IN THE GOVERNORSHIP ELECTION PETITION TRIBUNAL

HOLDEN AT KANO

THIS 20TH DAY OF SEPTEMBER, 2023

PETITION NO.EPT/KN/GOV/01/2023

BETWEEN:

ALL PROGRESSIVES CONGRESS (APC)............PETITIONER

AND

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)..........................RESPONDENTS**
2. **YUSUF ABBA KABIR**
3. **NEW NIGERIA PEOPLE'S PARTY (NNPP)**

BEFORE THEIR LORDSHIPS

HON JUSTICE OLUYEMI AKINTAN-OSADEBAY ....CHAIRMAN

HON JUSTICE I. GANDU.....................................MEMBER I

HON JUSTICE BENSON ANYA..............................MEMBER II

J U D G M E N T

(LEAD JUDGMENT DELIVERED BY HON JUSTICE O. AKINTAN- OSADEBAY)

The election into the Governorship in Kano State held on the 18th of March 2023. The Petitioners candidate NASIR YUSUF GAWUNA contested the election on the platform of the Petitioner (APC). The 2nd Respondent YUSUF ABBA KABIR on the other hand, contested the said election on the platform of the 3rd Respondent (NNPP). Fifteen other political parties, i.e AA, AAC, ADC, ADP, APGA, APM,

APP, BP, LP, NRM, PDP, PRP, SDP, YPP, and ZLP, also fielded candidates in the election referred to above.

At the end of the election, the 1st Respondent (INEC), who was in charge of the conduct of the said election declared the 2nd Respondent, candidate of the 3rd Respondent, winner of the election with 1,019,602 votes and accordingly returned him as duly elected. The Petitioner who are credited to have scored 890,705 votes, are not satisfied with the said election and declaration of the 1st Respondent.

Kano State consists of 44 Local Government Areas, 484 Wards, 11,122 polling units, 5,921,370 registered voters of which 5, 594, 193 voters collected their permanent voters card (PVC) as stated in paragraph 21 of the Petitioners Petition and reflected in table 3, pages 8 to 10, volume 1 of the petition.

The 1st Respondent (INEC) admitted this fact at paragraph 18 of the '1st Respondents Amended Reply to the Petition' filed on the 13th of May 2023.

The Petitioners accordingly filed this Petition on the 9th of April 2023 in volumes 1 to 6, whereby they pray this Tribunal for the relief's stated in paragraph 99 at pages 100 to 103 of the petition as follows that:

RELIEFS SOUGHT BY THE PETITIONER AGAINST THE RESPONDENTS

WHEREFORE YOUR PETITIONER seeks the following reliefs from this Honourable Tribunal:

Your Petitioner prays that:-

1. That it be determined that the 3rd Respondent failed to present or sponsor any candidate who satisfied the requirement of the provisions of Sections 177 and 182 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Electoral Act, 2022, and other electoral laws, for the election of the Governor of Kano State.
2. That it be determined that the 2nd Respondent was not qualified as a candidate in the election to the office of Governor of Kano State held on the 18th March, 2023.
3. That it be determined that all the votes recorded for the 2nd and 3rd Respondents in the election were wasted votes by reason of the non – qualification /disqualification of the 2nd Respondent as a candidate in the election to the office of Governor of Kano State held on the 18th March 2023.
4. That it be determined that on the basis of the remaining votes, the candidate of Your Petitioner, NASIRU YUSUF GAWUNA, having scored a majority of lawful votes and having met the constitutional requirement be declared the winner of the election and returned elected as Governor of Kano State.
5. That it be additionally determined that the 2nd Respondent was not duly elected by a majority of lawful votes at the election.
6. That it be determined that the candidate of Your Petitioner, NASIRU YUSUF GAWUNA scored a highest number of lawful votes of 890,705 (after discounting the unlawful votes of the 2nd Respondent amounting to 282, 496 votes) and having met the requirement of the law, is declared the winner of the

election to the office of Governor of Kano State and returned elected.

7. That the certificate of return issued to the 2nd Respondent by the 1st Respondent be set aside as invalid and nullity.
8. SETTING ASIDE AND OR NULLIFYING the certificate of return or any declaration of the 2nd and 3rd Respondents by any means whatsoever as the winner of the 2023 Gubernatorial election for Kano State held on 18th March 2023.
9. DIRECTING the 1st Respondent to immediately issue and serve a certificate of return on or in favour of the candidate of your Petitioner, as the winner of the 2023 Gubernatorial election for Kano State held on 18th March 2023.

IN THE ALTERNATIVE AND ONLY IN THE ALTERNATIVE:

1. The election into the office of Governor of Kano State held on the 18th March, 2023 was invalid by reason of non-compliance with the Electoral Act which non-compliance substantially subverted the principles of democratic elections laid down in the act and substantially affected the results of the election.
2. AN ORDER and direction setting aside and cancelling the elections held into the office of the Governor of Kano State on the 18th March 2023.
3. AN ORDER directing fresh elections be held in Kano for the office of Governor of Kano.
4. AN ORDER excluding the 2nd and 3rd Respondents from participating in any fresh elections ordered by the tribunal

since the 2nd defendant(sic) is not qualified to as a candidate in the election and the 3rd Respondent did not sponsor a qualified candidate in the election.

5. AN ORDER of this Honourable Tribunal setting aside the issuance of certificate of return to the 2nd Respondent.

As a further alternative

6. In alternative to relief 8 above, AN ORDER of this Honourable Tribunal setting aside the return made by the 1st Respondent of the 2nd Respondent as winner of the election and directing the 1st Respondent to conduct a rerun/supplementary election in the polling units which election were cancelled or not held or there was over voting.
7. Cost of this petition.
8. And such further or other order as this Honourable Court may deem fit to make in the circumstances of this case.

The 3 grounds upon which the Petitioners are basing the Petition are as contained at page 7 paragraph 20 of the said petition as follows:

20(i):

The election and return of the 2nd Respondent as Governor of Kano State was invalid by reason of non-compliance with the provisions of the Electoral Act.

ii):

The 2nd Respondent whose election is being questioned was,

as at the time of the election, not qualified to contest the election.

iii):

The 2nd Respondent was not duly elected by majority of lawful votes cast at the election.

Upon service of the petition, the 1st Respondent filed and relied on the '1st Respondents amended reply to the petition and notice of preliminary objection' filed on 13th of May 2023.

The 2nd Respondent filed and relied on the '2nd Respondents reply to the Petition' filed on the 14th of May 2023, volumes 1 and 2.

The 3rd Respondent filed the '3rd Respondents Reply to the Petition' on the 14th of May 2023 Volumes 1 and 2.

The Petitioners also filed the Petitioner's reply to the replies of the Respondents.

Prior to the prehearing session, various applications were taken for inspection of polling documents, obtaining CTC's thereof, for extension of time and for an amendment.

Upon the close of pleadings, pre-hearing session commenced on the 7th of June 2023 and was concluded on the 19th of June 2023. A Prehearing report was issued and served on all the parties.

A ruling was delivered by this tribunal on the 16th of June 2023, sequel to an application filed by the Petitioners counsel filed on the 7th of June 2023 for an order for the production and joint inspection of the Bimodal Voters Accreditation System device

(BVAS), used for the Governorship election held on the 18th day of March 2023.

A resolution of the preliminary objections of the 3 Respondents in this Petition shall be taken and considered by this tribunal before delving into the issues in the substantive case.

At the pre hearing session, 3 Notices of Preliminary Objection filed by the 1st Respondent on the 29th of May 2023, the 2nd Respondents objection filed on the 6th of June 2023 and the 3rd Respondents objection of 7th of June 2023, challenging the Jurisdiction of this Tribunal, were taken and opposed to by the Petitioners counsel, who filed counter affidavits in opposition. For the exigency of time and in line with the dictates of the Electoral Act 2022, this Tribunal subsumed the ruling in these 3 notices of objection, to be determined along with the main petition.

We shall now proceed to determine them accordingly.

1ST RESPONDENTS NOTICE OF PRELIMINARY OBJECTION

By a notice of preliminary objection dated the 25th day of May, 2023 and filed on the 29th of May, 2023, the 1st Respondent filed an objection before this Honourable Tribunal brought pursuant to **Section 6(6)(b) and 179(4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 134(1) and (2) of the Electoral Act, 2022, paragraph 47(1) of the First Schedule to the Electoral Act, 2022** and under the inherent jurisdiction of the Honourable Tribunal.

The notice of preliminary objection prays the Honourable Tribunal for the following orders:

1. An order striking out and/or dismissing the petition for being incompetent, fundamentally defective and vesting no jurisdiction in the Tribunal to adjudicate on it.

2. An order striking out reliefs 4 and 6 of the petition, same having been sought in favour of a person not joined as a party to this petition.

3. And such order or other orders as this Honourable Tribunal may deem fit to make in the circumstances of this case.

The 1st Respondent/Applicant filed three grounds upon which the notice of preliminary objection is brought. The particulars of the said grounds of the notice of preliminary objection were also articulated by the 1st Respondent/Applicant. This Honourable Tribunal shall therefore take judicial notice of the grounds of the preliminary objection, as well as the particulars incorporated therein.

The notice of preliminary objection is supported by a five paragraphed affidavit deposed to by one Yusuf Nuhu Ozovehe, a litigation officer in the law firm of Abdullahi Aliyu, SAN and Co., Solicitors to the 1st Respondent/Applicant. The 1st Respondent/Applicant relied on all the paragraphs of the affidavit deposed therein. The 1st Respondent/Applicant equally filed a written address in support of the application.

Upon being served with the Applicant's notice of preliminary objection, the Petitioners filed a counter affidavit on the 5th day of June, 2023 in vehement opposition to same.

This application was heard on the 16th day of June, 2023 wherein the 1st Respondent and the Petitioner identified their respective processes. Parties adopted same and also argued their respective motion and counter affidavit. It is on this premise that the Honourable Tribunal then reserved the motion for ruling.

The 1st Respondent/Applicant distilled four issues for determination in his notice of preliminary objection, to wit:

1. *Whether the failure of the Petitioner to copy word for word the provision of Section 134(1)(b) of the Electoral Act, 2022, or use the word that convey its exact meaning in couching ground one of the petition has not rendered the said ground one of the petition incompetent.*
2. *Whether ground two of the Petitioner's petition which contains that the 2nd Respondent did not score the majority of lawful votes cast in the Governorship election held in Kano State on the 18th day of March, 2023, is not incompetent in view of the fact that the election was conducted and won under Section 179(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which requires the winner of the election to only score the highest votes cast at the election.*
3. *Whether this Honourable Tribunal has the jurisdiction to entertain the Petitioner's complaint in ground ii of his petition.*

4. *Whether Petitioner's reliefs 4 and 6 which are sought on behalf of a person who is not a party to this petition are grantable.*

ISSUE ONE

In respect of issue one, the 1st Respondent raised an eyebrow in the way and manner in which the Petitioner couched one of the grounds in the petition. The 1st Respondent/Applicant's complaint specifically, is that the Petitioner butchered the provision of **Section 134(b) of the Electoral Act 2022** by his inclusion or addition of the words **"and return of the 2nd Respondent as Governor of Kano State"** to the said provision.

According to the 1st Respondent/Applicant, that this being the case, that the ground as couched by the Petitioner is incompetent and not cognizable under the provision of Section 134(b) of the Electoral Act 2022 and thus liable to be struck out.

On the other hand, the Petitioner in its counter affidavit and written address in support of the counter affidavit, however, maintained that the Petitioner did not contravene the provision of Section 134(b) of the Electoral Act 2022 and prayed this Honourable Tribunal to discountenance all the arguments of the 1st Respondent/Applicant in relation to the way and manner the Petitioner's ground one was framed.

Counsel to all the Respondents in this petition cited copious authorities in support of their contention in this regard, including but not limited to the cases of **OSHIONMOLE V AIRHIA & ORS**

2013 7 NWLR PT 1353 PG 376 AT 399-400 PARAS E-C SC; HASSAN & ANOR V ISHAKU & ORS 2016 LPELR-40083 SC; OJUKWU V YAR'ADUA 2009 12 NWLR PT 1154 PG 50 &121-122 PARAS G-H (*dictum of Niki Tobi JSC*) and OYETOLA V ADELEKE 2020 6 NWLR PG 440 AT PG 551 PARAS A-C AND SILAS V INEC 2022 10 NWLR PT 1893 PG 467.

It is trite law, that a Petitioner is required to question an election on any of the grounds set out in Section 134 (1) of the Electoral Act, 2022. For ease of reference, Section 134(1) of the Electoral Act, 2022 provides as follows:

> *"An election may be questioned on any of the following grounds –*
>
> *a. A person whose election is questioned was at the time of the election not qualified to contest the election;*
> *b. The election was invalid by reason of corrupt practices and non-compliance with the provisions of this Act; or*
> *c. The Respondent was not duly elected by majority of lawful votes cast at the election.*

What then is the meaning of the word "ground"? In the case of **KALU VS CHUKWUMERIJE (2012) 12 NWLR (PT. 1315) 425 AT 485**, the Court of Appeal per Owoade, JCA puts it succinctly, thus:

> *"The Compact Edition of the Oxford English Dictionary (1971) US reprint (1988) defines the word "Ground" in numerous terms and with an*

> *array of examples at pages 1214 to 1225 as follows: "Ground": (a) The fundamental constituent or the essential part of anything. (b) A fundamental principle, also the elements or rudiments of any study or branch of knowledge. (c) A circumstance on which an opinion, inference, arguments, statement or claim is founded, or which has given rise to an action, procedure or mental feeling, a motive often with additional implication. A valid reason justifying motive or what is alleged as such."*

Thus, a ground in the context of an election petition, is the fundamental reason, basis or justification for questioning the election.

Before a party can question an election, his petition must fall within the grounds specified by the Electoral Act 2022. See the following cases: **OYEGUN VS IGBENEDION & ORS (1992) 2 NWLR (PT. 226) 947; OKONKWO VS INEC & ORS (2003) 3 LRECN 599; ABUBAKAR VS INEC (2020) 12 NWLR (PT. 1737); and MODIBO VS USMAN (2020) 3 NWLR (PT. 1712) 470.**

The issue at stake here, is not that the petition is not incorporated with a ground at all, but the issue here bothers on the way and manner the ground of the Petitioner's petition is couched. Can it then be said that the Petitioner offended the provision of Section 134(b) of the Electoral Act 2022 to lead to the striking out of the said ground?

The Petitioner, in filing this Petition on the 9th of April 2023 before this Election Petition Tribunal against all the Respondents,

pursuant to **S134 (1) of the Electoral Act 2022,** at page 7 of the Petition, formulated its **GROUNDS OF PETITION** as follows;

i) *The election and return of the 2nd Respondent as Governor of Kano State was invalid by reason of non-compliance with the provisions of the Electoral Act;*

ii) *The 2nd Respondent whose election is being questioned was, as at the time of the election, not qualified to contest the election;*

iii) *The 2nd Respondent was not duly elected by majority of lawful votes cast at the election*

The issue is whether by the inclusion of the phrase ***'and return of the 2nd Respondent as Governor of Kano State'*** into the provisions of S134 (1) (b) of the Electoral Act 2022, renders ground 1 of the Petition of the Petitioner as invalid and liable to be struck out.

Without much ado, Copious authorities as cited by the parties, are to the effect, that Petitioners are enjoined to use the words as stated in **section S134 (1) of the Electoral Act 2022.** That a Petitioner who decides to use his own language, is taking a big gamble, if not a big risk. See the case of **OJUKWU V YAR'ADUA (SUPRA); SILAS V INEC (SUPRA).**

Nevertheless, it is of note, that in the Respondents written addresses, all the Respondents conceded to the fact as reiterated in a plethora of authorities, that a Petitioner in an election Petition is allowed to use its own language in couching the grounds of its Petition. That however, in doing so, the Petitioner is expected to use the words that will convey the exact end purpose of the

subsection. It is their collective submission, that the two expressions used by the Petitioner did not convey the same meaning with the wordings in S134 of the Electoral Act 2022. See Page 13 paragraph 4.04 of the 1st Respondent's written address.

In the case of **ADEWUNMI & ANOR V AKINLOYE & ORS 2019 LPELR-50417 CA,** in interpreting the provisions of the then S138(1) of the Electoral Act 2010, which is now S134 (1) (b) of the extant Electoral Act 2022, Per Omoleye JCA, relying on the decision in **OJUKWU V YAR'ADUA (SUPRA)** reiterated thus;

> *'……In couching the grounds of a Petition, the words used in S138 (1) of the Act should be employed verbatim. In the earlier decisions of this court in; OJUKWU V YAR'ADUA 2009 12 NWLR PT 1154 PG 55 and (2) OJUKWU & ANOR V INEC & ORS 2015 LPELR 40652, petitioners are enjoined to use the words as stated in section 138(1) of the act in framing their grounds of Petition. However this court went further to state, and I agree that a petitioner has the freedom to use his own language to convey the exact meaning and purport of the sub-section. It is my humble view but very firm view that, the purport and meaning of section 138(1) of the Act, especially when read communally with the provision of section 138 (2) and 153 of the Electoral act and paragraph 4(1) (d) of the 1st schedule to the Electoral Act, have not in any way been offended so as to render invalid ground three (3) of the 1st and 2nd Respondents'*

See also the case of **SALIS V INEC 2022 10 NWLR PT 1893 PG 467 AT 481 PARAS A –C** Per the *dictum* of Galumje (JSC); **DIM**

C. O. OJUKWU VS ALHAJI UMUARU MUSA YAR'ADUA 38 NSCQR (PT. 1) 492 AT 551.

The crux of this issue, if juxtaposed with the decisions and interpretation of the parameters of S134 (1) (b) of the Electoral Act 2022, is whether the inclusion of ***'and return of the 2nd Respondent as Governor of Kano State'*** into the provisions of S134 (1) (b) of the Electoral Act 2022, by the Petitioner, is materially and substantially at variance with S134(1) (b) of the Electoral Act 2022, to render the clause ambiguous and invalid as canvassed by the Respondents?

Suffice it to say, that **S152 of the Electoral Act 2022,** further relied upon by counsel to the Respondents are mere definition sections of the words 'Election' and 'Return' used in the Electoral Act. This section does not defy the use of the words interchangeably or conjunctively.

Ditto, **S4 (1) of the 1st Schedule to the Electoral Act 2022** states as follows*;*

(1) An election Petition under this Act shall;

a) Specify the parties interested in election petition.

b) Specify the right of the petitioner to present the election petition

c) Specify the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

d) *State clearly the facts of the election petition and the grounds or grounds on which the petition is based, and the reliefs sought by the Petitioner"*

There is no contention as to the fact, that there was a Governorship election held in Kano State on the 18th of March 2023. That the 2nd Respondent was returned as the winner of the election on the 20th day of March 2023.

In effect, there is no gainsaying the fact, that there was an 'election' and there was a 'return' in the Governorship election in Kano State.

It is our considered view, premised on the strength and consideration of the authorities cited above, that though a Petitioner is enjoined to use the exact words in **S134 (1) (b) of the Electoral Act 2022,** that the addition of the word '*and return of the 2nd Respondent as Governor of Kano State….',* into the provisions of S134(1) (b) of the Electoral Act 2022, in the ground as stated by the Petitioner in the petition, is not ambiguous and does not materially or substantially alter the provisions of that ground as formulated by the Petitioner, as it is inclusive of the obvious and known fact, that there was an 'election' and there was a 'return' in the Governorship election held in Kano State on the 18th of March, 2023 and a return of the 2nd Respondent on the 20th March, 2023. Election is a composite process which ends with a return of an elected candidate. We are unable to see how a ground of the petition which complains of return of a candidate specified for a State can be outside or contravene section 134(1) b of the Electoral Act 2022. See also **S130 of the Electoral Act, 2022.**

The current judicial mood, is that substantial justice should be done to the parties in election cases without being unduly fettered by legal technicalities through strict adherence to the provision of

Section 134(b) of the Electoral Act, 2022. This is the liberal approach founded on a consideration of the attainment of substantial justice. We are inclined to do substantial justice to this issue for determination, which relates, or pertains to the couching of ground one of the Petitioner's petition in accord with our understanding of the current mood of the Courts in election matters; a mood dictated by the need to eschew technicalities in favour of substantial justice. See the cases of: **CHIME VS EGWUONWU (2008) 2 LRECN 575 AT 616; CHIME VS EZEA (2008) LRECN 673 AT 744 TO 745, (2009) 2 NWLR (PT. 1125) 263; ABUBAKAR VS YAR'ADUA (2008) 4 NWLR (PT. 1078) 465**;**INEC VS INIAMA (2008) 8 NWLR (PT. 1088) 182 and OGUNSAKIN VS AJIDARE (2008) 6 NWLR (PT. 1082) 1**

One of the known statements of the Supreme Court of Nigeria, decrying as old Order, the free reign of technical justice, is contained in this passage from the leading judgment of Nweze, JSC (now of blessed memory) in the case of **OMISORE VS AREGBESOLA (2015) ALL FWLR (PT. 813) 1673 AT 1712 PARAS B-C,** where his Lordship held as follows:

> *"Now, it is no longer in doubt that this Court and indeed all Courts have made a clean sweep of "the picture of the law and its technical rules triumphant", Aliyu Bello & Ors Vs Attorney General of Oyo State (1986) 5 NWLR (pt. 45) 828-826. Let me explain, by its current mood, it is safe to assert that this court has firmly and irreversibly spurned the old practice where the*

> *temple of justice was converted into a forensic abattoir where legal practitioners, employing such tools of their trade like "whirling of technicalities", daily butchered substantial issues in Court. In their fencing game in which parties engage themselves in an exercise of outsmarting each other..." Afolabi Vs Adekunle (1983) 2 SCNLR 14, 150. Those days are gone; gone for good"*

For the aforesaid reason, we hold that ground 1 is competent and the objection of counsel to the 1st Respondent in this regard, is hereby dismissed.

ISSUE TWO

This issue under consideration, relates to the qualification of the 2nd Respondent in contesting the election. It relates to ground two of the Petitioner's ground in presenting the election petition. The 1st Respondent/Applicant's position on this issue, is that the 2nd Respondent is a member of the 3rd Respondent and that the issue of membership of a political party is an internal affair of the political party and not for another party, or a person from another party, or the Court to determine. It is on this basis that the 1st Respondent/Applicant submitted that this Honourable Tribunal lacks the jurisdiction to entertain the petition being a matter within the purview of the internal affairs of the 3rd Respondent. The 1st Respondent/Applicant then called in aid a plethora of legal authorities to wit: **DAVID & ANOR VS AKINRUTAN & ORS (2015)**

LPELR-41798 (CA) PAGES 12-12 PARAS C-F; SANI VS GALADIMA & ORS (2023) LPEPR-60183(SC) 32-33 PARAS D-A; ODEY VS APC (2003) LPELR-59695 (CA) 2021 PARAS F-F AND ISRAEL & ANOR VS AMOSUN & ANOR (2019) LPELR-48916(CA) 28-36 PARAS E-D.

Counsel to the Petitioner in his written address to the Respondents submissions, contended that ground 2 of the Petition is competent by virtue of **S177(c) of the Constitution of the Federal Republic of Nigeria,** which he submits clearly makes membership and sponsorship of a candidate by a political party a qualification requirement, hence making same challengeable by a Petitioner by virtue of **S134 (1) (a) of the Electoral Act, 2022.**

Counsel submitted, that membership of a political party is evident from its register submitted to the party 30 days to the primaries before he can be duly sponsored by the said political party. That it is not an intra- party dispute which is in the realm of a pre-election matter but a post-election complaint, cognizable under S134 (1) of the Electoral Act 2022, hence falling within the jurisdiction of this tribunal to entertain and determine.

Counsel contends that ground 2 does not question primaries or false information under **Section 29(5) and (6) and 84(14) of the Electoral Act 2022.** That qualification of a candidate can be agitated under 2 realms; the pre-election stage and at the post -election stage, hence the maintenance of the provision of S134 (1) (a) of the Electoral Act 2022. That after an election, the issue of qualification becomes an inter-party dispute, maintainable as a

post - election litigation, citing the cases of **FAYEMI V ONI & ORS 2019 LPELR -49291 SC PG 20-22 PARAS E-E; PDP & ANOR V KAWUMA & ORS 2015 LPELR-26044 CA; OMOIGBERIA V OGEDENGBE & ORS LPELR 4776 CA PG 29-32**.

The salient question for determination herein, is whether this tribunal has jurisdiction to determine Ground 2 of the petition in the light of the objection raised by the 1st Respondent and the reply of the Petitioner thereto?

Ground 2 of the reliefs sought by the Petitioner against the Respondents at paragraph 99(2), page 100 of the petition is;

> *'That it be determined that the 2nd Respondent was not qualified as a candidate in the election to the office of Governor of Kano State held on the 18th of March 2023.*

The facts relating to ground 2 of the alleged Non - qualification of the 2nd Respondent are as pleaded in paragraphs 82 to 89 of the Petition filed on the 9th of April 2023. Same is grounded on;

a) the non –membership, and non- sponsorship of the 2nd Respondent by 3rd Respondents party (NNPP); (paragraph 83 of the petition)
b) that the 2nd Respondent and his name is not contained in the register of members of the 3rd Respondent in the entire volumes of the register submitted to the 1st Respondent; (paragraphs 84 and 85 of the petition)
c) that in part A of the INEC Form EC9-'Affidavit of personal particular' of the 2nd Respondent submitted to the 1st Respondent, reflects that the membership number of the

2nd Respondent is NNPP/HQ/KN/GWL/DS/001. That no such number is contained in the 3rd Respondents register of members; (paragraph 86 of the petition);

d) that the affidavit of personal particulars wherein the 2nd Respondent claims membership of the 3rd Respondent as member No NNPP/HQ/KN/GWL/DS/001, is a false certificate because no such membership number or name exists in the register of the 3rd Respondent and the said membership number above are not those of the 2nd Respondent (Paragraphs 88 and 89 of the Petition)

In the case of **LADO V MASARI 2021 13 NWLR PART 1793 PG 334 AT PAGE 349 TO 350 PARAS H- B,** it was restated by the Supreme court that;

'The law is now trite that qualification to contest election for the office of Governor of any state in Nigeria is a Constitutional issue which has been sufficiently provided for by the Constitution of the Federal Republic of Nigeria 1999 (as amended)……………………………………………………………

Thus, Section 177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides;

177. A person shall be qualified for election into the office of Governor of a state if;

a) He is a citizen of Nigeria by birth

b) He has attained the age of 35 years;

c) he is a member of a political party; and is sponsored by that political party; and

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

Section 134 (1) (a) of the Electoral Act 2022, states as follows;

(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*

Ditto, in the Supreme Court case of **AL-HASSAN V ISIHAKU 2016 10 NWLR PART 520, PG 230,** the court reiterated at pages 275-276 PARAS H-A; 277 PARAS A-F as follows;

"…Where it is alleged that a person is or was not qualified to contest election into the office of Governor as envisaged by section 138(1) (a) of the Electoral Act, it is S177 and 182 of the 1999 Constitution (as amended) that are being contemplated. Taking the provisions together, it is seen that both the provision for qualification and that for disqualification are so comprehensive which makes them exhaustive. Thus the Constitution, as the Supreme law of the land, having such elaborate and all- encompassing provisions for qualification and disqualification of persons seeking the office of Governorship of a state, does not leave any room for addition to those conditions already set out. Once a candidate sponsored by his political party has satisfied the provisions set out in S177 of the Constitution and is not disqualified under

> *S182 (1) thereof, he is qualified to stand for election to the office of Governor of a State. No other law can disqualify him* ***(P.D.P V INEC (2014) 17 NWLR (PT 1437) 525, Shinkafi V Yari (2016) 7 NWLR (PT 1511) 340 referred to (Pp 275, paras H_A;277 Paras A-F"***

On the issue as to who can challenge an election on the ground of the winner not qualified to contest; the Supreme court, in the said authority above, stated thus at page 264 Para E-F that;

> *"A person who participated in an election and it is his desire to challenge the election of the winner on the ground that the winner was not qualified to contest the election can do so only under section 177 of the Constitution, if he failed to do so under section 31(5) and (6) of the Electoral Act.* ***(See PDP V INEC (2014) 17 NWLR PT 1437) P.525.***

A communal reading of this decision of the Supreme Court, presupposes the following.

a) That there must have been an election;
b) That there must have been a declared winner of the Election;
c) That the person with the *locus standi* to challenge that election must have participated as a 'Candidate' in the said election.
d) That his challenge to the election must be on the ground that the declared winner was not qualified to participate in the election on constitutional grounds.

In effect, the challenge of the Petitioner, as stated above is as to the qualification of the 2nd Respondent under S177 (c) of the 1999

Constitution, as to whether the 2nd Respondent *'..is a member of a political party; and is sponsored by that political party;'.*

The courts have held in a plethora of cases, that the issue of membership of a political party is an internal affair of the political party.

It has been consistently held in a plethora of authorities, that it is only the party (in this case, the 3rd Respondent), that has the prerogative of determining who are its members and the 3rd Respondent, having sponsored the 2nd Respondent as its candidate for the Governorship Election in Kano State on the 18th of March 2023, the 2nd Respondent has satisfied the requirement of being a member of the 3rd Respondent as provided for in **S134 (1) (a) of the Electoral Act 2022.**

Consequently, it is not within the right of the Petitioner at this stage and after the nomination, sponsorship of the 2nd Respondent by the 3rd Respondent as its candidate, to question the 2nd Respondents membership of the 3rd Respondent as it is an internal affair of the party.

This issue has been laid to rest in the following cases; **See the cases of ENANG V ASUQUO & ORS 2023 LPELR 60042 SC AT PAGES 29-35, PARAS D-A; SANIV GALADIMA & ORS 2023 LPELR- 60183 SC AT PAGES 32-33, PARAS D-A, TUMBIDO V INEC& ORS 2023 LPELR 60004 SC AT PAGES 31-35, PARAS D-D; AGI V PDP 2016 LPELR 42578 SC AT 48-50; UFOMBA V INEC 2017 LPELR -42079 SC; APC V MOSES 2021 14 NWLR PART 1796 PG 278 PARAS C-F**

Ditto, the same decision and/or position was maintained in the cases of **APM V INEC 2023 NWLR PART 1890** and the recent unreported case of **MR PETER GREGORY OBI & 1 OR V INEC & 3 ORS PETITION NO CA/PEPC/03/2023,** delivered on the 6th of September 2023.

For the aforesaid reasons, this issue is resolved against the Petitioner in favour of the Respondents.

ISSUE THREE

In relation to this issue, the 1st Respondent/Applicant submitted that a ground challenging an election on the grounds that the winner did not score a majority of the lawful votes cast at the election can only be tenable in the case of a re-run under **Section 179 (4) and (5) of the 1999 Constitution of the Federal Republic of Nigeria.** According to the 1st Respondent, that since the election was conducted and won under **Section 179(2) of the 1999 Constitution of the Federal Republic of Nigeria,** the ground for presentation of an election petition under **Section 134(1) (c) of the Electoral Act, 2022** will be inapplicable and incompetent. The 1st Respondent/Applicant therefore urged the Honourable Tribunal to so hold and to strike out the said ground and the supporting facts contained thereunder.

On behalf of the Petitioner, it was argued that the Petitioners have the *locus* to present an election petition on a ground that the 2nd Respondent was not elected by majority of lawful votes cast at the election. The Petitioner's argument is that there is nothing wrong with this ground contained in the petition, as such ground is firmly

rooted and same cannot be struck out by the Honourable Tribunal.

It is pertinent to state that, at this stage of the determination of these objections challenging the jurisdiction of this court, issue 3 of the 1st Respondent's issue, on the ground challenging an election on the ground that the winner did not score a majority of the lawful votes when under the Constitution, he did not need to score a majority of lawful votes at the election, with particular reference to **paragraph 179 of the Constitution**, being a matter of mixed law and fact, same will be determined in the body of this judgment and upon a review of the facts, laws cited in support thereof and the evidence of the parties and not at the interlocutory stage *in Limine*.

ISSUE FOUR

The 1st Respondent/Applicant's issue four, is whether the Petitioner's reliefs 4 and 6, which are sought on behalf of a person who is not a party to the petition are grantable? The 1st Respondent/Applicant, in support of the above issue, argued tacitly, that in as much as the Petitioner can bring the petition alone, however, having not joined the candidate it sponsored in the election, that the consequences of the non-joinder of the candidate will deprive the candidate who was not joined, in the petition, from benefiting from the reliefs sought in reliefs 4 and 6. That this is because the Court cannot make an order, or decision which will affect a stranger in the suit, who was never heard, or been given the opportunity to defend himself. The 1st Respondent/Applicant in aid of her argument cited the cases of **OKWU VS UMEH (2016) 4 NWLR (PT. 1501) 120 AT 148 PARAS**

C-F and BAPPA & ANOR VS APC & ANOR 2019 LPELR-49200 (CA)

The Petitioner, in response to the 1st Respondent/Applicant's argument, submitted that the Petitioner, who is aggrieved or being dissatisfied with the outcome of the election, has the right to approach the Honourable Tribunal to seek for redress.

The Petitioner further argued, that in doing so, the Petitioner is not only urging the Honourable Tribunal to determine the proprietary or otherwise of the outcome of the General Election, but to also seek for reliefs which she ordinarily stands to benefit and these reliefs include those sought by the Petitioner in her reliefs 4 and 6. The Petitioner's further argument, is that having scored the majority of lawful votes cast at the election, she is entitled to be declared the winner of the election, whether or not her candidate is joined or not as a party to the petition and ought therefore to be returned as the winner of the said election.

The centre piece of the entire argument by both the Petitioner and the 1st Respondent, is that the Petitioner's candidate was not joined as a party in this petition. This is an admission by both parties. We shall therefore consider *anon*, whether the non-joinder of the Petitioner's candidate in the petition will entitle the candidate to the benefit or the result of the litigation.

In our system of democracy, a person contests an election if he is a member of a political party and he is sponsored by that political party for the election. The requirement is prescribed in **Section 177 (c) of the 1999 Constitution of the Federal Republic of Nigeria, as amended.**

Section 177 (c) of the 1999 Constitution provides as follows:

> **"(177)** *A person shall be qualified for election as Governor of a State if –*
> *(d) He is a member of a political party and is sponsored by that party"*

Furthermore, **Section 221 of the same 1999 Constitution** provides as follows:

> *"No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election"*

For ease of clarity, **Section 133 of the Electoral Act 2022**, provides as follows:

> *"An election petition may be presented by one or more of the following persons –*
> *(a) A candidate in an election; or*

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> *(b) A political party which participated in the election*

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

By the tenor or wordings of the above section, in its literal and unambiguous interpretation, what is clear, is that the right or interest to canvass for votes in an election and to present an election petition, is not exclusively that of the candidate, or even that of his political party. It is obviously in recognition of this joint, or common interest, that **Section 133 of the Electoral Act 2022** vest in the political party and its candidate for an election, a right to bring an election petition challenging the outcome of an election.

In the case of **ALL PROGRESSIVE CONGRESS V PEOPLES DEMOCRATIC PARTY 2019 LPELR-49499 CA,** in the interpretation of the provision of **S137(1) of the Electoral Act 2010, w**hich provision is in *pari material* with the extant provisions of **S133 (1) (a) and (b) the Electoral Act 2022,** the Court of Appeal, Per Ali Abubakar Babandi Gummel JCA, took the stance that:

> *'….it is clear from this provision, that either the political party, or its candidate for the election, or both of them jointly can present an election petition….this provision recognizes that a political party, can in its name, present an election petition challenging the election for the benefit of the candidate and itself….'*

Ditto, in the lead judgment delivered by per Emmanuel Akomaye Agim JCA, the court reiterated and expounded as follows;

'….therefore such a petition is a representative action by the political party on behalf of its candidate for the election and its members, the political party's candidate for the election is an unnamed party for his benefit and that of the political party. An unnamed party in a representative action is a party to the action……."

This position was also clearly expounded in the case of **CPC V INEC & ORS 2011 LPELR-8257 SC,** to the effect, that the said provision did not put a restriction on the kind of relief an election petition filed by a political party, as sole petitioner, can ask for and could not have intended that the petition presented by the political party should not ask for reliefs that benefit the candidate it sponsored for the election.

