IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON SATURDAY THE 21ST DAY OF SEPTEMBER, 2019
BEFORE THIER LORDSHIP

HON. JUSTICE P.A. AKHIHIERO }	--------------	**CHAIRMAN**
HON. JUSTICE A.N YAKUBU }	--------------	**1ST MEMBER**
HIS WORSHIP S.T. BELLO }	--------------	**2ND MEMBER**

PETITION NO: EPT/SKT/HA/21/2019

IN THE MATTER OF THE ELECTION INTO THE OFFICE OF MEMBER , SOKOTO STATE HOUSE OF ASSEMBLY FOR TAMBUWAL WEST STATE CONSTITUENCY HELD ON THE 9TH DAY OF MARCH 2019

BETWEEN:

1. BASHIR AHMED DAHIRU } ------------ **PETITIONER**

AND

1. ROMO SULE HANTSI
2. PEOPLE DEMOCRATIC PARTY (PDP) } ------------ **RESPONDENTS**
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION

JUDGEMENT
DELIVERED BY JUSTICE A.N. YAKUBU (1ST MEMBER)

This is a Judgment in respect of an election Petition filed by the petitioner on the 29th Day of March, 2019 challenging the election and Return of the 1st Respondent

on the platform of the 2nd Respondent to the office of Member, Sokoto State House of Assembly for Tambuwal West State Constituency held on the 9th Day of March, 2019. At the said election, the Petitioner scored 15, 328 votes while the 1st Respondent scored 24, 547 votes. Consequently the 3rd Respondent declared the 1st Respondent the winner of the said election, and issued a Certificate of Return to him.

Dissatisfied with this Declaration by the 3rd Respondent, the petitioner filed this petition before this Tribunal on the 29th day of March, 2019 to challenge the said Declaration. The grounds of the petition are as follows:-

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

ii. The election of the 1st Respondent was invalid by reason of corrupt practices or non-compliance with the provisions of electoral Act.

The two grounds are found in paragraph C of page 3 of the petition. The facts in support are found in paragraphs 5, 9, 12, 18, and 21 of the petition. It is based on the above two grounds that the petitioner prayed this tribunal for the following declarations:-

i. That there was numerous and material non-compliance with the electoral Act, and INEC Guidelines which substantially affected the result of the election.

ii. That there were numerous and material malpractices and corrupt practices which substantially affected the credibility and fairness of the election and in view of the findings and determination above-

iii. Declare that the 1st Respondent was not elected by the majority of lawful votes cast at the election and make the necessary consequential orders.

Or in the Alternative:-

i. Declare that the election was invalid due to wide spread malpractices corrupt practices and material infringements and breaches of the electoral Act and Guidelines and Order a Re-run of the election and

ii. Any other order the Honourable Tribunal may deem fit to make in the circumstances.

On their part, the Respondents denied the claim of the petitioner. The 1st and 2nd Respondents upon being served with the petition, filed a joint Reply on the 14th May, 2019. The 3rd Respondent on his part filed his Reply to the Petition on the 26th April, 2019 together with a notice of Preliminary objection.

To prove the petition as required by the law, the petitioner testified for himself and called 4 other witnesses. He also tendered Exhibits P, PA-PA6, PB1-PB6, PC, PD1-PD2 from the Bar. Also Exhibits PE and PF were tendered.

The PW1 was one Umar Ango. He lives in Bashire village. He said he filed a statement on Oath in the Tribunal on the 29th day of March, 2019. He adopted his statement as his evidence in the tribunal. In his witness statement, he deposed to the fact that there was multiple voting and votes buying, mobile police men were invited by one Zaki to drive supporters and agents of the petitioner away using tear gas. 1st and 2nd Respondents drove away supporters of petitioners away and stuffed the Ballot Box. Supporters of the petitioner were not allowed to vote, Card Reader was not used for the election, Security details from Government House, drove away supporters and agents of the Petitioner, snatched the Ballot Box and stuff same with Ballot papers.

Under cross-examination witness said the information of vote buying, ballot snatching etc came from his agents.

