PRESIDENTIAL ELECTION PETITION COURT
COURT OF APPEAL OF NIGERIA
HOLDEN AT ABUJA

ON WEDNESDAY, THE 11TH DAY OF SEPTEMBER, 2019

BEFORE THEIR LORDSHIPS

HON. JUSTICE MOHAMMED LAWAL GARBA	JUSTICE, COURT OF APPEAL
HON. JUSTICE ABDU ABOKI	JUSTICE, COURT OF APPEAL
HON. JUSTICE JOSEPH SHAGBAOR IKYEGH	JUSTICE, COURT OF APPEAL
HON. JUSTICE SAMUEL CHUKWUDUMEBI OSEJI	JUSTICE, COURT OF APPEAL
HON. JUSTICE PETER OLABISI IGE	JUSTICE, COURT OF APPEAL

CA/A/PEPC/002/2019

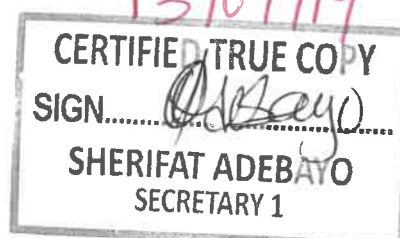
1. ATIKU ABUBAKAR
2. PEOPLES DEMOCRATIC PARTY - PETITIONERS

V.

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. PRESIDENT MUHAMMADU BUHARI - RESPONDENTS
3. ALL PROGRESSIVE CONGRESS (APC)

JUDGMENT
(DELIVERED BY JOSEPH SHAGBAOR IKYEGH, J.C.A.)

I agree with the robust judgment pronounced by my learned brother, Mohammed Lawal Garba, J.C.A., with the addition of these few words by way of emphasis.



Paragraph 15(d) and (e) of the petition averred that –

> "(d) *The 2nd Respondent was at the time of the election not qualified to contest the said election.*
>
> (e) *The 2nd Respondent submitted to the 1st Respondent an affidavit containing false information of a fundamental nature in aid of his qualification for the said election".*

Section 138(1)(a) and (e) of the Electoral Act, 2010, as amended by the Electoral (Amendment) Act No.25 of 2015, states thus -

> *"138(1) An election may be questioned on any of the following grounds, that is to say –*
>
> (a) *that a person whose election is questioned was, at the time of the election, not qualified to contest the election;*
>
> ....
>
> (e) *that the person whose election is questioned had submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the election".*

The RW2, a Mr. Suleiman Isa Maiadua, who was 77 years old at the time of his testimony on 30.07.19 swore that he was one of the class-mates of the 2nd respondent at Katsina Provincial Secondary School (now Government College Katsina) between 1956 and 1961 where English language was the medium of communication and that they wrote

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examination in 1961 upon reaching class six in the said secondary school. The evidence of the RW2 was not discredited under cross-examination.

A witness of 77 years, such as RW2, is indeed an old man who in virtue of advanced age would lean on the side of truth vide **Nwawuba v. Enemuo (1988) 2 NWLR (pt.78) 581 at 595** where the Supreme Court held per the judgment prepared by Nnaemeka-Agu, J.S.C., (as he was, now of blessed memory) thus –

> *"It is a matter of common knowledge that old men .... often find it difficult to twist the truth".*

Accordingly, I accept the uncontradicted evidence of RW2 to the effect that the 2nd respondent was indeed one of his classmates at Katsina Provincial Secondary School (now Government College Katsina) between 1956 and 1961 where they sat for their final examination upon completion of class six.