Ditto, the *Dictum* of the Supreme Court in the case of **ODEBO V INEC & ORS 2008 LPELR -2204 SC PG 109 PARA A** expounds that

'Candidates in an election are sponsored by political parties. It is the political party that participated in the conduct of an election that is the winner or the loser and not the candidates by the political parties. Sometimes, the goodwill of a candidate being sponsored in an election may contribute to the victory of the political party in an election. Section 122 of the 1999 Constitution of Nigeria does not recognize an independent candidate contesting in our elections'

See also **S136 (2) of the Electoral Act 2022**

In effect, and what this tribunal is saying, is that for the grounded constitutional and entrenched principle, that the candidate is sponsored by his political Party, the argument of counsel to the 1st Respondent and other Respondents in this petition, cannot suffice.

The authorities cited by counsel to the Respondents are not on all fours with this principle of law.

In the light of the foregoing constitutional provision, a political party and the candidate, sponsored by it, for an election, have a joint right or interest in the outcome of the election and both can present an election petition.

For the aforesaid reason, the prayers of the Respondents for an order striking out reliefs 4 and 6 of the Petition, same having being sought in favour of a person not joined as party to this Petition, and other prayers relating thereto, are hereby dismissed.

2ND RESPONDENT NOTICE OF PRELIMINARY OBJECTION

The 2nd Respondent/Applicant filed a motion on notice on the 8th day of June, 2023. The motion is brought pursuant to **Paragraphs 47 (2) and (3) and 53 (5) of the First Schedule to the Electoral Act, 2022, Sections 134 and 135 of the Electoral Act, 2022** and under the inherent jurisdiction of the Tribunal. The motion is seeking the following orders:

1. An order of this Honourable Tribunal dismissing or striking out this petition for gross incompetence, fundamental and incurable defects.

2. An order striking out paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68, 69, 73, 74, 80, 81, 92, 93 and 94 of the petition wherein the petitioner alleged various acts of corrupt practices and over voting despite the fact that the Petitioner did not plead corrupt practices as a ground of the petition.
3. And such order or further order(s) as may be deemed necessary in the circumstance.

The grounds upon which the application is anchored, or based, are as follows:

1. This Honourable Court has no jurisdiction to entertain the petition for the following reasons:
   a. Ground 1 of the petition is incompetent as **Section 134 of the Electoral Act 2022** has no provision for questioning the **election and return** of the 2nd Respondent as the successful candidate at the election of 18th March, 2023.
   b. Ground I and III of the petition are incompetent when read together with the facts in support of the ground and reliefs in the petition. Facts of ground III are matters of acts constituting corrupt practices.
   c. Reliefs 1, 2, 3, 4, 5, 6, 7, 8 and 9 claimed in the petition are inconsistent, unreliably conflicting and not known to Section 177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. (a) The Petitioner has no *locus standi* to question the nomination, sponsorship of the membership of the 2nd Respondent being an internal affair of the 3rd Respondent.

(b) The Petitioner has no legal right to expand or amend the exhaustive provisions on the qualification and disqualification in Sections 177 and 182 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), by reading into it the provisions of the Electoral Act or any Act of the National Assembly into the exhaustive provisions of the Constitution.

(c) The Election Tribunal has no power to exercise jurisdiction on the facts in support of Grounds II in an election petition and all the reliefs thereunder are to no avail.

3. The Tribunal has no jurisdiction to consider ground III of the petition for the following reasons;

a) Facts in the petition and the relief sought thereon show that the reliefs based on the grounds III are academic, otiose and confer no benefit on the petitioner.

b) Reliefs 3 and 4 flowing from reliefs No. 1 are not recognizable as there is no facts in the petition to support the relief and liable to be struck out.

c. Relief 4, in particular, is not grantable, particularly as the right of the candidate for whom votes were cast is not shown in the facts and figures as qualified to be granted the relief.

d. Relief 5 being a consequential one, does not flow or derive its existence or life from primary relief No. 1, so that if relief 1 and 2 fails every other relief must collapse like park of cards.

e. Relief No. 6 in the petition is not grantable or capable of being countenanced as the relief stands in isolation and unconnected with the principal relief No. 1 being speculative,

presumptuous and has no foundation in the facts pleaded in the petition.

f. Relief No. 7, 8 and 9 being consequential or ancillary reliefs has no foundation in the facts pleaded in the petition to sustain them.

4. This Honourable Tribunal lacks jurisdiction to grant the "alternative and only in the alternative reliefs" for the following reasons;

a. It is inconsistent with other reliefs and should be rejected.

b. It has no foundation in Section 136 of the Electoral Act, 2022 and the facts in the petition.

c. It is not grantable in the absence of the candidate sponsored by the petitioner having walked away, abandoned his mandate, conceded defeat and congratulated the 2nd Respondent as the winner of the election.

5. Alternative Reliefs claimed in the petition have no separate pleaded fact or grounds to sustain each of the alternative relief.

The motion is supported by a ten paragraphed affidavit deposed to by one Bashir Yusuf Mohammad, who is a Legal Practitioner and a Counsel for the 2nd Respondent. The 2nd Respondent is relying on all the paragraphs of the said affidavit. In support of the application, the 2nd Respondent/Applicant filed a written address wherein he formulated seven issues for determination, which are as follows:

1. Whether the petition is competent having regards to grounds I, II and III and the reliefs claimed in paragraph 99, in the

absence of the candidate of the petitioner sponsored to contest and who contested the election and lost and did not participate in this petition.

2. Whether this Honourable Tribunal has statutory competence to entertain and pronounce on ground II based on the facts in paragraphs 82, 83, 84, 85, 86, 87, 88, 89, 90 and 91 in the petition.
3. Whether the grounds of the petition conformed with mandatory provisions of the Electoral Act when they are mutually exclusive and inconsistent with one and other alternatives and whether in law the reliefs claimed in multiple alternatives in paragraph 99, (1, 2, 3, 4, 5, 6, 7, 8, 9), (1, 2, 3, 4, 5, and 6) are competent and grantable.
4. Whether the petitioner complied with the mandatory provisions of paragraph 4 of the First Schedule to the Electoral Act, 2022.
5. Whether paragraphs 23, 24, 32, 48, 53, 61, 74, 81, 92, 93 and 97 of the petition are not vague, nebulous, inchoate, too general and should be struck out.
6. Whether allegations in paragraphs 51, 52, 53, 54, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68, 69, 73, 74, 80 and 81 of the petition alleging over voting, disruption, emergency declaration, allocation of votes, wrongful crediting of votes and violence, dereliction of duties by INEC officials and illegal, unlawful use of ballot papers and such allegation constituting corrupt practices can be entertained where there is no ground in the petition that the election is invalid by reason of corrupt practices.

7. Whether this petition is not merely academic and a waste of judicial resources, ought to be dismissed *in limine*.

The Petitioner/Respondent, upon being served with the 2nd Respondent/Applicant's motion on notice, filed an eight paragraphed counter affidavit deposed to by one Ibrahim Zakariah Serina, who is the State Secretary of the Petitioner. The Petitioner/Respondent relied on all the paragraphs of the said counter affidavit. The Petitioner/Respondent did not formulate any fresh issue for determination but adopted and argued all the issues as formulated by the 2nd Respondent/Applicant.

ISSUE ONE

Arguing issue one, the 2nd Respondent/Applicant submitted that **Section 133 (a) and (b) of the Electoral Act, 2022** gives the political party and the candidate sponsored by the political party, who was unsuccessful at an election, the right to present a petition. He further submitted that a political party is a legal fiction, while the candidate is a human being. He further argued that a political party may participate in an election, but he cannot be a candidate. According to the 2nd Respondent/Applicant, a competent election petition must have the duo – political party and the candidate. It is the further argument of the 2nd Respondent/Applicant that the Petitioner's main relief in paragraph 99 (4), (6) and (9), read together, inure only to the benefit of the candidate. He further submitted that the Petitioner cannot, without the candidate, claim the relief. The 2nd Respondent/Applicant cited plethora of legal authorities including,

but not limited to the following: **CPC VS INEC (2012) ALL FWLR (PT. 617) 605 AT 624, UZUOKWU VS EZEONU II (1991) 6 NWLR (PT. 200) 708, PDP & ANOR VS INEC (2012) LPELR-9225 (CA), PDP VS EKEAGBARA (2016) LPELR-40849 (SC).**

The 2nd Respondent/Applicant further maintained, that Section 136 (1), (2) and (3) of the Electoral Act 2022, confer benefits to only a candidate and the political party cannot substitute itself for the candidate. He relied on the cases of **AL-HASSAN VS ISHIAKU (2016) 10 NWLR (PT. 1520) 230 AT 284-285, MAIKORI VS LERE (1992) 3 NWLR (PT. 231) 525 AT 535 PARAS D-C.** The Applicant maintained that paragraphs 99 (1, 2, 3, 4, 5, 6, 7, 8, and 9) of the Petition and every other alternative cannot be granted as the Tribunal lacks the jurisdiction to do so.

The Petitioner/Respondent on the other hand, in arguing issue one submitted that her petition, its ground and the reliefs as presently constituted, are valid, competent and in accordance with the Electoral Act, 2022. The Petitioner/Respondent cited Section 133 (a) and (b) thereof, which empowers a candidate to present an election petition, or the political party which participated in the election. The Petitioner/Respondent argued that the non-joinder of her candidate in this petition did not vitiate the petition and further argued that this issue has been laid to rest by the Appellate Court and he called in aid the case of **APC VS PDP (2019) LPELR-49499 (CA),** amongst other authorities and he urged the Honourable Tribunal to hold that the grounds and reliefs of the petition are valid and competent.

The centre piece of the entire argument by both the Petitioner and the 2nd Respondent/Applicant, is that the Petitioner's candidate was not joined as a party in this petition. This is an admission by both parties. We shall therefore consider *anon* whether the non-joinder of the petitioner's candidate in the petition will entitle the candidate to the benefit or the result of the litigation.

In our system of democracy, a person contests an election if he is a member of a political party and he is sponsored by that political party for the election. The requirement is prescribed in **Section 177 (c) of the 1999 Constitution of the Federal Republic of Nigeria,** as amended.

Section 177 (c) of the 1999 Constitution provides as follows:

> *"A person shall be qualified for election as Governor of a State if –*
>
> > *(c) <u>He is a member of a political party and is sponsored by that party"</u>*

Furthermore, **Section 221 of the same 1999 Constitution** provides as follows:

> *"No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election"*

For ease of clarity, **Section 133(1) of the Electoral Act 2022** provides as follows:

> *"An election petition may be presented by*
> *one or more of the following persons –*
> *(a) A candidate in an election; or*
> *(b) A political party which participated in the election*
> *(c) A person whose election is complained of is in*
> *this Act referred to as the Respondent"*

By the tenor or wordings of the above section, in its literal and unambiguous interpretation, what is clear, is that the right or interest to canvass for votes in an election and to present an election petition, is not exclusively that of the candidate, or even that of his political party. It is obviously in recognition of this joint or common interest that Section 133 of the Electoral Act 2022 vest in the political party and its candidate for an election a right to bring an election petition challenging the outcome of an election.

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In the case of **ALL PROGRESSIVE CONGRESS V PEOPLES DEMOCRATIC PARTY 2019 LPELR-49499 CA,** in the interpretation of the provision of **S137(1) of the Electoral Act**

2010, which provision is *in pari materia* with the extant provisions of **S133 (1) (a) and (b) the Electoral Act 2022,** the Court of Appeal, Per Ali Abubakar Babandi Gummel JCA, took the stance that:

'….it is clear from this provision, that either the political party or its candidate for the election or both of them jointly can present an election petition…….this provision recognizes that a political part,y can in its name, present an election petition challenging the election for the benefit of the candidate and itself….'

Ditto, in the lead judgment delivered by per Emmanuel Akomaye Agim JCA, the court reiterated and expounded as follows;

'….therefore such a petition is a representative action by the political party on behalf of its candidate for the election and its members, the political party's candidate for the election is an unnamed party for his benefit and that of the political party. An unnamed party in a representative action is a party to the action……."

This position was also clearly expounded in the case of **CPC V INEC & ORS 2011 LPELR-8257 SC,** to the effect, that the said provision did not put a restriction on the kind of relief an election petition filed by a political party as sole petitioner can ask for and could not have intended that the petition presented by the political party should not ask for reliefs that benefit the candidate it sponsored for the election.

Ditto, the Dictum of the Supreme Court in the case of **ODEBO V INEC & ORS 2008 LPELR -2204 SC PG 109 PARA A** expounds that

> *'Candidates in an election are sponsored by political parties. It is the political party that participated in the conduct of an election that is the winner or the loser and not the candidates by the political parties. Sometimes, the goodwill of a candidate being sponsored in an election may contribute to the victory of the political party in an election. Section 122 of the 1999 Constitution of Nigeria does not recognize an independent candidate contesting in our elections'*

See also **S136 (2) of the Electoral Act 2022.**

In effect, and what this tribunal is saying, is that for the grounded constitutional and entrenched principle, that the candidate is sponsored by his political Party, the argument of counsel to the 1st Respondent and other respondents in this petition cannot suffice.

The authorities cited by counsel to the Respondents are not on all fours with this principle of law.

In the light of the foregoing constitutional provision, a political party and the candidate, sponsored by it, for an election, have a joint right or interest in the outcome of the election and both can present an election petition.
In the light of the above stated principle of law, this tribunal has no difficulty in holding that the petitioner's candidate, though not joined as a party in this petition, can still benefit from the outcome of the election petition, whether the outcome is good or bad. We

hold that the Petitioner can without her candidate claim the reliefs in the petition. Consequently, the reliefs in paragraph 99 (1, 2, 3, 4, 5, 6, 7, 8 and 9) of the petition and every other alternative relief's are duly constituted and the Honourable Tribunal has the jurisdiction to determine those reliefs either way, based on the evidence before the Honourable Tribunal and as presented by the parties. This issue is resolved in favour of the Petitioner.

ISSUE TWO

Arguing issue two, the 2nd Respondent/Applicant questioned the competence or otherwise of ground two of the petition and the facts contained in paragraphs 82, 83, 84, 85, 86, 87, 88, 89, 90 and 91 of the petition. The 2nd Respondent/Applicant submitted, that ground two of the petition is incompetent. That ground two and the facts supporting the ground, are all incompetent and that this Honourable Tribunal has no jurisdiction to entertain same.

The 2nd Respondent/Applicant referred the Honourable Tribunal to the case of **AL-HASSAN VS ISHIAKU (2016) 10 NWLR (PT. 520) 230 AT 276** and the case of **APM VS INEC**. The 2nd Respondent urged this Honourable Tribunal to dismiss the ground and the facts and to also dismiss reliefs 1, 2, 3, 4, 5, 6, 7, 8 and 9 anchored on ground two of the petition.

On the other hand, the Petitioner/Respondent submitted that ground two of the petition is competent and same seeks to challenge the qualification of the 2nd Respondent by virtue of Section 177(c) of the Constitution. The Petitioner/Respondent further contended that the Petitioner possesses the requisite *locus standi* to challenge the qualification of the 2nd Respondent. He

called in aid a plethora of legal authorities including **FAYEMI VS ONI (2019) LPELR – 4929 (SC) 20-22 PARAS D-E, PDP VS KAWUWA (2015) LPELR-26044 (CA), ABDULLAH VS SULEIMAN & ORS (2017) LPELR-9219 (CA) 17-19 PARAS F-B,** amongst other legal authorities.

Counsel to the Petitioner in his written address to the Respondents submissions, contended that ground 2 of the Petition is competent by virtue of **S177(c) of the Constitution of the Federal Republic of Nigeria,** which he submits clearly makes membership and sponsorship of a candidate by a political party a qualification requirement, hence making same challengeable by a Petitioner by virtue of **S134 (1) (a) of the Electoral Act, 2022.**

Counsel submitted that membership of a political party is evident from its register submitted to the party 30 days to the primaries before he can be duly sponsored by the said political party. That it is not an intra- party dispute which is in the realm of a pre-election matter, but a post-election complaint, cognizable under **S134(1) of the Electoral Act 2022**, hence falling within the jurisdiction of this tribunal to entertain and determine.

Counsel contends that ground 2 does not question primaries or false information under **Section 29(5) and (6) and 84(14) of the Electoral Act 2022.**

That qualification of a candidate can be agitated under 2 realms; the pre-election stage and at the post -election stage, hence the maintenance of the provision of S134 (1) (a) of the Electoral Act 2022. That after an election, the issue of qualification becomes an inter-party dispute, maintainable as a post - election litigation,

citing the cases of **FAYEMI V ONI & ORS 2019 LPELR -49291 SC PG 20-22 PARAS E-E; PDP & ANOR V KAWUMA & ORS 2015 LPELR-26044 CA; OMOIGBERIA V OGEDENGBE & ORS LPELR 4776 CA PG 29-32.**

The salient question for determination herein, is whether this tribunal has jurisdiction to determine Grounds 2 of the petition in the light of the objections raised by the 2nd respondent and the replies of the Petitioner thereto?

Ground 2 of the reliefs sought by the Petitioner against the Respondents at paragraph 99(2), page 100 of the petition is;

> *'That it be determined that the 2nd Respondents was not qualified as a candidate in the election to the office of Governor of Kano State held on the 18th of March 2023.*

The facts relating to ground 2 of the alleged Non - qualification of the 2nd respondent are as pleaded in paragraphs 82 to 89 of the Petition filed on the 9th of April 2023. Same is grounded on;

a) the non –membership, and non- sponsorship of the 2nd respondent by 3rd respondents party (NNPP); (paragraph 83 of the petition)

b) that the 2nd respondent and his name is not contained in the register of members of the 3rd Respondent in the entire volumes of the register submitted to the 1st respondent; (paragraphs 84 of and 85 the petition)

c) that in part A of the INEC Form EC9-'Affidavit of personal particular' of the 2nd Respondent submitted to the 1st respondent reflects that the membership number of the 2nd

Respondent is NNPP/HQ/KN/GWL/DS/001. That no such number is contained in the 3rd Respondents register of members; (paragraph 86 of the petition);

d) that the affidavit of personal particulars wherein the 2nd Respondent claims membership of the 3rd Respondent as member No NNPP/HQ/KN/GWL/DS/001, is a false certificate because no such membership number or name exists in the register of the 3rd respondent and the said membership number above are not those of the 2nd Respondent (Paragraphs 88 and 89 of the Petition)

In the case of **LADO V MASARI 2021 13 NWLR PART 1793 PG 334 AT PAGE 349 TO 350 PARAS H- B,** it was restated by the Supreme court that;

'The law is now trite that qualification to contest election for the office of Governor of any state in Nigeria is a Constitutional issue which has been sufficiently provided for by the Constitution of the Federal Republic of Nigeria 1999 (as amended)……………………………………………………………….

*Thus, Section **177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** provides;*

177. A person shall be qualified for election into the office of Governor of a state if;

a) He is a citizen of Nigeria by birth

b) He has attained the age of 35 years;

c) he is a member of a political party; and is sponsored by that political party; and

d) he has been educated up to at least School Certificate or its equivalent

Section 134 (1) (a) of the Electoral Act 2022, states as follows;

(1) An election may be questioned on any of the following grounds, that is to say:

(b) That a person whose election is questioned was at the time of the election, not qualified to contest the election

Ditto, in the Supreme Court case of **AL-HASSAN V ISHAKU 2016 10 NWLR PART 520, PG 230,** the court reiterated at pages 275-276 PARAS H-A; 277

PARAS A-F as follows;

"…Where it is alleged that a person is or was not qualified to contest election into the office of Governor as envisaged by section 138(1) (a) of the Electoral Act, it is S177 and 182 of the 1999 Constitution (as amended) that are being contemplated. Taking the provisions together, it is seen that both the provision for qualification and that for disqualification are so comprehensive which makes them exhaustive. Thus the Constitution, as the Supreme law of the land, having such elaborate and all- encompassing provisions for qualification and disqualification of persons seeking the office of Governorship of a state, does not leave any room for addition to those conditions already set out. Once a candidate sponsored by his political party has satisfied the provisions set

out in S177 of the Constitution and is not disqualified under S182 (1) thereof, he is qualified to stand for election to the office of Governor of a State. No other law can disqualify him ***(P.D.P V INEC (2014) 17 NWLR (PT 1437) 525, Shinkafi V Yari (2016) 7 NWLR (PT 1511) 340 referred to (Pp 275, paras H_A;277 Paras A-F"***

On the issue as to who can challenge an election on the ground of the winner not qualified to contest; the Supreme court in the said authority above stated thus at page 264 Para E-F that;

> *"A person who participated in an election and it is his desire to challenge the election of the winner on the ground that the winner was not qualified to contest the election can do so only under section 177 of the Constitution, if he failed to do so under section 31(5) and*
>
> *(6) of the Electoral Act. (See* ***PDP V INEC (2014) 17 NWLR PT 1437)***
>
> *P.525.*

A communal reading of this decision of the Supreme Court, presupposes the following.

a) That there must have been an election conducted;
b) That there must have been a declared winner of the Election;
c) That the person with the *locus standi* to challenge that election must have participated as a 'Candidate' in the said election.

d) That his challenge to the election must be on the ground that the declared winner was not qualified to participate in the election on constitutional grounds.

In effect, the challenge of the Petitioner as stated above is as to the qualification of the 2nd Respondent under S177 (c) of the 1999 Constitution, as to whether the 2nd Respondent *'.. is a member of a political party; and is sponsored by that political party;'.*

The courts have held in a plethora of cases that the issue of membership of a political party is an internal affair of the political party.

It has been consistently held, that it is only the party (in this case, the 3rd Respondent), that has the prerogative of determining who are its members and the 3rd Respondent, having sponsored the 2nd Respondent as its candidate for the Governorship Election in Kano State on the 18th of March 2023, the 2nd Respondent has satisfied the requirement of being a member of the 3rd Respondent as provided for in **S134 (1) (a) of the Electoral Act 2022.**

Consequently, it has been held, that is not within the right of the Petitioner at this stage and after the nomination, sponsorship of the 2nd Respondent by the 3rd Respondent as its candidate, to question the 2nd Respondents membership of the 3rd Respondent, as it is an internal affair of the party.

This issue has been laid to rest in the following cases; See the cases of **ENANG V ASUQUO & ORS 2023 LPELR 60042 SC AT PAGES 29-35, PARAS D-A; SANI V GALADIMA & ORS 2023 LPELR-60183 SC AT PAGES 32-33, PARAS D-A, TUMBIDO V INEC&**

ORS 2023 LPELR 60004 SC AT PAGES 31-35, PARAS D-D; AGI V PDP 2016 LPELR 42578 SC AT 48-50; UFOMBA V INEC 2017 LPELR -42079 SC; APC V MOSES 2021 14 NWLR PART 1796 PG 278 PARAS C-F

Ditto, the same decision and/or position was maintained in the cases of **APM V INEC 2023 NWLR PART 1890** and the recent unreported case of **MR PETER GREGORY OBI & 1 OR V INEC & 3 ORS PETITION NOCA/PEPC/03/2023 delivered on the 6th of September 2023.**

For the aforesaid reasons, this issue is resolved against the Petitioner in favour of the 2nd Respondent.

ISSUE THREE

The 2nd Respondent/Applicant, submitted that Section 134 (a), (b) and (c) of the Electoral Act, 2022 prescribed what an aggrieved person who lost at an election should question at any Election Tribunal. He submitted that the law is trite that an election petition is a special proceedings with its statutory rules and procedure. It is regarded as *sui generis* and that implies that the Petitioner must strictly adhere to the words of the statute because any departure, no matter how slight, will be fatal to the petition.

It is the submission of Learned Counsel to the 2nd Respondent/Applicant, that parties in an election petition are not allowed any discretion in the choice of words in couching the words of their petition. It is further submitted that Section 134 (1) of the Electoral Act 2022, specifically used the word "election" that must be questioned in an election petition. That the Petitioner in this petition, according to Learned Counsel, in her ground one, is

questioning the “**election and return**”. The 2nd Respondent/Applicant argued that the law does not permit the questioning of “election” and “return”, as both have different meanings and intendment in the Electoral Act.
Counsel referred the Honourable Tribunal to Section **152 of the Electoral Act 2022**. It is the further submission of the Learned Senior Counsel of the 2nd Respondent, that ground one of the petition is incurably ineffective and this Honourable Tribunal cannot amend the ground one, to bring it in line and in obedience to the mandatory obligations under the statute. Counsel contended that the reliefs provided by the Electoral Act are mutually exclusive and that the grounds of this election petition have failed to follow the law. He referred the Honourable Tribunal to **Section 136 to the Electoral Act 2022.**

It is the further submission of Learned Senior Counsel to the 2nd Respondent, that the reliefs claimed in the petition ignored the basic requirement and the obligation under the Act and the petition is liable to be struck out. Finally, the 2nd Respondent/Applicant also argued that the Petitioner cannot claim alternative reliefs, because the Electoral Act 2022 did not provide for a situation where a Petitioner can seek for alternative reliefs on grounds that are mutually exclusive. He called in aid the case of **METAL CONSTRUCTION WEST AFRICAN LTD VS ABODERIN (1998) 8 NWLR (PT. 563) 538.**

The Petitioner on the other hand submitted that the grounds of the petition as couched in paragraph 20 (1), (2) and (3) is

competent, valid and in compliance with the provisions of the Electoral Act 2022. He called in aid the cases of **ADEWUMI VS AKINLOYE (2019) LPELR-50 417** and **MUSTAPHA VS DANLADI (2015) LPELR-41655 (CA)**.

It is trite law, that a Petitioner is required to question an election on any of the grounds set out in Section 134 (1) of the Electoral Act, 2022. For ease of reference, **Section 134(1) of the Electoral Act, 2022** provides as follows:

> *"An election may be questioned on any of the following grounds –*
>
> *a. A person whose election is questioned was at the time of the election not qualified to contest the election;*
> *b. The election was invalid by reason of corrupt practices and non-compliance with the provisions of this Act; or*
> *c. The respondent was not duly elected by majority of lawful votes cast at the election.*

What then is the meaning of the word "ground"? In the case of **KALU VS CHUKWUMERIJE (2012) 12 NWLR (PT. 1315) 425 AT 485**, the Court of Appeal per Owoade, JCA puts it succinctly, thus:

> *"The Compact Edition of the Oxford English Dictionary (1971) US reprint (1988) defines the word "Ground" in numerous terms and with an array of examples at pages 1214 to 1225 as follows: "Ground": (a) The fundamental*

constituent or the essential part of anything. (b) A fundamental principle also the elements or rudiments of any study or branch of knowledge. (c) A circumstances on which an opinion, inference, arguments, statement or claim is founded, or which has given rise to an action, procedure or mental feeling, a motive often with additional implication. A valid reason justifying motive or what is alleged as such."

Thus, a ground in the context of an election petition is the fundamental reason, basis or justification for questioning the election.

Before a party can question an election of the Respondent, his petition must fall within the grounds specified by the Electoral Act 2022. See the following cases:

OYEGUN VS IGBENEDION & ORS (1992) 2 NWLR (PT. 226) 947; OKONKWO VS INEC & ORS (2003) 3 LRECN 599; ABUBAKAR VS INEC (2020) 12 NWLR (PT.1737); and MODIBO VS USMAN (2020) 3 NWLR (PT. 1712) 470.

The issue at stake here, is not that the petition is not incorporated with a ground at all, but the issue here bothers on the way and manner the ground of the Petitioner's petition is couched. Can it then be said that the Petitioner offended the provision of Section 134(b) of the Electoral Act 2022 to lead to the striking out of the said ground?

The Petitioner in filing this Petition on the 9th of April 2023 before this Election Petition Tribunal against all the Respondents, pursuant to **S134 (1) of the Electoral Act 2022,** at page 7 of the Petition, formulated its **GROUNDS OF PETITION** as follows;

i) *The election and return of the 2nd Respondent as Governor of Kano State was invalid by reason of non-compliance with the provisions the Electoral Act;*

ii) *The 2nd Respondent whose election is being questioned was, as at the time of the election, not qualified to contest the election;*

iii) *The 2nd Respondent was not duly elected by majority of lawful votes cast at the election*

The issue is whether by the inclusion of the phrase ***'and return of the 2nd Respondent as Governor of Kano State'*** into the provisions of **S134 (1) (b) of the Electoral Act 2022**, renders ground 1 of the Petition of the petitioner as invalid and liable to be struck out.

Without much ado, Copious authorities as cited by the parties are to the effect that petitioners are enjoined to use the words as stated in **section S134 (1) of the Electoral Act 2022.** That a Petitioner who decides to use his own language, is taking a big gamble, if not a big risk. See the case of **OJUKWU V YAR'ADUA (SUPRA) ; SILAS V INEC (SUPRA).**

Nevertheless, it is of note, that in the Respondents written addresses, all the Respondents conceded to the fact, as reiterated in a plethora of authorities, that a Petitioner in an election Petition is allowed to use its own language in couching the grounds of its

Petition. That however, in doing so, the Petitioner is expected to use the words that will convey the exact end purpose of the subsection. It is their collective submission, that the two expressions used by the petitioner did not convey the same meaning with the wordings in S134 of the Electoral Act 2022.

In the case of **ADEWUNMI & ANOR V AKINLOYE & ORS 2019 LPELR-50417 CA,** in interpreting the provisions of the then S138(1) of the Electoral Act 2010, which is now S134 (1) (b) of the extant Electoral Act 2022, Per Omoleye JCA, relying on the decision in **OJUKWU V YAR'ADUA (SUPRA)** reiterated thus;

> *'……In couching the grounds of a Petition, the words used in S138 (1) of the Act should be employed verbatim. In the earlier decisions of this court in; OJUKWU V YAR'ADUA 2009 12 NWLR PT 1154 PG 55 and (2) OJUKWU & ANOR V INEC & ORS 2015 LPELR 40652, petitioners are enjoined to use the words as stated in section 138(1) of the Act in framing their grounds of Petition. However this court went further to state, and I agree that a petitioner has the freedom to use his own language to convey the exact meaning and purport of the sub-section. It is my humble view but very firm view that, the purport and meaning of section 138(1) of the Act, especially when read communally with the provision of section 138 (2) and 153 of the Electoral Act and paragraph 4(1) (d) of the 1st schedule to the Electoral Act, have not in any way been offended so as to render invalid ground three (3) of the 1st and 2nd respondents'*

See also the case of **SALIS V INEC 2022 10 NWLR PT 1893 PG 467 AT 481 PARAS A –C** Per the *dictum* of Galumje (JSC); **DIM C. O. OJUKWU VS ALHAJI UMUARU MUSA YAR'ADUA 38 NSCQR (PT. 1) 492 AT 551.**

The crux of this issue, if juxtaposed with the decisions and interpretation of the parameters of S134 (1) (b) of the Electoral Act, is whether the inclusion of ***'and return of the 2nd Respondent as Governor of Kano State'*** into in the provisions of **S134 (1) (b) of the Electoral Act 2022** by the Petitioner is materially and substantially at variance with **S134(1) (b) of the Electoral Act 2022,** to render the clause ambiguous and invalid as canvassed by the Respondents?

Suffice it to say, that **S152 of the Electoral Act 2022**, further relied upon by counsel to the Respondents, are mere definition sections of the words 'Election' and 'Return' used in the Electoral Act. This section does not defy the use of the words interchangeably or conjunctively.

Ditto, **S4 (1) of the 1st Schedule to the Electoral Act 2022** states as follows*;*

(1) An election Petition under this Act shall;

a) Specify the parties interested in election petition.

b) Specify the right of the petitioner to present the election petition

c) Specify the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

d) *State clearly the facts of the election petition and the grounds on grounds on which the petition is based, and the reliefs sought by the Petitioner"*

There is no contention as to the fact that there was a Governorship election held in Kano State on the 18th of March 2023. That the 2nd Respondent was returned as the winner of the election on the 20th day of March 2023.

In effect, there is no gainsaying the fact, that there was an 'election' and there was a 'return' in the Governorship election in Kano State.

It is our considered view, premised on the strength and consideration of the authorities cited above, that though a Petitioner is enjoined to use the exact words in **S134 (1) (b) of the Electoral Act 2022,** that the addition of the word ***'and return of the 2nd respondent as Governor of Kano State....'***, into the provisions of **S134(1) (b) of the Electoral Act** in the ground as stated by the Petitioner in the petition, is not ambiguous and does not materially or substantially alter the provisions of that ground as formulated by the Petitioner, as it is inclusive of the obvious and known fact, that there was an 'election' and there was a 'return' in the Governorship election held in Kano State on the 18th of March 2023 and a return of the 2nd Respondent on the 20th March, 2023. Election is a composite process which ends with a return of an elected candidate. We are unable to see how a ground of petition which complains of return a candidate specified for a State can be outside or contravene section 134(1) (b) of the Electoral Act 2022. See also S.130 of the Electoral Act, 2022 and we so hold.

The current judicial mood, is that substantial justice should be done to the parties to election cases without being unduly fettered by legal technicalities through strict adherence to the provision of Section 134(b) of the Electoral Act, 2022. This is the liberal approach founded on a consideration of the attainment of substantial justice. We are inclined to do substantial justice to this issue for determination which relates, or pertains to the couching of ground one of the Petitioner's petition in accord with our understanding of the current mood of the Courts in election matters; a mood dictated by the need to eschew technicalities in favour of substantial justice. See the cases of: **CHIME VS EGWUONWU (2008) 2 LRECN 575 AT 616 CHIME VS EZEA (2008) LRECN 673 AT 744 TO 745, (2009) 2 NWLR (PT. 1125) 263 ABUBAKAR VS YAR'ADUA (2008) 4 NWLR (PT. 1078) 465 INEC VS INIAMA (2008) 8 NWLR (PT. 1088) 182 OGUNSAKIN VS AJIDARE (2008) 6 NWLR (PT. 1082) 1**

One of the most known statements of the Supreme Court of Nigeria, decrying as old Order, the free reign of technical justice, is contained in this passage from the leading judgment of Nweze, JSC (now of blessed memory) in the case of **OMISORE VS AREGBESOLA (2015) ALL FWLR (PT. 813) 1673 AT 1712 PARAS B-C,** where his Lordship held as follows:

> *"Now, it is no longer in doubt that this Court and indeed all Courts have made a clean sweep of "the picture of the law*
> *and its technical rules triumphant", Aliyu Bello & Ors Vs Attorney General of Oyo State (1986) 5*

> *NWLR (pt. 45) 828-826. Let me explain, by its current mood, it is safe to assert that this court has firmly and irreversibly spurned the old practice where the temple of justice was converted into a forensic abattoir where legal practitioners, employing such tools of their trade like "whirling of technicalities", daily butchered substantial issues in Court in their fencing game in which parties engage themselves in an exercise of outsmarting each other…" Afolabi Vs Adekunle (1983) 2 SCNLR 14, 150. Those days are gone; gone for good"*

For the aforesaid reason, we hold that ground 3 is competent and the objection of counsel to the 2nd Respondent in this regard is hereby dismissed.

ISSUE FOUR

The 2nd Respondent/Applicant submitted that the Petitioner initiated this petition without the mandatory compliance with **paragraph 4 (4) of the First Schedule to the Electoral Act 2022**, by failing to include the content of the OCCUPIER at the foot of the petition. He referred this Honourable Tribunal to the case of **OJUKWU VS YAR'ADUA (2008) 4 NWLR (PT. 1078) 435**.

The Learned Senior Counsel for the 2nd Respondent, further submitted that paragraph 4 (1) (d) of the First Schedule to the Electoral Act, 2022, requires that an election petition shall state clearly the facts of the petition and the ground(s) on which the election petition is based. It is on this basis that the Learned

Senior Counsel urged the Honourable Tribunal to strike out paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 51, 52, 54, 55, 56, 57, 58, 59, 60, 75, 76, 77 and 78 of the petition.

The reaction of the Learned Senior Counsel to the petitioner in relation to this issue, is that the petition complied with the mandatory provision of paragraph 4 of the First Schedule to the Electoral Act. The Learned Senior Counsel maintained that the issue raised by the 2nd Respondent is academic and of no utilitarian value at all and he urged the Honourable Tribunal to discountenance same.