The PW2 is one Aminu Umar Lukkingo. He filed a statement on Oath which he adopted as his evidence. His deposition is similar to that of the PW1. He deposed to the fact that the rule of one man, one vote was not followed in the election. Under cross-examination by M.M. Yabo, witness stated that on the election day i.e. 9th March, 2019 between 8:00 AM to 5: 00 PM, he was at his polling unit at Lukkingo. He has no contrary result to the one declared by INEC. That election did not hold in Ubandawaki 003 polling unit. There was equally no election in Danfure polling unit. That it was 1st and 2nd Respondents that were involved in vote buying.

The PW3 is Alhaji Abu Romo. He lives at Romo village. He was a supervisory Agent for the Petitioner at Bakaya/Sabon Birni Polling unit. His duty was to

observe the election and Report to the petitioner and APC. His deposition is also similar to that of the PW1 and PW2.

Under cross-examination by M.M. Yabo, witness stated that he voted at Shiyar Waziri polling unit 0010. He went back home after casting his vote because he had ulcer.

After recovering he visited some polling units. He witnessed some of the malpractice himself. Under cross-examination by M.B. Abdallah (Esq) counsel to the 3rd Respondent, witness stated that he is also known as Abubakar Aliyu that he supervised and visited all the polling units under him. That election was cancelled in Iloje 011. There was vote buying and it was PDP that was involved in vote buying. That votes were bought with N2,000, N4,000, N5,000.00 and Wrappers.

The PW4 is Umaru Liman. He was the supervisory agent for the petitioner in Romo Sarki polling unit. He filed a witness statement on Oath in the Tribunal which he adopted. In his evidence, he stated that Security operatives connived with the agents of the 1st and 2nd Respondents to scare away supporters of the Petitioner. His deposition is also similar to that of the PW1, 2, and 3.

Under cross-examination by M.M. Yabo, witness stated that he has no contrary result apart from the one declared by INEC. That on the day of the election, between 8:00 am-5:00 pm, he was at his polling unit. He said he made the allegation in paragraphs 7-8 and it was based on information received from their APC agents in the polling unit. that he supervised four polling units.

The last witness is the Petitioner himself. He filed his witness statement on Oath on the 29th March, 2019. Which he adopted as his evidence during the hearing of the petition. In his evidence, he alledged multiple vote buying, non-use of smart Card Reader, fake Ballot papers were used in the election, violence, Ballot snatching and stuffing.

Under cross-examination by M.M.Yabo (Esq.), witness stated that they found fake Ballot papers in an uncompleted building. He also stated that the Ballot Box snatching was by security personal.

At the end of the case for the petitioner, the Respondents opened their defence. They called 4 witnesses. The RW1 is one Imran Maidame. He lives in Tambuwal and a farmer. He adopted his witness statement filed with the Reply. Under cross-examination, he said he did not contest for any position. All voters in his ward were allowed to vote. On further cross-examination by Nuhu Adamu (Esq) witness stated that apart from his polling unit, he did not go elsewhere. He admits that apart from his polling unit, other things stated in his deposition was what he was told.

The RW2 is Haruna Mallam Garba. He lives in Romo in Tambuwal Local Government Area of Sokoto State. He filed a witness statement which he adopted. He was the polling unit agent for the 1st and 2nd Respondents under cross-examination he said that the voters who came to vote were allowed to vote.

He was not the winner of the election. He stands by his paragraphs 19, and 26 of his deposition. He said he was not a candidate at the election.

The RW3 is Aliyu Gambo. He used the name A. G. in his deposition. He was a ward supervisor in the election at Bakaya ward. He said he will be surprised to hear of over voting at his ward. He agreed that paragraph 26 was an error and the correct thing is that he was a ward supervisor and not an election candidate. Under cross-examination by M.B. Abdullah, witness said he was the agent of his party. He stated the election was inconclusive in some wards and polling unit. he cannot remember the score of his party in the ward.