Educational qualification for election to the office of President of Nigeria is stated in section 131(d) of the 1999 Constitution, as altered, thus –

> *"131. 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".*

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The educational threshold of "school certificate or its equivalent" in section 131(d) of the 1999 Constitution, as altered, is interpreted in section 318(1)(a) and (b) thereof in these words –

> *"School Certificate or its equivalent" means (inter alia at least) –*
>
> *(a) a Secondary School Certificate or its equivalent or Grade II Teacher's Certificate, the City and Guilds Certificate; or*
>
> *(b) education up to Secondary School Certificate level"*

The Court (coram: Obadina, Sanusi, Ogbuagu JJ.CA) had cause to interpret a similar provision in section 106 of the 1999 Constitution relying on section 318(1)(a) and (b) thereof in the case of **Digai and Anor. Nanchang and Ors. (2005) All F.W.L.R. (pt.240) 41 at 70** per Obadina, J.C.A. thus –

> *"What is required under the law is that there must be evidence that a candidate is educated up to the school certificate level, and not that he must produce a certificate to that effect".* *(My emphasis).*

There is also the case of **Bayo v. Njidda (2004) 8 NWLR (pt.876) 544 at 630** where it was held by Ogbuagu, J.C.A., thus –

> *"… as regards a secondary school certificate level, one does not have to pass the secondary school certificate examination. It is enough, in my view, that one attended a secondary school and read up to secondary school*

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certificate level ie., without passing and obtaining the certificate". *(My emphasis).*

There is again the case of **Chukwu v. Icheonwo (1999) 4 NWLR (pt.600) 587,** where his lordship, Aka'ahs, J.C.A., (now J.S.C.) while interpreting section 99(1) of the Local Government (Basic Constitutional and Transitional Provisions), Decree No.36 of 1998, which is similar to section 318(1) of the 1999 Constitution (supra) on the phrase "School Certificate or its equivalent" held thus –

> *"It is not absolutely necessary that such a person must possess a certificate to enable him function effectively".*

Generally, there is a rebuttable presumption of literacy. A person is presumed literate until the contrary is proved by the person doubting or challenging that person's literacy vide the cases of **Anaeze v. Anyaso (1993) 5 NWLR (pt.291) 1, Otitoju v. Governor, Ondo State (1994) 4 NWLR (pt.340) 518, Jibosu v. Obadina (1962) NRNLR 303, Ezeigwe v. Awudu (2008) 11 NWLR (pt.1097) 158** all cited with approval by the Supreme Court in the fairly recent case of **Sunday v. F.R.N. (2019) 4 NWLR (pt.1662) 211 at 229, 239**.

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No scintilla of evidence was brought by the petitioners to rebut the presumption of literacy in favour of the 2nd respondent that he attained

education at least up to secondary school level in 1961 as stated on oath by the RW2. The 2nd respondent therefore possessed the minimum educational qualification under section 131(d) of the 1999 Constitution read with section 318(1)(b) thereof to contest the said Presidential Election.

The information given on oath by the 2nd respondent to the 1st respondent (INEC) in Exhibit P1, Form CF001, on his educational qualification reads–

> **"SCHOOLS ATTENDED/EDUCATIONAL QUALIFICATIONS WITH DATES:**
>
> **Attach evidence of all educational qualifications**

S/N	*SCHOOL*	*QUALIFICATION*	*YEAR*
1	*PRIMARY*	*PRIMARY SCHOOL CERTIFICATE*	*1952*
2	*SECONDARY*	*WASC*	*1961*
3	*HIGHER*	*OFFICER CADET*	*1963*

The affidavit accompanying the information in Exhibit P1, Form CF001, on educational qualification sworn to by the 2nd respondent reads –

> *"1. That I am the above named person and the deponent on this affidavit herein.*
>
> *2. 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.*
>
> *3. This affidavit is made in good faith and for record purpose."*

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The information given by the 2nd respondent to the 1st respondent in Exhibit P1, Form CF001, was on the submission of his Primary School and Secondary School Certificates to the Military at the time of his enlistment in the Nigerian Army in 1963.