Paragraph 4 (4) of the First Schedule to the Electoral Act, 2022 provides as follows:

> **"Paragraph 4 (4);**
> *"at the foot of the election petition, there shall also be stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier.*

We have carefully gone through the petition filed by the Petitioner and we hold that the Petitioner complied with the provision of **paragraph 4(4) of the First Schedule to the Electoral Act 2022.** This is because the Petitioner copiously stated at the foot of the election petition, his address for service, at which address documents or all Court processes relating to this petition may be served on the Petitioner and the Petitioner equally indicated who the occupier of that address is.

Furthermore, the Petitioner equally complied with the mandatory provision of **paragraph 4(1) (d) of the First Schedule to the Electoral Act, 2022**. Upon a calm reading of the petition, this tribunal observed that the Petitioner clearly stated the facts of the election petition and the ground(s) on which the petition is based. The paragraphs of the petition sought to be struck out by the 2nd Respondent are all competent and this Honourable Tribunal therefore declines in striking them out, but will consider them and the replies of the Respondents in the determination of this petition. This being the case, this issue is resolved in favour of the Petitioner and against the 2nd Respondent.

ISSUE FIVE

On issue five, the 2nd Respondent/Applicant submitted that the pleadings of alleged non-compliance to the Electoral Act, 2022 in this petition are vague, too general, imprecise and capable of springing ambush and surprise during the trial of this petition. The 2nd Respondent therefore urged the Honourable Tribunal to strike out paragraphs 22, 24, 32, 48, 53, 61, 74, 81, 92, 93 and 97 of the petition on the grounds that the facts are scanty, vague and too generalized, imprecise, as the Petitioner will be embarking on a wild goose chase. The 2nd Respondent called in aid the cases of **BELGORE VS AHMED (2012) 2 LRECN 532, PDP VS INEC (2022) LPELR-9712, OJUKWU VS YAR'ADUA (2009) 12 NWLR (PT. 1154) 50 AT 148-149**.

In relation to this issue, the Learned Counsel to the Petitioner, submitted that the issue raised by the 2nd Respondent is academic

and of no utilitarian value. According to the Learned Counsel for the Petitioner, the pleadings referred to in the paragraphs aforementioned, clearly refers to specific polling units, wards and Local Governments in Kano State and the pleadings are clear and unequivocal and he urged this Honourable Tribunal to discountenance the submission of the 2nd Respondent on this issue.

We have thoroughly read through paragraphs 22, 24, 32, 48, 53, 61, 74, 81, 92, 93 and 97 of the petition and we observe that those paragraphs are specific. It is only on the consideration of the facts adduced and evidence relied upon at the trial, that this court can determine whether such facts are scanty, vague, or too generalized and not *in limine* at this jurisdictional objection stage.

For the aforesaid reason, this ground of objection is hereby dismissed.

ISSUE SIX

The 2nd Respondent/Applicant submitted on this issue that paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68, 69, 73, 74, 80, 81, 92, 93 and 94 of the petition alleged massive allotment or allocation of votes, over voting, violence, illegal and unlawful use of illegal ballot papers and destruction in various polling units at the election. The 2nd Respondent urged this Honourable Tribunal to strike out the aforementioned paragraphs of the petition, for failure to plead the ground of corrupt practices under **Section 134 (1) (b) of the Electoral Act, 2022.**

The Learned Senior Counsel for the Petitioner submitted that allegations in paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68, 69, 73, 74, 80 and 81 of the petition alleging over voting, disruption, emergency declaration, allocation of votes, wrongful crediting of votes and violence, dereliction of duties by INEC officials and illegal, unlawful use of ballot papers and such allegations constituting corrupt practices can be entertained, even where there is no ground in the petition.

We have thoroughly considered the paragraphs of the petition sought to be struck out by the 2nd Respondent and it is the observation of this Honourable Tribunal that all the Respondents reacted vividly to each of those paragraphs of the petition in their respective Replies. Since the attitude of this Honourable Tribunal is geared towards doing substantial justice, rather than paying attention on technicalities, we firmly hold, that all the paragraphs in the petition alleging massive allotment or allocation of votes, over voting, violence, illegal and unlawful use of ballot papers and destruction in the various polling units on the election day, would serve the interest of justice, if those paragraphs are considered on the merit and a decision arrived one way or the other, at the judgment stage. There is no need at this stage, to begin to scratch the propriety or otherwise of the aforementioned paragraphs. This Honourable Tribunal shall therefore, at the judgment stage, consider whether the pleaded paragraphs of the petition has been proved, or not and make a decision one way or the other. In the light of the foregoing, we hold that the said paragraphs are not liable to be struck out.

For the aforesaid reason, this ground of objection is hereby dismissed.

ISSUE SEVEN

In relation to issue seven, the Learned Senior Counsel for the 2nd Respondent/Applicant urged this Honourable Tribunal to dismiss this petition, on the grounds that the entire petition is academic in nature and amounts to merely an academic exercise. It is further submitted that reliefs 1 (1-9), inures only to the sponsored candidate and not to the Petitioner, being a mere legal personality, he cannot take the benefit of the candidate.

On his part, the Learned Senior Counsel for the Petitioner submitted that the petition is competent, valid and ought to be decided in favour of the Petitioner, because the 2nd Respondent was not qualified to contest at the election and the 2nd Respondent did not score the majority of lawful votes cast at the election.

This Honourable Tribunal is not minded to dismiss this petition *in limine* as parties have led evidence and tendered legion of documentary evidence in favour of their respective cases.

This being the case, this issue is resolved in favour of the Petitioner and against the 2nd Respondent.

3RD RESPONDENTS NOTICE OF PRELIMINARY OBJECTION

This is a ruling on an application filed by the 3rd Respondent/Applicant dated the 8th day of June, 2023 and filed

same day, pursuant to **Order 26 of the Federal High Court (Civil Procedure) Rules, 2019, Paragraph 18 and 47(1) of the First Schedule to the Electoral Act, 2022** and under the inherent jurisdiction of this Honourable Tribunal, praying for the following orders:

1. An order striking out Grounds 1, 2, and 3 of the petition stated in paragraphs 20(i), (ii) and (iii) of the petition.
2. An order of this Tribunal striking out paragraphs 51-82 of the petition for being facts in support of incompetent grounds.
3. An order striking out paragraphs 82-89 of the petition for being averments bothering on pre-election matters which this Honourable Tribunal lacks jurisdiction to entertain and the Petitioner has no *locus standi* to present, thereby robbing this Tribunal of jurisdiction.
4. An order of this Tribunal striking out paragraphs 90-95 of this petition, for being at variance with ground 2 they are purportedly based (sic).
5. An order of this Tribunal striking out ground 3 of the petition for being abandoned.
6. An order of this Honourable Tribunal striking out this petition for grossly being incompetent.
7. And for such further order(s) this Honourable Tribunal may deem fit to make in the circumstance of this case.

The grounds upon which the application is brought are as follows:

1. The grounds upon which the petition is based is provided for in paragraphs 20 (i), (ii) and (iii) of the petition.

2. The manner Ground 1 as stated in paragraphs 20 (i) of the petition is couched, has taken the said ground outside the scope of valid ground for presenting election petition as provided for in Section 134 (1) (b) of the Electoral Act.
3. The facts stated in paragraphs 82-89 of the petition in support of ground 2 (paragraph 20(ii) of the petition are issues/facts the Tribunal lacks power to determine and the Petitioner has no locus to present.
4. The Petitioner did not state the facts in support of ground 3 of the petition.
5. Ground 3 is abandoned.
6. The issue regarding form EC9 is a pre-election matter and is statute barred.
7. This Honourable Tribunal has no jurisdiction to consider pre-election matters.

The 3rd Respondent/Applicant filed a 25 paragraphed affidavit. The said affidavit was deposed to by Ibrahim Isah Wangida, who deposed to the fact that he is a Legal Practitioner in the team of lawyers representing the 3rd Respondent in this case. The 3rd Respondent/Applicant equally filed a written address which is contained in pages 9-18 of the motion and also adopted same as their argument in support of the motion paper. The 3rd Respondent/Applicant therefore relies on the affidavit in support as well as his written address, in urging this Honourable Tribunal to grant this application as prayed.

Upon service of the 3rd Respondent/Applicant's motion on notice on the Petitioner/Respondent, the Petitioner/Respondent filed a

counter affidavit of 8 paragraphs. The said counter affidavit was deposed to by Ibrahim Zakariah Serina, who deposed to the fact that he is the State Secretary of the Petitioner and by virtue of which he is conversant with the facts of this petition. Relying on the counter affidavit in support and adopting her written address, the Petitioner/Respondent urged this Honourable Tribunal to dismiss the 3rd Respondent's application or preliminary objection in view of the fact that it is not meritorious.

In arguing his application, the 3rd Respondent/Applicant formulated the following issues for determination:

1. Considering Section 134 (1) (b) of the Electoral Act, 2022, whether ground 1 of the petition is invalid and liable to be struck out.
2. Whether, considering the facts pleaded by the Petitioner in paragraphs 82-89 of the petition, this Tribunal has the jurisdiction to determine pre-election matter and whether the Petitioner has *locus standi* to challenge issue of nomination and sponsorship of the 2nd Respondent by the 3rd Respondent.
3. Whether the facts pleaded in paragraphs 90-95 are not at variance with the ground of qualification under which the said facts were pleaded and whether ground 3 of the petition stated in paragraph 20(iii) is not abandoned.

The Petitioner/Respondent did not distill any issue for determination in the hearing of this application, but however craved the indulgence of the Honourable Tribunal to adopt the issues as already distilled by the 3rd Respondent/Applicant and to

argue same *seriatim*. The indulgence sought by the Petitioner/Respondent is hereby granted as prayed. This motion will therefore be determined based on the issues for determination formulated by the 3rd Respondent/Applicant.

The preliminary point raised by the Petitioner/Respondent that the motion of the 3rd Respondent be dismissed, because the affidavit in support is sworn to by a legal practitioner in the law firm of counsel representing the 3rd Respondent, is not sustainable. Our simple answer to this, is that there is no law that prohibits a counsel from deposing to an affidavit, if the counsel is conversant with the facts, or where the facts are within his personal knowledge. See the case of **SODIPO VS LEMMINKAINEM (1986) 1 NWLR (PART 15) 220.** In view of this, the motion of the 3rd Respondent cannot be dismissed for the aforesaid reason.

ISSUE ONE

The 3rd Respondent on issue one submitted that the way and manner the Petitioner couched ground one of his petition is outside the scope of the grounds upon which an election petition can be presented. He further submitted that ground one of the petition is a ground not fit for an election petition and finally submitted that ground one of the said petition is unknown under **Section 134 (1) of the Electoral Act, 2022**. He referred the Honourable Tribunal to the cases of **AMBODE VS AGBAJE (2016) ALL FWLR (PT. 814) 120 AT 143 PARA A** and **OJUKWU VS YAR'ADUA (2009) NWLR (PT. 1154) 50 AT 120-121 PARA H**.

The 3rd Respondent/Applicant, further submitted that paragraphs 51-82 of the petition are facts in support of ground one of the petition and same should be struck out for being imbedded or subsumed under an incompetent ground. He referred the Honourable Tribunal to the case of **ELOHOR & ANOR VS INEC (2019) LPELR-48806 AT 36-47.**

In reaction to the argument of the 3rd Respondent/Applicant in his motion, the Petitioner/Respondent submitted, that ground one of the petition as couched is competent, valid and in compliance with the provisions of the Electoral Act. He referred the Honourable Tribunal to the cases of **OJUKWU VS YAR'ADUA (SUPRA), ADEWUMI & ANOR VS AKINLOYE & ORS (2019) LPELR-50417 (CA), BARR M. B. MUSTAPHA & ANOR VS ALHAJI SANI ABUBAKAR DANLADI & ORS (2015) LPELR-41655 (CA).** Learned Senior counsel for the Petitioner urged this Honourable Tribunal to discountenance the argument of the Learned Senior Counsel for the 3rd Respondent as having no judicial or legislative backing to stand on and same must of necessity crumble like packs.

It is trite law, that a Petitioner is required to question an election on any of the grounds set out in **Section 134 (1) of the Electoral Act, 2022.** For ease of reference, Section 134(1) of the Electoral Act, 2022 provides as follows:

> *"An election may be questioned on any of the following grounds –*

a) A person whose election is questioned was at the time of the election not qualified to contest the election;

b) The election was invalid by reason of corrupt practices and non-compliance with the provisions of this Act; or

c) The Respondent was not duly elected by majority of lawful votes cast at the election.

What then is the meaning of the word "ground"? In the case of **KALU VS CHUKWUMERIJE (2012) 12 NWLR (PT. 1315) 425 AT 485**, the Court of Appeal per Owoade, JCA puts it succinctly, thus:

> *"The Compact Edition of the Oxford English Dictionary (1971) US reprint (1988) defines the word "Ground" in numerous terms and with an array of examples at pages 1214 to 1225 as follows: "Ground": (a) The fundamental constituent or the essential part of anything. (b) A fundamental principle also the elements or rudiments of any study or branch of knowledge. (c) A circumstance on which an opinion, inference, arguments, statement or claim is founded, or which has given rise to an action, procedure or mental feeling, a motive often with additional implication. A valid reason justifying motive or what is alleged as such."*

Thus, a ground in the context of an election petition, is the fundamental reason, basis or justification for questioning the election.

Before a party can question an election of the Respondent, his petition must fall within the grounds specified by the Electoral Act 2022. See the following cases: **OYEGUN VS IGBENEDION & ORS (1992) 2 NWLR (PT. 226) 947; OKONKWO VS INEC & ORS (2003) 3 LRECN 599; ABUBAKAR VS INEC (2020) 12 NWLR (PT.1737); and MODIBO VS USMAN (2020) 3 NWLR (PT. 1712) 470.**

The issue at stake here, is not that the petition is not incorporated with a ground at all, but the issue here bothers on the way and manner the ground of the petitioner's petition is couched. Can it then be said that the petitioner offended the provision of **Section 134(b) of the Electoral Act 2022** to lead to the striking out of the said ground?

The Petitioner in filing this Petition on the 9th of April 2023 before this Election Petition Tribunal against all the Respondents, pursuant to **S134 (1) of the Electoral Act 2022**, at page 7 of the Petition, formulated its **GROUNDS OF PETITION** as follows;

i) *The **election and return** of the 2nd Respondent as Governor of Kano State was invalid by reason of non-compliance with the provisions the Electoral Act;*

ii) The 2nd Respondent whose election is being questioned was, as at the time of the election, not qualified to contest the election;

iii) The 2nd Respondent was not duly elected by majority of lawful votes cast at the election

The issue is whether by the inclusion of the phrase **'*<u>and return</u>*** *of the 2nd respondent as Governor of Kano State'* into the provisions of S134 (1) (b) of the Electoral Act 2022 renders ground 1 of the Petition of the Petitioner as invalid and liable to be struck out.

Without much ado, Copious authorities as cited by the parties is to the effect that petitioners are enjoined to use the words as stated in **section S134 (1) of the Electoral Act 2022.** That a Petitioner who decides to use his own language, is taking a big gamble, if not a big risk. See the *dictum* in the case of **OJUKWU V YAR'ADUA (SUPRA); SILAS V INEC (SUPRA).**

Nevertheless, it is of note, that in the Respondents written addresses, all the Respondents conceded to the fact, as reiterated in a plethora of authorities that a Petitioner in an election Petition is allowed to use its own language in couching the grounds of its Petition. That however, in doing so, the Petitioner is expected to use the words that will convey the exact end purpose of the subsection. It is their collective submission that the two expressions used by the petitioner did not convey the same meaning with the wordings in S134 of the Electoral Act 2022. See Page 13 paragraph 4.04 of the 1st respondent's written address.

In the case of **ADEWUNMI & ANOR V AKINLOYE & ORS 2019 LPELR-50417 CA,** in interpreting the provisions of the then S138(1) of the Electoral Act 2010, which is now S134 (1) (b) of the extant Electoral Act 2022, Per Omoleye JCA, relying on the decision in **OJUKWU V YAR'ADUA (SUPRA)** reiterated thus;

'……In couching the grounds of a Petition, the words used in S138 (1) of the Act should be employed verbatim. In the earlier decisions of this court in; OJUKWU V YAR'ADUA 2009 12 NWLR PT 1154 PG 55 and (2) OJUKWU & ANOR V INEC & ORS 2015 LPELR 40652, petitioners are enjoined to use the words as stated in section 138(1) of the act in framing their grounds of Petition. However, this court went further to state, and I agree that a petitioner has the freedom to use his own language to convey the exact meaning and purport of the sub-section. It is my humble view but very firm view that, the purport and meaning of section 138(1) of the Act, especially when read communally with the provision of section 138 (2) and 153 of the Electoral act and paragraph 4(1) (d) of the 1st schedule to the Electoral Act, have not in any way been offended so as to render invalid ground three (3) of the 1st and 2nd respondents'

See also the case of **SALIS V INEC 2022 10 NWLR PT 1893 PG 467 AT 481 PARAS A –C** Per the *dictum* of Galumje (JSC); **DIM C. O. OJUKWU VS ALHAJI UMUARU MUSA YAR'ADUA 38 NSCQR (PT. 1) 492 AT 551.**

The crux of this issue, if juxtaposed with the decisions and interpretation of the parameters of S134 (1) (b) of the Electoral Act 2022, is whether the inclusion of ***'and return of the 2nd Respondent as Governor of Kano State'*** into in the provisions of S134 (1) (b) of the Electoral Act 2022, is materially and substantially at variance with S134 (1) (b) of the Electoral Act 2022, to render the clause ambiguous and invalid as canvassed by the Respondents?

Suffice it to say, that **S152 of the Electoral Act 2022** further relied upon by counsel to the Respondents are mere definition sections of the words 'Election' and 'Return' used in the Electoral Act. This section does not defy the use of the words interchangeably or conjunctively.

Ditto, **S4 (1) of the 1st Schedule to the Electoral Act 2022** states as follows*;*

(2) An election Petition under this Act shall;

a) Specify the parties interested in election petition.

b) Specify the right of the petitioner to present the election petition.

c) Specify the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

d) State clearly the facts of the election petition and the grounds on grounds on which the petition is based, and the reliefs sought by the Petitioner"

There is no contention as to the fact, that there was a Governorship election held in Kano State on the 18th of March 2023. That the 2nd Respondent was returned as the winner of the election on the 20th day of March 2023.

In effect, there is no gainsaying the fact, that there was an 'election' and there was a 'return' in the Governorship election in Kano State.

It is our considered view, premised on the strength and consideration of the authorities cited above, that though a

Petitioner is enjoined to use the exact words in **S134 (1) (b) of the Electoral Act 2022,** that the addition of the word ***'and return of the 2nd respondent as Governor of Kano State....'**,* into the provisions of S134(1) (b) of the Electoral Act 2022 in the ground as stated by the Petitioner in the petition, is not ambiguous and does not materially or substantially alter the provisions of that ground as formulated by the Petitioner, as it is inclusive of the obvious and known fact, that there was an 'election' and there was a 'return' in the Governorship election held in Kano State on the 18th of March 2023 and a return of the 2nd Respondent on the 20th of March 2023 Election is a composite process which ends with a return of an elected candidate. We are unable to see how a ground of petition which complains of return of candidate specified for a State can be outside or contravenes **Section 134(1) b of the Electoral Act 2022**. See also S.130 of the Electoral Act, 2022.

The current judicial mood, is that substantial justice should be done to the parties to election cases without being unduly fettered by legal technicalities through strict adherence to the provision of Section 134(b) of the Electoral Act, 2022. This is the liberal approach founded on a consideration of the attainment of substantial justice. We are inclined to do substantial justice to this issue for determination which relates or pertains to the couching of ground one of the Petitioner's petition in accord with our understanding of the current mood of the Courts in election matters; a mood dictated by the need to eschew technicalities in favour of substantial justice. See the cases of: **CHIME VS EGWUONWU (2008) 2 LRECN 575 AT 616 CHIME VS EZEA (2008) LRECN 673 AT 744 TO 745, (2009) 2 NWLR (PT. 1125)**

263 ABUBAKAR VS YAR'ADUA (2008) 4 NWLR (PT. 1078) 465 INEC VS INIAMA (2008) 8 NWLR (PT. 1088) 182 OGUNSAKIN VS AJIDARE (2008) 6 NWLR (PT. 1082) 1

One of the most known statements of the Supreme Court of Nigeria decrying as old Order, the free reign of technical justice is contained in this passage from the leading judgment of Nweze, JSC (now of blessed memory) in the case of **OMISORE VS AREGBESOLA (2015) ALL FWLR (PT. 813) 1673 AT 1712 PARAS B-C,** where his Lordship held as follows:

> *"Now, it is no longer in doubt that this Court and indeed all Courts have made a clean sweep of "the picture of the law and its technical rules triumphant", Aliyu Bello & Ors Vs Attorney General of Oyo State (1986) 5 NWLR (pt. 45) 828-826. Let me explain. By its current mood, it is safe to assert that this court has firmly and irreversibly spurned the old practice where the temple of justice was converted into a forensic abattoir where legal practitioners, employing such tools of their trade like "whirling of technicalities", daily butchered substantial issues in Court in their fencing game in which parties engage themselves in an exercise of outsmarting each other…" Afolabi Vs Adekunle (1983) 2 SCNLR 14, 150. Those days are gone; gone for good"*

For the aforesaid reason, we hold the ground 1 of the objection of counsel to the 3rd Respondent in this regard, is hereby dismissed.

ISSUES TWO AND THREE

The 3rd Respondent/Applicant argued issues two and three together. Learned Senior Counsel for the 3rd Respondent/Applicant, in relation to issues two and three, submitted that the averments in support of ground two of the petition, are facts also based on the alleged/purported violation of the provisions of the Electoral Act 2022 and not the Constitution. He referred this Honourable Tribunal to paragraphs 82-89 of the petition, **Section 77 (2) and (3) of the Electoral Act 2022**, as well as **Section 29 (1) and (2) of the Electoral Act 2022.**

Counsel submitted on behalf of the 3rd Respondent/Applicant, that the submission of register of members of a political party and the submission or sponsorship of the 2nd Respondent, are events that took place months before the election of 18th day of March, 2023. He referred the Honourable Tribunal to paragraphs 82, 83, 85, 86, 87, 88 and 89 of the Petition as contained in pages 92-94 thereof.

Counsel submitted that from all the above paragraphs of the petition, the Petitioner is not complaining about the qualification of the 2nd Respondent, but membership of the 2nd Respondent of NNPP and his sponsorship/nomination by the 3rd Respondent. That the facts of the petition reveals that the purported non-membership of the 3rd Respondent was an event that took place

before the election, which this Honourable Tribunal lacks the jurisdiction to venture into.

Learned Senior Counsel submitted that the only Court bestowed with the vires to adjudicate on the allegations in paragraphs 82-89 of the petition, is the Federal High Court and not this Tribunal. He called in aid the case of **ATIKU ABUBAKAR & ORS VS INEC & ORS (2020) 12 NWLR (PT. 1737) 161 PARAS C-F.**

Counsel further submitted, that by virtue of **Section 29(5) of the Electoral Act**, the only person that can challenge the alleged false information which the petition alleged in the paragraphs of the petition is an 'aspirant' in the primary conducted by the 3rd Respondent and not every Tom, Dick and Harry, as in this case. He submitted that the allegations contained in paragraphs 82-89 of the petition, have nothing to do with the issue of qualification as provided for in the Constitution. This is because what the petitioner's allegation centred on, was the violation of the Electoral Act. The attention of this Honourable Tribunal was called to **Section 134 (3) of the Electoral Act 2022.** It is also submitted, that the Petitioner has no *locus standi* to intermeddle into the affairs of the 3rd Respondent, or to challenge the manner in which the 2nd Respondent was nominated by the 3rd Respondent. Counsel referred this Honourable Tribunal to the case of **APM VS INEC & ORS (unreported cases) APPEAL NO: CA/IL/CV/1414/2022** delivered on the 8th day of February, 2023.

Counsel submitted that the facts pleaded by the Petitioner in paragraphs 90-95 of the petition are at variance with the grounds of qualification under which the facts are pleaded. This Honourable Court was urged to strike out paragraphs 90-95 of the petition.

Counsel called in aid the case of **ELOHOR VS INEC (as cited)**. It is the further submission of Learned Senior Counsel for the 3rd Respondent that by **paragraph 44 (1) (d) of the First Schedule to the Electoral Act 2022,** the Petitioner is expected to state clearly the facts of the petition and not to muddle them up. He referred to the case of **OSHIOMOLE VS AIRHAVBERE (as cited)**. He submitted that the petition did not disclose reasonable cause of action, justifying the grant of any relief in favour of the petition. It is the further contention of the Learned Senior Counsel, that paragraphs 82-95 of the Petition should be struck out, based on the fact that ground 3 of the petition has been abandoned since the Petitioner did not state any fact in support of ground 3 of the petition. On the whole, the 3rd Respondent urged this Honourable Tribunal to grant this application and to dismiss the petition.

The Learned Senior Counsel for the Petitioner, in arguing issues two and three, submitted that the Honourable Tribunal has the statutory competence to entertain and determine ground 2 of the petition. He submitted that **Section 177 as well as section 182 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**, are mutually exclusive as one is a qualifying provision while the other one is a disqualifying provision. He submitted that ground 2 of the petition is competent as same

seeks to challenge the qualification of the 2nd Respondent by virtue of **Section 177 (c) of the Constitution of the Federal Republic of Nigeria.**

Counsel submitted, that the sub-stratum of the ground 2 of the petition is to the effect, that a candidate must be a member of a political party, evidenced from its register submitted to the party 30 days to the primary before he can be duly sponsored by the said political party. That it is not an intra-party dispute which is in the realm of pre-election matters but a post- election complaint, cognizable under Section 134 (1) (a) of the Electoral Act 2022, hence, falling within the jurisdiction of the Honourable Tribunal to entertain and determine same. He submitted that the Petitioner possesses the requisite *locus standi* to challenge the qualification of the Respondent on this ground, in a post- election dispute, as in the instant case.

It is the contention of the Learned Senior Counsel, that ground 2 of the petition does not question the primaries or false information under Sections **29(5) and 26 and 82(14) of the Electoral Act**, which regulates pre-election issues. The complaint herein, according to the Learned Senior Counsel for the Petitioner centres on constitutional qualification as it relates to the sponsorship of a candidate, which is mandatory under the Nigerian Constitutional democracy, as there is no room for independent candidate. Learned Senior Counsel submitted that qualification on grounds of membership and sponsorship by a political party, has been maintained as a post - election dispute in a plethora of case law.

He called in aid the case of **PDP VS KAWUWA (2015) LPELR-26044**.

It is argued on behalf of the Petitioner, that the issue of qualification of the 2nd Respondent is not an internal affair of the 3rd Respondent, as it is constitutional and this Tribunal is constituted to hear and determine same.

Counsel further submitted, that the pleadings referred to in paragraphs 82-95 of the petition refers to specific polling units, wards and LGA in Kano State and the pleadings are clear and unequivocal. It is submitted that none of the petitioner's grounds have been abandoned and the Honourable Tribunal is urged to discountenance the 3rd Respondent's objection, as same is lacking in merit. On the whole, the petitioner urged this Honourable Tribunal to dismiss the preliminary objection, in view of the fact that it is not meritorious.

The salient question for determination herein, is whether this tribunal has jurisdiction to determine Ground 2 of the petition in the light of the objections raised by the 3rd Respondent and the replies of the Petitioner thereto?

Ground 2 of the reliefs sought by the Petitioner against the Respondents at **paragraph 99(2), page 100 of the petition** is;

'That it be determined that the 2nd Respondent was not qualified as a candidate in the election to the office of Governor of Kano State held on the 18th of March 2023.

The facts relating to ground 2 of the alleged Non - qualification of the 2nd respondent are as pleaded in paragraphs 82 to 89 of the Petition filed on the 9th of April 2023. Same is grounded on;

a. the non –membership, and non- sponsorship of the 2nd respondent by 3rd respondents party (NNPP); (paragraph 83 of the petition)
b. that the 2nd Respondent and his name is not contained in the register of members of the 3rd Respondent in the entire volumes of the register submitted to the 1st Respondent; (paragraphs 84 of and 85 the petition)
c. that in part A of the INEC Form EC9-'Affidavit of personal particular' of the 2nd Respondent submitted to the 1st Respondent reflects that the membership number of the 2nd Respondent is NNPP/HQ/KN/GWL/DS/001. That no such number is contained in the 3rd Respondents register of members; (paragraph 86 of the petition);

d. that the affidavit of personal particulars wherein the 2nd Respondent claims membership of the 3rd respondent as member No NNPP/HQ/KN/GWL/DS/001, is a false certificate because no such membership number or name exists in the register of the 3rd respondent and the said membership number above are not those of the 2nd Respondent (paragraphs 88 and 89 of the Petition)

In the case of **LADO V MASARI 2021 13 NWLR PART 1793 PG 334 AT PAGE 349 TO 350 PARAS H- B,** it was restated by the Supreme court that;

'The law is now trite that qualification to contest election for the office of Governor of any state in Nigeria is a Constitutional issue which has been sufficiently provided for by the Constitution of the Federal Republic of Nigeria 1999 (as amended)……………………………………………………………….

Thus, ***Section 177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides;***

177. A person shall be qualified for election into the office of Governor of a state if;

a) He is a citizen of Nigeria by birth

b) He has attained the age of 35 years;

c) he is a member of a political party; and is sponsored by that political party; and

d) he has been educated up to at least School Certificate or its equivalent

Ditto, in the Supreme Court case of **AL-HASSAN V ISIHAKU 2016 10 NWLR PART 520 PG 230,** the court reiterated at pages 275-276 PARAS H-A; 277 PARAS A-F as follows;

"…Where it is alleged that a person is or was not qualified to contest election into the office of Governor as envisaged by section 138(1) (a) of the Electoral Act, it is S177 and 182 of the 1999 Constitution (as amended) that are being contemplated. Taking the provisions together, it is seen that both the provision for qualification and that for disqualification are so comprehensive which makes them exhaustive. Thus the

Constitution, as the Supreme law of the land, having such elaborate and all- encompassing provisions for qualification and disqualification of persons seeking the office of Governorship of a state, does not leave any room for addition to those conditions already set out. Once a candidate sponsored by his political party has satisfied the provisions set out in S177 of the Constitution and is not disqualified under S182 (1) thereof, he is qualified to stand for election to the office of Governor of a State. No other law can disqualify him ***(P.D.P V INEC (2014) 17 NWLR (PT 1437) 525, Shinkafi V Yari (2016) 7 NWLR (PT 1511) 340 referred to (Pp 275, paras H_A;277 Paras A-F"***

On the issue as to who can challenge an election on the ground of the winner not qualified to contest; the Supreme court, in the said authority above, stated thus at page 264 Para E-F that;

"A person who participated in an election and it is his desire to challenge the election of the winner on the ground that the winner was not qualified to contest the election can do so only under section 177 of the Constitution, if he failed to do so under section 31(5) and (6) of the Electoral Act. (See PDP V INEC (2014) 17 NWLR PT 1437) P.525.

A communal reading of this decision of the Supreme Court, presupposes the following.

a) That there must have been an election conducted;
b) That there must have been a declared winner of the Election;

c) That the person with the *locus standi* to challenge that election must have participated as a 'Candidate' in the said election.
d) That his challenge to the election must be on the ground that the declared winner was not qualified to participate in the election on constitutional grounds.

In effect, the challenge of the Petitioner, as stated above is as to the qualification of the 2nd respondent under S177 (c) of the 1999 Constitution, as to whether the 2nd Respondent *'..is a member of a political party; and is sponsored by that political party;'.*

The courts have held in a plethora of cases, that the issue of membership of a political party is an internal affair of the political party.

It has been consistently held, that it is only the party (in this case, the 3rd Respondent), that has the prerogative of determining who are its members and the 3rd Respondent, having sponsored the 2nd Respondent as its candidate for the Governorship Election in Kano State on the 18th of March 2023, the 2nd Respondent has satisfied the requirement of being a member of the 3rd Respondent as provided for in S134 (1) (a) of the Electoral Act 2022.

Consequently, it is not within the right of the Petitioner at this stage and after the nomination, sponsorship of the 2nd Respondent by the 3rd Respondent as its candidate, to question the 2nd Respondents membership of the 3rd Respondent as same is an internal affair of the party.

This issue has been laid to rest in the following cases; **See the cases of ENANG V ASUQUO & ORS 2023 LPELR 60042 SC AT PAGES 29-35, PARAS D-A; SANIV GALADIMA & ORS 2023 LPELR- 60183 SC AT PAGES 32-33, PARAS D-A, TUMBIDO V INEC& ORS 2023 LPELR 60004 SC AT PAGES 31-35, PARAS D-D; AGI V PDP 2016 LPELR 42578 SC AT 48-50; UFOMBA V INEC 2017 LPELR -42079 SC; APC V MOSES 2021 14 NWLR PART 1796 PG 278 PARAS C-F**

Ditto, the same decision and/or position was maintained in the cases of **APM V INEC 2023 NWLR PART 1890** and the recent unreported case of **MR PETER GREGORY OBI & 1 OR V INEC & 3 ORS PETITION NOCA/PEPC/03/2023 delivered on the 6th of September 2023.**

For the aforesaid reasons, this issue is resolved against the Petitioner in favour of the 3rd Respondent.

This Tribunal has also thoroughly considered the paragraphs of the petition sought to be struck out by the 3rd Respondent and it is the observation of this Honourable Tribunal, that all the Respondents reacted vividly to each of those paragraphs of the petition in their respective Replies. Since the attitude of this Honourable Tribunal is geared towards doing substantial justice, rather than paying attention on technicalities, there is no need to begin to scratch the propriety or otherwise of the aforementioned paragraphs. This Honourable Tribunal shall therefore at the judgment stage, consider whether the pleaded paragraphs of the petition has been proved, or not and make a decision one way or

the other. In the light of the foregoing, we hold that the said paragraphs are not liable to be struck out.

Having resolved the Notices of preliminary objection, filed by counsel to the 1st, 2nd and 3rd Respondents, we shall proceed to address the issues for determination in the main petition and in this judgment, we shall consider the objections to the admissibility of documents raised by the Parties during trial.

To conserve time, in order to expedite trial, counsel to the parties in this petition and during the pretrial, agreed to subsume arguments on objections on the admissibility of documents during trial and canvass same in their final written addresses.

Having determined the notices of preliminary objection, this tribunal shall now proceed to determine objections by the parties to the admissibility of documents and other objections, raised during the trial of this petition.

OBJECTIONS OF THE PARTIES ON THE ADMISSIBILTY OF DOCUMENTS AND OTHER OBJECTIONS

RULING ON THE 1ST RESPONDENTS OBJECTION

In summation, vide a written address dated the 31st of July 2023, counsel to the 1st Respondent objected to;

a) The adoption of the written statements on oath of Pw31 deposed to on the 13th of May 2023 and the statement on oath of Pw32, a subpoenaed witness.

It is the submission of counsel to the 1st Respondent on the adoption of the oaths of Pw31, that the provision of **Paragraph 4**

of the 1st Schedule to the Electoral Act 2022 stipulates the contents of documents that must accompany an election Petition. That **paragraph 16 of the 1st Schedule to the Electoral Act 2022** which provides for filing of Petitioners reply, does not require Petitioners reply to be accompanied by deposition of witness statement on oath, citing the case of **IDUME V ARUNSI 2010 LPELR 9133 (CA),** Per Helen Morounkeji Ogunwunmiju JCA (as he then was) PG 33-36 PARAS B-B.