RW4 is Haruna Sahadu Kaya. He lives at Kaya. He adopted his witness statement on Oath as his evidence. Under cross-examination he said his polling unit was Romo Sarki. He was the only agent in his polling unit. that his party scored 250 votes in his polling unit and the APC scored 284 votes. He said he stands by his paragraph 1 and 26 of his deposition. He was in court on the 12th July, 2019 but denied discussing with RW1 and RW2 about the questions they were asked in court. He denied the RW1 and 2 informed him of any typographical error in paragraph 19. He realized there was a mistake when his statement was shown to him.

At the close of the case for the 1st and 2nd Respondents Mr. M.B. Abdullah (Esq) told the tribunal that the 3rd Respondent do not intend to call witness.

At the close of Pre-hearing session this tribunal formulated a sole issue for determination as follows:-

WHETHER THE PETITIONER IS ENTITLED TO ANY OF THE RELIEFS SOUGHT BEFORE TRIBUNAL.

At this point it is apt to dispose of some preliminary matters before considering arguments on the sole issue. The Respondents in this petition have raised common grounds of objection to the hearing of this petition namely:-

1. The petition is bad and incompetent for non joinder of necessary parties.
2. That ground Cii is vague, lacking in material, speculative and lacks precision.
3. That ground Cii is vague, self conflicting, contradictory and incompetent.
4. The ground Cii is alien, strange and unknown to the Electoral Act, and other relevant laws.
5. The petition is incompetent as presented.
6. The petitioner has no locus standi to present the petition having not been sponsored by any political party. Other grounds are provided in sub paragraphs 7-15 pages I and 2 of the notice of preliminary objection.

The objection further states that consequent to paragraphs 1-15 above, the petition is empty, incompetent and liable to be dismissed having not been presented in compliance with the mandatory provision and requirements of paragraph 4(4) of the 1st Schedule to the electoral Act, 2010 as amended.

It states further that the Hon. Tribunal lacks the vires, and jurisdiction to adjudicate on the incompetent petition having expressed no reliefs known to the law and or justiciable under the electoral law.

Mr. Nuhu Adamu counsel to the petitioner gave a Reply to this Preliminary point in his written closing address. He Relied on Section 137(1) of the Electoral Act 2010 (as amended) to submit that either a candidate or the party that participated in the election can present an election petition. On the allegation

that ground 2 of the petition is vague and strange, without particulars, counsel submitted that the said ground is lifted verbatim from section 138 of the Electoral Act, 2010 as amended. That if the ground was vague, it was left for counsel to ask for more particulars under section 17 of the electoral Act, 2010. He submits further that the objection is misconceived and urged us to discountenance same.

We have considered the preliminary objection raised, and the arguments of counsel based on it. At this stage it must be observed that the 3rd Respondent, apart from merely filing a separate notice of preliminary objection, same was not argued. The 1st and 2nd Respondents too only raised it in their closing address. But since the petitioner did not raise any objection but went ahead to argued it, we shall give a brief Ruling for whatever worth it may be.

The 1st and 2nd Respondents raised sundry ground of objection. This is contained in paragraph 2(1)-2(18) at page 2 of their closing address. The 3rd Respondent also raised grounds that are similar word for word with the 1st and 2nd Respondent's grounds. The 3rd Respondents ground are contained in the second paragraph of his separate notice of preliminary objection filed, at pages 1 and 2 thereof.

A close look at the sundry grounds will reveal that they can be conveniently considered under the three grounds namely:-

1. Non joinder of the political party that sponsored the petitioner.
2. Whether the grounds of petition filed is cognizable under the Electoral Act.
3. Whether the Reliefs sought are competent.

On the ground of non joiner of the political party that sponsored the petitioner, Mr. Nuhu Adamu had submitted that either the candidate in the election or his political party can present an election petition. He relied on section 137(1)(a) and (b) of the Electoral Act. 2010 (as amended). We have looked at the provisions of the said Electoral Act. It provides:-

1. An Election petition may be presented by one or more of the following persons:-
   (a) A candidate in an election.

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

The words ONE OR MORE of the following persons appearing in the section must be construed disjunctively and it means either of the two categories of persons can present the petition without joining the other. In the case of **KALU VS. UZOR (2004)12 NWLR (pt 886)1, at 21,** the court held.