Giving false information in an affidavit tantamounts to lying on oath. It is a criminal offence vide section 156 of the Penal Code which provides thus –

> *"Whoever, being legally bound by an oath or by any express provision of law to state the truth or being bound by law to make a declaration upon any subject, makes any statement, verbally or otherwise, which is false in a material particular and which he either knows or believes to be false or does not believe to be true, is said to give false evidence".*

The next stage is on the proof of the allegation that the information by the 2nd respondent to INEC in Exhibit P1, Form CF001, on educational certificates is false. This is a criminal allegation which is directly in issue in the election petition which must be proved beyond reasonable doubt or with laser-like precision by the petitioners who had asserted in the petition that the information on the educational qualification of the 2nd respondent given on oath by the 2nd respondent to the 1st respondent in Exhibit P1, Form CF001, is false vide section 135 of the Evidence Act, 2011 (Evidence Act) which provides thus -

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> "135 (1) *If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.*
>
> *(2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action."*

See also the cases of **Mohammed v. Wamako and Ors. (2018) 7 NWLR (pt.1619) 573 at 588 and 591, Ikpeazu v. Otti (2016) All FWLR (pt.833) 1946, Saleh v. Abah (2018) All FWLR (pt.933) 944, Maihaja v. Geidam (2018) 4 NWLR (pt.1610) 454 at 486-489**.

It is trite that he who asserts has the burden to prove the assertion or allegation and if the allegation or assertion is criminal in nature it must be proved beyond reasonable doubt by the person asserting it vide the case of **Zaccala v. Edosa and Anor. (2018) All FWLR (pt.926) 1 at 34** per the lead judgment prepared by his lordship, Eko, J.S.C., to the effect that proof beyond reasonable doubt is not established by mere assertion.

Furthermore, the Supreme Court while considering similar issue inter alia of false declaration in the case of **Maihaja v. Geidam (2018) 4 NWLR (pt.1610) 454 at 486-489**, held per the lead judgment prepared by his lordship, Bage, J.S.C., (now His Royal Highness, The Emir of Lafia) inter alia that–

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> *"The necessary question is what must a party prove to succeed on the allegation of false declaration.*
> *The nature of evidence required in this kind of situation is similar to that of "mathematical precision" of two multiplied by two equals four (2x2=4)."*
> *(My emphasis).*

See also the case of **Digai v. Nanchang (supra) at 64** where the Court held that –

> *" As I had indicated earlier in this judgment, this issue revolves on the two other issues already treated by me but in specific, hinges on the complaint of an alleged giving false information to the 3rd respondent by the 1st respondent.*
>
> *Firstly, giving of false information either to the Police and in the instant case to the 3rd respondent certainly amounts to an allegation of the committal of a crime. Again, the standard of proof is beyond reasonable doubt, See section 138(1) of the Evidence Act".*

The quantum of proof beyond reasonable doubt would therefore be proof with "mathematical precision" as stated by the Supreme Court in **Maihaja v. Geidam (supra).**

The petitioners sought to prove the allegation of false information by relying on Exhibit P24, a copy of the Vanguard Newspaper of 21.01.15, where it was reported in part that –

> *"The outgoing Director of Army Public Relations, Brigadier-General Olajide Laleye, who addressed newsmen in Abuja, said:*

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"The Nigerian Army does not have the original copy of his (Buhari) West African Examinations Council, WAEC result or a certified true copy...............

... Neither the original copy, Certified True Copy, CTC, nor statement of result of Major General Muhammadu Buhari's WASC result is in his personal file. What I have said here is what is contained in his service records' personal file. We have not added or subtracted anything".

The petitioners further relied on Exhibit P25, a Vanguard Newspaper of 01.11.18, where similar information as contained in Exhibit P24 was quoted by one Ikechukwu Amaechi who described himself as the MD/Editor-in-Chief, TheNitche on Sunday Newspaper, Ikeja, Lagos in their bid to establish the allegation. The petitioners again relied on Exhibit P80, video clip, purporting to carry the same information as Exhibit P24 where the Director of Army Public Relations, the same Brigadier-General Olajide Laleye, gave a press briefing on the said issue contained in Exhibit P24 in pursuit of the allegation.