On the adoption of the witness statement on oath of Pw32, counsel submitted that the statement on oath of Pw32 was not filed in line with the provision of **Paragraph 4(5) of the 1st schedule to the Electoral Act 2022,** that it was not frontloaded and therefore did not accompany the Petition, citing the cases of **ARARUME V INEC 2019 LPELR-48397 (CA) AT 31-36 PARAS B-G; PDP V OKOGBUO 2019 LPELR -48989 CA**

b) That on the 22nd of July, 2023, when the 2nd Respondents witness 2RW1, was in the witness box, after he had been examined in chief and cross examined by the 1st and 2nd Respondents counsel, counsel to the Petitioner tendered some certified true copies of forms ECBs numbering over 500 copies from more than 500 wards in Kano State, with the sole purpose of cross examining 2RW1 on same.

It is the submission of the 1st Respondent, that admitting these documents at this stage of the proceedings when the Petitioner and the 1st Respondent had closed its case, will be highly prejudicial to the case of the 1st Respondent, in the sense that the 1st Respondent will be foreclosed from commenting on those documents, thereby

violating the *Audi alteram partem* principle of fair hearing, citing the cases of **LEADERS OF COMPANY LTD & ANOR V BAMAIYI 2010 LPELR-1771(SC); IKENYE V OFUNE 1985 2 NWLR PT 5, PG 1 AT 13** and a host of other cases, urging the court to reject the said documents.

Counsel to the Petitioner in reply, filed a response to the objection of the 1st Respondent to Petitioners documentary evidence on the 7th of August 2023, to the effect that the documents tendered through 2RW1 were duly pleaded and the 2nd Respondent had ample notice of same and on the basis of which he filed his reply to the Petition, citing the case of **OKONKWO OKONJI (ALIAS WARDER) & ORS V GEORGE NJOKOMA & ORS 1999 14NWLR PT 638 PG 250.** Counsel urged the Tribunal to take judicial notice of the attitude of the 1st Respondent in this Petition, in hoarding relevant documents and releasing same piecemeal, making it extremely difficult for the Petitioner to have all required documentary evidence early enough. That fair hearing requires that justice must be done to all, citing the case of **NWOKOCHA V A.G OF IMO STATE 2016 LPELR -40077 SC per Ogunbiyi JSC.**

On the competence of the statement on oath of Pw31 filed on 26th May 2023, counsel submitted that same is relevant, and does not offend **Paragraph 4, nor 16 of the 1st Schedule to the Electoral Act 2022.** That the 1st Respondent having introduced new facts in his Petition, cannot prevent the Petitioner from responding and adducing evidence in support of same through his witness, distinguishing this case from the case of **UDUMA V ARUNSI (SUPRA),** cited by counsel to the 1st Respondent.

Of note is the fact, that Pw31 on the 15th day of July 2023, before this tribunal, adopted 4 witness statements on oath, one dated 9 /4/2023 attached to the main Petition. The 2nd to 4th depositions on oath are attached to the Petitioners replies to the replies of the 1st, 2nd and 3rd Respondents. The question is, whether paragraphs 4 and 16 of the 1st Schedule to the Electoral Act 2022, which provides for what a petition must specify and for filing of Petitioners reply, does not require the Petitioners reply to be accompanied by deposition of witness statement on oath?

Paragraph 16(1) of the 1st schedule to the Electoral Act 2022 stipulates as follows;

> *'If a person in his reply to the election petition raises new issues of facts in defence of his case which the Petition has not dealt with, the petitioner shall be entitled to file in the Registry within five days from the receipt of the respondent's reply, a Petitioner's reply, in answer to the new issues of fact'*

A literal and unambiguous reading and interpretation of this provision presupposes that the Petitioner has the liberty to file a reply in the light of new issues of facts in a Respondents reply. It has been emphasized in various authorities, that where a party fails to file a reply in denial or rebuttal of new facts or issues raised in the Respondents reply, the Petitioner would have been deemed to have admitted the new issues raised by the Respondent. See the case **MICHAEL V YOUOSO 2004 15 NWLR PT 895 PG 96.**

The only embargo, is that a Petitioner is not entitled to set up in their reply to the Respondent's replies to their petition, either a new cause of action, grounds or new facts outside or inconsistent

with their Petition. See the cases of **EMERHOR V OKOWA 2016 11 NWLR PT 1522 PG 1 AT 32-33 PARAS G-G; SYLVA V INEC 2018 18 NWLR PT 1651 PG 310 AT 352 PARAS F-H and EZEA V& ANOR V UGWANYI & ORS 2015 LPELR -40644 (CA).**

In the case of **ALHAJI ISIAKA GARBA & ANOR V ALHAJI AREMU BANNA 2014 LPELR – 24308 (CA),** the court, Per Onyemena JCA, emphasized the proprietary of a reply statement on oath, accompanying a Petitioners reply when it reiterated thus, in distinguishing between an 'additional statement on oath' and a 'Reply statement on oath'

> *'A reply statement of oath is sworn evidence made to proof facts contained in a claimants reply to defendant's statement of defence. The reply statement on oath does not add nor revise the claimant's statement on oath. It is only necessary and allowed in proceedings to enable the claimant proof facts in response to defendants fresh issues raised outside the claimants pleadings. Accordingly, a reply statement on oath is that sworn evidence of a claimant which seeks to prove facts in his reply statement as a result of fresh, unique, novel and further averments introduced to the defendant's statement of defence outside the claimant's statement of claim. See Egesimba v Onuzuruike 2002 15 NWLR PT 791 PG 466.*
>
> *Clearly therefore, an additional statement on oath is different from a reply statement on oath of a claimant.........'*

There is nowhere in **Paragraph 4, or paragraph 16(1) of the 1st schedule to the Electoral Act 2022**, which forbids the filing of a reply to Respondents reply and such cannot be inferred into the provision by the objectors and we sold hold. Consequently, the objection in this regard is hereby struck out and the replies are deemed as admitted.

The objection of the witness deposition on oath of Pw32 is to the effect that the statement on oath of Pw32 (A subpoenaed witness) was not filed in line with the provision of **Paragraph 4(5) of the 1st schedule to the Electoral Act 2022,** that it was not frontloaded and therefore did not accompany the Petition. Our answer to this objection was decided in our ruling on this issue delivered on the 13th of July 2023. Counsel to the Respondents filed an appeal against this decision in SUIT NO **CA/KN/EP/GOV/KAN/05/2023**. In a considered ruling delivered by the Court of Appeal, Abuja Judicial division, the Court of Appeal affirmed the ruling of this tribunal, dismissing the Appeal of the Respondents. In effect, this objection is overtaken by the decision of the appellate Court.

For the aforesaid reason, this line of objection is hereby dismissed.

The last objection of the 1st Respondent, is on the objection on the admissibility of some certified true copies of INEC forms and documents. It is on the strength of this ground, that the 1st Respondent urged the Honourable Tribunal to expunge the documents admitted as **Exhibits P170, P171(1-44) and Exhibits B126-B171** respectively.

It is pertinent to state, that on the 21st day of July 2023 and during the cross examination of 2RW1 by counsel to the Petitioner, these Exhibits were admitted by this tribunal.

It is trite, that the basic principle on admissibility in law, is whether the documents are duly pleaded; whether they are relevant to the facts in issue and whether they are admissible in Law? See the cases of **AONDO AKAA V OBOT 7 OR 2021 SC; TORTI V UKPABI 1984 1 SC PG 370 and DIKIBO & ORS V IZIME 2019 LPELR – 48992-CA.**

There is no gainsaying the fact, that the certified true copies admitted by the court met the criteria on admissibility, as relevancy governs admissibility and the said documents were pleaded. See the cases of **NAB LTD VS SHUAIBU (1991) 4 NWLR (PT. 186) 450, OKECHUKWU VS INEC (2014) 17 NWLR (PT. 1436) 256 AT 294-295.**

Be that as it may, the question is whether they can be admitted at the stage they were admitted and after the Petitioner had closed its case, on the hallowed principle of fair hearing as canvassed by the objectors? This is the crux of this objection.

It is of note, that on the 23rd of June 2023, during trial and upon the failure of the 1st Respondent to produce to the Petitioner all the INEC documents requested by the Petitioner at once, but producing same piecemeal during the course of trial, this tribunal varied its order in the Pre-Trial Report, on the time for the tendering of documents, as follows;

> *'with the joint consent of counsel to the parties, this tribunal hereby varies the resolution in the pre-hearing report, that*

> *counsel can tender documents not tendered during the pre-hearing, at the commencement of their case and not thereafter. This order is hereby varied now, <u>it is agreed that counsel can only tender documents throughout the hearing of this Petition, but before the conclusion of trial'</u>*

In effect, trial was still going on, when counsel to the Petitioner sought to tender the INEC documents said to have been given to him that day.

It is the considered view of this tribunal, that the 1st Respondent cannot have its cake and eat it. Fair hearing is a double edged sword, which can be used by either party in the conduct of a fair trial. See the case of **OPARA V MORECAB FINANCE LTD & ANOR 2018 LPELR -43990 P 31-36 PARAS D**

The objection of counsel to the 1st Respondent in this regard, is hereby dismissed and the documents are deemed admitted as admitted.

The bottom line is that all the objections of learned counsel to the 1st Respondent are hereby dismissed.

<u>RULING ON THE 2ND RESPONDENTS OBJECTION TO THE ADMISSIBILITY OF DOCUMENTS</u>

Counsel to the 2nd Respondent vide the '2nd Respondents objection to the documents of the Petitioner' filed on the 1st of August 2023, raised:

a) Objection to the admissibility of the BVAS machines;

b) Objection to the adoption of the witness statements on oath of Pw31 and Pw32; on the same grounds as canvassed by counsel to the 1st Respondent, further relying on **S285(5) of the 1999 Constitution; S115(1) (3) & 4 of the Evidence Act 2011** respectively and on the case of **MGBENWELU V OLUMBA 2017 5 NWLR PT 1558 PG 169 AT 190, PARAS G-H**

c) Objection to the admissibility of Exhibit P169.

In summary, it is counsel to the 2nd Respondents submission, on objection (a), that the admissibility of the BVAS machines are in violation of the provisions of *S4 (5) (i) of the 1st Schedule to the Electoral Act 2022*, submitting that they were not pleaded nor frontloaded. Counsel cited the cases of **ONYEWUCHI V IHEMEDU 2018 LPELR -257 CA and OKONJI V NJOKAMA 1999 14 NWLR PT 638 PG 250.**

In summation, it is the submission of counsel to the Petitioner, that the BVAS machines were pleaded and that relevancy governs admissibility, citing the cases of **DUNIYA V JIMOH 1994 3 NWLR PT 334 and BABAN-LUNGU & ANOR V ZAREWA & ORS 2013 LPELR-20726 CA**

That the Respondents were given notices to produce all documents connected with the 2023 Governorship election in Kano State.

Citing the case of **OYETOLA & ORS V INEC & ORS SC/CV/508/2023,** counsel submitted that the machines are relevant to the facts in issue, the Petitioners having pleaded the reports on the BVAS machines.

It is a trite and a resonated principle of our legal jurisprudence, that you plead material facts and not the evidence to be relied upon and the evidence to be relied upon can be tendered in support of those facts.

It is of no doubt, that the BVAS machines were copiously referred to in the Petitioner's Petition and the BVAS report, relied upon by the Petitioner, is said to have been generated from the contents in the BVAs machine. Upon a calm perusal of the Petitioner's petition, we are able to observe relevant pleadings in relation to the BVAS machine in **paragraphs 29 at page 11, 31 at page 12, 35 at page 12, 37(c) at page 13, 45, 46 and 48 at page 15 and 58 at page 17**. As reiterated above, relevancy governs admissibility and on the authority **OYETOLA & ORS V INEC & ORS SC/CV/508/2023,** the BVAS machines in the custody of the 1st Respondent only, are relevant to the facts in issue.

For the reasons stated above, this objection is hereby overruled and the BVAS machines admitted by this tribunal are deemed as admitted.

The second limb of the 2nd Respondent's objection deals with the incompetence of the witness statement on oath of PW31, which according to the Learned Senior Counsel to the 2nd Respondent offends the mandatory provision of **Section 285 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and paragraph 4(5)(i) of the First Schedule to the Electoral Act, 2022.** It is the submission of the Learned Senior Counsel to the 2nd Respondent that the written statement on oath of PW31 was

filed outside the 21days window required of a Petitioner to file his petition and accompany same with written statement on oath.
The Learned Senior Counsel for the 2nd Respondent also submitted that the written statement on oath filed by PW31 is bereft of facts showing the source of information of the deponent, since the witness was not deposing to facts from his personal knowledge. In a nutshell, Learned Senior Counsel submitted that the written statement on oath of PW31 offends the mandatory provision of **Section 115 (1), (3) and (4) of the Evidence Act, 2011.**
In response to the argument proffered by Learned Counsel to the 2nd Respondent, in his objection to the admissibility of the documents tendered by the Petitioner, the Learned Senior Counsel for the Petitioner submitted that the written statement on oath of PW31 is relevant and valid and same did not offend the provision of Section 115 of the Evidence Act 2011. He urged this Honourable Tribunal to discountenance the legal argument of the Learned Senior Counsel for the 2nd Respondent.

The heavy weather made by the 2nd Respondent is on the competence of the written statement on oath deposed to by PW31 on the 26th day of May, 2023. It must be borne in mind, that PW31's, Rabiu Suleiman Bichi's written statement on oath is not only contained in the Petitioner's Replies to the Respondents' Replies, but is also contained in the Petitioner's petition which was filed on the 9th day of April, 2023, specifically at pages 125-224. The signature of PW31 (Rabiu Suleiman Bichi), in his first written statement on oath filed along with the petition on the 9th of April,

2023 is the same with his signatures in the written statements on oath filed in the Petitioner's Replies to the Respondents' Replies.
The written statement on oath of PW31 did not also offend the provision of **Section 115 (1) (3) and (4) of the Evidence Act 2011.** The fact that PW31 filed his written statement on oath within the 21 days' time frame allowed by the provision of **Section 285(5) of the 1999 Constitution and Paragraph 4(5)(i) of the First Schedule to the Electoral Act**, neutralizes the heavy weather made on this issue by the 2nd Respondent.
The authorities relied on by the 2nd Respondent, in urging us to discountenance PW31's written statement on oath, is therefore of no moment and cannot apply in this case. It is trite law that cases are authorities for what they decide such, that it is not helpful to flog authorities where the facts and circumstances of cases are different. See **PDP VS INEC (2018) LPELR-44373 (SC) AND OLLEY VS TUNJI (2015) 10 NWLR (PT. 1362) 374.** The second limb of the 2nd Respondent's objection to the documents of the Petitioner therefore fails and is accordingly overruled.

Objection (b), as to the adoption of the witness statements on oath of Pw32, has been decided in the 1st Respondent's objection. In view of this, this tribunals decision in this regards abides the 2nd Respondent's objection.

Counsel to the 2nd Respondent on issue c, in objecting to the admissibility of report; Exhibit P169, submitted that the purported expert report is inadmissible. That Pw32 who produced and tendered Exhibit P169 did not establish his skills and qualification as an Expert to analyse INEC Electoral materials, citing the cases

of **TONY ABACO NIG LTD V ACCESS BANK 2019 LPELR-47919 and UBA PLC V PATKAN VENTURES LTD 2017 LPELR-42392 CA** and **S68 of the Evidence Act 2011.** Further submitting that the expert report is caught up by the admissibility requirement of computer generated evidence requiring compliance with **S84 of the Evidence Act 2011,** citing the case of **OMISORE V AREGBESOLA 2015 15 NWLR PT 1482 PG 205,**

Counsel to the Petitioner, in the Petitioners response to the 2nd Respondent's objection on this issue, submitted that the challenge of the admissibility of Expert report, Exhibit P169, under section 68 and 84 of the Evidence Act 2011, is misconceived, as same is not a computer generated evidence. In citing the case of **ADELEKE V OYETOLA 2023 11 NWLR PT 1894 PG 712,** counsel defined who is an expert witness.

It is the considered view of this tribunal, that the contention of learned counsel to the 2nd Respondent, that Pw32, did not produce before the tribunal, his qualification or certificate, to satisfy the tribunal of his qualification as an expert witness pursuant to **S68 of the Evidence Act 2011** does not go to the admissibility of the report Exhibit P169, but to the weight to be attached to the report, if the court finds so.

Furthermore, this tribunal agrees *in toto* with the submission of the Petitioner's counsel, that the argument of the 2nd Respondent on the inadmissibility of Exhibit P169, on account of the fact that it is a computer generated document, is misconceived. We agree that the report is a product of information fed into the computer

and printed and such documents are different from computer generated documents.

If not so, its implication is, that every information fed into a computer by anyone would have to be certificate compliant, which is definitely not the intention of Section 84 of the Evidence 2011 and we so hold.

In view of these, all the objections of learned counsel to the 2nd Respondent are also hereby dismissed and the documents are deemed admitted as admitted by this tribunal.

RULING ON THE 3RD RESPONDENT'S OBJECTION TO THE ADMISSIBILITY OF THE DOCUMENTS OF THE PETITIONER

The 3rd Respondent did not file any objection to any document. In paragraph 3.34 of the 3rd Respondent's final written address, particularly at page 14, the 3rd Respondent submitted, that rather than object to the admissibility of the certified true copies of INEC/electoral documents tendered from the bar by the Petitioner, that she would rather canvass the trite point of law, that certified true copies of official/public documents are admissible in evidence even if tendered from the bar, but that such documents have no probative value if the makers of the documents are not called to give evidence to testify on those documents. We note the said submission of Learned Senior Counsel for the 3rd Respondent and on this basis, this Honourable Tribunal will have nothing to rule on for now in respect of the probative value on the said documents.

RULING ON THE PETITIONER'S OBJECTION TO THE ADMISSIBILITY OF THE DOCUMENTS OF THE RESPONDENTS

The Petitioner in his final written address at pages 37, 38, 39 and 40, objected to the admissibility of the documents tendered by the Respondents. The first arm of the Petitioner's objection to the Respondents' documents deals with the admissibility of the documents tendered and marked as exhibits O, P, Q and M respectively. According to the Petitioner, none of these documents were pleaded and neither were the documents listed in the Respondents' Reply.

We have looked at the Respondents' Reply and we observed that none of the Respondents listed nor pleaded exhibits O, P, Q and M. None of the Respondents also sought the leave of the Honourable Tribunal to tender and rely on any document and none was admitted as such pursuant to the provision of **Paragraph 41(8) of the First Schedule to the Electoral Act, 2022**. For the aforesaid reason the address of counsel to the Petitioner on the admissibility of Exhibit O P, Q and M in this regard are hereby expunged.

RULING ON THE PROPRIETY OR OTHERWISE OF THE WRITTEN STATEMENT ON OATH OF PW19

On the 12th day of July, 2023 when **PW19** (Sani Al-Hassan Inuwa) testified before this Honourable Tribunal, Learned Counsel to the Respondents raised objection regarding the discrepancies and manifest inconsistencies between the two versions of the written

statements on oath of this witness, in that the content of the English version of the evidence of this witness, is distinct from the Hausa version.

We have read through the written statements on oath of this witness and we agree with the Respondents that the Hausa version of the evidence of this witness is totally different from the English version. This Honourable Tribunal shall therefore restrict herself to the English version of the written statement on oath of **PW19**.

Having determined the objections to the admissibility of documents, this Tribunal shall proceed to determine the merits of this petition.

MERITS OF THE PETITION

Trial in this petition commenced on the **23rd day of June 2023.** Counsel to the Petitioner called 32 witnesses as Pw1 to Pw32.

At the Pre-trial session and during trial, Exhibits were tendered by the Petitioners counsel, to wit Exhibits P1 to P168, consisting of polling unit register of voters; BVAS report, copious ballot papers; Forms EC8C's, Forms EC8D; Form EC40's; Form EC40 PU; Form Ex40(i), Form EC40G (ii), Form EC8E Governorship election declaration of results, letters and the report of a statistician; Forms EC8a's were admitted as Exhibits A1 to A106, Form EC8b series were admitted as Exhibits B1 to B171,which are the summary of results from polling units collation registration areas.

Counsel to the 1st Respondent tendered 3 Exhibits, **Exhibit 1R(1), Exhibit 1R2 and Exhibit 1R3**, but did not call any witness at the trial of this Petition.

Counsel to the 2nd Respondent tendered 16 Exhibits, to **wit Exhibits 2R1 to 2R16** and **Exhibits 2R17(x) to 2 R20(x)** were admitted under cross examination. The 2nd Respondent called 1 (one) witness.

Counsel to the 3rd Respondent tendered 3 Exhibits; **Exhibits 3R1 to 3R3,** but did not call any witness at the trial of this petition.

At the conclusion of the hearing of the petition, final written addresses were filed and exchanged by the Learned Senior Counsel on both sides in accordance with the rules and practice of this Honourable Tribunal.

The 1st Respondent filed her final written address on the **2nd day of August, 2023**. The 2nd Respondent filed his final written address on the **1st day of August, 2023** while the 3rd Respondent filed her final written address on the **31st day of July, 2023**.

Upon being served with the Respondents' final written addresses, the Petitioner filed her final written address dated the **6th day of August, 2023**. Thereafter, on the **7th and 8th of August, 2023**, the Petitioner again filed two final written addresses in response to the 1st and 2nd Respondents respectively. The Petitioner in his final written address dated the 6th of August 2023 did add his 'Petitioners Response to 3rd Respondents final Address'

The 1st, 2nd and 3rd Respondents filed their respective replies on point of law to the Petitioner's final written address. The 1st

Respondent's reply on point of law was filed on the **14th day of August, 2023**. The 2nd Respondent's reply on point of law was filed on the **11th day of August, 2023**. The 3rd Respondent's reply on point of law was filed on the **12th day of August, 2023**.

On the **21st day of August, 2023**, all the parties as represented by their Learned Senior Counsel identified and adopted their final written addresses and their replies on points of law as earlier pointed out by this Honourable Tribunal. This Honourable Tribunal afforded all the parties the opportunity to make oral adumbration on their respective written addresses, which they did.

The 1st Respondent raised two questions for determination:

1. Whether from the totality of the evidence adduced, the Petitioner has proven that the election into the office of Governor of Kano State held on the 18th day of March, 2023 and the eventual declaration of the 2nd Respondent as the winner of the election was invalid by reason of substantial non-compliance with the provision of the Electoral Act.

2. Whether the Petitioner had proved its allegation that the 2nd Respondent was, at the time of the election, not qualified to contest for the office of Governor of Kano State in the election held on the 18th of March, 2023.

In the final written address filed by the 2nd Respondent, the three issues formulated for determination are as follows:

1. Whether the Petitioner has proved that the election and return of the 2nd Respondent to the office of the Governor of Kano State held on the 18th of March, 2023 was not conducted by the 1st Respondent in compliance with the Electoral Act, 2022.

2. Whether the Petitioner has proved that the 2nd Respondent did not score the majority of lawful votes cast and ought not to have been returned as the duly elected Governor of Kano State in the election held on the 18th of March, 2023.

3. Whether the 2nd Respondent is disqualified from contesting for the office of the Governor of Kano State in the Election held on the 18th of March, 2023.

Having regard to the circumstances of this petition, the 3rd Respondent distilled five issues for determination as reproduced hereunder:

1. Whether the election to the office of the Governor of Kano State held on the 18th day of March, 2023 was not conducted and held in substantial compliance with the provisions of the Electoral Act.

2. Whether the 2nd Respondent was not validly elected and returned having won majority of lawful votes cast at the

election to office of the Governor of Kano State held on the 18th of March, 2023.

3. Whether the Petitioner has *locus standi* to raise the issue of sponsorship of the 2nd Respondent by the 3rd Respondent, since the issue of nomination and sponsorship of the candidate is the domestic affair of the 3rd Respondent.

4. Whether the petition is competent and is not liable to be struck out and/or dismissed in *limine.*

5. Whether the Petitioner proved its case as required by law (on the balance of probability, or at all) to enable the Tribunal grant the reliefs in the petition which are declaratory in nature in its favour.

The Petitioner in her final written address distilled three issues for determination:

1. Whether or not the 2nd Respondent was constitutionally qualified to contest the election and qualified to hold the office of the Governor of Kano State, in line with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2022.

2. Whether or not the 2nd Respondent was duly elected by majority of lawful voted cast at the election.

3. Whether or not in light of the manifest evidence of substantial non-compliance with the provision of the Electoral Act, 2022 presented before this Honourable Tribunal, the declaration of the 2nd Respondent as the purported winner of the election ought not to be set aside.

It is of note, that from the above, issue 1 of the Petitioners issue on qualification of the 2nd Respondent to contest the Election, are also issues 2 & 3 of the 1st and 2nd Respondents issues for determination.

It is of note, that from the above, issue 2 of the Petitioners issue, as to whether the 2nd Respondent scored the majority of lawful votes cast at the election, are also issues 1, 2 and 3 of the 1st, 2nd and 3rd Respondents issues for determination respectively.

It is also of note that, issue 3 of the Petitioners issue for determination, as to whether there was substantial compliance with the provisions of the Electoral Act, are also issues 1 of the 1st, 2nd and 3rd Respondents issues for determination.

In effect all the parties in this suit formulated similar issues and same shall be determined *seriatim.*

For the purpose of determining this petition, the two issues distilled by the 1st Respondent has captured the salient points raised and canvassed by the Learned Senior Counsel to the parties in this petition. They will be crystallised and considered, as they encapsulate all the grievances articulated in this Petition. It will therefore be apt to be guided by it in the determination of this petition and we shall accordingly do same.

All the issues arising from this Petition shall be subsumed into these 2 umbrella issues.

This tribunal shall consider first, the issue as to whether the Petitioner has proved its allegation, that the 2nd Respondent was, at the time of the election, not qualified to contest for the office of Governor of Kano State in the election held on the 18th of March, 2023.

On this issue, this tribunal has determined earlier in this petition, that it is not within the right of the Petitioner at this stage to question the 2nd Respondents qualification on the basis of non-membership of the 2nd Respondent in the 3rd Respondents party, in line with the authorities cited therein, including, but not limited to the recent unreported case of **MR PETER GREGORY OBI & 1 OR V INEC & 3 ORS, PETITION NO CA/PEPC/03/2023 delivered on the 6th of September 2023.**

Be that as it may, this tribunal hereby resolves, that the tribunal, being a court of first instance and in the event of an appeal, which might go otherwise, this tribunal has resolved to consider this issue on the merit.

QUALIFICATION OF THE 2ND RESPONDENT TO CONTEST THE GOVERNORSHIP ELECTION

Succinctly put on this issue, it is the case of the Petitioner in the summary of the evidence, that the 2nd Respondent did not fulfill the requirement of **sections 177(c) of the 1999 Constitution** and therefore not qualified to contest the election.

The Petitioner also contends, that the particulars of membership stated by the 2nd Respondent in its form EC9 is forged, as it is untraceable in the records of members of the 3rd Respondent as kept with 1st Respondent, contrary to **Section 182 (1) (j) of the 1999 Constitution.**

In proof of this ground of its petition, the Petitioner called witnesses and tendered 3 volumes of the 3rd Respondents register of members submitted to INEC by the 3rd Respondent in compliance with section **77(3) of the Electoral act 2022, to wit exhibits P2, P2a and P2b.**

On issue one, counsel submitted in summary, that by the combined effect of the provisions of **Sections 134 (1)(a), 134(3) of the Electoral Act 2022 and section 177 (c) of the 1999 Constitution,** the 2nd Respondent was not qualified to contest the Kano State Governorship Election held on the 18th of March 2023. He submitted that the constitutional requirements in **Sections 65, 106, 131 or 177 of the 1999 Constitution** can be valid ground for challenging the return of the 2nd Respondent as the winner of the election in issue, on ground of qualification to contest the said election. He cited the case of **PDP AND ANOR V KAWUWA AND ORS 2015 LPELR 26044 CA.** He submitted further that the issue of qualification raised by the Petitioner is in the realm of Constitutional qualification. He submitted that the Petitioner gave evidence and even pleaded that the 2nd Respondent was not a member of the 3rd Respondent and thus has discharged the onus placed on him by which the evidential burden shifts to the 2nd and 3rd Respondents.

Counsel submitted that on the authority of **APC V ISHAKU 2019 LPELR 49991 CA**, that the 2nd Respondent was not qualified to contest the election which produced him as the Governor of Kano State. He submitted that the law is, that for the 2nd Respondent to be qualified for sponsorship by the 3rd Respondent as its candidate, he must be a member and his name must be in the register of members submitted to the 1st Respondent 30 days to the conduct of the 3rd Respondent's primary election.

Counsel further submitted, that the 2nd Respondent has, by presenting Exhibit 2R2OX, clearly admitted the fact to the tribunal, that he was not a member of the 3rd Respondent.

He submitted that the 3rd Respondents letter, forwarding updated NNPP membership register together with the register tendered as exhibits P163 and P163A, clearly shows that these are documents made during the pendency of this suit as Exhibit P163 is dated 28th April 2023, 20 days after the filing of this petition.

Counsel submitted, that if it is found out that the 2nd Respondent was not a member of the 3rd Respondent and was not validly sponsored as 3rd Respondent's candidate in the election in issue, then it is obvious that the content of his nomination form, Exhibit P1 i.e FORM EC9 submitted to the 1st Respondent contains information that is false in breach of **Section 182 (1) (j) of the 1999 Constitution**, which then would amount to a forged certificate, citing the cases of **DIDE & ANOR V SELEKETIMIBI & ANOR 2009 LPELR-40 38(SC); PEOPLES DEMOCRATIC PARTY V DEGI-EREMIENYO &ORS 2020 LPELR-49734 (SC)** and a host

of other cases at lines 5.32-5.41 pages 12 to 15 of counsels written address.

That it is their submission, that the 3rd Respondent had no competent candidate for the governorship election of 18th March 2023 and for the aforesaid, the votes scored by the 2nd Respondent be regarded as wasted votes as the evidence before the court confirms that the 2nd Respondent was not validly and lawfully declared as the winner of the governorship election.

He urged the court to hold that the 2nd Respondent was not qualified to be nominated to contest the election, because he was not a member of the 3rd Respondent's party. Citing the case of **ONUBOGU V ANAZONWU AND ORS 2023 LPELR 60288 SC.**

In reply to the above, counsel to the 1st, 2nd and 3rd Respondents, in summation, in their written addresses, submitted that where a claimant seeks declaratory reliefs, the burden is on him, to prove his entitlements to those reliefs on the strength of his own case. That whether there is any atom or semblance of admission by the Respondents, the Petitioner must still lead cogent, concrete and convincing evidence to establish its claims before the declaratory reliefs can be granted, citing the cases of **ENGR GEORGE T.A NDUUL V BARR. BENJAMIN WAYO & ORS 2018 16 NWLR PT 1646 PG 548 AT 586; ADELEKE V. OYETOLA (2023) 11 NWLR (PT. 1894) 71 at 116 PARAGRAPHS H – B,** relying on the provisions in **S131 of the Evidence Act 2011** on the burden of proof.

That once a political party forwards the name of a candidate to the 1st Respondent as its candidate in an election, such candidate is

deemed to be a member of the political party that forwarded his name as in this case, citing the case of **ISRAEL & ANOR V AMOSUN 7 ANOR 2019 LPELR 48916 (CA) PARAS E-D.** That the law is trite that to prove the membership of a political party, the membership register of the Political party is not conclusive proof of all members of that party. That the possession of a membership card of the political party by the candidate sponsored is sufficient in determining who is a member of the political party, referring to Exhibit P1.

That the 2nd Respondent also tendered the original NNPP Ward register with membership number **NNPP/HQ/KN/GWL/DS/001** that corresponds with the Number on Form CF001, referencing Exhibit 3R1 and Exhibit P1.

That the submission of the Petitioner at Ratio 5.19 of its written address is speculative, as INEC did not deny that Exhibit 2R20X was submitted to it before the 3rd Respondents primary election. That it is the position of the law, that nothing precludes a political party from updating its register after submission, citing the recent Supreme Court decision in **ENANG V ASUKWO & ORS 2023 LPELR -60042 (SC)** and the cases of **ANDREW V INEC 2018 9 NWLR PAGE 507; BUHARI V OBASANJO 2005 2 NWLR PT 901 PG 241.**

That the attempt of the Petitioner to read into the clear and unambiguous provisions of **Section 77(3) of the Electoral Act, 223 and 177(c) of the Constitution of the Federal Republic of Nigeria, 1999,** what are not there with the integral interpretation has no support in law, citing the cases **of A-G, FEDERATION V**

ANPP 2003 15 NWLR PART 844, PG 615 AT 653-654 PARAS G-B; APM V INEC 2023 9 NWLR PT 1890 PG 419 PARAS G-E Per Sench, J.C.A and KANAWA V INEC 2022 1 NWLR PT 1812 PG 393 AT 417 PARA B.

That the allegation of forgery under S182 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), is a distinct and different allegation for non-qualification under S177 of the 1999 Constitution.

That the Petitioner did not plead the allegation of forgery of Form Ec9 (Exhibit P1) in the petition under S182 (1) (j) of the Electoral Act 2022 with facts in support.

The Respondents urged the court to discountenance the evidence of PW31 as same is worthless, urging the tribunal to act on the un-contradicted and uncontroverted evidence of **2RW1,** who affirmed the membership of the 2nd Respondent in the 3rd Respondent party. Counsel urged the court to hold that the 2nd Respondent is a member of the 3rd Respondent and that he was lawfully sponsored as the 3rd Respondent's candidate to contest the Governorship election of 18th of March 2023. See cases cited at line 3.01 of the written address.

Let us quickly reproduce some relevant paragraphs of the Petitioners Petition. Paragraph 8 of the Petitioner's petition reads as follows:

Paragraph 8

"The 3rd Respondent is also a duly registered political party in Nigeria obligated by the electoral

laws in force in Nigeria to submit the register of its members to the 1st Respondent not later than 30 days to the conduct (sic) valid primary elections and sponsor candidates for the General Election to elective offices established by the Electoral Laws in force in Nigeria, and ensure the participation of its candidates in such respective elections and in this instance, the 2023 Gubernatorial Elections held on 18th March, 2023.

Paragraphs 13, 14 and 15 of the Petitioner's petition also reads thus:

Paragraph 13;

"Your Petitioner avers that the 3rd Respondent did not have any qualified candidate as required by law at the just concluded General Election for the Governor of Kano State held on 18th March, 2023.

Paragraph 14;

"Your Petitioner avers that the 2nd Respondent was not a member of the 3rd Respondent as at the date of the election the 18th March, 2023

Paragraph 15;

"Your Petitioner avers, that at the end of the Governorship election for Kano State, the 1st Respondent on 20th March, 2023 purportedly, unlawfully and erroneously declared

the 2nd Respondent as the winner of the said election and returned him as duly elected Governor of Kano State.

The question is, has the Petitioner proffered credible, convincing and satisfactory oral and documentary evidence, in proof of his assertion from the preponderance of evidence adduced, that the 2nd Respondent as alleged was at the time of election into the office of the Governorship election in Kano state on the 18th of March 2023, not qualified to contest the said election?

It is trite, that the extant provisions of **Sections 131(1) to S136 of the Evidence Act 2011,** he who asserts must prove.

By S132 of the said Act,

'the burden of proof in a suit or proceedings lies on that person who will fail if no evidence at all were given on either side''.

This presupposes, that the burden of proof in civil cases, like a pendulum, is not static, it shifts, depending on the state of the pleadings and the evidence adduced in support thereof and the burden is discharged on the balance of probability. The burden of proof from the aforesaid, lies on the Petitioner to proof the assertion on the preponderance of oral and documentary evidence adduced in support thereof. See the cases of;

AGAGU & ORS V MIMIKO 2009 LPELR 21149 (CA); BOLAJI & ANOR V INEC & ANOR 2019 LPELR 49447 (CA); SEN JULIUS ALIUCH & 1 OR V CHIEF MARTIN N. ELECHI & ORS 2012 LPELR -7823 SC PG 43 PARAS B-E

Given that the general rule, is that he who asserts must prove, the Petitioner had the burden to first adduce *prima facie* evidence in support of her case. In the determination of this issue, we shall insightfully consider the various pleadings of the parties, the laws and some exhibits tendered therein. This is to ascertain, whether at the material time of the election, the 2nd Respondent was a member of the 3rd Respondent.

Parties have placed before this Tribunal the necessary facts and documentary evidence that are needed in the resolution of this issue.