''An Election petition may be presented by one of or both of the persons specified, that is the candidate in an election, and the political party that participated in the election.''

See also **PPA VS. SARKI (2007)17 NWLR (pt. 1064)453.** The petitioner in this case presented this petition alone without joining his party. From the above position of the law, he has an option so to do. We agree with petitioners counsel that a candidate or the party that participated in the election can present an election petition. All other related objection have been taken care of by the ruling under this ground of objection.

The next ground of objection is whether the ground of petition are cognizable under the electoral Act. Mr. Nuhu Adamu had argued in his closing address that the two grounds of petition are cognizable and indeed lifted verbatim from the grounds provided under section 138 of the electoral Act. He contended that even if the grounds are vague, Respondent's counsel would have asked for more particulars under paragraph 17 of the 1st Schedule to the Electoral Act.

We have looked at the only two grounds of this petition. They are contained in paragraph C(i) and (cii) at page 3 of the petition.

Paragraph c(i) provides:-

''the 1st Respondent was not Elected by majority of Lawful votes cast at the election.'' While paragraph c(ii) provides:-

''the Election of the 1st Respondent was invalid by reason of corrupt practices or non compliance with the provision of the electoral Act.''

We have looked at the said grounds of the petition and also looked at the grounds provided under section 138(1)(a)(c) and (d) of the Election Act 2010. They are indeed the same. Paragraph 'D' of the Petition even provides facts in support of the grounds. We therefore agree with petitioners counsel that the two grounds of petition are cognizable under the Electoral Act 2010.

As to whether the reliefs sought are competent, the Respondents state that the Reliefs i and ii are not supported by any grounds of the petition known to the law.

We have earlier ruled that the grounds of Petition are competent and cognizable under the electoral law. Reliefs and 1-2 being challenged are indeed distilled from the said grounds.

In view of all that we have stated above, the preliminary objection ought to be overruled, it is accordingly overruled. Having resolved the preliminary objection in favour of the petitioner, we shall now proceed to consider the sole issue raised for determination in this petition.

SOLE ISSUE:- WHETHER THE PETITIONER IS ENTITLED TO ANY RELIEFS SOUGHT BEFORE THE TRIBUNAL

The petitioners counsel on this sole issue submitted that the petitioner has proved over voting Vide Exhibits PE and PF that is the Card Reader Report and the result of inspection. That exhibit PF at page 10 contains the summary of votes cast in the six wards for Tambuwal West Constituency which ought to be cancelled. That the total of the said votes is 2,017 votes.

He contends that to be able to resolve whether the petitioner is entitle to the relief sought, the tribunal must look critically at the evidence adduced by both sides. He contends further that the five witnesses called by the petitioner have proved corrupt practices in all the polling units in the constituency, particularly the breach of the principle of one man, one vote. That the evidence of these witnesses were never cross-examined in these vital issues. Therefore their evidence remains uncontroverted and unchallenged and the tribunal has no option but to act on it. He cited in support the case of **CAMEROON AIRLINES VS.**

MIKE E OTUTU (2011)1 SCM 70 at 92 C-E ALSO ODULAJA VS. HADDAD (1973)11 SC at 35

Learned counsel argued that the allegation of a breach of the principle of one man, one vote i.e. multiple voting in the deposition of all the petitioners witnesses were met with dead silence in the Replies of all the respondents. According to counsel, the implication of this silence means the allegations are admitted. He cited in support the case of **AFOLABI VS. ALARIMU (2011) LPELR 8894 CA.** Similarly that if an averment is made in a pleading and no evidence is led in support, the pleadings go to no issue. It is the further contention of counsel that the Respondents in this case failed to challenge or controvert the evidence put forward by the petitioner either by traversing same in their Replies or challenge it under cross-examination.

In closing, counsel urged us to uphold the petition and grant the prayers of the petitioner.