Proof beyond reasonable doubt of the criminal allegation in question required the evidence of the Military Secretary or Secretary, Military Board, who is in custody of the service records' personal file of the 2nd respondent and/or by tendering in evidence a certified true copy of the service records' personal file of the 2nd respondent as secondary evidence;

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or, perforce, by tendering in evidence the original service records' personal file of the 2nd respondent through its custodian as primary evidence of what it contains.

In other words, any document in the custody of a public servant such as service records' personal file of the 2nd respondent kept by the Military Secretary or Secretary, Military Board, should be proved by tendering in evidence a certified true copy of the service records' personal file of the 2nd respondent in accordance with the provisions of sections 102(b), 104 and 105 of the Evidence Act as secondary evidence of what the service records' personal file of the 2nd respondent contains, or by tendering in evidence the original file itself through the custodian thereof as primary evidence of what the service records' personal file of the 2nd respondent contains.

In addition, the video clip, Exhibit P80, is a piece of documentary evidence under sections 83 and 258 of the Evidence Act and required it to be tendered in evidence through the maker of the statement or the recorder of the interview or message who has personal knowledge of the matters dealt with by the statement or in performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have personal knowledge of those matters.

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None of the conditions in the proviso to section 83 of the Evidence Act (supra) that the document can be admitted in evidence if the maker of the statement is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or the maker is outside Nigeria and it is not reasonably practicable to secure his attendance, or all reasonable efforts to find him have been made without success, or by the circumstances of the case the court is satisfied that undue delay or expense would otherwise be caused to procure the attendance of the maker of the statement to give evidence in court was met by the petitioners in this case to warrant the Court to act on the document, Exhibit P80, vide **Madueke v. Okoroafor and Ors. (1992) 9 NWLR (pt.263) 69 at 81 and 83.**

The Supreme Court also held in the case of **Adegbite v. State (2018) 5 NWLR (pt.1612) 183 at 204 – 205** per the lead judgment prepared by his lordship, Galinje (Galumje), J.S.C., that –

> "*The lower court was also right when it refused to accord probative value to the newspaper report and radio interview as newspaper report is not always the truth of its contents*".

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Exhibits P24, P25 and P80 therefore lack probative value.

The RW1, Major-General Tarfa (retired), one of the Military course-mates of the 2nd respondent gave evidence under cross-examination by the 1st respondent that educational certificates were not submitted to the

Nigerian Army during their enlistment in the Nigerian Army in 1963. The evidence of a witness such as the oral evidence of RW1 who is not the custodian of the said service records' personal file of the 2nd respondent would not suffice as proof of the criminal allegation beyond reasonable doubt or with mathematical precision.

The comment under section 156 of the Penal Code reads –

> *"COMMENT*
>
> *Pakistan Penal Code section 191.*
>
> *Sudan Penal Code section 167.*
>
> 1. *This section defines the giving of false evidence, known as perjury in English law.*
> 2. *The section does not require that the false statement made shall have any bearing upon a matter in issue. It is sufficient if the false statement is made with the intention of deceiving the court and the statement is made deliberately and in the knowledge that it is false.*
> 3. *The section differs from English law in that:*
>
>   *(a) The false statement need not be made in the course of or be related to a judicial proceeding;*
>
>   *(b) It need not be made on oath or affirmation provided that the person making it was under an express provision of law to tell the truth;*
>
>   *(c) It need not be material to proceedings before a court;*
>
>   *(d) Corroboration is not stated to be a requirement to prove that a false statement was made".*
>
> *(My emphasis).*

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It is my modest opinion that once the alleged false statement is made on oath as in an affidavit its quality of being made on oath would bring it within the meaning of perjury and thus under the ambit of the underlined comment 1 (supra). Because the legal consequence of lying on oath in an affidavit is the crime of perjury. Proof of it requires corroboration under section 202 of the Evidence Act. Corroboration being an issue of evidence exclusively reserved for the legislative powers of the National Assembly pursuant to item 23 in the Exclusive Legislative List contained in the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999, as altered, such statement on oath (affidavit) if alleged to be false would require corroborative evidence in proof of it as provided under section 202 of the Evidence Act, which provides for corroboration of evidence in a case of perjury.