This tribunal, shall in the determination of this issue, consider the extant provisions of **Sections 134 (1) (a), S77(3) of the Electoral Act 2022; Sections 131, 65(1), 106, and S177(c) and Section 182 (1) (j) of the 1999 Constitution,** upon which the Petitioner premised his conclusion that the 2nd Respondent was not qualified to contest the election for the Governorship of Kano State held on the 18th of March 2023.

Section 134(1) of the Electoral Act, 2022 provides as follows:

> *'An election may be questioned on any of the following grounds –*
>
> *a) A person whose election is questioned was at the time of the election not qualified to contest the election;*
>
> *b)* ………………………………………………
>
> c) ………………………………………………

Section 177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides*;*

177. A person shall be qualified for election into the office of Governor of a State if;

a) ………………………………………………………………………

b)………………………………………………………………………

c) he is a member of a political party; and is sponsored by that political party; and……………………………………………………………

In like manner, **Sections 131, Section 65 (2) (b) and Section 106 (d) of the 1999 Constitution of the Federal Republic of Nigeria,** provides the same requirements for qualification of an aspirant, that the person must be a member of a political party and sponsored by that party for the offices of the President, National Assembly and House of Assembly respectively.

In effect, by the combined reading of these extant laws, an aspirant's membership of his political party either, for the Presidency, Governorship, or Houses of Assembly is a *Sine qua non* to his ability, or right to contest for Presidency, the Governorship offices, or that of an Assembly (Federal or State) in the Federal Republic of Nigeria.

This tribunal, shall now proceed to consider the extant provision of **S77(3) of the Electoral Act 2022,** *vis- a -vis*, **S177 (c) of the 1999 Constitution**, and judicial authorities relating thereto, in its interpretation of this Section.

Section 77 of the Electoral 2022, provides as follows;

77.(1) *A political party registered under this Act shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.*

(2) Every registered political party shall maintain a register of its members in both hard and soft copy.

(3) Each political party shall make such register available to the Commission not later than 30 days before the date fixed for the party primaries, congresses or convention.

The 1st Respondent, in paragraph 7 of the '1st Respondents amended reply to the Petition', pleaded thus;

> *'The 1st Respondent admits paragraph 8 of the petition only to the extent that by virtue of the provisions of section 77(3), a Political party shall make available to the commission, a register of its members not later than 30 days before the date fixed for the party primaries, congresses or convention*

Nevertheless, this tribunal is not unmindful of the case of **ALLIED PEOPLES MOVEMENT V INDEPENDENT NATIONAL ELECTORAL COMMISSION & 2 ORS 2023 NWLR PART PG 419 AT PG 441** (Court of Appeal decision), particularly at **PG 514 – 515 RATIOS H-E**, where the Court of Appeal on the issue, as to whether a political party shall make available to the commission a register of its members not later than 30 days before party primaries, reiterated as follow;

> *'……..the appellant seeks to import and read into the said constitutional requirements what is not provided therein by harvesting from Section 77(3) of the Electoral Act, 2022 a*

qualification requirement that is not in the Constitution. The qualification requirement as it relates to membership of a political party is in S131 (c) which provides that a person shall be qualified for election to the office of President if he is a member of a political party and is sponsored by that party.

The quest by the appellant to read into this clear and unambiguous provision what is not there with the integral interpretation that the person's name must be on the Register of Members of the political party and must have been so for at least 30 days before the party primaries, has no support in law. It is hornbook law that you cannot read into a statue what is not contained therein A.-G.,Abia state v.A.-G., Federation (2005) 12 NWLR(PT. 940) 452 at 503, Buhari v.INEC (2008) 19 NWLR (PT. 1120) 246 at 344 and A.-G., Cross River State v. FRN (supra) at 445, Equally, trite is that the words used in section 131 © of the 1999 Constitution, as amended, being clear and unambiguous; there is no need to resort to the external aid of section 77 (3) of the Electoral Act in order to interpret the clear, plain and unequivocal stipulation of section 131 © of the Constitution, as amended. See Okotie-Eboh v. Manager (supra) at 30 and INEC V. PDP (supra) at 48-49.

Be that as it may, the Supreme Court in the case of **ENANG V ASUQUO & ORS 2023 WRN 1-PG 1-85; or 2023 11 NWLR 1896 PG 501 Per Kekere-Ekun JSC,** stated thus;

'…..it is important to note that membership of a political party takes place even before the issue of sponsorship, or nomination for election arises……….S285(13) of the 1999

Constitution, as amended, which provides that an election tribunal or court shall not declare any person a winner at an election in which such a person has not fully participated in all the stages of an election, gives an aspirant a cause of action within the narrow confines of Section 84(14) of the Electoral Act. Thus while the membership of a political party is ordinarily not justiciable, as it is not the duty of the court to determine who the members of a political party are, where the complaint is that the person declared winner did not participate in all the stages leading to the nomination because he was not a member of the party, which is one of the qualifications to contest, the court can look into the complaint.'See Osagie v Enaghama 2022 LPELR- 58903 (SC) at 16-17 E-D & 18-19 G-D;SC/CV/176/2023; Ibrahim Sani v Sani Umar dan Galadima & Ors delivered on 7/3/2023 Per Kekere-Ekun, JSC Pp 26-27 lines 35-5'

In effect, a communal reading of all the laws cited above and judicial pronouncements elucidated above, it requires;

a) That a party seeking election into the offices referenced above, must participate in all the stages leading up to his sponsorship and/or nomination for election as an aspirant of a political party.
b) That one of the stages, is that prior to his sponsorship or nomination, he must be a member of the party which is one of the qualifications to contest; and
c) That his name must have been forwarded to INEC as its candidate before the election.

It is the contention of the Petitioner, that the 2nd Respondent was not qualified to contest for the office of Governor of Kano, not being a member of the 3rd Respondent as at the time of the election.

The Petitioner tendered documents and relied on the oral testimony of some of his witnesses in support of this assertion. The Petitioner tendered exhibits **P1, exhibits P2, P2a and P2b and exhibits P163, P163(a) and P163(b)**, in support of this assertion and also relied on the laws cited and reproduced above.

To the contrary, the Respondents denied this assertion, relied on the laws cited and on some of the authorities cited above alongside the evidence of 2Rw1.

Counsel to the 1st Respondent (INEC), did not tender any document on this issue for determination.

Counsel to the 2nd Respondent, under cross examination tendered and relied upon **Exhibit 2R20x** and on **2R20x(a)**.

Counsel to the 3rd Respondent tendered and relied upon **Exhibit 3R1.**

The only witness called by the Respondents, 2RW1, Abdullahi Batta Bichi, a politician, testified in support of the fact that the 2nd Respondent is a *Bonafide* member of NNPP, relying on the documents tendered as above,

Consequently, all the parties in this Petition, in proof, or denial of the 2nd Respondent's membership of NNPP are structured primarily on documentary evidence.

It is the position of our Legal jurisprudence and it is settled Law, that where there are oral, as well as documentary evidence before the court, documentary evidence should be used as the hanger from which to assess oral testimony, as it is more reliable and is used to test the credibility of oral evidence. See the cases of **NWOBODO V OKOLIE 2020 LPELR -51267 CA; YA'U V DIKWA 2000 LPELR-10138 CA; AKINBISADE V THE STATE 2006 LPELR-342 SC.**

For the aforesaid reason, this tribunal shall consider the documents tendered in proof or otherwise.

Exhibit P1, is a certified true copy of INEC Form EC9 filled out by the 2nd Respondent on the 15th of July 2022 titled **'AFFIDAVIT IN SUPORT OF PERSONAL PARTICULARS',** wherein the 2nd Respondent gave the particulars of his person, seeking election of the office of Governor of Kano State.

Exhibits P2, P2a and P2(b), are INEC Certified True copies of Volumes 1, 2 and 3, titled 'New Nigeria Peoples Party (NNPP) Electronic membership Register presented to INEC on the 1st April 2022. (with 55,620 members (Volume 1), 131,311 members (Volume 2) and 275 members (Volume 3), respectively.

It is of note, that these Volumes contain the list of members of the 3rd Respondent party, their names, gender, their States of origin and Local Governments. It is the case of the Petitioner that the name of the 2nd Respondent is not in Exhibit P2 series.

It is pertinent to state, that this tribunal, has painstakingly gone through each page of the 3 volumes, with 55,620 members

(Volume 1), 131,311 members (Volume 2) and 275 members (Volume 3), respectively.

The undisputed and unchallenged findings of this tribunal, is that the name of the 2nd Respondent is not in the 3 volumes of documents to wit, Exhibits P2, P2a and P2b.

Exhibits P163 and P163a, are Certified True Copies by INEC of 2 letters dated the **28th day of April and the 9th of June 2023 reference Nos NNPP/HQRTS/INEC/023/31** and reference No **NNPP/HQRTS/INEC/023/35** respectively, written by NNPP (3rd Respondent), to the chairman INEC (1st Respondent), titled **'FORWARDING OF NNPP UPDATED REGISTER'**

Attached to the 2 letters above, is **Exhibit P163 (b)**, which is a certified true copy by INEC, of the said updated list of the register of members of the political party NNPP.

The letter dated 23rd of April 2023, Exhibit P163, reads as follows;

NEW NIGERIA PEOPLE'S PARTY(NNPP)

28th April 2023

NNPP/HQRTS/INEC/023/31

The Chairman

Independent National Electoral Commission (INEC)

Zambezi Crescent,

Maitama,

Abuja,

Dear sir,

<u>FORWARDING OF NNPP UPDATED MEMBERSHIP REGISTER</u>

I hereby forward to your good office our UPDATED MEMBERSHIP REGISTER, both in hardcopy and soft copy.

This is a build-up on the membership Register of four volume document submitted to your office in our letter dated 26th day of July,2022.

Please accept the assurances of our esteemed regards.

SIGNED	*SIGNED*
DIPO OLAYOKU	*ABBA KAWU ALI*
National secretary	*Ag National Chairman*

It is of note, that this letter dated 28th of April 2023 was stamped 'Received' by INEC on the 3rd of May 2023.

Ditto,

The letter dated June 9th 2023, Exhibit P163(a) reads as follows;

NEW NIGERIA PEOPLE'S PARTY(NNPP)

June 9th 2023

NNPP/HQRTS/INEC/023/35

The Chairman

Independent National Electoral Commission(INEC)

Zambezi Crescent,

Maitama,

Abuja,

Dear sir,

FORWARDING OF NNPP UPDATED MEMBERSHIP REGISTER

I hereby forward to your good office our UPDATED MEMBERSHIP REGISTER in hardcopy.

This is a build-up on the membership Register of four volume document submitted to your office in our letter dated 26th day of July, 2022 and an update through our letter NNPP/HQTRS/INEC/023/31 of April 28, 2023.

Please accept the assurances of our esteemed regards.

SIGNED SIGNED

DIPO OLAYOKU ABBA KAWU ALI

National Secretary Ag National Chairman

It is also of note, that this letter dated June, 9th 2023 Exhibit P163(a) was stamped 'Received' by INEC on the 6th of July 2023.

Counsel to the 2nd Respondent, under cross examination of Pw31, tendered and relied upon Exhibit 2R20x, a certified true copy of a document by INEC on June 2023 and on Exhibit 2R20x(a), a receipt by INEC dated 23/06/2023 being 'payment for CTC IRO updated NNPP membership party of Gwale LGA Kano.'

It is of note, that Exhibit P163(b), tendered by the Petitioner, is an extract of part of Exhibit 2R20(x) tendered by counsel to the 2nd Respondent. In both documents at page 2311, the name of the Petitioner is in serial no 56209 as;

'56209 HON ABBA KABIR YUSUF, MALE, KANO, GWALE CHIRANCHI 2348036277930.

These were the 2 documents forwarded by the letters dated 28th April 2023 and June 9th 2023 respectively by NNPP to INEC, to wit, Exhibits P163(b) and Exhibit 2R20(x).

In view of the provisions of **S83(3) of the Evidence Act 2011**, the questions begging for answers are: if the name of the 2nd Respondent is contained in exhibits P2, P2A and P2B (which this tribunal has found not to be), why did the 3rd Respondent go further to submit exhibits P163, P163a (NNPP updated membership register) and Exhibit 2R20(x) (updated NNPP membership register), to the 1st Respondent, vide the 2 letters replicated above? What is the anomaly that exhibit P163, P163(a) and exhibit 2R 20 (x) seeking to cure?

Counsel to the Petitioner, in his objection to the documents tendered by the 2nd and 3rd Respondents, submitted that the admissibility of a document is based on; the document must be pleaded, it must be relevant and must be admissible. Counsel submitted, that all the documents tendered by the 3rd Respondent were not pleaded, urging the court to expunge those documents from its record. On the issue of dumping of documents, he submitted that all the documents tendered by the 2nd Respondent were dumped on the tribunal. He urged the court to

discountenance all the documents tendered in evidence by the 2nd Respondent and same should be marked inadmissible and accorded no probative value. Counsel to the 1st and 2nd Respondents canvassed otherwise.

In resolving this issue, it is necessary to have recourse to section **83(3) of the Evidence Act, 2011**, provides thus:

> *"Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish"*

The import of this section, is that before a document could be rejected as inadmissible, it must not only be made when litigation was pending or anticipated, but the person making it must be interested. It is not in dispute, from the dictates of the letters and their annexure updated membership lists, that exhibits P163 and P163(a) were made and dated the 28th day of April, 2023 and June 9, 2023 and were submitted and received by the 1st Respondent on the 3rd day of May, 2023 and 6th of July 2023 respectively.

Both Exhibits P163(b) and 2R20(x), (which as said by this tribunal are the same, as one is an extract of the other), are not dated nor signed.

The position of the law generally speaking, in relation to documents prepared in anticipation of impending litigation, is that such documents are not admissible in evidence, although there are exceptions to this general rule. See the cases of **ANISU VS**

OSAYOMI (2008) 15 NWLR (PT. 110) PAGE 246 AT 275, ABDULLAHI VS HASHIDU (1999) 4 NWLR (PT. 600) 638 AT 645, ANYANWU VS UZOWUAKA (2009) 13 NWLR (PT. 1159) 445 AT 476.

The exception to this general rule, excludes documents made in anticipation of litigation, by a person who is not personally interested in the outcome of the litigation. The operative words, as far as the exceptions are concerned, are **"persons not personally interested in the outcome of the litigation"**. In other words, it relates only to a situation, where such a person relying on such documents, has no personal interest in the matter, as against mere interest in an official capacity.

In the instant case, the exceptions do not apply here. This is because the maker of exhibit P163, P163(a) and exhibit 2R20X is the 3rd Respondent, who is a party in this Election petition and clearly has exhibited her interest in the ultimate result of the proceedings for the simple reason that the temptation to protect her interest is clearly overwhelming. See the following cases: **ALIYU VS ADEWUYI (1996) 4 NWLR (PT. 442) 284, GBADAMOSI VS KANO TRAVELS LTD (2000) 8 NWLR (PT. 608) 243, GAMJI NIG. COMP. LTD VS NIG. AGIP OIL. COMP. LTD (2018) LPELR-49215 (CA).**

The petition before this Honourable Tribunal was filed on the 9th day of April, 2023. *Ex facie*, that would indicate that exhibit P163, P163a and 2R20(x), submitted to INEC was made and submitted by the 3rd Respondent to INEC, after the filing of this petition. It is crystal clear, that in view of the time of making the document and

the date of filing of the petition, the irresistible conclusion is that the said Exhibits were tailored for the purposes of this suit.

Counsel to the 3rd Respondent, tendered Exhibit 3R1 as a register of members of Gwale Local Government, Diso Chapter of Kano State.

We have looked at exhibit 3R1 tendered by the 3rd Respondent, where the name of the 2nd Respondent is cited and which bears the date of 9th May, 2022 at the foot end of the document. The date 4/5/2022 in exhibit 3R1 gives the impression, that it was in existence before the date for the submission of the party membership register to the 1st Respondent (INEC). If it were, that leads the tribunal to wonder, why it was not submitted along with exhibits P2, P2a, and P2b. The futile explanation, however, is that it came as an update of the membership register of the 3rd Respondent.

This tribunal is not unaware of the decision of the court in the case of **ENANG V ASUQUO (supra)** to the effect, that **S77(3) of the Electoral Act 2022,** does not preclude a Political Party to update its Register after submission, but not during the pendency of this petition, which act is caught by the Provision of **S83(3) of the Evidence Act 2011**

This Honourable Tribunal, will not fail to point out that exhibit 3R1 was not the party register submitted to the 1st Respondent as her party register, rather it was exhibits P2, P2a, P2b that were submitted to the 1st Respondent by the 3rd Respondent as her party register.

It is also noteworthy to point out the fact, that though the 3rd Respondent pleaded membership register of Kano State chapter of the 3rd Respondent in her paragraph 65 of her Response to the petition, it was pleaded as "**membership register of Kano chapter of the 3rd Respondent**". For the avoidance of doubt, we shall reproduce the said paragraph 65 of the 3rd Respondent's Reply to the petition.

> *"The 3rd Respondent, in further denial of paragraphs 82, 83, 84, 85 and 86 of the petition, states that the 2nd Respondent was at all material times a member of the 3rd Respondent. And the 3rd Respondent sponsored the 2nd Respondent as a candidate for the Governorship Election in Kano State after a successful party primaries where the 2nd Respondent scored majority of votes and was nominated and sponsored thereby. The 3rd Respondent hereby pleads the membership register of Kano Chapter of the 3rd Respondent out of the abundance of caution. (underlining ours for emphasis)*

A careful perusal of the documents tendered and the record of proceedings, it cannot be found where the 3rd Respondent tendered the membership register of all the Local Governments in Kano State. Being the party register of the 3rd Respondent for Kano chapter, the said document ought to have contained all the Local Government Areas in Kano State. However, what we saw is not what was pleaded but an unpleaded private document from

doubtful sources containing only that of **Gwale Local Government Area, Diso Ward"**. Where then are the rest of the Local Governments in Kano State? and how then can exhibit 3R1 be said to be the party register of the 3rd Respondent for Kano Chapter? when it contains only one local government. This goes to show that exhibit 3R1 was not specifically pleaded.

The irresistible conclusion is that exhibit 3R1 is prepared for the purposes of this petition and no probative value will be placed on exhibit 3R1. Furthermore, the said Exhibit 3R1 does not have the stamping of INEC and receipt, nor stamped by the NNPP as a document emanating from NNPP.

It is clear to this Tribunal, that the 3rd Respondent cannot in the circumstances of this case be said to be independent and /or an impartial person, with no temptation to lean in support of the 2nd Respondent. The 3rd Respondent's interest at the time of making exhibits P163b and exhibit 2R20X, were clearly in sync with that of the 2nd Respondent, thus the likely-hood of bias is imminent. See the cases of **AGBALLA VS DR. NNAMANI & ORS (2005) ALL FWLR (PT. 245) PAGE 1052, UGWU VS ARARUME (2007) 6 SCNJ PAGE 316 AT 354-355.**

Upon this background, this Honourable Tribunal ascribes no probative value or weight to exhibits P163, P163(a), P163(b) and 2R20X and exhibit 3R1, because they are documents made during the pendency of this petition. The overriding *raison d'etre* of the legislation in our humble view, is that the Tribunal would not allow a person interested in the outcome of a litigation to cook up a

document during the pendency of a suit, or in its anticipation, in order to defeat the course of justice.

The submission of counsel to the Petitioner, is that the particulars of membership stated by the 2nd Respondent in its form EC9 to wit, Exhibit P1, is forged, as it is untraceable in the records of members of the 3rd Respondent as kept with 1st Respondent contrary to **Section 182 (1) (j) of the 1999 Constitution.**

Section 182 (1) (j) of the 1999 Constitution states as follows;

> *"No person shall be qualified for election to the office of Governor of a state if;*
>
> *...*
>
> *(j) he has presented a forged certificate to the Independent National Electoral Commission*

This tribunal hereby resolves without much ado, that Exhibit P1 is not a 'certificate', but a 'form' filled by the 2nd Respondent on his particulars and therefore the argument of counsel to the Petitioner in this regard cannot suffice.

We must state that this Tribunal is not unaware of the law permitting political parties to update their membership register as of right at any time. This Tribunal is also not unaware of the law, that the membership of a person whose name is in the register of the political party, or who holds the membership or identification card of the party but same must necessarily relate to, or concur with the material time of any event prescribed under the electoral process.

In the case of **SENATOR ABUBAKAR S. YAR'ADUA & ORS VS SENATOR ABDUL U. (2015) 61 NSCQR (PT. 1) 1 AT 40,** the Supreme Court per M. D. Muhammed held, that an election is a long drawn out process with distinct stages, ending with the declaration of a winner by the Returning Officer. It entails one's membership of a political party, his indication of desire to be the party's candidate at the election, primaries for the nomination of a party's candidate, presentation of the party's candidate to INEC, the event of the election, return of the successful candidate at the election after a declaration of scores and ends with the issuance of certificate of return to the successful candidate.

It is the view of this Tribunal, that going by the above Supreme Court authority, every candidate at an election must at all stages of the election and the process, have an existing and unbroken membership of the political party sponsoring him at the election. If the candidate of the political party is shown not to be a member of the political party, at any stage of the electoral process, he would be said to not be in compliance with the requirement of the Constitution and the Electoral Act, thereby rendering his participation as null and void. It must be emphasized with the highest judicial authority that election does not mean the "poll". It means the entire electoral process. It goes beyond casting of votes and declaration of winners. It is a process concerning with delimitation of constituency, nomination and accreditation of candidates, voting, counting the collation of votes, culminating in return or declaration of results. See the cases of **OJUKWU VS OBASANJO & ORS (2004) EPR 616, 653 (2004) 12 NWLR (PT.**

886) 169, IBRAHIM IDRIS VS ALL NIGERIA PEOPLES PARTY & ORS (2008) 8 NWLR (PT. 1088) 1 AT 168.

The point here, is that at all times material to the electoral process culminating in the declaration of the winner at the election, all the candidates must be lawful members of the political party sponsoring them. The issue for determination here is whether the 2nd Respondent is a member of the 3rd Respondent at all times material to the election in which he emerged the winner? From these authorities, it follows, in line with the case of **DR. OKEY ENEMUE VS CHIEF CHIDI DURU & ORS (2004) 9 NWLR (PT. 877) 75 AT 112,** as per Ogunbiyi JCA, that It is also obvious that the issues of candidature, nomination, screening, clearance and contesting as candidate are very paramount and significant and which must precede the winning of any election. Without such, preliminaries having been conducted, it is impossible that any candidate would have been eligible for an election. Further in support of the above, it is the law in Nigeria that the requirement for contesting an election as settled in long line of Supreme Court authorities, is that no one can contest an election without first and foremost being a member of a registered political party and secondly, being sponsored by that party as a candidate for the election.

In the case of **BUHARI VS OBASANJO (2005) 2 NWLR (PT. 910) 241, t**he Court of Appeal stated that the register of members of a political party is not the only proof of who is a member of the party. It is the view of this Honourable Tribunal, that there are other ways of proving membership of a political party which include; the letter

of sponsorship by the sponsoring party, membership identification, the publication of names of nominated candidates of political parties by INEC, and the nomination form of the candidate etc. It is unfortunate that the Respondents, particularly the 2nd and 3rd Respondents failed to tender before this Honourable Tribunal any of those other means as listed above in proving the 2nd Respondent's membership of the 3rd Respondent.

Without a lawful membership, there cannot be a lawful sponsorship. See the case of **DR. OKEY ENEMUO VS CHIEF CHIDI DURU & ORS (SUPRA)**. For the court of law to support the sponsorship and election of a person who is not a member of the political party, will amount to introducing anarchy into the political system and will not serve the interest of the polity. See **IBRAHIM VS BADAMOSI KABIR & ORS (2011) 2 NWLR (PT 1232) 417 AT 442.**

The Respondents therefore failed to discharge the burden of proof which shifted to them to prove that the 2nd Respondent is a member of the 3rd Respondent at the time of the election into the office of Governor of Kano State. In the circumstances, this issue is hereby resolved in the favour of the Petitioner and against the Respondents.

On the strength of the foregoing, we hold that the 2nd Respondent was not qualified to be nominated to contest the 2023 General Election, because he was not a member of the 3rd Respondent and his name is not contained in the register of members submitted by the 3rd Respondent to the 1st Respondent in compliance with the provision of **Section S177 (c) of the Constitution of the Federal**

republic of Nigeria 1999 (as amended) and S134 (1) of the Electoral Act 2022.

ISSUE 2 - NON COMPLIANCE OR OTHERWISE WITH THE PROVISIONS OF THE ELECTORAL ACT

This tribunal shall proceed to determine the 2nd issue, which is whether from the totality of the evidence adduced, the Petitioner has proven that the election into the office of Governor of Kano State held on the 18th day of March, 2023 and the eventual declaration of the 2nd Respondent as the winner of the election was invalid by reason of substantial non-compliance with the provision of the Electoral Act.

It is the case of the Petitioner, that the 2nd Respondent is not the one who scored majority of lawful votes cast at the election, particularity having regard to the evidence of invalid votes recorded for the 2nd and 3rd Respondents in exhibit **P5- P16C, P18-P34A and P15-P162.**

It is the evidence of the Petitioner, that having regards to the certified true copies of INEC forms EC 40G series (ie Exhibits P44-P79, P81-P93C) EC8As, (ie Exhibits A1-A105), EC8Bs(ie Exhibits B1-B168), EC8Cs (ie Exhibits P171(1-44)), EC8D and EC8E (Exhibit P95), Compendium of polling units in Kano State (ie Exhibits P170), record of permanent voters card collected (ie Exhibit P3) and voters registers (i.e Exhibits P33- P43, P98-P17, P120-P123, P151A- P157 and BVAs report (i,e Exhibit P4a), it is manifestly disclosed, that noncompliance in the nature of over voting and failure to hold elections in areas where election was

disrupted or cancelled for over voting before a return is made, occurred as alleged in the Petition.

1ST RESPONDENTS SUBMISSIONS ON ISSUE TWO

Whether from the totality of the evidence adduced, the Petitioner has proven that the election into the office of Governor of Kano State held on the 18th day of March, 2023 and the eventual declaration of the 2nd Respondent as the winner of the election was invalid by reason of substantial non-compliance with the provision of the Electoral Act.

In urging this Honourable Tribunal to resolve this issue in the Respondent's favours, the Learned Senior Counsel for the 1st Respondent submitted, that since the Petitioner has made the issue of non-compliance with the provisions of the Electoral Act a ground of her complaint, that the Petitioner is fixed with the burden of proof by cogent and compelling evidence. He submitted that the Petitioner must prove that the non-compliance took place and that such non-compliance substantially affected the result of the election. Learned Counsel referred us to the following cases: **LAWAL VS MAGAJI & ORS (2009) LPELR-4427 (CA) PAGES 96-97 PARAS B-D, OMISORE VS AREGBESOLA (2015) NWLR (PT. 1482) 205, 297-298 F-A AND UCHE VS ELECHI (2012) 13 NWLR (PT. 1317) 336.**

He added that a Petitioner who alleges non-compliance is expected to tender in evidence all the necessary forms used in the conduct of the election, in addition to calling oral evidence from competent witnesses who were present at the time the forms were filled and

completed at the level of the election process where they were made. Learned Counsel called in aid the cases of **LADOJA VS AJIMOBI (2016) 10 NWLR (PT. 1519) 87 AT 135-136 AND ANDREW VS INEC (2018) 9 NWLR (PT. 1625) 507 AT 557 PARAS B-F.**

Learned Senior Counsel, argued that the Petitioner did not lead cogent, credible and direct evidence to prove that the 1st Respondent (INEC), did not conduct the election in substantial compliance with the provisions of the Electoral Act, 2022.
The Learned Silk insisted that the evidence adduced by the Petitioner on the margin of lead is highly inadequate to sustain its claim. He submitted that in order to prove that election in a particular polling unit has been cancelled, the Petitioner must in addition to giving evidence, tender the report of the Presiding Officer showing that the result was cancelled and the reason for its cancellation. Counsel maintained that no such report was tendered by the Petitioner. Learned Senior Counsel extensively quoted excerpts of the provision of **Paragraph 43 of the Regulations and Guidelines for the Conduct of Elections 2023 (Exhibit 2R18 (x).**

Learned Senior Counsel argued that, out of the thirty-two (32) witnesses called by the Petitioner, that only seventeen (17) of the witnesses gave evidence of the alleged cancellation of results in their respective polling units for over-voting. Learned Senior Counsel argued further that if the seventeen (17) polling units covered by the evidence of these witnesses are subtracted from the

total of the 252 polling units over which the Petitioner had complained about cancellation, that the complaint in respect of 235 polling units had been abandoned. He referred to the case of **ABE VS DAMAWA & ANOR (2022) LPELR-57829 (SC).**

Learned Senior Counsel for the 1st Respondent also submitted that the evidence adduced by the seventeen (17) witnesses called by the Petitioner, is not credible and ought to be jettisoned in that none of the names of these witnesses were among the names forwarded by the Petitioner to the 1st Respondent in line with the provision of **Section 43 of the Electoral Act, 2022 and Paragraph 9 of the Regulation** and **Guidelines for the Conduct of Election, 2022.** He referred the Honourable Tribunal to exhibit 2R18 (x). He relied on the case of **B.F.I GROUP VS B.P.E (2012) LPELR-9339 (SC).**

Learned Senior Counsel insisted that Form EC40G and form EC40G1, which were tendered by the Petitioner were all completed at the ward or local government level and none of those forms were made at the polling unit level. He further submitted that none of the witnesses called by the Petitioner who claimed to be polling unit agents can give evidence of what transpired at the ward or local government level. He called in aid the case of **SAIDU VS NONO (2015) LPELR-4073 (CA)**. The Learned Silk for the 1st Respondent further submitted that there are striking similarities in the deposition and testimonies in the witnesses called by the Petitioner and as such their evidence is not believable and worthy of any probative value.

Learned Senior counsel submitted that PW1-PW5, PW12, PW14, PW21, and PW24-PW28, failed to give evidence of over-voting in the respective polling units where they testified. Counsel submitted that none of these witnesses admitted that they signed the form EC8A in their polling units. He insisted that a careful examination of the deposition on oath of these witnesses will reveal that their depositions on oath are fundamentally the same, word for word.

He urged the Honourable Tribunal not to attach probative value to same. Learned Senior Counsel submitted that the Petitioner and her witnesses did not prove the case of over voting, as all the ingredients of proving over-voting is entirely absent in the case presented by the Petitioner. He referred the Honourable Tribunal to the case of **OYETOLA & ANOR VS INEC & ANOR (2023) LPELR-60392(SC).**

On the issue of non-compliance, Learned Senior Counsel submitted that the Petitioner abandoned all her allegations of not holding of election in polling units listed in table 6 of the petition. He insisted that the Petitioner equally abandoned her allegation that there was disenfranchisement of voters in the polling units listed in tables 7 and 8 of the petition. He added that the Petitioner did not call any evidence in each of these polling units to substantiate their claim. He further argued that since the Petitioner did not call evidence in relation to her claim in tables 6, 7 and 8 in the petition, all the allegations contained therein are deemed abandoned. He referred this Honourable Tribunal to the

cases of **ADEMOK CONTINENTAL LTD & ANOR VS OGUN STATE GOV'T (2022) LPELR-56418 (CA) AT PAGES 23-24 PARAS E-E AND OBUZOR VS ASINOBIAKE (2018) LPELR-4670 (CA) PAGES 45-45 PARAS D-E.**

Learned Senior Counsel to the 1st Respondent also submitted that the evidence of PW31 is not credible at all, in that this witness gave a general and fleeting evidence as regards all the claims of the petition. He insisted that this witness under cross-examination admitted that he was neither a polling unit agent, ward collation agent, local government agent, or state collation agent of the Petitioner at the election. He urged this Honourable Tribunal to reject the evidence of PW31 as the testimony of this witness is devoid of any credibility or evidential value. He called in aid the case of **PDP VS INEC (2022) 18 NWLR (PT. 863) PAGES 653 AT 682.**

Learned Senior Counsel also submitted that the Petitioner through the bar, tendered trailer and lorry load of documentary evidence, without calling competent witnesses who can speak to the documents and link same to the specific aspect of the Petitioner's claim. He insisted that what the Petitioner did in this regard was to dump the document on the court by tendering it from the bar. He urged the Honourable Tribunal not to accord any probative value to the documents dumped by the Petitioner on the Honourable Tribunal. He referred this Honourable Tribunal to the following authorities: **LADOJA VS AJIMOBI (2016) 10 NWLR (PT. 1519) 87 AT 135-136, TUMBIDO VS INEC & ORS (2023) LPELR-**

60004 (SC), WOWO & ANOR VS SIDI-ALL & ORS (2009) LPELR-5106 (CA), amongst other authorities.

In further submission, Learned Senior Counsel posited that **Section 137 of the Electoral Act 2022,** did not relieve the Petitioner of the burden of calling oral evidence to explain and link the evidence to each of the aspects of the Petitioner's case. He insisted that it will be in utter violation of the party's right to fair hearing if **Section 137 of the Electoral Act 2022,** is accepted hook, line and sinker and this will have the effect of rendering the section unconstitutional. Learned Counsel quoted the excerpts of the judgment in the case of **DAMINA VS STATE (1995) LPELR-918 (SC) AT 28 PARAS A-G,** amongst other authorities. He added that it will be highly prejudicial to invoke the provision of **Section 137 of the Electoral Act 2022** in favour of the Petitioner since the Respondents will not have the opportunity to test the veracity of the witnesses through the documents. He urged this Honourable Tribunal to decline any invitation from the Petitioner to invoke the provision of this section to construe the documents in the cool recesses of the Honourable Tribunal's chambers. He referred the Honourable Tribunal to the case of **NURUDEEN VS OYETOLA & ORS (2023) LPELR-600093 (CA)**. Learned Senior Counsel referred this Honourable Tribunal to paragraphs 79, 80 and 81 of the petition, to show that the non-compliance alleged by the Petitioner purportedly cut across 489 polling units. He maintained that the Petitioner's averments in relation to the above paragraphs could not have affected substantially the entire elections in Kano.

He then urged the Honourable Tribunal to resolve issue two in favour of the Respondents.

2ND RESPONDENT'S SUBMISSION ON ISSUE TWO

The Learned Senior Counsel for the 2nd Respondent introduced his argument, when he posited that the result of any election declared by the 1st Respondent is correct and authentic until the contrary is proved. He added that the burden is on the Petitioner to rebut the correctness of the result declared by the 1st Respondent (INEC). Learned Senior Counsel extensively quoted the excerpts of the judgment in the case of **UDOM VS UMANA (1) (2016) 12 NWLR (PT. 1526) 179 Pp. 227-228 PARAS H-D**.

He further argued that the thrust of the case of the Petitioner concerning non-compliance with the provision of the Electoral Act, 2022 are allegations of cancellations due to over-voting, over voting without cancellation, cancellation due to violence and disruption of voting, non-conduct of elections of disenfranchisement of voters, non-use of BVAS machine in polling units and alleged use of unlawful ballot papers in 34 local government areas. He submitted that an election shall only be invalidated if there is evidence of substantial non-compliance with the provisions of the Electoral Act 2022. He referred the Honourable Tribunal to the provision of **Section 135 (1) of the Electoral Act, 2022** and the cases of **BUHARI VS OBASANJO (2005) 13 NWLR (PT. 941) 1 and ABUBAKAR VS YAR'ADUA (2008) 18 NWLR (PT. 1121).**

The Learned Senior Counsel to the 2nd Respondent urged this Honourable Tribunal to take judicial notice of the fact that there

are **44 LGAs in Kano State with a total of 484 wards and 11, 222 polling units.** He posited that elections were simultaneously held in all the polling units for the purpose of the election of the Governor of Kano State held on the 18th day of March, 2023. He added that the Petitioner is complaining against the election conducted by the 1st Respondent in 385 polling units but however went ahead and called 30 witnesses, 28 of whom are polling unit agents covering only 28 polling units across 16 LGAs out of 44 LGAs of Kano State. He insisted that the Petitioner abandoned her averment concerning 356 polling units where she led no evidence in support of the allegation concerning the petition. He submitted that averments in pleadings, no matter its eloquence, do not speak, have no voice of human beings to speak for the pleader without supporting evidence. He referred the Honourable Tribunal to the following authorities: **YAKTOR VS GOV. PLATEAU STATE (1997) 4 NWLR (PT. 498) 216, ADELOYE VS OLONA MOTORS (NIG) LTD (2002) 8 NWLR (PT. 769) 284, OMISORE VS AREGBESOLA (2015) 15 NWLR (PT. 1482) 205 Pp. 321 PARA E.**

Learned Senior Counsel also submitted that the allegations of non-compliance alleged by the Petitioner can only be proved by polling unit agents of 385 polling units pleaded by the Petitioner.