ADDRESS ON THE SOLE ISSUE BY 1ST AND 2ND RESPONDENT

Mr. A M Dambuwa, counsel t the 1st and 2nd Respondent argued the sole issue. He submitted that the argument of the Petitioner's counsel that the evidence of the 5 witnesses called by the petitioners remained unchallenged and uncontroverted is not true and misleading. Rather, the 4 witnesses called by the defence…, rendered the evidence and testimony of the petitioner totally challenged and controverted. He submits that it is trite law that the burden of prove in an election petition lies squarely on the petitioner who is to adduce cogent evidence in the proof of his assertion. He relied on the case of **AJIDE VS. KELANI (1993) NWLR (pt. 12)248.** He submits further that the law presumes that an election result as declared by INEC is correct, authentic and valid. A person who denies the correctness of the result has the burden of rebutting this presumption. He relied on the case of **NWOBODO VS. ONOH (1934)1 SCNR 1, OMOBORIONO VS. AJASIN (1984)1 SCNLR 108**. He contends that a petitioner has a duty of proving the essential elements of the claim. That where the claim is declaratory, and the defence did not call any witness, the claim must still be proved head by head. He relied on **PDP & ANOR VS. INEC (2012) LPELR 8409**

(C.A). Counsel contended further that assuming in the instant case, the defendant defaulted in providing evidence, a default Judgment in favour of the petitioner is not automatic, but on the cogency and strength of the evidence before the tribunal.

Learned counsel referred to the two grounds of petition and submitted that where a petitioner challenges the election on grounds that it was not conducted in compliance with the provision of the electoral Act, he must plead facts that not only show non compliance but how it affected the result of the election. He relied on the case of **OJUKWU VS. YAR'ADUA (2009)12 NWLR (pt. 1154) at 50.** He submits further that to succeed in a case of non compliance with the provisions of the electoral Act, the petitioners are expected to plead the instances of non compliance in each of the polling units, ward by ward in the constituency of the Local Government with the figures of the affected votes from those polling units which will enable the tribunal looking at the votes to hold that there was non compliance. He submits that in the instant case, the petitioners has failed to show how the non compliance has affected the result of the election. He referred to paragraph 6 of the petitioners deposition which alledges that Card Readers were not used in the accreditation of voters. He argued that this did not affect the result as there was provision for manual accreditation in a situation where the Card Reader fails. He also referred to exhibits P, PA, PA1-PA6, PB1-PB6, PC, PE, PD1, PD2 and PD tendered in the tribunal and contended that they were only identified by the petitioner. It was also counsels argument that there was no demonstration or analysis of the exhibits done by the witness during examination in chief. As to the allegation of non signing of result, counsel submitted that the documents were not analyse to show which result that was not signed. He submits that where documents were merely dumped without relating them to averments in the petition, the umpire will not discern and decide what document is meant to prove which particular averment in the petition. He relied on **ACN VS. NYAKO (2015)18 NWLR (pt. 191) 352 at 395.**

He urged us to hold that the documents tendered from the bar by petitioner's counsel were merely dumped. That the allegation made by the petitioners in paragraph 5-25 inclusive of the sub paragraph, and paragraphs 4-10 of the

petitioners averment in the petition to show non compliance has not proved that the votes were unlawful or invalid by evidence of witness. He further argued that the entire evidence of the petitioner and that of PW1 to prove grounds of reliefs, and the alterative relief is based on hearsay and hearsay evidence is not admissible.

It is his further submission that there was no infraction of any provisions of the electoral Act (2010) as amended or the 3rd Respondent's Guidelines for the conduct of the election. He submits further that even where there are discrepancies, section 139(1)(2) of the electoral Act, can be used to validate the election of the 1st "Respondent by invoking the doctrine that the discrepancy did not constitute substantial non compliance with the provisions of the electoral Act.