Proof beyond reasonable doubt would have, at the risk of repetition, entailed the testimony of the custodian of the service records' personal file of the 2nd respondent with the Nigerian Army and/or evidence of certified true copy of the said service records to establish the allegation of giving false information by the 2nd respondent to the 1st respondent in Form CF001, Exhibit P1. See by analogy the case of **Mohammed v. Wammako and Ors. (supra) 573** especially at page **592** thereof per the judgment prepared by his lordship, Kekere-Ekun, J.S.C., (while considering the case

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of alleged forgery of educational certificate and giving false information) to the effect that proof beyond reasonable doubt of the allegations would require evidence, be it documentary or by communication, from the organisation or authority concerned disputing the information. The petitioners did not lead such evidence to prove the said allegation with certainty or mathematical precision.

These would have amounted to proof beyond reasonable doubt or proof with mathematical precision of the allegation whether the 2nd respondent submitted his Primary School Certificate and his West African School Certificate to the Military Secretary or Secretary, Military Board of the Nigerian Army upon his enlistment into the Nigerian Army as an officer cadet in 1963, and would have corroborated the evidence of RW1 as required by section 202 of the Evidence Act.

Accordingly, even if the evidence of RW1 had some weight, the said evidence contradicting the affidavit evidence on which the allegation of false information is predicated should have been corroborated by trustworthy evidence as circumstances were not proved to corroborate the said admission made by the RW1 under cross-examination.

I conclude that the said allegation of giving false information by the 2nd respondent to the 1st respondent in Exhibit P1, Form CF001, was not established beyond reasonable doubt.

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Bribery is an electoral offence under section 124 of the Electoral Act. It is a corrupt practice within the definition of the phrase rendered by the Supreme Court in the case of **Yusufu v. Obasanjo (2003) 16 NWLR (pt.847) 544** per the judgment prepared by his lordship, Acholonu, J.S.C., as follows –

> *"The term 'Corrupt Practices' denote or can be said to connote and embrace certain perfidious and debauched activities which are really felonious in character being redolent in their depravity and want of ethics. They become hallmark of a decayed nature lacking in conscience and principles".*

The PW28 testified of vote buying in Dass Local Government Area of Bauchi State, while PW30 testified of vote buying in Zaki Local Government Area of Bauchi State; also, the PW32 testified of vote buying in Ningi Local Government Area of Bauchi State. The PW29 testified of vote buying in Billiri Local Government Area of Gombe State, while the PW43 testified of bribery of INEC collation official in Agyaragu-Tofa ward in Lafia Local Government Area of Nasarawa State.

The witnesses (supra) did not mention the name(s) of any of the voters whom they saw bribed. The Court (Ete, Uwais and Ademola, JJ.CA) held in the case of **Alege v. Edun (1978) NNLR 17 at 26** that the name(s) of the voter(s) whom the witness saw bribed must be given in

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evidence before allegation of bribery would be held to have been proved beyond reasonable doubt.

The Supreme Court also held in the case of **Waziri and Anor. v. Geidam and Ors. (2016) 11 NWLR (pt.1523) 230** following the cases of **Nyako v. Balewa (1965) NMLR 257** and **Alege v. Edun (supra)** that allegation of bribery or corruption must be proved by the accuser beyond reasonable doubt by evidence identifying by name the voter(s) that were bribed.

Subsections (1)(a), and (b) of section 124 of the Electoral Act also require that the alleged bribe be given or offered to a voter therefore it becomes necessary that the name of any of the voters whom the witness saw bribed be given in evidence. This is to ensure that the corrupt practice of bribery was actually effected on a registered voter or voters, not at large, for the purpose of illicitly swaying the voter's free choice of candidate in the election in order to maintain a sanitised electoral process that would be seen to be conducted in a free and fair manner and/or on level playing ground.