He maintained that the Petitioner has a duty to prove the allegation in the petition, polling unit by polling unit. He referred to the case of **UCHA VS ELECHI (2012) 13 NWLR (PT. 1317) 330**. He remarked that the Petitioner has the onus of presenting credible evidence of eyewitnesses from the polling units, in this case the polling unit agents who were accredited and designated to the

polling units as the one who witnessed the allegation of over voting, cancellation due to over voting, cancellation due to violence and disruption, non-recording of results in Form EC8A and non-use of BVAS machine for accreditation of voters. He referred the Honourable Tribunal to the following authorities: **ANDREW VS INEC (2018) 9 NWLR (PT. 1625) 507, GUNDIRI VS NYAKO (2014) 2 NWLR (PT. 1391) 211 AND ADEWALE VS OLAIFA (2012) 17 NWLR (PT. 1330) 478.**

It is the view of the Learned Silk, that the oral evidence given by all the witnesses called by the Petitioner, is of no moment, as there is no scintilla of evidence that these witnesses were in the polling units where they claimed to be. He referred the Honourable Tribunal to exhibits 2R17(x), which is a certified true copy of the list of agents the Petitioner submitted to the 1st Respondent for the Kano State Governorship election held on the 18th of March, 2023. He urged this Honourable Tribunal not to believe the evidence of these procured witnesses who, according to Learned Senior Counsel, were picked by the Petitioner from nowhere and prepared to give evidence in this Tribunal. He referred the Honourable Tribunal to the following authorities: **GUNDIRI VS NYAKO (2014) 2 NWLR (PT. 1391) 211 Pp. 245 PARAS C-D and NLNG & CO LTD VS HART (2013) LPELR-21176 (CA) Pp. 14-15, PARAS A-B.** He also posited that the evidence of the witnesses called by the Petitioner were discredited under cross-examination.

On the issue of allegation of cancellation of votes due to over voting, Learned Senior Counsel submitted that there is no credible

evidence from any of the witnesses called by the Petitioner establishing over voting in the polling units which resulted in the 1st Respondent cancelling the polling unit result. By way of further submission, the Learned Senior Counsel remarked that the Petitioner failed to state the number of accredited voters and the number of total votes that constitute over voting. According to him, it is not the duty of the Honourable Tribunal to speculate and work out the facts for the Petitioner, who only pleaded the number of registered voters and the number of Permanent Voters Card collected. He added that the large volume of INEC forms tendered from the Bar by the Petitioner's counsel, were not related to, or demonstrated by any witness called to testify. He further argued that the documents tendered by the Petitioner were merely dumped. Learned Senior Counsel extensively quoted the excerpts of the judgment in the case of **LADOJA VS AJIMOBI (SUPRA)** and **Section 51(2) of the Electoral Act 2022,** amongst other authorities.

The Learned Senior Counsel opined, that the Petitioner has failed woefully to demonstrate the number of accredited voters recorded in the BVAS and the number of accredited voters recorded in the results in form EC8A. He submitted that the Petitioner did not compare these records and never verified them to determine if there was over voting in any of the polling units. He submitted that the Petitioner abandoned all his pleadings. He referred the Honourable Tribunal to the following authorities: **OKEREKE VS UMAHI (2016) 11 NWLR (PT. 1524) 438, NYESOM VS PETERSIDE (2016) 7 NWLR (PT. 1512) 452, NWANKWO VS**

OFOMATA (2009) 11 NWLR (PT. 1153) 498 AND ANYAEGBUNAM VS OSAKA (1993) 5 NWLR (PT. 294) 449.

Learned Senior Counsel challenged the evidence adduced by PW7, PW9, PW10, PW19 and PW20, regarding the filling of Form EC40G at the ward collation centers. He maintained that the evidence of these witnesses is inadmissible, hearsay evidence and that their evidence is not worthy of any probative value. He called in aid the following authorities: **IKPEAZU VS OTTI (2016) 8 NWLR (PT. 1513) 38 Pp. 93, PARAS A-B, INEC VS RAY (2004) 14 NWLR (PT. 892) 92 P. 136 PARAS A-B.**

Learned Senior Counsel challenged the evidence of PW1-PW4, PW12, and PW24-PW28. He submitted that none of the witnesses gave evidence of allegation of over voting. He added that none of these witnesses gave evidence of the content of BVAS machine which was used for accreditation and the voters register which were merely dumped on the Tribunal. He submitted that PW31, who identified the BVAS machine, admitted that he cannot operate the machine and he was not at any of the polling units. He submitted that the contents of BVAS machine and the voters register are indispensable proof of over voting. He referred the Honourable Tribunal to the case of **OYETOLA VS INEC (2023) NWLR (PT. 164).**

He further argued that the Petitioner did not prove over voting and neither did they prove, that if the figures representing over voting is removed, it will result in his victory. He cited the case of **APC VS**

PDP (SUPRA) 437-438 PARAS F-A. He maintained that the total number of votes from the ten polling units is just 2, 362 votes which figure is not sufficient to affect the outcome of the election. He further argued that the Petitioner did not prove that the said over voting immersed votes of the winner of the election in particular as the over voting can be in favour of any other candidate. He added that the Petitioner did not satisfy the Honourable Tribunal that it was due to the over voting traceable to the Respondents that led to the winning of the election by the 2nd Respondent. He cited the case of **YAHAYA VS DANKWANBO (2016) 7 NWLR (PT. 1511) 284 AT 313 TO 314 PARAS B-A**. The Learned Silk further submitted that exhibit P50 tendered by the Petitioner, through PW11, was of no moment, as the said exhibit was neither pleaded nor referred to in the witness deposition of PW11. He submitted that the said document is inadmissible and the Tribunal is urged to reject same. He called in aid the case of **INEC VS RAY (SUPRA)**. He submitted that the petitioner has failed to lead evidence in support of her pleadings in the allegations contained in the petition. Learned Senior Counsel posited that the averments in the petition are deemed abandoned and he urged the Honourable Tribunal to so hold. He called in aid the following authorities: **EMEGOKWUE VS OKADIGBO (1973) 4 SC 113 AND BALOGUN VS AMUBIKANHUN (1985) 3 NWLR (PT. 11) 27.**

On the issue of non -conduct of election and disenfranchisement of voters, the Learned Senior Counsel submitted that PW15-PW18 and PW23 and PW29 are not competent witnesses to give evidence on account of what happened or transpired at the ward collation

centre. He submitted that the totality of the testimony of these witnesses is inadmissible and has no probative value. He referred the Honourable Tribunal to the cases of **ANDREW VS INEC (SUPRA) AND PDP VS INEC (SUPRA) 690 PARAS E-H,** where the Learned Counsel quoted extensively the excerpts of the judgment in the above cases.

On the issue of allegation of cancellation of election due to non-use of BVAS, the Learned Senior Counsel submitted that the Petitioner did not call any witness to testify in support of their pleadings. He maintained that the averments of the Petitioner are therefore deemed abandoned. He referred the Honourable Tribunal to the following cases: **EMEGOKWUE VS OKADIGBO (SUPRA) AND BALOGUN VS AMUBIKANHUN (SUPRA).** On the whole, the Learned Senior Counsel insisted that the Petitioner failed to prove her case of non-compliance with the provisions of the Electoral Act, 2022 as required by law and he urged this Honourable Tribunal to resolve issue two in favour of the 2nd Respondent.

3RD RESPONDENT'S SUBMISSION ON ISSUE TWO

The Learned Senior Counsel for the 3rd Respondent urged this Honourable Tribunal to resolve same by looking at the pleadings of all the parties and the evidence placed on record by the Petitioner and the Respondents in the petition. He said that the reliefs sought by the Petitioner is declaratory in nature. He added that the Petitioner has a greater duty to discharge, show or justify her entitlement to the reliefs sought. He referred the Honourable Tribunal to the case of **ENGR. GEORGE T. A. NDUUL VS BARR.**

BENJAMIN WAYO & ORS (2018) 16 NWLR (PT. 1646) 548 AT 556, SENATOR JULIUS ALIUCHA VS CHIEF MARTIN N. ELECHI (2012) LPELR-7823 (SC) 43 PARAS B-A. He submitted that the burden of proof at all times rest on the Petitioner to prove her petition. He submitted that the Petitioner failed to prove all the averments contained in the paragraphs of her petition as it relates to tables 1-7 of the petition. Learned Senior Counsel insisted that the Petitioner did not prove the allegation of over voting in 55 polling units as shown in tables 4, 5 and 8 of the petition. He further argued that the Petitioner bears a duty to prove her petition on polling unit by polling unit basis by presiding officers who worked at the polling unit and who also gave a report of their duty in the polling unit where they worked. He maintained that with the state of evidence led by the Petitioner, that the Petitioner has failed to prove her case and he referred the Tribunal to the case of **OYETOLA VS INEC (SUPRA)**.

The Learned Silk opined that in election matters, the place to x-ray is the polling unit to determine whether the alleged infraction complained of by the Petitioner is proved. He further argued that the Petitioner must tender all the necessary documents to establish his case. He referred the Honourable Tribunal to the case of **ABUBAKAR VS YAR'ADUA (2009) ALL FWLR (PT. 457) 1 AT 155**. Learned Senior Counsel again submitted, that a critical examination of the evidence presented by the Petitioner through the 32 witnesses shows that the Petitioner has fallen far short of proving her case. He quoted *in extenso* paragraph **43 of the Regulation and Guideline of the Conduct of Election, 2022.**

Consequent upon the above quotation of the regulation by Learned Senior Counsel, he then further argued that the nature of the evidence that the Petitioner is required to give of her allegation concerning cancellation of result for over voting and for violence or emergency or any reasons whatsoever, is such that a written report of the presiding officer is what is imperative.
He maintained that the evidence of a polling unit agent alone is not enough, without the evidence of the presiding officer of each of the polling unit. The Learned Silk maintained that the 30 witnesses called by the Petitioner who presented themselves as polling unit agents were not actually polling unit agents, because they are impostors as their status of not being polling units agents were revealed under cross-examination. He submitted that the evidence of the witnesses by the Petitioner were discredited by the Respondents, thus amounted to nothing. He faulted the strategy of the Petitioner of giving evidence of 489 polling units with only a scanty evidence of 30 witnesses. He referred the Tribunal to the case of **JUDA VS SALLAU (2019) LPELR-15-16 PARAS C**.

Learned Senior Counsel also submitted that the evidence of PW31 go to no issue and amounted to hearsay. He insisted that all the exhibits identified by PW31 also go to no issue. He maintained that PW31 under cross-examination stated that he was not in a position to give evidence in respect of 132 polling units. He also submitted that he never saw exhibits P124-P144 (BVAS device). He remarked that the evidence of PW31 was worthless. To further buttress his argument, the Learned Silk maintained that the totality of the evidence called by the Petitioner is weak, porous and

not credible and he called in aid the case of **UDOM VS UMANA (1) (2016) 12 NWLR (PT. 1526) 179 AT 253 PARAS C-F.** Also, on the issue of the authenticity of PW1-PW30, Learned Counsel maintained that exhibit 2R17(x) revealed that PW1 and PW2 were not INEC recognized agents forwarded by the Petitioner to the INEC as none of Pw1-PW30 is an authentic witness on exhibit 2R17(x).

Coming to the issue of admissibility, probative value/weight to be attached to INEC documents/certified true copies tendered by the Petitioner, the Learned Senior Counsel for the 3rd Respondent submitted that certified true copies of official or public documents are admissible in evidence, even if tendered from the bar, but that such document will have no probative value if the makers of the documents are not called to give evidence to those documents. Learned counsel extensively quoted the excerpts of the judgment in the case of **ANDREW VS INEC (2018) 9 NWLR (PT. 1625) 507 AT 558-559 PARAS G-C**. He further argued that with the large number of documents tendered from the bar by the Petitioner, that none of her witnesses made reference to these exhibits, nor did they know anything about the exhibits and so they could not testify about the exhibits. The Learned counsel opined that the Petitioner failed to call any presiding officer, and ward collation officer of any of the 489 polling units being contested. He added that PW31 was only a state collation agent whose evidence was based on hearsay.

On the issue of ballot papers for five LGAs as shown in exhibit P157-P162, Learned Counsel submitted that no single witness testified to link the so-called ballot papers to the case of the

Petitioner. Counsel quoted extensively the case of **ANDREW VS INEC (SUPRA)**. He urged the Honourable Tribunal to expunge the evidence of PW1-PW31 in that they were not makers of the INEC documents that they tendered and that under cross-examination, it was revealed that none of these witnesses were genuine agents as all the Petitioner's witnesses also said that they knew nothing about the INEC documents tendered by the Petitioner. He posited that exhibit B126-B160 tendered from the bar by the Petitioner were dumped on the Tribunal without any evidence linking them to the case whatsoever. Learned Senior Counsel again quoted extensively the case of **ANDREW VS INEC (SUPRA).** He equally referred the tribunal to the case of **BELGORE VS AHMED (2013) 8 NWLR (PT. 1355) 60 AT 100 PARAS D-G, MAKU VS AL-MAKURA (2016) 5 NWLR (PT. 1505) 201 AT 228 PARAS D.**

He concluded by saying that all the documents tendered from the Bar amounts to dumping and that no probative value should be attached to same. Learned Senior Counsel took out his time to explain what documentary hearsay means and in arriving at a conclusion, he submitted that the entire gamut of the evidence of the witnesses called by the Petitioner are documentary hearsay as none of the Petitioner's witnesses were a maker of the documents tendered. He referred to the case of **OKEZIE IKPEAZU VS ALEX OTTI & 3 ORS (2016) ALL FWLR (PT. 833) 1946 AT 1988 PARAS A-B and OKE VS MIMIKO (2) 1 NWLR (PT. 1388) 332 AT 376-377 PARAS C-A**.

On the allegation of unlawful ballot papers with respect to 5 LGAs, the Learned Silk argued that the Petitioner did not call any eyewitness in respect to this allegation and no eyewitness testified in relation to the polling unit being contested by the Petitioner. He added that the total of 841, 228 votes cast for the 2nd Respondent which the Petitioner claimed were unlawful votes based on alleged unlawful ballot papers have not been proved by the Petitioner to be unlawful votes. He insisted that the Petitioner must state its complaint on polling unit by polling unit basis and there must be evidence from each polling unit with respect of the ballot papers. The Learned Silk again called in aid the case of **ANDREW VS INEC (SUPRA) AT PAGE 563 PARAS G-H**. He remarked that the evidence in chief of PW32 is discredited under cross-examination as PW32 is not a credible witness because he worked only on the information and document given to him by the Petitioner. He urged the Honourable Tribunal not to attach any probative value on the evidence of this witness. Learned Senior Counsel extensively quoted excerpts of the judgment in the case of **OYETOLA & ANOR VS INEC & ORS (SUPRA) PAGE 30—31**.

On the issue of evidence based on BVAS machine/devices, the Learned Silk submitted that the Petitioner failed to prove over voting in that, apart from the fact that the necessary electoral documents were not demonstrated, that the additional standard of proof established by the Supreme Court in the recent case of **OYETOLA VS INEC** concerning BVAS machine were not met. He insisted that the BVAS devices (exhibit P24-P44) since after it was admitted as exhibit, that none of the BVAS machine was linked to

the case of the Petitioner. He maintained that the 21 devices fall short of the 155 polling units where over voting was alleged. He submitted finally that the Petitioner has failed to comply with the instruction and decision of the Supreme Court in **OYETOLA VS INEC (SUPRA)** at pages 18-20.

On the allegation that election did not hold in 332 polling units, Learned Senior Counsel submitted that the Petitioner did not call any registered voter who came and testified before the Honourable Tribunal that he came to his polling unit and election did not hold. He further submitted that no registered voter testified in relation to all the polling units where the Petitioner alleged that there was no election. He referred the Honourable Tribunal to the case of **NGIGE VS INEC (2015) 1 NWLR (PT. 1440) 281 to 325 PARAS A-F, UDOM VS UMUNA (1) (SUPRA) 253 PARAS E-G.** he submitted that if the Petitioner had proved that there was no election in 30 polling units, that it will still have been a far cry from the 489 polling units which he pleaded allegations about. He then urged the Honourable Tribunal to discountenance all the imaginary figures including the entire paragraphs of the petition in respect of the alleged unlawful ballot papers in respect of the 32 LGAs.

On the whole, the Learned Senior Counsel urged this Honourable Tribunal to resolve issue two in favour of the 3rd Respondent.

PETITIONER'S SUBMISSION ON ISSUE TWO

In respect of issue two, the Learned Senior Counsel for the Petitioner submitted that the 1st Respondent did not comply with the provisions of the Electoral Act, 2022 and its Guidelines for the Conduct of Election before declaring the 2nd Respondent as winner of the election. To further buttress his argument on issue two, the Learned Senior Counsel submitted that it is the settled position of the law, that declarations made by the 1st Respondent are presumed to be correct unless the contrary is proved.
He submitted that in this case, the 1st Respondent had declared and determined that there were over voting in a number of polling units. He insisted that these declarations are contained in form EC40G series. He added that by virtue of Section 137 of the Electoral Act, 2022, allegations covered under tables 4 and 5 of the petition do not require oral evidence to prove them as these are manifest in INEC certified true copies of EC40G and EC8B series covering the polling units listed when read together with forms EC8C series of the respective LGAs and the compendium of polling units in Kano State.

In further submission, the Learned Senior Counsel submitted that in cancelling the elections, whether for over voting or violent destruction, the approach adopted by the 1st Respondent was to issue forms EC40G1 or form EC40G which embodied composite reasons for cancellation of elections together with a statement of the number of registered voters affected and the number of permanent voter's card collected. He placed reliance on exhibits P44-P79, and exhibits P81-P93c respectively. Learned Senior Counsel further submitted that an examination of exhibits P44-

P79 shows that the number of permanent voter's cards collected by voters in respect of the polling units where the 1st Respondent cancelled elections, either on account of over voting as pleaded in table 4 and for violent destructions as pleaded in table 6 is 239, 433 voters. He added that when the permanent voter's cards collected as shown in exhibits P88, P90, P91 and P92 are added, that the figure will rise to 251, 456 voters. Learned Senior Counsel argued further, that it is manifest from an examination of exhibit P3 that the total number of permanent voter's cards collected in respect of the admitted polling units are 61, 415 and not 60, 407. The Learned Silk further submitted that the Petitioner demonstrated how the 1st Respondent is duty bound to comply with the provisions of the Electoral Act, 2022 in the conduct of the election, however, the 1st Respondent failed thoroughly to live up to her responsibility. Learned Senior Counsel called in aid the provision of **Section 51 (2), (3) and (4) of the Electoral Act, 2022.**

He maintained that by the above provision, once a case of over voting occurs in any polling unit in the course of conducting an election, the 1st Respondent ought to cancel the results of the polling units affected by the over voting. He submitted that the above cited section of the Electoral Act 2022 clearly defines over voting to mean where the number of votes cast exceeds the number of accredited voters. He concluded his argument on this point when he submitted that once the number of votes cast exceeds the number of accredited voters, then it can be said that there is over voting and the result from such a polling unit is to be cancelled as provided under the law. Learned Senior Counsel referred this

Honourable Tribunal to the case of **YAHAYA VS DANKWANBO (2016) LPELR-48364 (SC) PAGES 26-27 PARAS C-C**.

He remarked that there were manifest cases of over voting in the several polling units spanning across 89 polling units identified in table 4 and the number of permanent voters collected by registered voters in these affected polling units are 83, 120. He further argued that despite the glaring cases of over voting, the 1st Respondent failed to cancel the election as mandated by the Electoral Act, 2022 and indeed the Guidelines for the conduct of elections. He opined that these cases of over voting were confirmed during hearing vide certified true copies of BVAS report, form EC8As in all the polling units and the voter register for the polling units identified in table 4 which were all presented as documentary evidence to show that the results of the election did not emanate from compliance with the Electoral Act, 2022 as contemplated.

He referred the Honourable Tribunal to exhibits **P44-P79 and exhibits P81-P93c** respectively. Learned Senior Counsel submitted that the 1st Respondent through her presiding officers were duty bound to comply with the provisions of the Electoral Act, 2022 in the conduct of the elections. He added that the 1st Respondent cannot exercise discretion about whether or not the cancellation of results due to over voting should take place. He maintained that the word employed by the drafters of the law under reference is “shall” which connotes a compulsion under our jurisprudence.

On the issue of non-compliance bothering on violent disruption of election as shown in table 6 of the petition, he submitted that the Petitioner proved this point as shown in table 6 of the petition. He submitted that the violent disruption of election in polling units shown in table 6 of the petition led to the cancellation of election by the 1st Respondent in 332 polling units. He maintained that despite the cancellation of election in 332 polling units by the 1st Respondent, the 1st Respondent failed to conduct election in the affected 332 polling units. He called in aid the provision of **Section 24(1)-(4) of the Electoral Act, 2022**. Learned Senior Counsel extensively quoted the provision of paragraph **58 of the Regulations and Guidelines for the Conduct of Election, 2022** and maintained that the said provision did not permit the 1st Respondent to exercise any discretion. He maintained that the only circumstances in which the 1st Respondent is allowed to exercise discretion, is when the total number of registered voters who have collected their PVCs allocated to vote in those areas affected will not influence the overall result in the election. He called in aid Section **24 (5) of the Electoral Act, 2022.**

Learned Senior Counsel further submitted that the proviso to Section 24(5) of the Electoral Act, 2022 cannot apply, because the number of the permanent voter's card collected in the areas where elections were cancelled exceed the margin of lead between the Petitioner and the 2nd Respondent which is 128, 897. He submitted that a fresh election ought to have been conducted in those areas. Learned Senior Counsel further submitted that it was wrong for the 1st Respondent to have declared the 2nd Respondent as winner

of the election. He added that there was non-compliance with the provision of the Electoral Act, 2022. He further argued that **Sections 24 and 52 of the Electoral Act, 2022** is the principal legislation and therefore no provision of the Regulation and Guidelines issued by the 1st Respondent which conflicts with the mandatory requirement that election should be held where result was cancelled for over voting, or disruption, or breach of peace, or threat of it, can survive because such conflict must give way to the provisions of the Electoral Act, 2022. He referred the Honourable Tribunal to the case of **APC VS HON. MATTHEW KOLAWALE (2022) LPELR-59109 (CA) 37 F- 38D, 40 B-41D**.

Learned Senior Counsel opined that the total number of registered voters and the total number of permanent voter's card collected by registered voters allocated to vote in all the polling units identified in tables 4 and 6 alone in the petition is 251, 456 voters. He added that the margin of lead between the 2nd Respondent and the Petitioner is 128,897 and same is lesser than the total number of registered voters who had collected their permanent voter's card and were allocated to vote in the affected polling units identified in tables 4 and 6 which amounts to 251, 456 voters.

Learned Senior Counsel opined, that the computation and collation of results from polling units affected by over voting by the 1st Respondent clearly shows that the 2nd Respondent was substantially credited with undue and illegal votes which ought to have been cancelled. He insisted that the return of the 2nd Respondent as winner of the election was improper and unlawful

as a result of the gross contravention of **Sections 51 (2), (3) and (4), 47 and 65 of the Electoral Act as well as Paragraphs 58 and 62 of the Regulations and Guidelines of the Conduct of Election, 2022** as it relates to over voting, cancellation of election due to destruction of electoral process, perpetration of violence and the margin of lead principle.

By way of further submission, the Learned Senior remarked, that the 1st Respondent was duty bound, by law to refrain from making returns in the 332 polling units identified to have been affected by violent destructions, destruction of election materials and emergency, declaration of results until supplementary elections were conducted in those affected polling units. he referred the Honourable Tribunal to **Paragraph 58 of the Regulations and Guidelines for the Conduct of Elections, 2022**. He posited that for a declaration and return to be made, the returning officer must be satisfied that the relevant laws have been complied with, one of which includes the margin of lead principle. The Learned Silk called in aid the provision of **Paragraph 62 of the Regulations and Guidelines of the Conduct of Election, 2022,** which is a subsidiary legislation to the Electoral Act, 2022 by virtue of **Section 70 of the Electoral Act.**

Learned Senior Counsel submitted, that the above provision expressly prohibits a return to be made in a situation where the number of permanent voter's card collected in the affected areas where election did not hold, or where postponed or voided in excess of margin of lead between the Respondent and the Petitioner. Learned Senior Counsel extensively quoted the excerpts of the

judgment in the case of **KUMURYA VS GURJIYA (2019) LPELR-48972 (CA) 19-20 PARA A.** He further argued that the number of registered voters with permanent voter's card collected in all the polling units identified in tables 4 and 6, where there was over voting, or elections did not hold, or were marred by destruction and violence, exceeded the margin of lead between the two leading candidates, in the instant case, the Petitioner and the 2nd Respondent**.**

Learned Senior Counsel then urged the Honourable Tribunal to resolve issue two in favour of the Petitioner and against the Respondents.

We have carefully read and considered the arguments proffered by the Respondents in their respective Replies on point of law and we have taken judicial notice of same.

RESOLUTION OF ISSUE TWO

This tribunal shall start by considering the case made out by the Petitioner, on the issue that the election into the office of the Governor of Kano State held on the 18th day of March, 2023 and the eventual declaration of the 2nd Respondent as the winner of the election was invalid by reason of substantial non-compliance with the provision of the Electoral Act.

The phrase burden of proof in civil cases has two distinct meanings which are; firstly, there is the pleadings, it is the legal burden of proof or the burden of establishing a case. Then secondly, there is the burden of proof in the sense of adducing of evidence, which is described as the evidential burden. The burden of proof in the first

sense is always stable, but the burden of proof in the second sense, oscillates and constantly shifts like a chameleon changing its colour, according to how the evidence preponderates on the scale of justice. See the cases of **ODUKWE VS OGUNBIYI (1998) LPELR-2239 PAGE 1 AT 17; (1998) 8 NWLR (PT. 561) 339, ADIGHIJE VS NWAOGU (2010) 12 NWLR (PT. 1209) 119 AT 463 AND OKOYE VS NWANKWO (2014) LPELR-23172 PAGE 1 AT 21; (2014) 15 NWLR (PT. 1429) 93.**

It is settled law, that in civil cases, the legal burden of proof in the sense of establishing a case lies on the claimant/Petitioner as in this petition, being the person who would fail if no evidence was adduced at all. However, this is not invariably so, as there are circumstances in our adjectival law, when the burden of proof shifts to the defendant. /Respondent as in this petition. See the cases of **OSAWARU VS EZEIRUKA (1978) 6-7 SC 135 AT 145, NWAVU VS OKOYE (2008) LPELR-2116 PAGE 1 AT 31, (2008) 18 NWLR (PT. 1118) 29 AND EZEMBA VS IBENEME (2004) LPELR-1205 PAGE 1 AT 20-21. AGAGU & ORS V MIMIKO 2009 LPELR 21149 (CA); BOLAJI & ANOR V INEC & ANOR 2019 LPELR 49447 (CA); SEN JULIUS ALIUCH & 1 OR V CHIEF MARTIN N. ELECHI 7 2 ORS 2012 LPELR -7823 SC PG 43 PARAS B-E**

Section 133 (1) and (2) of the Evidence Act, 2011 provides as follows:

> *"133(1) – In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be*

given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

133 (2) – If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with"

Given that the general rule, is that he who asserts must prove, the Petitioner had the burden to first adduce *prima facie* evidence in support of her case. In the determination of this issue, we shall insightfully consider the various pleadings of the parties, the laws and some exhibits tendered therein.

In the petition, this ground is based on the allegation of facts of non-compliance with the Electoral Act 2022 and INEC Regulations, Guidelines and Manuals in respect of the numerous polling units, Wards and LGAs listed by the Petitioner from pages 19-90 of the petition.

The Petitioner's case in his pleadings is that elections did not take place in all the forty (40) state constituencies that made up Kano State. According to the Petitioner, that the election in 14 out of the said forty (40) state constituencies were declared inconclusive as elections in 177 polling units in fifty six (56) Registration

Areas/Wards in the 14 state constituencies were cancelled due to over voting, disruption, non-accreditation, emergency declaration and violence, non-conduct of elections and disenfranchisement of voters, voters resistance to the use of BVAS or BVAS by pass, general wave of unrest and lawlessness during the conduct of the election.
The Petitioner gave the particulars of the affected polling units in a tabular form as shown in tables 4, 5, 6, 7 and 8 respectively.

The Petitioner in her petition desired this Honourable Tribunal to enter judgment in her favour in respect of this ground and the two other grounds of this petition, on the basis that the facts stated in the petition in respect of this ground exist. The Petitioner therefore has the burden to prove the existence of those facts by virtue of **Section 131 (1) of the Evidence Act, 2011,** which provides as follows:

> *"Whoever desires any court to give judgment as to which he asserts must prove that those facts exist"*

In proof of her case in relation to this ground, the Petitioner called 32 witnesses who testified as PW1-PW32. The Petitioner also relied on legion of documentary evidence. The Petitioner tendered certified true copies of register of voters for all the polling units pleaded in the petition, BVAS Reports, polling unit results in form EC8A, ward result in form EC8B, certified true copies of ballot papers etc.

We shall proceed to resolve this issue, having regard to the state of pleadings and evidence placed on record by the Petitioner and the Respondents in this petition. We are guided by the principle of law, that parties are bound by their pleadings and a court of law is only to decide the case as formulated on the pleadings of the parties. It is equally not within the powers of a court of law to enter into any enquiry outside the pleadings of the parties. See **ROWLAND OMOREGIE VS IDUGIEMWANYE (1986) 2 NWLR (PT. 5) 41 AND REMI VS SUNDAY (1999) 8 NWLR (PT. 613) 92 AT 106.**

We have thoroughly examined the pleadings of the Petitioner as well as that of the Respondents. One point that cannot be taken away from the petition, is the fact that the allegation of over voting, disruption, non-accreditation, emergency declaration and violence, non-conduct of elections and disenfranchisement of voters, voters resistance to the use of BVAS or BVAS by pass, general wave of unrest and lawlessness during the conduct of the election are facts within the knowledge of the 1st Respondent and we shall, in the course of the determination of this issue, consider how the 1st Respondent who conducted the election reacted to these allegations raised by the Petitioner in her petition.

This Tribunal, shall at this stage, reference the new extant provision of **S137 of the Electoral Act 2022** as it addresses the burden of proof in Election matters as it relates to non-compliance in Electoral evidence.

Section 137 of the Electoral Act, 2022 provides as follows:

> *"It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged"*

This provision was succinctly interpreted in the recent Supreme Court decision in **OYETOLA & ORS V INEC & ORS 2023 LPELR-60392 AT PAGE 59** as follows;

> *'………It is indubitable that section 137 of the Electoral Act only applies where the non-compliance alleged is manifest from the originals or certified true copies of documents relied on. In the instant case, neither Exhibit BVR nor any other document relied on by the appellants remotely disclosed non- compliance with the provisions of the Electoral Act. Hence the section cannot be of any assistance to them. In the circumstance, they still had a duty to call witnesses who witnessed the alleged acts of non-compliance to testify'*

Let us point out, that the current position of the Electoral Act, 2022 in Nigeria now, is that a party who alleges non-compliance with the provisions of the Electoral Act, 2022 for the conduct of election need not call oral evidence if the originals or certified true copies of election documents used in the conduct of the election manifestly discloses the infraction alleged.

This Honourable Tribunal shall make a careful and dispassionate examination of all the exhibits tendered and relied upon by all the parties in this case particularly the exhibits tendered by the Petitioner and if necessary, the evidence led by the parties in this petition, in order to discover whether there are manifest scale of irregularities that occurred on the day of the election.
The petitioner on whom the burden of proof strictly lies, relied on copious Exhibits, to wit Exhibits P1 to P168, consisting of polling unit register of voters; BVAS report, ballot papers; Forms EC8C's, Forms EC8D; Form EC40's; Form EC40 PU; Form Ex40(i), Form EC40G (ii), Form EC8E Governorship election declaration of results, letters and the report of a statistician; Forms EC8a's were admitted as Exhibits A1 to A106, Form EC8b series were admitted as Exhibits B1 to B168.

In proof of the Registered voter and No. of PVC's collected all over the entire Local Governments in Kano State, counsel tendered and relied upon Exhibit P3, which is a bundle of documents tendered as INEC CTC of the Registered voters and number of PVC's collected all over the entire Local Governments in Kano State.

Counsel tendered Exhibit P4, which is the GOVERNORSHIP/STATE HOUSE OF ASSEMBLY ELECTION 18TH MARCH 2023 KANO BIMODAL VOTER ACCREDICTATION SYSTEM (BVAS) PU BY PU (polling unit by polling unit) ACCREDICTATION, while Exhibit P4B is the INEC official receipt No 08338 for the payment of CTC IRO (in respect of) BVAS report/ Record for Governorship and State House of Assembly in Kano

State Constituency election, with the certificate in compliance with section 84 of the Evidence Act 2011.

In proof of the alleged allegation of over voting, disruption, non-accreditation, emergency declaration and violence, non-conduct of elections and disenfranchisement of voters, voters resistance to the use of BVAS or BVAS by pass, killing of innocent Nigerians on the election day, general wave of unrest and lawlessness during the conduct of the election, counsel tendered the following documents;

1) Exhibit P44, Form EC40G(1) Ajingi Local Government Area 5 wards 8 polling units 1 sheet:
2) Exhibit P45-P45F, Form EC40G (PU) 5 polling units 2 wards Bagwai Local Government Area, 7 sheets, Romo ward 08 002 EC40G PU Sare Sare 09 and 1 report.
3) Exhibit P46 –P46A, Form EC40G(PU) Bebeji Local Government Area 2 sheets
4) Exhibit P47, Form EC40G, Bichi Local Government Area 1 sheet
5) Exhibit P48 EC40G(1), Bunkure Local Government Area 1 sheet.
6) Exhibit P49-P49H, Form EC40G, Dala Local Government 6 sheets and 6 reports.
7) Exhibit P50, Form EC40G(1) Dambatta Local Government Area ,7 wards 79 Polling Units, 1 sheet
8) Exhibit P51, Form EC40G(1), Dawakin Kudu Local Government Area 8 wards, 13 Polling Units I sheet.
9) Exhibit P52, Form EC40G(1) Doguwa Local Government Area 5 wards 6 polling units, 1 sheet.

10) Exhibit P53, Form EC40G(1) Dawakin Tofa 5 wards, 8 polling units, 1 sheet.

11) Exhibit P54, Form EC40G(1) Faggae Local Government Area 3 wards 3 polling units, 1 sheet

12) Exhibit P55, Form EC40G 4 wards, 5 polling units and Form EC40G (1) 1 ward 2 polling unit Gabasawa Local Government Area 7 documents

13) Exhibit P56, Form EC40G(1) Garun Mallam Local Government Area 6 wards 7 polling Units, 1 sheet

14) Exhibit P57 Form EC40G Gaya Local Government Area 1 sheet.

15) Exhibit P57A, Form EC40G(1) Gaya Local Government Area 1 sheet 1 report.

16) Exhibit P58, Form EC40G(1) Gwale Local Government Area 4 wards 6 polling units 1 sheet..

17) Exhibit P59, Form EC40G(1) Gezawa Local Government Area 4 wards 5 polling units, 1 sheet.

18) Exhibit P60, Form EC40G(1) Gwarzo Local Government Area 5 wards, 6 polling units, 1 sheet.

19) Exhibit P61, Form EC40G(1) Kabo Local Government Area, 3 wards, 4 polling units, 1 sheet.