He submits further that Exhibit PF cannot be a court process because it was not franked. It was neither dated nor franked by the solicitors to the petitioner. Therefore the tribunal ought not to have admitted it. The tribunal is urged to expunge same. Counsel referred the tribunal to the evidence of petitioner under cross-examination admitting that he made and sign Exhibits PF and the fact that the petitioner made the Exhibit alone and sign same, makes him aJudge in his own case. He referred to the case of **GUNDIRI VS. NYAKO (2012) NSCQLR (pt 1)26.** He further stated that there is no evidence that an inspection was carried out, and no valid analysis was made to warrant the cancellation of 24, 547 votes, so as to declare the petitioner the winner of the election. He further states that no witness stated in his deposition, the figure which the non compliance attracted. That non of the witness was present at the various polling units when the forms were filled or were an eye witness to what transpired at the various polling units, their evidence is therefore hearsay.

Learned counsel then went into specific instances of non compliance. He referred to paragraphs 5,6,7,8, and 9 of the petition, which alledged over voting and fake ballot papers, Ballot snatching, and vote buying were not proved by an eye witness, and no fake Ballot papers were produced before the tribunal. He submits that entries in electoral forms do not constitute evidence of disputed

scores, unless there is direct evidence linking the forms with the polling units complained of. He relied on **ADEWALE VS. OLAIFA (2012)12 NWLR (pt. 1330)483.**

On allocation of votes, suppression/Juggling of entries inform EC8AII and non accounting of Ballot papers. Counsel submitted the petitioners have failed woefully to prove the allegation. That no ballot Boxes and fake Ballot papers have been produced before the tribunal. That same was admitted in his evidence under cross-examination. Furthermore counsel submits that the over voting and corrupt practices are by virtue of section 135 (1) of the evidence Act 2011, are supposed to be proved beyond reasonable doubt. If the allegations are true, the petitioners most prove that they were perpetrated by agents of the respondent. He relied on the case of **BUHARI VS. OBASANJO(9005)13 NWLR(pt. 941)1 at 209 paragraph and P.311 paragraph 311.**

Counsel further argued that to prove the allegations, petitioners dumped the various election results in Romo Sarki, Bakaya, S/Birni, Fagga Alasan, Bashire/Maikada, Bakida Lukkingo, Tambuwal Shinfiri wards on the tribunal to sought them out and tie them to the allegations in the petition. Those documents which were not tied to actual voters accredited from the list of voter's Register from all the polling units are rendered dormant and of little or no evidential value. He relied on **ACN VS. LAMIDO (2012)8NWLR (pt. 1303)560 at 584-585.**

It was also the contention of learned counsel that the issue of non compliance if any, substantially affecting the result of the election was, not pleaded by the petitioners. If it was not pleaded then evidence cannot be led on it, and if evidence was led on it, it goes to no issue.

On failure of the petitioner to certify all exhibits tendered before the tribunal, learned counsel submits that by virtue of section 104(a-c) public documents must be duly and properly certified and fees for the certification duly paid before same can be tendered in any court or tribunal. Further that section 84(2)(4) of the evidence Act makes it mandatory for a certificate of compliance with section 84(4)(a)-(c) for any document that is computer generated like Exhibit 'A' (Card Reader). Learned counsel then submits that Exhibits P, PA, PA1-PA6, PB1-PB6, PC, PE, PD1-PD2 tendered from the bar by petitioner's counsel were not properly

certified in that the name, and the official title of the person certifying it was not written and or provided. That this amounts to a clear contravention of section 104(1) and 4(a,b,c). similarly, he contends that section 84(2) of the evidence Act 2011, requires that a computer Generated document like the Card Reader print out in this case, must comply with the statutory provisions of section 84(2) of Evidence Act 2011 and must be accompanied by a certificate in accordance with sub section (2) and (4) of section 84. He cited in support the case of **KUBOR VS. DICKSON (2012) S.C. 369/2012.** He contends that Exhibits 'O' which is the Receipt for payment for certification also ought to be expunged as it is a public document and was not also certified. That it is the original or the certified true copy of the Receipt that ought to be tendered. If the Receipt is expunged, it means that no payment was made for certification and ought to be expunged from the evidence. Learned counsel also vehemently argued that a certificate must be dated and subscribed by such officer with his name and his official title, and any document that falls below the above mandatory requirement is in admissible as a certified true copy of a public document. He relied on the cases of **UDOM GABRIEL VS. UMANA OKON UMANA & ORS. (2016) LPELR-S.C. 1/2016, OMISORE VS. ADEBESOLA & ORS. (SUPRA).**