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There is no convincing evidence that the alleged bribe givers acted with the knowledge and consent of the 2nd – 3rd respondents or with the knowledge and consent of a person that acted under the general or special authority of the 2nd – 3rd respondents with reference to the election as required by section 124(6) of the Electoral Act which, for emphasis,

states that a candidate will only be held responsible for bribery if the offence was committed with his knowledge and consent or the knowledge and consent of a person who is acting under the general or special authority of the candidate with reference to the election.

Clear and unequivocal proof of the allegation of bribery was also not made out by the petitioners as it is not sufficient to suggest that the mere fact that somebody else bribed other persons to vote for a particular candidate was enough and conclusive evidence against a candidate in an election as such a candidate cannot be held responsible for what other people did in the form of unsolicited aid of which he or his acknowledged agents were ignorant vide **Anazodo v. Audu (1999) 4 NWLR (pt.600) 530**.

There was therefore lack of concrete evidence to establish that the 2nd – 3rd respondents personally committed the corrupt act of bribery or aided, abetted, counselled or procured the commission of the alleged corrupt practice of bribery; nor was it established that the alleged act of bribery was committed through an agent that was expressly authorised to act in that capacity or granted the general or special authority to act in that capacity on behalf of the 2nd – 3rd respondents; nor did the petitioners establish that the alleged corrupt practice of bribery substantially affected the outcome of the election to warrant nullification of the election of the

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2nd respondent vide section 139(1) of the Electoral Act and the cases of **Audu v. INEC (No.2) (2010) 13 NWLR (pt.1212) 456 at 544, Buhari v. Obasanjo (2005) 13 NWLR (pt.941) 1, Abubakar v. Yar'Adua (2008) 18 NWLR (pt.1120) 1, Oke v. Mimiko (No.2) (2014) 1 NWLR (pt.1388) 332, Akeredolu v. Mimiko (2014) 1 NWLR (pt.1388) 402, Ngige v. INEC (2015) 1 NWLR (pt.1440) 281**.

The PW59, the Kenyan witness, admitted he obtained the information contained in Exhibits P87, P88 and P89 from a whistle-blower's website which had hacked (permit the colloquialism) the website of the 1st respondent. The bottom-line is that the information and data upon which the PW59 based his analysis of the results of the election contained in Exhibits P87, P88 and P89 were sourced from the website of the 1st respondent, a public body, by means of hacking its website by a whistle-blower.

The website of the 1st respondent is doubtless a document within the meaning of section 258(1) of the Evidence Act which defines "document" as –

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> *"(d) any device by means of which information is recorded, stored or retrievable including computer output".*

Proceeding on the footing that the ultimate source of the information and data contained in Exhibits P87, P88 and P89 were illegally obtained from

the website of the 1st respondent, the computer print-out of the information and data in Exhibits P87, P88 and P89 should have been certified by the 1st respondent, a public body in custody of a public document, as secondary evidence under sections 102, 104 and 105 of the Evidence Act, as amended.

Exhibits P87, P88 and P89 were not certified therefore they have no evidential value – **Kubor and Anor. v. Dickson and Ors. (2013) 4 NWLR (pt.1345) 534 at 579** per the lead judgment prepared by his lordship, Onnoghen, J.S.C., (later CJN) thus –

> *"The fact that the Exhibits are computer printouts or e-documents does not change their nature and character as public documents …".*

His lordship, Ogunbiyi, J.S.C., had this to say in his judgment in pages 593 – 594 thus –

> *"Also and on the same footing is the document exhibit "L" which is a computer or internet generated document allegedly printed by the appellants from the website of the 3rd respondent. As rightly submitted on behalf of the respondents, by virtue of section 102(ii) of the Evidence Act, such document is classified as public document and only a certified true copy of same is admissible in law. It follows therefore that the two exhibits 'D' and 'L' share the same fate and are rendered of no legal effect. The lower court was therefore on a sound footing in upholding the tribunal's stand by expunging the documents. The following authorities are relevant in support: **N.I.P.C. Ltd. v. Thompson Organization Ltd. (1969) 1 NMLR 99 at***

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104; (1969) 1 SCNLR 279; Kankia v. Maigemu (2003) 6 NWLR (pt.817) 496 and Owonyin v. Omotosho (1961) 2 SCNLR 57".