20). Exhibit P62, Form EC40G(1) Kano Local Government Area, 8 wards, 16 polling units, 1 sheet.

21. Exhibit P63, Form EC40G(1) Karaye Local Government Area, 6 wards, 17 polling units, 1 sheet

22). Exhibit P64, Form EC40G(1) Kibiya Local Government Area, 5 wards, 8 polling units, 1 sheet

23) Exhibit P65, Form EC40G(1) Kiru Local Government Area, 3 wards, 1 sheet

24). Exhibit P66-P66F, Form EC40G(1) Kumbotso Local Government Area, 7 sheets, 2 report

25) Exhibit P67-P67G, Form EC40G(1) Kunchi Local Government Area, 9 sheets, 3 report

26) Exhibit P68-P68D, Form EC40G Kura Local Government Area, 5 sheets

27) Exhibit P69A-P69F, Form EC40G Madobi Local Government Area, 6 sheets, 5 reports

28) Exhibit P70, Form EC40G (1) Makoda Local Government Area, 1 sheet

29) Exhibit P71, Form EC40G(1) Minjibir Local Government Area 4 wards, 5 polling units, 1 sheet

30) Exhibit P72, Form EC40G, Rano Local Government Area 4 wards 6 polling units, 1 sheet

31) Exhibit P73-P73C, Form EC40G(1) Rimi-Gado Local Government Area, 4 sheets, 3 reports

32) Exhibit P74, Form EC40G(1) Rogo Local Government Area 5 wards, 26 polling units, 1 sheet

33) Exhibit P75, Form EC40G(1) Takai Local Government Area 3 wards, 5 polling units, 1 sheet

34) Exhibit P76-P76C, Form EC40G(1) Tsanyawa Local Government Area, 4 sheets, 2 reports

35). Exhibit P77, Form EC40G(1) Ungogo Local Government Area 6 wards, 11 polling units, 1 sheet

36) Exhibit P78, Form EC40G(1) Wudil Local Government Area 1 sheet

37) Exhibit P79, Form EC40G(1) Warawa Local Government Area 1 sheet

38) Exhibit P81-P87, Form EC40G Ajingi Local Government Area, 7 sheets

39). Exhibit P88-P88M, Form EC40G(1) Minjibir Local Government Area, 4 sheet, 10 reports

40) Exhibit P89-P89A, Form EC40G Garko Local Government Area, 1 sheet, 1 report

41)Exhibit P90-P93C, Form EC40G(1) Shanono Local Government Area, 16 polling units, 4 sheets, 3 reports

The Petitioners tendered copious documents which are certified true copies of INEC valid voter register and valid registrations in Kano State, Exhibits P118, P135-P143.

The Petitioners also tendered copious Ballot papers in various Local Governments in Kano State all binded and placed by this Tribunal in not less than 8 heaps of bags as Exhibits before this tribunal.

The Petitioner also tendered Exhibits B1-B125, which are Forms EC8Bs, the summary of results from polling units collation Registration area level.

The Petitioner called 32 witnesses, out of which 30 of the witnesses testified as polling unit agents. All of them identifying and adopting their witness depositions on oath in English and Hausa languages, except one witness who was fully literate in English language. They were all cross examined by counsel to the 1st, 2nd and 3rd respondents.

This tribunal in summation shall review their witness testimonies.

REVIEW OF THE TESTIMONIES OF PW1 TO PW30

PW1 (Volume 2 page 262, English version of the Petition)

BADAMOSI MUHAMMED, Trader, testified as polling agent for (Walija Polling Unit) Bebeji Local Government Polling unit 006.He stated that there was over voting in his polling unit. That the number of registered Voters are 212, accredited voters 215 and PVCs collected 450. He identified Exhibits P4, P36 and P3, (polling unit, voters register and register of voters)

Under cross examination by counsel to the 2nd Respondent, he stated that *"On the day of the election there was crisis at the Polling Unit, Army officers came and the jacket and the tag were torn on that day. I was the agent of the Petitioner and not an imposter on that day."*

PW2 (page 302 Volume 2 of the English version of Petition)

MAHARAZU TUKUR DUN DABO, Teacher, polling agent for Karaye Islamiyya Polling Unit 025, Karaye Local Government. He testified that there was over-voting at his polling unit. That the accredited voters are 257, votes cast 293. He Identified Polling Unit

voters register and other documents shown to him. (Exhibits A81, P3, P108 and P4)

Under cross Examination by counsel to the 1st Respondent, he testified, *"there was over-voting, there was crisis'*.

PW3 (page 266 Volume 2 of the English version of the Petition)

YAU AMINU Carpenter, testifying that he is the polling unit agent Ishifawa Gaya prison polling unit 006. He alleged over-voting at his polling unit. He testified that the accredited voters are 223, number of valid votes cast are 224. Total number of PVCs collected are 815. Under cross examination by counsel to the 1st Respondent, he stated that his name, signature or thumb print are not on Exhibit A69. He confirmed that one ballot paper of the State Assembly was found in the Governorship Ballot box and the Presiding officer sorted it out and countersigned. He identified Exhibits A69, P104, P4a, P3

PW4 (page 298 Volume 2 of the English version of the Petition). **SAGIRU MOHAMMED**, trader, testified as polling agent for Warawa Polling Unit 005 of Warawa Local Government. He alleged over-voting at the Polling unit. That accredited voters are 255, number of votes cast are 256. Permanent voters card collected 683. He identified Exhibits A72, P117, P4a and P3 (P.U). He alleged over-voting but no violence. He was also cross examined.

PW5 (page 102 Volume 2 of the English version of the Petition) **AMINU BAFA DAIHA** civil servant, polling agent for Diso ward Kwale Local Government, polling unit No 007 Kwale Primary School 1. Witness identified Exhibits A80, P58, P3 (P.U), P105

(voters register) and other Exhibits shown to him. He alleged over-voting at his polling unit. He stated that the number of permanent voters card collected is 816. That the election was cancelled and he saw Form EC40 issued by the 1st Respondent.

Under cross examination he stated that there was no record of violence at his polling unit.

PW6 (page 158 Volume 2 of the English version of the Petition) **MUDASSIR MUHAMMED** (school teacher). Polling unit agent for Sabuwar Gandu Primary School 1, polling unit 014 Kumbotso Local Government. He testified that the number of PVCs collected is 1342. He alleged over-voting in his polling unit. He testified under cross examination by counsel to the 1st Respondent that *"the result of the polling unit was cancelled and Form EC40 P.U was completed.*

PW7 page 160 Volume 2 of the English version of the Petition **ISHAQ INUWA**, businessman. He testified as the polling agent for Sabuwar Gandu Primary School 2, polling unit 015, Dan Maliki ward Kumbotso Local Government. He testified that the number of Registered voters is 1601, PVCs collected 1541. He alleged over-voting at his polling unit. He identified Exhibits A36 and P3 (polling unit). Under cross examination he testified that the Presiding officer complied with the law by cancelling the result and filled out Form EC40GPU.

PW8 (page 162 English version, Volume 2 of the Petition)

NURU LAWAN ALIYU, painter and decorator. He testified as the polling agent for Sheke Primary School III, polling unit 020. He

testified that the number of Registered voters are 1601 and the number of PVCs collected are 859. He identified Exhibits A37, P3, P66d. He stated under cross examination by counsel to the 1st Respondent that the result in his polling unit was cancelled.

PW9 page 166, Volume 2 English version of the Petition)

ALI ALSAM UMAR businessman, polling agent for Unguwur Rimi Primary School IV, polling unit 007 Kumbotso Local Government. He alleged over-voting at his polling unit. He identified exhibits P3, P66(a). He testified that the number of registered voters are 1172, PVCs collected is 395, though he denied the above under cross examination by counsel to the 3rd Respondent.

PW10 (page 110 Volume 2 of the Petition) name is **SANI MUAZ ABDULLAHI**, dyer, polling agent for Madawari Primary School III Mundawari Ward, Gwale Local Government polling unit 011. He testified that there was over-voting at his polling unit. That the total number of registered voters are 804 and the number of PVCs collected are 620. He identified Exhibits P3 and P58.

PW11 (page 95 Volume 2 English version only of the Petition) **ABBA AUWAL AHMAD**, student, polling agent for Funkura Yakaba II polling unit 010 Funkura Ward, Garun Malam Local Government. Witness alleges over-voting at his polling unit. he stated that the number of PVCs collected is 366. He identifies Exhibit P3 and Exhibit P50. Under cross examination by counsel to the 2nd Respondent he admitted that Exhibit P50 does not contain the number of accredited voters and the total number of votes cast.

PW12 (page 286 Volume 1 English version of the petition) **NURA ISMAIL,** businessman, polling agent for Yadakunya ward, Ungogo Local Government, polling unit 015. He alleged over-voting at his polling unit. He identified Exhibits A96, Exhibit P3 (PU) Exhibit P4(a). He stated that the total number of valid voters is 156, rejected votes is 11. That 156+11 is 167. That it is correct 164 were accredited.

PW13 (page 8 Volume 2 of the Petition English Version) **HASSAN HAMISU** (businessman) polling unit agent of Makama dispensary polling unit 006, Ajingi Local Government. He identified Exhibit P3, Exhibit A3 (result of his polling unit, Exhibit P44 (EC40)

PW14 (page 54 Volume 2 English version of the petition

SALISU SANNI, Civil servant, polling agent for polling unit 011 Gano ward, Kudu Local Government. He identified Exhibits P39c (voters register) Exhibit P3 as the number of PVCs collected at his polling unit. He stated that there was over voting at his unit. That the registered voters are 973, PVCs collected 958.

PW15 (page 322 of the English version of the Petition)

YAHAYA SHUAIBU, businessman, polling unit agent for Zango Islamiyya Primary School, P.U 012. He stated in paragraph 4 of his witness deposition, that the 1st Respondent did not collate its results on the INEC Form EC8B from the polling unit, neither did he give reasons for the said cancellation/non collation or holding of election in the polling unit. That in his unit, the total number of registered voters is 1001, the number of PVCs collected is 1000.

PW16 (page 316 Volume 2 of the English version of the Petition) **SALISU ALHAJI BASIRU**, polling unit agent for Fadin Sonka Primary School, Wudil Local Government polling unit 004. He also stated in paragraph 4 that the 1st Respondent did not collate the result on the INEC Form EC8B from the polling unit, neither did he give reasons for the said cancellation/non collation or holding of elections in the polling unit. That in his unit, the total number of registered voters is 708 and the number of PVCs collected is 689. Witness identifies Exhibit P3, and Exhibit P78.

PW17 page 308 Volume 2, of the English version of the petition. **ANNAS MUHAMMED**, Carpenter, polling unit 019, Barkum ward, Bunkure Local Government. He stated that though the election held, the 1st Respondent did not collate its result on Form EC8B, nor did it give reason for such cancellation/non collation or holding of election in the polling unit. That the total number of registered voters is 74, PVCs collected 58.

PW18 page 304 Volume 2 of the English version of the Petition. **YINUSA MOHAMMED**, Okada driver, polling unit agent for Bunkure Chikin Gari II, polling unit 002, Bunkure Local Government. He also testified that although elections held on that day, there was no collation of results and that no reason was given for cancellation/non collation or holding of results in the polling unit. He identified Exhibit P3, his polling unit.

PW19 page 14 Volume 2 of the English version of the petition.

SANNI AL HASSAN INUWA businessman, polling agent for Alagawa Primary School, polling unit 004 Sare Sare ward, Bagwai Local Government Area. He testified that there was over-voting in

his polling unit. That the election was cancelled. That the total number of registered voters is 445, PVCs collected 445. He identified Exhibits P3, P59, P123(a).

PW20 (page 116 Volume 2 the English version of the Petition) **HAMZA ADAMU**, driver, polling agent for Kutil Cikin Gari polling unit 002, Wangara ward, Gezawa Local Government. He testified that there was over-voting in his polling unit and the results were cancelled. He identified Exhibits P3, Exhibit P59 and Exhibit P123D. He testified that the total number of registered voters in his polling unit is 581, PVCs collected 581.

PW21 (page 118, Volume 2 of the English version of the Petition) **MUSA ABDU,** businessman, polling unit agent for Wangara Primary School polling unit 006, Wangara ward, Gezawa Local Government. He testified that there was over-voting in his polling unit. Witness identified Exhibit P3 and Exhibit P59. He stated that 890 were accredited and 274 people voted.

PW22 page 2 of the English version of Volume 2 of the Petition **MUSA SALE**, businessman, polling unit agent for Dugwal near H/H house, polling unit 001, Ajingi ward, Ajingi Local Government. He testified that there was over-voting in his polling unit. That the total registered voters are 750, PVCs collected 649. He stated that the election was cancelled. He identified Exhibit A1, Exhibit P3 and Exhibit P81 (Form EC40G P.U). When shown Exhibit P81 under cross examination by counsel to the 3rd Respondent, he claimed not to know the difference between Form EC40G and Form EC40G P.U. He stated that the accredited voters in Exhibit P81 is 649 and the number of people who voted are 287.

PW23 page 318 Volume 2 of the English version of the petition. **ALLI ANGAS YINUSA**, polling unit agent for Utai, Urumi Primary School, Utai Ward Wudil Local Government, polling unit 005. He stated that although election held, the results were not collated for no reason. He testified that the total number of registered voters is 799, PVCs collected 795. He identified Exhibits P3 and P78.

PW24 page 292 Volume 2 of the English version of the Petition. **NURA ABDU,** polling unit agent for Dan Dangana polling unit 002, Bono ward, Bunkure Local Government. He testified that there was over-voting in his polling unit. That the total number of PVCs collected is 1253. He identified Exhibits P3, P4a and A64. Under cross examination, he stated that the number of accredited voters on Exhibit A64 is 488 and the total number of valid votes is 488 and valid votes on Exhibit A64 is 496.

PW25 (page 296, Volume 2 of the English version of the Petition) **ABUBAKAR JUBRIL**, farmer, polling unit agent for Kuruma II polling unit 011. He testified that there was over-voting at his polling unit, that the number of accredited voters is 215, that the votes cast is 219, PVCs collected 494. He identified Exhibit A63, P3 and P4(a).

PW26 page 294, Volume 2 of the English version of the Petition **MUSIBAU ADAMU,** farmer, polling agent for SA/SS Bunkure public building polling unit 025, Bunkure ward, Bunkure Local Government. He testified that there was over-voting at his polling unit. That the number of accredited voters is 231, total votes cast 232, PVCs collected 585. He identified Exhibits A99, P3 and P4(a).

PW27 page 264 Volume 2 of the English version of the petition. **SADIKU BAFFA**, trader, polling agent for Matawama 11I, polling unit 034, Gaya Arewa ward, Gaya Local Government. He testified that there was over-voting in his polling unit. That the accredited voters are 50, total votes cast is 52, the number of PVCs collected is 50. He identified Exhibit's P3 and P4a.

PW28 page 282 Volume 2 of the English version of the Petition. **FAHAD SALE MOHAMMED**, polling unit agent for Kafin Malemi Hurumi, polling unit 005. He testified that there was over-voting in his polling unit, accredited voters 209, number of votes cast was 213 and PVCs collected 592. He identified Exhibits P3, P4a and A67. Under cross examination by counsel to the 3rd Respondent, he stated that his name and his signature are not on the column of APC in Exhibit A67.

PW29 (page 320 Volume 2 of the English Version of the Petition **SABIU SHUIABU**, trader, polling unit agent for Ango Makare open space, Darki ward, Wudil Local Government, polling unit 015. He testified that though election was held in his polling unit, that the 1st Respondent did not collate its results on INEC Forms and gave no reasons for its cancellation or non-collation. That the total number of registered voters is 691, PVCs collected 689. He identified Exhibits A58, P3, P15a and P151(a).

PW30 (page 134 Volume 2 of the English version of the Petition) **JAMILU NAZIFI SANI**, student, polling unit agent for BGSS Shekara polling unit 025 Yakassi ward Kano Municipal Local Government. He testified that there was over-voting at his polling unit. That the total number of registered voters is 725, total

number of PVCs collected is 664. He identified Exhibits P3, P156(d), P156(a).

Suffice it to say, that all these witnesses except one, gave their testimonies in Hausa language. It was the observation of this tribunal, during the trial, that most of these witnesses above were businessmen, traders, a carpenter, decorator, farmers, driver, okada rider. Understandably, we observed also, that the level of their understanding of English language, which they themselves admitted was 'small, small', this obvious fact did affect their ability to identify some INEC forms and the questions put to them.

Counsel to the Petitioner in his written address, pages 23 thereof and in proof of **Over voting** submitted as follows;

5.69 The Petitioner submits that by virtue of the new Section 137 of the Electoral Act 2022, the allegations covered under Table 4 and 6 of the Petition do not require oral evidence to prove, these are manifest in INEC Certified true copies of EC40 and Ec8Bs covering the polling units listed when read together with forms EC8s for the respective Local Governments and the compendium of polling units in Kano State

5.70 The Petitioner submits that in cancelling the election, whether for over voting, or violent disruption, the approach adopted by the 1st Respondent was to issue a Form EC40G(1) or EC40G which embodied composite reasons for cancellation of elections together with a statement of the number of registered voters affected and the number of

Permanent voters cards collected. These forms have been tendered as Exhibits P44-P79 and Exhibit P81-P93C. it is submitted these exhibits sufficiently prove that the 1st Respondent cancelled elections either on account of over voting or violent disruption as pleaded in Tables 4 and 6 of the Petition.

5.71 It is further submitted that an examination of Exhibit P.44-P79 shows that the number of PVCs collected by voters in respect of the polling units where the 1st Respondent cancelled elections either on account of ***over voting*** *as pleaded in* ***Table 4*** *and for* ***violent disruption*** *as pleaded in* ***Table 6*** *is* ***239,435 voters.***

5.72 It is submitted further that when the PVCs collected as shown on ***Exhibits P88, P90, P91 and P92*** *are added that figure rises to* ***251, 456 voters****.*

5.73 Happily the 1st Respondent whose responsibility it was to conduct the elections has ***admitted these to the extent shown in paragraph 60 on pages 13-61 of the 1st Respondent's Reply.*** *It is respectfully submitted that it is manifest from an examination of* ***Exhibit P3 that the total number of PVCs collected in respect of the admitted polling units are 61,415 and not 60,407.*** *It (sic) sufficient to state that this difference came from the 1st Respondent understanding the number of PVCs collected in the following areas SareSare Ward, Alajawa Pry School 1 PU code 003 & Alajawa Pry School PU Code 004- Bagwai*

LGA, Yautar Kudu Ward Yautar PU Code 012-Gabasawa LGA, Gama Ward Gama Mini Stadium III PU code 074 & Tundun Wada Ward Tundun Wada Special Pry School II PU code 028-Nassarawa LGA.

Of note, is that the Petitioner at page 18, paragraph 62 of the Petition filed on the 9th of April 2023, volume 1 thereof stated as follows;

Paragraph 62;

> *Your Petitioner states that in the polling units listed in the table 4 hereunder, the 1st Respondent made a determination that there was over voting and therefore cancelled the results of those polling units and did not include the results of the polling units among the results colSlated in the election to the office of governor of Kano State. The polling units, the wards/ Registration Areas and the local Government Areas of their location are stated hereunder.'*

The petitioner at **Table 4** (tabulated figures)**,** pages 19 to 49 of the Petition filed on the 9th of April, 2023 Vol 1 thereof, listed 34 Local Government areas, their ward, polling code, polling unit, number of registered voters, number of PVCs collected and reasons for cancellation in all the polling units which were for **'over voting'**

Ditto, the Petitioner in **Table 5** (tabulated figures)**,** at page 50 to 56, paragraph 65 of the Petition listed the number of PVCs collected in specified Local Governments, wards, Polling unit, total votes cast, over voting and PVC, BVAS report and the number of PVCS collected.

The petitioner at **Table 6** (tabulated figures), pages 57 to 86, volume 1 of the Petition, listed cancellations due to **violence** in specified polling units in 30 Local Government areas.

The Petitioner at **Table 7** (tabulated figures) pages 86 to 89, volume 1 of the Petition, listed the number of cancellation or non-collation of votes in specified polling units in 5 Local Government area, wherein the Petitioner pleaded thus in paragraph 69 of the petition thus;

> *'Your Petitioner further states that in the following polling units shown on table 7 below the 1st Respondent did not collate any results on the forms ECB from polling unit, neither did it give reasons for such cancellations/ non collation or holding of elections in the polling units, nor respond to the written inquiry of the Petitioner for written report of the presiding officers, collation officers and returning officers with regard to the fate of elections in these polling units.'*

The Petitioner at **Table 8**, pages 89 to 90, volume 1 of the Petition is to the effect, that the 1st Respondent did not hold elections in 2 polling units in registration areas in 2 Local Governments areas in table 8, but reported that elections were cancelled for reasons of **missing BIVAS** device or **non-use of BVAS device.**

This Tribunal, has painstakingly combed through the above listed exhibits page by page, especially **exhibits P44 to P93,** and the other Exhibits listed above.

The findings of this tribunal, is that they are all certified True copies of INEC forms, in proof of the allegations of violence,

destruction and vandalisation of election materials, over voting, cancellation of results for the areas affected, alleged vandalisation of Ballot boxes torn and scattered; malfunctioning of BVAS machines, or non-use thereof and copious reports, signed by Presiding officers, collation officers who are mostly Professors or Drs.

Very importantly, the 1st Respondent (INEC) who conducted the election made many open admissions in her reply to the petition in respect to the allegation of over voting, disruption, non-accreditation, emergency declaration and violence, non-conduct of elections and disenfranchisement of voters, voters resistance to the use of BVAS or BVAS by pass, killing of innocent Nigerians on the election day, general wave of unrest and lawlessness during the conduct of the election.

The 1st Respondent's admission in respect to the heavy allegations can be gleaned in paragraphs **63, 64, 78, 79, 85, 88, 90, 97 and 104 of the '1st Respondent's amended reply to the petition',** as follows;

"63. The 1st Respondent avers that unknown thugs invaded various polling units and collation centers in the Local Government and Polling Units listed in the table below on the day of the Governorship election and disrupted elections process. They forcefully hijacked election materials, BVAS devices were stolen and destroyed by the thugs thus making it impossible for the 1st Respondents' officials to verify and validate the number of accredited voters, collate the results from the

affected polling units in the absence of the BVAS device thereby compelling the 1st Respondent to record no vote for all the parties or cancel election result in those Polling Units.

64. *The 1st Respondent will contend at the hearing of this Petition that the under listed Polling Units out of the Polling Units listed by the Petitioner in its table four on pages Petition were not cancelled as a result of over-voting but were cancelled due to sundry acts of willful obstruction, and/or resistance to deployment of material, or voter's resistance to the use of BVAS and threat to security of life of election official. The said Polling units are as follows:*

78. *In specific response to paragraph 67 of the Petition, the 1st respondent states that it conducted election for the office of the Governor of Kano State on the 18th of March, 2023 in the Polling Units listed in* ***table 6*** *on pages 57 to 86 of the Petition. It however, state that elections results in some of those Polling Units were cancelled due to* ***willful obstruction and/or Resistance to deployment/distribution of materials, Voters Resistance to the use of BVAS or BVAS bypass.***

79. *The 1st Respondent states in further response to paragraph 68 of the Petition that* ***hoodlums invaded majority of the Polling Units listed in the said table 6 of the Petition*** *in the course of the election, where they willfully disrupted the election process, brought their own already thumb printed Ballot Papers forced the presiding officers to fill for EC8A upload same to IREV at gun point* ***and vigorously resisted the use of BVAS device for accreditation in some***

instance the said act of the hoodlum resulted in killings of innocent citizens.

85. *The 1st Respondent will at the hearing of the Petition rely on all the relevant Forms EC40G series from the Polling Units and Wards listed in the Petitioner's Table 7 to show that the conduct of election in many of those Polling Units were marred and characterized by large scale* ***willful obstruction and/or Resistance to deployment/distribution of materials, voters Resistance to the use of BVAS or BVAS bypass***

88. *The 1st Respondent in response to paragraph 71 of the Petition states that election were held in the two polling Units listed by the Petitioner in its* ***table 8 on pages 89-90 of the Petition. The 1st Respondent however states that the election results in those Polling Unit were cancelled as a result of willful obstruction and/or Resistance to deployment/distribution of materials, voters Resistance to the use of BVAS or BVAS bypass.***

90. *In specific response to paragraph 73 of the Petition, the 1st Respondent states that the Petitioner's computation in its table 4-8 of the Petition is as a result of its deliberate lumping together of Polling Units where election were cancelled by a reason of over voting and Polling Units where election were cancelled as a result of* ***willful obstruction and/or Resistance to deployment/distribution of materials, voters Resistance to the use of BVAS or BVAS bypass****.*

97. *The 1st Respondent states in specific response to the averment in paragraph 75, that all things being equal, and in a*

conducive atmosphere it is bound to conduct election in all the 11, 222 Polling Units in Kano State for the purpose of affording every voter a voice in the choice of who the Governor of Kano should be. However, the 1st respondent will contend that it is not obligated to conduct election where there is willful obstruction and/or Resistance to deployment/distribution of materials, voters Resistance to the use of BVAS or BVAS bypass.

104. In further response to the said paragraph 79, the 1st Respondent says that it did not determined (sic) that there was over voting in 155 Polling Units and also it was not equally manifestly disclosed that there was over voting as allegedly shown in tables 4, 5 and 8 of the Petition. The 1st Respondent state again that it did not determine that there was destruction of election and insecurity to election officials by reason of violence and emergency declaration in 323 Polling Units as allegedly shown in the Petitioners table 6 and did not fail to hold election in 11 Polling Units as allegedly shown in Petitioner's table 7."

From the pleadings of the 1st Respondent (1st Respondent's Reply) as replicated above, there is no doubt that the 1st Respondent admitted that election results in some of the polling units listed by the Petitioner in Tables 4, 5 and 6 of the petition were cancelled, due to over voting and willful obstruction and/or resistance to deployment/distribution of materials, voters resistance etc. The 1st Respondent admitted unequivocally that hoodlums invaded

majority of the polling units listed by the Petitioner in table 6 of the petition.

The 1st Respondent, to say the least, emphatically admitted that hoodlums brought their own already thumb printed ballot papers wherein they brutally forced the presiding officers to fill the result sheet in form EC8A and upload same to IREV at gun point. See Paragraphs 79 of the 1st Respondent's Reply to the petition. Strangely, the hoodlums in a gestapo fashion akin to the attitude of hardened criminals and marauders rigorously resisted the use of BVAS device for accreditation.

A free and fair election is one in which all eligible voters who are willing to vote are given every opportunity to cast their votes which must be counted and declared for the candidate of their choice. See the case of **JIMOH VS ADEKUNLE (1991) 1 LRECN 123.** The essence of democratic elections, it has been held, is that they be free, fair and that in that atmosphere of freedom, fairness and impartiality, citizens will exercise their freedom of choice of who their representatives shall be by casting their votes in favour of those candidates who, in their deliberate judgment, they consider to possess the qualities which mark them out as preferable candidates to those others who are contesting with them. See the case of **OJUKWU VS ONWUDIWE & ORS (1984) 1 S 15 AT 91**. The above essential tenets of democratic elections are fundamentally negatived by election rigging.

Basically, election rigging refers to electoral malpractices which are palpable illegalities such as over voting, disruption of election, emergency declaration, violence, non-conduct of election, disenfranchisement of voters, voters resistance to the use of BVAS or BVAS by pass and so on, which no doubt will substantially affect the result of any election in any civilized jurisdiction and therefore translate to non-compliance with the provisions of the Electoral Act.

We have carefully and diligently searched through the length and breadth of the 1st Respondent's Reply to the petition and we are unable to find, or discover, where the 1st Respondent refuted, denied and or traversed the material facts stated by the Petitioner in paragraph 70 of the petition which deals with the total number of registered voters from the polling units listed in table 7 of the petition. According to the Petitioner in the above paragraph, that there are 7252 registered voters in respect of the polling unit listed in table 7, while those who collected their voter's card and were eligible to vote in the Governorship election are 7106. The law is that Petitioner's averment of facts must be met by the Respondents frontally and categorically. Thus, once a traverse is not met directly or denied at all, the Respondent will be taken to have admitted it. See the case of **NBC PLC VS OLAREWAJU (2007) 5 NWLR (PT. 1027) 255 AT 265.**

The 1st Respondent pleaded thus in paragraphs 41, 58, 62, 75, 80, 84, 86, 93, 108 and 109 as follows;

41. *In specific response to paragraph 48 of the Petition, the 1st Respondent states that votes were not allotted either to the 2nd Respondent or any other candidate at the election in the areas complained of by the Petitioner or any other areas in Kano State. The election were not characterized by irregularities, substantial non-complaince with the extant Electoral Regulations and Guidelines or over-voting as the scores recorded in Form EC8A in those polling Units were the results of the actual votes cast for the respective candidates/political parties.*

58. *The 1st Respondent will show at the hearing of this Petition that in the instances where 'nil or 'zero' or '0' or the Dash mark '-' is used by the Ward Collation Officer in Form EC8B, it means that the Polling Units affected will not count in the application of Margin of win principle and no further election will be held in the affected Areas.*

62. *The 1st Respondent states that, from the table above, it is glaring that the total number of Permanent Voter's collected by Registered Voters in the Polling Units affected by over-voting in the areas complained of by the Petitioner in its table four of pages 19 to 49 of the Petition is 60,407 which is less than the margin of win between the 2nd respondent and the Petitioner.*

75. *The 1st Respondent will contend at the hearing of this Petition that a careful look at the Petitioner's table 5 will reveal that the votes recorded for parties and their candidates in those Polling Units were the actual votes polled by the respective candidates and their political parties. The 1st Respondent will further*

contend that the alleged incidents of over-voting as put forward by the Petitioner are, were anomalies in the arithmetic computation of Ballot Papers accounting as the actual valid votes scored by parties did not exceed the number of accredited voters as captured by the BVAS device in those Polling Units. The 1st Respondent therefore state that the results from this Polling Units are not liable to be cancelled.

80. *The 1st Respondent will also show at the hearing of the Petition that some of the Wards and Polling units contained in Petitioner's table 6 do not exist.*

84. *In reaction to paragraph 69 of the Petition, the 1st Respondent states that it conducted election in all the Polling Units listed under table 7 on pages 86-89 of the Petition. It further states that in any of those Polling Units where election results were cancelled, it did not collate the results of election from such Polling Unit but gave reasons for such cancellation/non collation of result in the appropriate Forms EC40G (PU).*

86. *The 1st Respondent will show at the hearing of this Petition that the instances where election process is marred by* ***willful obstruction and/or Resistance to deployment/distribution of materials, voters Resistance to the use of BVAS or BVAS bypass*** *is indicated by ticking the column for DECLARED EMMERGENCY/ DISRUPTION' in Form EC40G (PU) or by simply writing the word 'VIOLENCE OR DESTRUCTION' in Form EC40G since there is no specific column for* ***willful obstruction and/or Resistance to***

deployment/distribution of materials, voters Resistance to the use of BVAS or BVAS bypass *in Form EC40G.*

93. The 1st Respondent will also contend at the hearing of this Petition that the total number of Permanent Voter's Card (PVC) collected by registered voters from the polling units as listed by the Petitioner in table 5 of the Petition where alleged over voting took place, is 12,315. The 1st Respondent will equally show at the hearing of this Petition that the total number of Permanent Voter's Card collected from Polling Units where the 1st Respondent cancelled results of election as a result of over voting as contained in the table drawn by the 1st Respondent immediately after paragraph 62 above is 60,407. The 1st Respondent states further that the addition of the various sums 60,407 and 12,315 which is 72, 722, is a far cry from the margin of lead between the Petitioner and the 2nd Respondent which stands at 128,896.

108. The 1st Respondent states in reaction to paragraph 81 of the Petition that the actual figure of the number of PVCs collected in the Polling Units where elections were cancelled by the 1st Respondent for over voting as complained of table 4 of the Petition is 60,407 while the number of PVCs collected in the Areas affected by over voting as alleged by the Petitioner itself in table 5 of its Petition is 12,315. The 1st Respondent will show that the aggregate number of PVCs collected by registered voters in the Polling Units allegedly affected by over voting as complained of by the Petitioner in its table 4 and 5 is 72, 722.

109. *The 1st Respondent will demonstrate that the number of Permanent Voter's Card collected in the Polling Units listed in table 6 under paragraph 67 at pages 57 to 86 of the Petition will not be reckoned with in determining the margin of lead principle.*

It is of note, that in this regard, none of the Respondents called any witness, particularly the 1st Respondent who conducted the said elections and who by his pleadings above, that he would lead evidence in denial and in proof of and to demonstrate '*that the number of Permanent Voter's Card collected in the Polling Units listed in table 6 under paragraph 67 at pages 57 to 86 of the Petition will not be reckoned with in determining the margin of win principle.',* did not do so, neither did she lead evidence as to the margin of lead calculated in paragraph 93 of his reply and all other paragraphs as pleaded above.

The only witness called by the 2nd Respondent, Abdullahi Batta Bichi, is a politician and he testified as a State returning agent.

When shown INEC documents, under cross examination by counsel to the Petitioner, he stated as follows;

> *'……… these documents are not coming from me but to the extent of having the logo of INEC, if INEC certified, these are their documents, I have no objection to recognize them as INEC documents …………I acted as State returning agent for the 2nd and 3rd Respondents at the level of headquarters of INEC in the State and not at the Local Government level and these are Local Government documents. Yes I am the state returning agent……'*

Accordingly, if a Respondent refuses to admit a particular allegation in the petition, he must state so specifically or categorically. See **ADESANYA VS ADERONMU (2000) FWLR (PT. 15) 2492 AT 2507.** By the provision of **Paragraph 12 (1) of the First Schedule to the Electoral Act, 2022,** it provides as follows:

> *"The Respondent shall within 14 days of service of the petition on him file in the registry his reply, specifying in it which of the facts alleged in the petition he admits and which he denies and setting out facts on which he relies in opposition to the petition"*

Therefore, where there is no proper traverse on a material fact alleged by the petition (especially from the umpire who conducted the election-in this case INEC), the fact will be deemed admitted. See the case of **UDEAGHA VS OMEGARA (2010) 11 NWLR (PT. 1204) 168 AT 175.**

Furthermore, the 1st Respondent failed to furnish this Honourable Tribunal with the exact particulars of the so called "few instances of clear case of over voting" having regard to paragraph 76 of the 1st Respondent's amended Reply to the petition. Since the Petitioner had alleged that there was over voting in the polling units listed in table 5 and the 1st Respondent is denying it, the 1st Respondent is duty bound in law to outline the exact polling units where the over voting took place as shown in table 5 of the petition.

Having admitted that there was over voting in the polling unit listed by the Petitioner in table 5 of the petition as contained in pages 50 – 56 of the petition, the 1st Respondent ought to have taken the more proactive step by outlining or listing the affected polling units inflicted by the virus of over voting. Having failed to do that, it is our firm view and we so hold, that the 1st Respondent conceded and admitted there was over voting in all the polling units listed by the petitioner in table 5 of the Petitioner's petition.

It should also be pointed out here, that the burden of proving that some of the polling units and wards (listed by the Petitioner in table 6 of the petition) do not exist, lies solely on the 1st Respondent who made such an averment. See paragraph 80 of the 1st Respondent's Reply to the petition.

Furthermore, it is a fact within the knowledge of the 1st Respondent, to specifically know all the polling units and wards in Kano State as the Electoral umpire, since it is the 1st Respondent who created and approved all the polling units, not only in Kano State, but in the whole of the country. In Paragraph 80 of the 1st Respondent's amended Reply, it was contended that *"the 1st Respondent will also show at the hearing of the petition that some of the wards and polling units contained in the Petitioner's table 6 do not exist".*

Contrary to this bold stand, the 1st Respondent in the course of hearing of the petition, never proved that the polling units and wards listed in table 6 of the petition never existed.

None of the Respondents called any witness to disprove or challenge the existence or authenticity of any of the polling units and wards listed by the Petitioner in table 6 of the petition. Since the Petitioner is asserting the negative and the 1st Respondent in asserting the positive, the position of the law therefore is that the burden of proof is on the person asserting the positive (the Respondents) and not on the person (Petitioner) asserting the negative.