On the issue of hearsay evidence to prove the allegation contained in paragraphs 5-10 of petitioner deposition counsel submitted that all the witness brought to prove same gave hear say evidence including the petitioner himself. That besides, the 5 witnesses that were called to testify in 5 polling units cannot prove allegation of malpractices in over 160 polling units and that the election cannot be cancelled in all the 160 polling units on the hearsay evidence of 5 witnesses.

In closing, counsel urged us to discountenance the testimony of the petitioner's witnesses and all the exhibits he tendered and strike out his petition.

On his part learned counsel to the 3rd Respondent in his written closing address filed on the 1st August, 2019 made submissions in similar terms with counsel to the 1st and 2nd Respondents. He however submitted further that the failure of the 3rd Respondent to call and lead evidence in proof of their Reply did not in any way amount to an admission of the petitioner's complaint or petition. He relied on

the case of **OKPOKO COMMUNITY BANK LTD. VS. IGWE (2013)15 NWLR (Pt. 1376)167 at 188 PARAS D-G.** he denied that the evidence of the five witnesses called by the petitioner were not contradicted and urge us to discountenance same. In conclusion, he urged the tribunal to uphold the election and return of the 1st Respondent having scored the highest majority of lawful votes cast at the election held on the 9th day of March, 2019.

We have considered the totality of the evidence before us and the submission of counsels to the parties. The question to ask is whether the petitioner has proved his petition to be entitled to the reliefs sought. The petitioner has the burden of proving his own petition. If he does not do this his petition will be dismissed see **BUHARI VS. INEC (2008)19 NWLR (pt. 1120)246 at 350.** It is only when the petitioner has discharged this burden before the Respondent can become obliged to call evidence in rebuttal.

The petitioner must succeed on the strength of his own case and not on the weakness of the Respondent's case. See **APC VS. INEC (2011)18 NWLR (pt. 1278)493 at 538.**

The petitioner in this case tried to discharge the burden of proof by both oral and documentary evidence. We shall examine each of them.

1. ORAL EVIDENCE

   The petitioner made allegation of vote buying by the 1st and 2nd Respondents, use of fake Ballot papers, non-use of smart Card Reader, multiple voting in about six wards. These are contained in paragraph D,5 to 22 at pages 3-13 of the petition. The oral evidence given in proof of the allegations came from 5 witnesses including the petitioner. The PW1-5 told the tribunal in their deposition that they were supervisory Agents of the Petitioner in their respective wards. It must be stated out rightly that evidence of supervisory Agents on events that took place at the polling units is not helpful because their evidence is regarded as hearsay which must be rejected. In the case of **GUNDIRI VS. NYAKO (2013)ALL FWLR(pt. 698)816 841-842,** the Supreme Court held.

> ''it is on record that the witnesses PW1-PW65, being supervisors, their testimonies were based on what they were told by the polling agents, appointed by appellants as well as what they did witness themselves ………. the entire evidence constituted hearsay evidence which was properly rejected.''

The PW1 under cross-examination told the tribunal that his information on malpractice in his deposition came from Agents. The PW2 under cross-examination stated that from 8:00 AM-5:00 PM he was at his polling unit and did not go anywhere. The PW3 under cross-examination said after voting in his polling unit, he went back home because he had ulcer. The PW4 also under cross-examination said from 8:00 AM-5:00 PM he was at his polling units and did not go anywhere. The evidence they gave in respect of other polling units outside their polling units amounted to hearsay. Evidence of events at their respective polling units was hearsay since they were supervisory agents.

In this petition there are sundry allegations of malpractice in all the 6 wards of the constituency with 117 polling units. Only five witnesses from five wards were called to testify on the malpractices. These witnesses said they did not go outside their polling units on the Election Day. This means that allegation in the remaining 112 polling units remain unproved since the 5 witness did not go outside their polling units. Even the five witnesses did not prove malpractice and non compliance in their respective five units because they were not unit agents but supervisory agents.