Besides, the PW59 admitted that the information or data upon which his "expert evidence" is based was hacked by a whistle-blower from the website of the 1st respondent from whose website the witness derived the information and data that formed the basis of his analysis contained in Exhibits P87, P88 and P89. Sections 14 and 15 of the Evidence Act, as amended, state –

"14. Evidence obtained –

(a) improperly or in contravention of law; or
(b) in consequence of an impropriety or of a contravention of a law,

shall be admissible unless the court is of the opinion that the desirability of admitting the evidence is out-weighed by the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained.

15. For the purposes of section 14, the matters that the court shall take into account include –

(a) the probative value of the evidence;

(b) the importance of the evidence in the proceeding;

(c) the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding;

(d) the gravity of the impropriety or contravention;

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> (e) *whether the impropriety or contravention was deliberate or reckless;*
>
> (f) *whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention; and*
>
> (g) *the difficulty, if any, of obtaining the evidence without impropriety or contravention of law."*

The website of the 1st respondent from which the information that was hacked being any device by means of which information is recorded, stored or retrievable as a computer output is a document under section 258(1) of the Evidence Act which should have been accessible to the petitioners for inspection for the purpose of filing and maintaining the election petition under section 151 of the Electoral Act empowering the Court to order for inspection of electoral documents and/or any other documents in the custody of the 1st respondent. See **Ladoja v. Ajimobi (2016) 10 NWLR (pt.1519) 98 at 158 – 159**.

Consequently, the petitioners had no basis to side-track the law by benefiting from the hacked website of the 1st respondent through the machination of the whistle-blower thus resorting to self-help which the Supreme Court deprecated in the case of **Governor of Lagos State v. Ojukwu (1986) 1 NWLR (pt.18) 621**.

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The law also frowns at a party benefiting from a wrongful act. Further, in the case of **Torti v. Ukpabi and Ors. (1984) 1 SCNLR 214 at 239 – 240,**

Anialogu, J.S.C., expressed reservation on placing weight on evidence obtained by felonious means or by breaking the law, as in this case.

The criminal case of **Sadau v. State (1968) 1 All NLR 125** following the Privy Council criminal case of **Kuruma, son of Kaniu v. The Queen (1955) A.C. 197** on the propriety of illegally obtained evidence by way of illegal search of an accused person has to be appreciated against the background that criminal law is addressed to all and sundry and is for the protection of society in the pursuit of which the State and the citizenry are stakeholders. Therefore, incriminating relevant evidence found on an accused person by illegal means will meet the ends of justice on ground of overriding public interest for the protection of society by the State using the illegally obtained evidence to prosecute the accused whose remedy may lie in a civil action for damages against the State for the illegal search.

In the present case, the petitioners deliberately and recklessly relied on the hacked information and data in question when it would have been convenient for the petitioners to have followed due process under section 151 of the Electoral Act to inspect the document and obtain certified true copies thereof at the time the 1st respondent's website was hacked before the petition was filed thus breaching section 15(d), (e) and (g) of the Evidence Act (supra).

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Based on the discussion (supra), I respectfully place no weight on Exhibits P87, P88 and P89 as they are the product of unjustifiable and illegally obtained evidence by means of hacking the website of the 1st respondent by the whistle-blower using his website through whom the PW59 improperly obtained the information and data contained in Exhibits P87, P88 and P89.