In the case of **AMALE VS MUSTAPHA & ORS (2022) LPELR-56897 (CA) PP. 41-42 PARAS D-E,** the Court of Appeal, adopting the stand of the Supreme Court's decision on this issue, held as follows:

> *"The position of law is clear that the burden is on he who asserts the positive and here the Respondents is the one who asserts the positive. The Appellants had no burden of proving the negative. See ADEGOKE VS ADIBI & 7 ORS (1992) LPELR-95 (SC) where the apex Court said thus: "The principle is that the burden of proof lies on he who asserts the positive and not on he who asserts the negative of an issue" per Kutigi, JSC*

The position of the law on a party who pleads facts in his pleadings in an action, but fails to lead evidence in support of the pleaded

facts, the facts pleaded go to no issue and are considered / deemed abandoned.

See the cases of **CBN & ORS V. OKOJIE 2015 LPELR-24740 SC**, where it was reiterated, that the defendant must call evidence in support of his averments, where this is not done, the defendant is deemed to have abandoned his defence.**; OKECHUKWU V. OKAFOR 1961 SCNLR PG 361**; **OOGBUMGBADA V. OGBUMGBADA & ORS 2018 LPELR- 44291 CA; HIGH PERFORMANCE DISTRIBUTION LTD V. SAMSUNG ELECTRONICS COMPANY LTD 2021 LPELR CA**

In the case of **NIGERIAN ROMANIAN WOOD & ORS V. AKINGBULUGBE 2010 LPELR- 9140 CA** it was pronounced as follows;

> *"Failure to call evidence meant the appellant chose to rely on the evidence by the Respondent"*

In effect, it was held in all these cases referenced above, that the case to be considered on its merit, is the case as presented by a claimant who had called evidence in support of his claim.

In effect and what this tribunal is saying, is that the facts pleaded by the 1st and 3rd Respondents who did not call any witness in support of the pleaded facts in their replies to the petition, are deemed abandoned. In fact, both counsel to the 1st and 3rd Respondents, when called upon by this Tribunal to call their witnesses, did inform this tribunal that they are not calling any witness, but rested their case on that of the Petitioner

It is the conclusion of counsel to the Petitioner in paragraphs **80,81 and 82** of the petition where he pleaded thus**;**

Paragraph 80;

Your petitioner says that the action of the 1st Respondent was contumacious in that it was aware that by the records of registered voters and of voters who had collected their PVCs kept by it, the total number of registered voters and voters who had collected their PVCs in the affected polling unis and areas which are shown on tables 4-8 were 243,319 and 231,848 respectively.

Paragraph 81;

Your Petitioner says that the 1st Respondent knowing well that the number of voters who collected their PVCs ***(i.e 231,848)*** *in the affected polling units and areas exceeded the margin of lead* ***(i.e 128,897)*** *between the Petitioner and the 1st respondent nevertheless disregarded the Electoral Act and thus caused a substantial non-compliance which affected the result of the election.*

Paragraph 82;

That the actions or inactions of the 1st Respondent substantially affected the outcome of the election

It is of note that in the case of **ONUIGWE VS EMELUMBA (2008) LPELR-4787 (CA),** the court held as follows:

> *"Acts which may be regarded to substantially affect the result of an election need not*

> *necessarily be widespread non-compliance. Such act may occur in a few places. Yet their effects are so significant to the overall result of the election that it cannot be ignored. It is not the number of stations where or how widespread the non-compliance has occurred which is relevant, it is the effect of the non-compliance on the overall result of the constituency involved. See also APC VS ADELEKE (2019) LPELR-47736 (CA)".*

Vide the provisions of Section **15 (2) (3) and (4) of the Electoral Act 2022** elucidated and spoken to in the case of **YAHAYA & ANOR V. DANKWANBO & ORS. (2016) LPELR- 48364 (SC), per WALTER SAMUEL NKANU ONNOGHEN, JSC (PP26-27 Paras C-C)** wherein it was stated thus:

> *"Over voting can only be demonstrated clearly where the number of accredited voters is less than the number of voter or votes cast."*

In fact, this tribunals physical calculation of the total number of PVCs collected by voters in the affected polling units in Exhibits **P44 to P79** and **Exhibits P81 to P93 (c)** is a total of **268,565** (human minor errors to be taken into consideration)

This Tribunal, hereby resolves that the number of voters who collected their PVCs **(i.e 231,848)** in the affected polling units and areas using the calculation of the Petitioner, exceed the margin of lead **(i.e 128,897)** between the Petitioner and the 2nd Respondent.

The authority of the Regulations and Guidelines for the Conduct of Elections, 2022 and Sections of the Electoral Act, 2022 are instructive of the following;

Regulation 62 of the Regulations and Guidelines for the Conduct of Elections, 2022 provides as follows:

> *"Where the margin of lead between the two leading candidates in an election is NOT in excess of the total number of voters who collected their Permanent Voters' Cards (PVCs) in Polling Units where elections are postponed, voided or not held in line with Sections 24(2 &3), 47(3) and 51(2) of the Electoral Act 2022, the Returning Officer* ***shall*** *decline to make a return for the constituency until polls have been conducted in the affected Polling Units and the results collated into the relevant forms for Declaration and Return. This is the Margin of Lead Principle and shall apply wherever necessary in making returns for all elections in accordance with these Regulations and Guidelines."*

Section 24 (1-4) of the Electoral Act reads as follows:

> *"(1) – In the event of an emergency affecting an election, the Commission shall, as far as practicable, ensure that persons displaced as a result of the emergency are not disenfranchised.*

*(2) - Where a date has been appointed for the holding of an election and there is reason to believe that a serious breach is likely to occur if the election is proceeded with on that date, or it is impossible to conduct the elections as a result of natural disasters or other emergencies, the Commission may postpone the election and **shall** in respect of the area or areas concerned appoint another date for the holding of the postponed election, provided that such reason for the postponement is cogent and verifiable.*

*(3) – Where an election has commenced and there is reason to believe that there is or has been substantial disruption of election in a polling unit or constituency or it is impossible to continue with the election occasioned by threat to peace and security of electoral officials and materials, the Commission **shall** suspend the election and appoint another date for the continuation of the election or the process.*

*(4) - Where the Commission appoints a substituted date in accordance with subsections 2 and 3, there **shall** be no return for the election until polling has taken place in the area or areas affected.*

(5) – Notwithstanding subsection 3, the Commission may, if satisfied that the result of

the election will not be affected by voting in the area or areas in respect of which substituted date have been appointed, direct that a return of the election be made.

Section 47(3) of the Electoral Act, 2022 provides as follows:

"Where a smart card reader or any other technological device deployed for accreditation of voters fails to function in any unit and a fresh card reader or technological device is not deployed, the election in that unit ***shall*** *be cancelled and another election* ***shall*** *be scheduled within 24 hours if the Commission is satisfied that the result of the election in that polling unit will substantially affect the final result of the whole election and declaration of the winner in the constituency concerned.*

Section 51(2 and 3) of the Electoral Act 2022 provides as follows:

"(2) - No voter shall vote for more than one candidate or record more than one vote in favour of any candidate at any one election.

(3) – Where the result of an election is cancelled in accordance with subsection 2, there ***shall*** *be no return for the election until another poll has taken place in the affected polling unit.*

Regulation 43 of the Regulations and Guidelines for the Conduct of Elections 2022 states as follows:

> *"For a Polling Unit where election is not held or is cancelled, or poll is declared null and void in accordance with these Regulations and Guidelines, the Presiding Officer **shall** report same in writing to the RA/ward Collation Officer explaining the nature of the problem and the Collation Officer shall fill Form EC40G as applicable."*

Regulation 58 of the Regulations and Guidelines for the Conduct of Elections 2022, states as follows:

> *"Where an election is postponed as a result of serious breach of the peace or natural disasters or other emergencies in line with Section 24 of the Electoral Act 2022, returns for the affected constituencies **shall** not be made until polls are conducted in the affected polling Units".*

Regulation 75 of the Regulation and Guidelines for the Conduct of Elections, 2022 states;

> *"Where the margin of lead between the two leading candidates is not excess of the total number of collected PVCs of the Polling Unit(s) where election was not held or was cancelled in line sections 24, 47 and 51 of the Electoral Act, the Returning Officer **shall** decline to make a return until polls have been conducted in the affected polling units and the results incorporated a new Form*

EC8D(II) and subsequently recorded into Form EC8E(II) for Declaration and Return."

It can be gleaned from all the laws cited above, that the word "shall" is stated in all the Laws and Regulations referenced above. In our legal parlance, the use of the word "shall" is "mandatory" and not optional.

From the foregoing sections of the Electoral Act 2022 reproduced above and the Regulation and Guidelines for the Conduct of Election, 2022, it is clear and mandatory, that the law empowers the Commission to postpone the election to a substitute date by appointing another date for the election, subject to the provisions of the Electoral Act 2022 vide Section 24 thereof.

From the evidence before this Honourable Tribunal, we hold that the Petitioner successfully proved that there was substantial non-compliance with the provisions of the Electoral Act in respect to ground one of her petition, having regard to the case of over voting, disruption,, non-accreditation, emergency declaration, violence, non-conduct of election, disenfranchisement of voters, voters resistance to the use of BVAS or BVAS by pass, general wave of unrest and lawlessness and killing of innocent Nigerians.

The Petitioner proved by documentary evidence and by the admission of the 1st Respondent, alleged cancellation of election results for over voting in the polling units contained in table 4 of the petition. The petitioner proved by documentary evidence and

through the admission of the 1st Respondent of the violence in the polling units listed in table 5 of the petition.

The Petitioner proved by documentary evidence and through the admission of the 1st Respondent, of failure of the 1st Respondent to hold election in the polling units listed in table 6 of the petition. The petitioner also proved by documentary evidence and through the admission of the 1st Respondent, the disenfranchisement of voters in the polling units listed in tables 7 and 8 of the petition.

By way of conclusion on this issue, may we point out for the umpteenth time that **Section 137 of the Electoral Act and Paragraph 46 (4) of the First Schedule to the Electoral Act, 2022** have changed the law on the hallowed doctrine of dumping in election petition litigation, so much so, that in a narrow sphere of proof of non-compliance, can now be proved by documents alone, without the need to even call for oral evidence as far as the allegation of non-compliance is manifest on the certified true copy of documents so tendered before the Tribunal.

This tribunal hereby affirmatively resolves, without any iota of doubt, that the Margin of Lead between the 2nd Respondent and the Petitioner in the instant Petition is **128,897**, which figure is unarguably lesser than the total number of registered voters who had collected their PVCs and were allocated to vote in each affected polling unit, which from the Petitioners calculation of **Exhibits P44 to P79** and **Exhibits P81 to P93 (c)**, is not less than the **231,848** stated in the Petitioners petition.

Where the Commission establishes the allegation of over voting, disruption, non-accreditation, emergency declaration and violence, non-conduct of elections and disenfranchisement of voters, voters resistance to the use of BVAS or BVAS by pass, killing of innocent Nigerians on the day of election, general wave of unrest and lawlessness during the conduct of the election, the Commission is mandated not to declare a return of any candidate but to call for another poll. In this regard, there exist in the Electoral Act two lines of action, that may be followed in dealing with the situation where non-compliance is established and found by the Tribunal as in this petition to be subject to other sections of the Electoral Act.

The Electoral Act made provision for where the non-compliance cannot be said to be substantial enough to vitiate the election as to call for a bye election or rerun. In this regard, two provisions of the Electoral Act come to bear on this issue:

1. **Section 24(5) of the Electoral Act, and**
2. **Section135 of the Electoral Act.**

Section 135 of the Electoral Act 2022 provides as follows:

> *"An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election."*

By the combined effect of **Sections 24(5) and 135 of the Electoral Act 2022**, it is either the Commission declares the return of the candidate who scored the majority of the lawful votes by reason of the fact that the non-compliance was not substantial enough to affect the outcome of the election or, if the Commission had a ground to do so, but failed in that duty, under Section 135 of the Electoral Act, the Tribunal is mandated to so order. The question that arises from the above is whether such exceptions exist in this petition?

It is the above question that brings this tribunal to the issue duly contested by the parties in this petition on invalid ballots.

ISSUE OF INVALID BALLOT PAPERS USED IN THE GENERAL ELECTION

On the issue of invalid votes and the 2nd Respondent not scoring the majority of lawful votes cast at the election, the Petitioner in paragraph 92 of her petition pleaded thus:

> *"Your Petitioner says further that in the election to the office of Governor of Kano held on the 18th March, 2023 unlawful ballot papers that did not have the signature, stamp and date of the elections were used in casting votes for the 2nd Respondent in all the polling units in the underlisted Local Government Areas".*

The Petitioner went further to list out the various Local Government Areas where the invalid ballot papers were used for the conduct of the 2023 General Election as contained in paragraph 93 of her petition.

In response to the Petitioner's averment, the 1st Respondent stated that the votes cast for the 2nd Respondent in the Local Government areas listed in paragraph 93 of the petition is not tainted by unlawful ballot papers. The 2nd and 3rd Respondents, in their response to the said averment of the Petitioner stated that the alleged allegations of the Petitioner are speculative, presumptuous and have no foundation as the particular polling unit, the number of ballot papers and the identity of presiding officers were not disclosed.

Tritely, the best form of evidence for the resolution of election matters are documentary evidence. A complaint that a candidate did not score the majority of lawful votes at the election is an invitation to compare and contrast figures. See the case of **ANOZIE VS OBICHERE (2008) 8 NWLR (PT. 981) 140 AT 155 PARAS. H.** In election petition cases the decision of the Court, particularly when the issue is as to who had the majority of lawful votes, is based largely on documentary evidence, mainly election result forms. See the case of **NGIGE VS OBI (2006) 14 NWLR (PT. 2006) 14 NWLR (PT. 999) 1 AT 233.** It is trite that results of election declared by an independent electoral commission are presumed correct, authentic and genuine. See **SECTION 168 (1) OF THE EVIDENCE ACT (AS AMENDED) 2022.**

Thus, in order to rebut the presumption of regularity in favour of the election results declared by INEC, the admissibility, inadmissibility and the probative value of Forms EC8As, EC8Bs, EC8Cs, EC8D, EC8E**,** etc, will be seriously contested. On the veracity of documentary evidence, it has been held that a Court is right to place a greater value on documentary evidence than oral testimony. As the most reliable if not the best evidence, is documentary evidence. It is certainly more reliable than oral evidence. When tendered and admitted in Courts are like words uttered and speak for themselves, on the strength of which the tribunal has powers to add to the votes found to have been wrongly excluded to the score by the affected candidate. See the following cases: **SAM V. EKPELU (2001) 1 NWLR (PT. 642) 582 – 797, FAYEMI VS. ONI (2009) 7 NWLR (PT. 1140) 223, AIKI VS. IDOWU (2006) 9 NWLR (PT. 984) 47 AT 65.** Therefore, in the resolution of this issue, it will be on the dissection of the principles governing election result forms and documents and the admissibility of the same.

It is noteworthy to state in clear terms, that in our clime, the most important aspect of the duty of the Court in the evaluation of evidence, is to decide where the scale preponderates by qualitative evidence. The Court must ensure that it holds the string or scale of justice evenly balanced between the parties, so that justice may not only be done, but must manifestly be seen to have been done.

It is the trial Court, which alone has the primary function of fully considering the totality of evidence before it, ascribe probative value to it, put same on the imaginary scale of justice to determine

the party in whose favour the balance tilts, make the necessary findings of fact flowing therefrom, apply the relevant law to the findings and come to a logical conclusion.

The Petitioner tendered the ballot papers used in the conduct of the election in the affected Local Government areas. The said ballot papers were certified by the 1st Respondent (INEC). The Respondents who averred in their pleadings already replicated, never tendered any document(s) to the contrary, to assert or support their pleadings that the ballot papers used in the aforementioned Local Government in Kano State were valid, authentic and not invalidated. For the aforesaid, this Tribunal shall rely on the certified true copies of Exhibits **Exhibits P5, P6-P16c, P18-P34a,** tendered by the Petitioner. The essence of certification of a public document is to show that the contents of the document are the same with the original. See the case of **OWOR VS CHRISTOPHER & ANOR (2008) LPELR-4815, OKADIGHO & ORS VS OJECHI & ORS (2011) LPELR-4687.**

Whether **Exhibits P5, P6-P16c, P18-P34a,** which were certified by the 1st Respondent (INEC) and tendered by the Petitioner can be ascribed any probative value, in the case of **ANYEGWU & ANOR VS AIDOKO ONUCHE (2009) LPELR-521 (SC),** the Supreme Court held as follows:

> *"what must influence his mind in ascribing the probative value is the quality of the evidence or document tendered. In achieving that, the trial Judge has to have regards to, among other things, the following:*

a. Admissibility of the evidence

b. Relevancy of the evidence

c. Credibility of the evidence

d. Conclusivity of the evidence

e. Probability of the evidence in the sense that it is more probable than the evidence of the other party.

f. Finally, after having satisfied himself that all the above have been complied with, he shall now, apply the law to the situation presented in the case before him so as to arrive at a conclusion in one way or the other.

From the above authority, there is no doubt that **Exhibits P5, P6-P16c, P18-P34a**, being ballot papers used in the conduct of the election in the affected Local Government areas aforementioned and certified by the 1st Respondent, are the same with the original. Upon a critical analysis and physical examination of **Exhibits P5, P6-P16c, P18-P34a**, this Honourable Tribunal made discoveries. **Exhibits P5, P6-P16c, P18-P34a** were either not signed, not named, dated nor stamped or a combination of all.

Section 71 of the Electoral Act provides thus:

> *"Every Result Form completed at the ward, Local Government, State and National Levels in accordance with the provisions of this Act or any guidelines issued by the commission* ***shall*** *be stamped, signed and countersigned*

> *by the relevant officers and polling agents at those levels and copies given to the Police Officers and the polling agents, where available."*

The above provision shows that a relevant officer and polling agents **"shall"** (must) stamp and sign the result form for it to be cognizable. Thus, where a result sheet does not bear the name, stamp and signature of the presiding officer and polling agents was purportedly made, what is the legal effect? The answer to this question is found in a plethora of judicial authorities that an unsigned document which purports to confer rights, benefit and duties, etc, is a worthless document. Again, where a document which ought to be signed is not, its authenticity is in doubt. See the following cases; **DAUDU VS ABIODUN Appeal No. CA/A/EPT/625/2011 (Unreported) delivered on 24/12/2011**. In the case of **LAWRENCE VS. OLUGBENGA (2018) LPELR – 45966 (CA),** *the Court held thus:*

> *"One of the planks or pillars upon which the Appellant's case rested is Exhibit "4" tendered before the lower court which looked like a result sheet of 2nd Respondent but the said document was not signed by any official of the 2nd Respondent. It is settled law that an unsigned document commands no judicial value, it is a worthless piece of paper which cannot benefit anybody that seeks to rely on such document, for the document to be relied upon, it must be*

> *signed by the officials of the Respondent who must be unambiguously disclosed."*

Moreso, **Section 63 of the Electoral Act, 2022**. states as follows:

> *"(1) – Subject to subsection (2), a ballot paper which does not bear official mark prescribed by the Commission shall not be counted.*
>
> *(2) If the returning officer is satisfied that a ballot paper which does not bear the official mark was from a book of ballot papers which was furnished to the presiding officer of the polling unit in which the vote was cast for use at the election in question, he or she shall, notwithstanding the absence of the official mark, count that ballot paper."*

We have placed side by side the above provision of the Electoral Act with the respective pleadings of the Respondent, in particular that of the 1st Respondent. In order not to sound repetitively boring but for the sake of double emphasis, we reproduce paragraph 122 of the 1st Respondent's Reply to the Petitioner's Petition:

> *"The 1st Respondent stated that the votes cast for the 2nd Respondent in the local government listed in paragraph 93 of the petition is not tainted by unlawful ballot papers".*

The above answer runs contrary to what this Tribunal discovered after the physical examination of **Exhibits P5, P6-P16c, P18-P34a**. The 1st Respondent is duty bound by virtue of the second

limb **(2) of Section 63 of the Electoral Act 2022,** to give further explanation, as to why he used or counted the ballot papers notwithstanding the absence of the official mark (signing, stamping, dating and the name of the presiding officer missing).

Ditto, the 1st Respondents pleaded in paragraph 79 of the 1st Respondents amended reply to the petition, that;

79. The 1st Respondent states in further response to paragraph 68 of the Petition that ***hoodlums invaded majority of the Polling Units listed in the said table 6 of the Petition*** *in the course of the election, where they willfully disrupted the election process,* ***brought their own already thumb printed Ballot Papers*** *forced the presiding officers to fill form EC8A upload same to IREV at gun point* ***and vigorously resisted the use of BVAS device for accreditation in some instance the said act of the hoodlum resulted in killings of innocent citizens.***

The 1st Respondent, in demonstrating that the ballot papers were valid, ought to have pleaded and further called the Returning Officer to give more particulars as to the validity of the ballot papers that lacked the official mark and also the 1st Respondent ought to have identified before this tribunal the already thumb printed ballot papers which the hoodlums brought.

Ditto, no evidence was led by the 1st Respondent to show that the Retuning Officer was satisfied that the ballot papers used in the aforementioned local governments, which did not bear the official mark, was from a book of ballot papers which was furnished to the

Presiding Officer of the polling unit in which the vote was cast for use at the election in question.

This tribunal was left with no option, but to look all the Ballot papers tendered and relied upon by the Petitioner.

It is the view of this tribunal, that election petition results and reports are very important documents as held by the Court of Appeal on the implication of undated election result and election report in the case of **ADIGHIGE VS NWOGU (2010) 12 NWLR (PT. 1209) 419 AT 481** per Ogunwumiju, JCA had this to say:

> *"My view is that election petition results and report are very important documents. The date on them is of great significance in proof of their contents and many issues flow from the date it was executed.*

Without having the name, signature and date of execution on **Exhibits P5, P6-P16c, P18-P34a**, how can the tribunal know that it was made contemporaneous with the date the results were declared? It may be of probative value, if the maker gives parole evidence of the date it was executed. Having not offered further explanation, this Honourable Tribunal cannot engage on a voyage of discovery, to know why those ballot papers in respect of the local governments aforementioned, which did not bear the official mark, were counted or not. In the case of **VICTOR ISONGUYO VS STATE (2023) 3 NWLR (PT. 1872) 519**, the Supreme Court held thus:

> *"A court should not decide a case on mere conjecture or speculation. Court of laws are courts of facts and law. They decide issues on facts established before them and on law. They must avoid speculation. A court cannot decide issues on speculation, no matter how close what it relies on may seem to be on the facts. Speculation is not an aspect of inference that may be drawn from facts that are laid before the Court. Inference is a reasonable deduction from facts, whereas speculation is a mere variant of imaginative guess which, even when it appears plausible should never be allowed by a court of law to feel any hiatus in the evidence before it."*

See also the case of **OGBORU VS UDUAGHAN (2013) NWLR (PT. 1370) 33 SC.** Against this background, this Tribunal, without any hesitation, is of the firm view that the votes in **Exhibits P5, P6-P16c, P18-P34a** in the aforementioned Local Governments totaling **165, 616** votes are invalid, by virtue of not having the names, signature, date and stamp of the officials of the 1st Respondent. The failure of the Presiding Officer to sign, stamp and affix his name on the result is a major vitiating factor in the light of **Section 63 of the Evidence Act, 2022**.

It is trite law, that where a Presiding Officer failed to sign, stamp or date a polling unit result, the result becomes invalid for lack of authenticity and non-compliance with the provisions of the

Electoral Act. See the following cases: **PDP VS IDRISSU (2019) LPELR-49213 (CA) 19-21, HON. HARUNA MOHAMMED VS BELLO HASSAN ABDULLAHI, unreported decision of the Court of Appeal No: CA/A/EPT/957/2019 delivered on 15th November, 2019, ALAMU & ANOR VS RIJAU & ORS (2021) LPELR-55639 (CA).**

Having invalidated the votes in respect of the affected Local Governments, it is natural and a logical sequence, that any 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 candidate(s). In the case of **AGBOM VS. AZA (2015) LPELR – 40534 (CA)** it was held thus:

> *"…An invalid vote is no vote at all, after it has been detected as being invalid, it cannot be used to compute the number of votes cast in the election. I would add that counting an invalid vote along with valid votes would be like one of her children asking his mother to add the chaff that had been sifted from the wheat, into the wheat meal, on the fire. Obviously, it would be absurd, if the mother agreed to that, which is the same thing here. An invalid vote is not a vote at all."*

The Tribunal, seeking to achieve substantial justice, rather than relying on technicality to defeat justice, is at liberty to re-compute the result from properly admitted exhibits. Where the final figures obviously deciphered from the documentary evidence is different

from that pleaded by the parties, so long as it is supported by admissible evidence and would not lead to a miscarriage of justice, then the Tribunal is duty bound to make the correct finding on the figures.

The Court in the case of **UDUMA VS ARUNSI (2012) 7 NWLR (PT. 1298) 55** held thus:

> *"It is my view that the Tribunal was not bound by the figure stated by the Respondent, but what was deducible from the exhibits which it scrutinized. Was the Tribunal expected to throw up its arms in helplessness simply because the Respondent pleaded a particular final score whereas the actual computation showed something different? It is my firm belief that to achieve justice in election petitions, the Courts must be proactive and not abdicate their responsibility of seeking to achieve substantial justice."*

In election cases, the decision of the Court, particularly when the issue is as to who had majority of lawful vote, is based largely on documentary evidence, mainly election result forms. Such as duplicates or pink copies given to party agents at polling stations, or units or both. See the following cases: **ANOZIE VS OBICHERE (2006) 8 NWLR (PT. 981) 140 AT 155-156 PARAS H-A, NGIGE VS OBI (2006) 14 NWLR (PT. 999) 1 AT 233.**

Where from the duplicates or pink copies given to party agents at polling stations, or units/booths and collation centers, the Petitioner scored the highest number of the valid votes cast and

satisfies the requirements of the Constitution, the Tribunal under **Section 136(3) of the Electoral Act, 2022,** is to declare the petitioner as duly elected.

The relevant provision of the Constitution to be satisfied in the case of Gubernatorial election is in **Section 179(2) of the Constitution of Nigeria, 1999 (as amended)**.

In the case of **AGAGU VS MIMIKO (2009) 7 NWLR (PT. 1140) 342,** INEC declared the Appellant as the winner of the Governorship election in Ondo State with 349, 288 votes whilst the Respondent was said to have garnered 226, 021 votes. After trial, it was found that the actual scores of the candidates after cancellation of invalid votes was 131, 555 and 195, 030 respectively. Thus, 248, 724 votes were cancelled and the margin of win was 63, 475. In view of the fact that **Section 179 (2) of the Constitution** has been satisfied, the Court of Appeal affirmed the Respondent's return as Governor. Also see the following cases: **INEC VS OSHIOMOLE (2009) 4 NWLR (PT. 1132) 611 AT 678, AREGBESOLA VS OYINLOLA (2011) 9 NWLR (PT. 1253) 458 AT 614-618.**

This Tribunal shall apply the Margin of Lead principle in accordance with **Paragraph 62 of the Regulations and Guidelines for the Conduct of the Elections, 2022** made pursuant to **Section 70 Electoral Act, 2022**.

From the foregoing and in answer to the question as to whether there is ground not to declare for a bye election, this Honourable Tribunal hereby holds that there is the existence of **165, 616**

invalid votes discovered by this Tribunal which figure is over and above the margin of lead between the 2nd Respondent and the Petitioner. By the calculation of this Tribunal as garnered from the records of this Court, the invalid votes wrongly credited to the 2nd Respondent is **165, 616**. The 2nd Respondent was returned wrongly with a vote of **1, 019, 602**. The Petitioner was credited with **890, 705** lawful votes.

The justice of this matter now demands, that the invalid votes be and is hereby deducted from the **1, 019, 602** wrongly credited to the 2nd Respondent which mathematically brings the total lawful votes of the 2nd Respondent to **853, 986**.

In view of the above calculation, this Honourable Tribunal have found as of fact and figures, that the Petitioner who scored **890, 705,** is clearly the winner of the Governorship election of Kano State held on the 18th day of March, 2023.

The Petitioner having satisfied the mandatory provision of **Section 179 (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 136 (2) of the Electoral Act, 2022** is hereby declared to be the candidate who scored the majority of lawful votes cast.

Consequently, this petition succeeds and this Honourable Tribunal hereby make the following orders:

1. It is hereby determined that the 2nd Respondent was not duly elected by a majority of lawful votes at the election.

2. It is hereby determined that the Petitioner, NASIRU YUSUF GAWUNA having scored a majority of lawful votes and having met the constitutional requirement, is hereby declared the winner of the election and returned elected as the Governor of Kano State.

3. That the Certificate of Return issued to the 2nd Respondent by the 1st Respondent is hereby set aside as invalid and a nullity.

4. The 1st Respondent is hereby ordered to immediately issue and serve a Certificate of Return in favour of the candidate of the Petitioner, **NASIRU YUSUF GAWUNA** as the winner of the 2023 Gubernatorial election for Kano State held on the 18th of March, 2023.

I participated and had preview of the judgment just delivered by my lord, Oluyemi Akintan Osadebay in the election into the Governorship in Kano State held on the 18th day of March, 2023.

The facts leading to this petition, the pleadings by both parties, the review of evidence led by both parties before this tribunal and the copious written addresses by all learned counsel, have been exhaustively set out in this judgment. I have no reason to reproduce or repeat these again.

I have considered the issues raised in this petition and comprehensively canvassed by all the parties placed against the reliefs sought by the petitioner and the evidence led. I agree with the treatment of all the preliminary objections raised by all the Respondents and the issues on merit in this petition. I also agree with the reasons given on all the issues and conclusions reached. I accordingly stand by the orders made in the judgment.

HON JUSTICE ISTIFANUS GANDU

MEMBER 1

The Petitioners brought a petition as already stated in the lead judgment asking this Court to return the Petitioner instead of the 2nd Respondent whom the 1st Respondent returned.

It is the duty of the Petitioner to proof their case with Factual and Documentary Evidence. In the bid of the Petitioner to prove his case, he called 32 witnesses in all and tendered documentary evidence the bulk of which were certified by the 1st Respondent. The character of the bulk of the evidence in this petition are mainly Documentary. The law is that where there are credible Documentary Evidence, there is little or no need for oral evidence.

It is worthy to note that the Respondents in this petition admitted almost all the allegations made in the petition thereby making further proof unnecessary facts admitted need no proof. See **RANO VS RANO (2021) 12 NWLR (PT. 1790) 289**.

The Respondents themselves in my opinion were the ones who helped this Court to arrive at the conclusion that this petition is meritorious for the following reasons:

1. The 1st Respondent supplied Certified True Copies of all the critical Electoral documents on the fact of which we found the clear evidence to arrive at the conclusion that the 2nd Respondent did not win the 18th day of March, Governorship Election in Kano State.

2. The Respondents at the points of pleadings made massive admissions as already stated by my learned brother in the lead judgment.

3. The few areas where issues were joined relatively to the invalid votes discovered as stated in the lead judgment. The Petitioners tendered documentary evidence supplied by the 1st Respondent in proof that there was indeed at least 165,616 invalid votes wrongly credited to the score of the 2nd Respondent.

This Court was highly justified to pluck all the invalid votes off and deduct same from the 2nd Respondent's votes. After the deduction of the invalid votes. The Petitioner became the rightful person that scored the majority of lawful votes in the said Kano State Election. This initial return of the 2nd Respondent was like building something on nothing. The effect of building in the air is that the wind will blow the structure away and bring it to nothing. That is

what this Tribunal done. We dedare the Return of the 2nd Respondent by the 1st Respondent as manifestly wrong and I so hold.

The only witness called by the Respondents urged this Court to use all the documents certified and supplied by the 1st Respondent to arrive at the just determination of this case. So the Tribunal saw good reason with him to make use of the Evidence before us to demolish the paper house built by the 1st Respondent for the 2nd Respondent while in the said paper house, the 2nd Respondent presided over a state where anarchy was being supported and prevented Agents of the Government were allowed to malign the Judiciary. The Judges of this Tribunal were harassed, intimidated and made to run under cover. What is the offence of the Judiciary. It is the duty of the Judiciary to disperse Justice and no more. The Judiciary is an arm of Government constituted by the Constitution of the Federal Republic of Nigeria.

As stated above the Respondents contributed heavily in the success of this petition. At the pleading stage they made critical admissions. At the trial stage they supplied critical and important documents. Yet at judgment stage the 20 Respondent does not want this Tribunal to stand by justice by stating the truth of the matter. They took the position as was widely reported in the media both print and social that if they loose the case, they will kill the Judges and put the Residence of Kano State on fire. They threatened to bring unrest and banditry to Kano State. We are also citizens of this country in Kano to discharge our lawful duties. We have not committed any offence by performing our duty of adjudication.

My message to the bandits in politics who want to take power by force is that the Judiciary cannot be intimidated. The Judiciary will never shy away from justice. Every Judge is a Soldier of justice, we are blessed with the courage to call a spade a spade and to do justice according to the law without fear or favour.

Where a party purport to have his eyes on the Judiciary and remove same from his case, the Judiciary will still do its work. You remove your eyes from your case, you abandoned your case and concentrated on distracting yourself by having your jaundiced eye on the Judiciary. The Judiciary as represented by the Honourable Judges will concentrates on their duty of adjudication and put their own eyes on the law and justice. All judicial activities must

necessarily and with the final decision of the Court. This is called a judgment.

Upon the judgment of the Court parties can only acknowledge the decision of the Court, accord it respect and if not satisfied, go on appeal.

A party who looses a case or anticipates the loss of his case can only prepare to appeal against the decision of the lower Court or prepare to appeal. This is what is obtainable in a civilised society. Kano State as we all know is a cradle of civilisation. No party on the account of loosing a case or on the basis of speculation of the possible loss of a case threaten to go an rampage against the Court and Honourable Judges.

It is wrong to threaten the entire polity of Kano State with violence. A party must not threaten terrorism and mayhem on the people. The decision of the court must not be taken personal as to warrant an attack and violence against the Judiciary Functionaries as threatened by the Agents of the 2nd and 3rd Respondents.

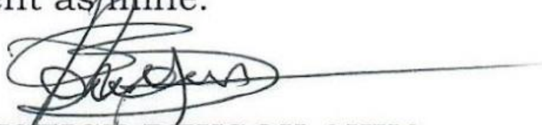
I use this opportunity to condemn the gang of Red Cap wearers who like a violent and terrorist cult chased us out of Kano and put us in the fear of our lives. We believe that only Allah is the giver of power. Those who believe in Allah must bow to his will and submit to the authority of Governmental power. Resort to anarchy, violence and killing can never be a source of lawful power. Threatening to put Honourable Judges in the danger of their life as done in Kano by some disgruntled bandits parading as politicians is hereby condemned.

Every Judge worth his salt will always abandone and ignore any form of threat to stand by justice and pronounce justice. This Tribunal in the lead judgment have pronounced justice and we stand by justice. I concur with the lead Judgment and commend my lord the Chairman for delivering this judgment under the threatened fire and brimstone by bitter losers. There is always another day for politics. I am in no doubt that the security Agencies know and are aware of those who removed their eyes from their case and put it on the Judiciary. They are also aware of those who extended the threat further by declaring that they will kill the Judges. This threat must not be swept under the carpet.

Instead of some Kano politicians to be allowed to use banditry and violence to abort Democracy in Kano State, justice will be used to stop them from destroying Democracy in Kano and upward, we do not want Anarchy and terrorism as being promoted in Kano State and as threatened by them.

As human beings and citizens of this country we love our lives. Nobody must be allowed to threaten to put our life in jeopardy because we are Judges charged by law to do justice. We are under the protection of Allah first and of the law. 1 commend my colleagues for their sense of justice and for a well crafted judgment.

I concur with the lead judgment and invalidate the return of the 2nd Respondent. I affirm the Petitioner as duly elected as the Governor of Kano State. I adopt all the orders in the lead Judgment as mine.



HON JUSTICE BENSON ANYA

MEMBER II