The PW60, the statistician, is not competent to analyse and produce report of election results and alleged malpractices afflicting them, though presented as an expert witness. His evidence and documentary analysis of the electoral documents contained in Exhibits P90A – P90J therefore have no evidential value vide **Ladoja v. Ajimobi (supra) at 142 – 144** per the lead judgment prepared by his lordship, Ogunbiyi, J.S.C., thus –

> *"PW1's report of inspection is replete with analysis of election materials and at the end of each table, he gave analysis and opinion and conclusion of the materials analyzed by him. This is evidenced at pages 4397 and 4398 of Vol.5 of the record reproduced earlier in the course of this judgment.*
> *The analysis of the smart card reader, accreditation, PVC collected and votes cast on each table in each local government is made from pages 3611 through 4371 of the volume 5 of the record. ....*
> *The witness PW I is also not qualified to analyze or subject to forensic scrutiny electoral forms, results and documents in the manner he did. In the case of* ***Buhari v. [NEC (2008) 18 NWLR (Pt.1120) 246 at 386 - 391*** *on a somewhat related matter, the Court of Appeal without much ado rejected the appellant's report because he was not qualified to analyze*

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INEC documents. The lower court at pages 386 - 389 of the report, wasted no time in rejecting the documents.
*Also in a recent decision in SC. 409/2012 - **Action Congress of Nigeria v. Rear Admiral Murtala H. Nyako & Ors**, delivered on November 12,2012 reported in **(2012) LPELP 19649 (SC); (2015) 18 NWLR (Pt. 1491) 352** this court in a similar situation rejected the evidence qua statistical analysis of a witness who described himself in his statement on oath as graduate of Economics, a consumer Banking officer and a retail financial analyst, held and said:-*

> *"PW66 by qualification and learning is not an expert in the art of establishing multiple registration and voting in elections special skill in respect of which would have entitled him to assist the tribunal to form its opinion on the point"."*

See also the case of **ANPP v. Usman (2008) 12 NWLR (pt.1100) 1 at 65 – 68** per the judgment prepared by his lordship, Aboki, J.C.A.

The RW4's attention was drawn under cross-examination by the petitioners learned senior counsel to the first name "MOHAMED" on Exhibit R.19, the Cambridge Assessment International Education Certifying Statement, while the first name of the 2nd respondent in the petition is "Muhammadu".

There should be no fuss over the name "MOHAMED" and "MUHAMMADU" because as held by the Court (coram: Nsofor, Ikongbeh, Onnoghen, Mika'illu, Ngwuta, JJ.CA) in **Alliance For Democracy v.**

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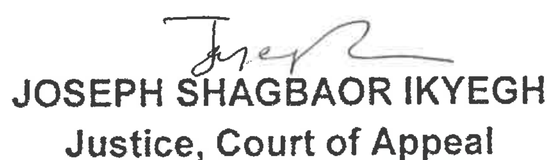
Fayose and 4 Ors. (2005) 10 NWLR (pt.932) 151 at 192 – 193 per the lead judgment prepared by Nsofor, J.C.A., thus -

> *"And I ask this: what, really, is in a name, or a name "cucullus non facit monachum".*
>
> *Now, "name" derived from the Latin: nomen - nominis, in its noun form, (See Chambers Twentieth Century Dictionary at page 875) is defined to mean*
>
> > *"that by which a person or a thing is known or called, a designation."*
>
> *Of what concern or to whom does it matter if "A" chooses to be called or known by many, or very many names? I confess that I know of no legislation or a Decree in Nigeria restricting any person(s) to a number of names he may be called or known by. No such law!"*

It is therefore not in doubt that the document, Exhibit R.19, bearing the name "MOHAMED BUHARI" refers to one and the same "Muhammadu Buhari", the 2nd respondent in the petition.

In the result, I too concur that the petition has not been proved as required by law and deserves to be dismissed and hereby dismiss it and abide by the consequential orders contained in the judgment pronounced by my learned brother, Garba, J.C.A.



JOSEPH SHAGBAOR IKYEGH
Justice, Court of Appeal