The petitioner that testified did not do so as a polling agent but as a candidate. The oral evidence adduced in this tribunal is therefore hearsay and ought to be rejected. It is accordingly rejected. See **GUNDIRI VS. NYAKO (SUPRA), BUHARI VS. OBASANJO (2005) 13 NWLR(pt.941)1248. HASHIDU VS. GOJE (2003) 15 NWLR (pt 843) 352, 393.**

2. DOCUMENTARY AVIDENCE

   Apart from oral evidence the petitioner also tried to prove their petition with documentary evidence. In this regard, they tendered exhibits PA1-PA6,

exhibits PA, PB1-PB6, PE, PF. These are polling unit results, summary of result, declaration of results of all the affected 6 wards. They also include inspection Report, Card Reader Print out.

It is trite law that documents tendered in evidence must be identified, linked and analysed. See **UCHA VS ELECHI (2012)13 NWLR (pt . 1317)330 at 360**. Also in **ADEWALE VS. OLAIFA (2012)12 NWLR(pt 1330)483** the court held:-

'' Entries in election forms do not constitute evidence of disputed scores until there is direct evidence linking the forms to the polling units complain of''

Also commenting on the need to link documents with Oral evidence the court in**:- UNION BANK VS. ONWUKWE (2017) LPELR-43279(C.A**) held

''the law is trite that documentary evidence tendered and admitted in a proof of a party's case remain dormant unless and until they are activated by oral evidence to allow the court speak to them where the party dumps them on the tribunal, the umpire will not discern and decided what document is meant to prove which particular averment in the petition.''

In the instant case, the PW1 merely identified Exhibit PB3 for Bashire/Maikada ward. He claims it was analysed in his deposition, but no result sheet was linked and analysed in his deposition. For PW2 no document was shown to him for identification.

The PW3 only identified Exhibit PB2 as result sheet for Bakaya ward. PW4 only identified Exhibit PB1 for Romo ward. The petitioner identified Exhibits PB1-PB6 in respect of areas he complained of in his deposition in paragraph 4-8 of his deposition. But the said paragraphs did not mention anything like results or figures.

Similarly, Exhibit PE, the Card Reader Print out was merely dumped and not explained by oral evidence. The same thing applies to the inspection Report of INEC documents. This was tendered through the petitioner. The petitioner merely told the tribunal that he carried out the inspection with INEC staff and their lawyers. The most important aspect of the Report that is the content of that

Report was left out and not explained or analysed by oral evidence. This was equally dumped on the tribunal. Where documents are merely dumped, they have no evidential value and detrimental to the petitioner's case. See **CAN VS. NYAKO (2013)ALL FWLR (pt. 686)424, 479, 480.** Consequently Exhibits PA, PA1-PA6, PB1-PB6 and Exhibit PE tendered in this petition are hereby declared of no evidence value.

Apart from the exhibits being dumped and dormant in the tribunal, learned counsel to the 1st and 2nd Respondent has asked us to expunge the said documents on a another ground. Mainly that the documents are public documents and were not certified before they were tendered and admitted in evidence. He submitted that the documents are public documents which were not certified as required by section 104 of the evidence Act, 2011. He contended further that section 84(2)(4) of the evidence Act makes it mandatory for a certificate of compliance with the provisions of section 84(4)(a-c) to be provided for any document that is computer Generated like Exhibits PD1 i.e. the Card Reader Print out. He relied on the case of **KUBOR VS. DICKSON (2012)S.C 369/2012.** He equally urged that the Receipt for payment of certification of Card Reader print out Exhibits PD1 be expunged from the Record since it is equally a public document that was not certified before it was admitted.

We have considered the submissions of counsel on failure to certify all the Exhibits tendered in this tribunal. We have also looked at the said exhibits. The objection to their admissibility was deferred by counsel to the closing address. Upon having a look on the said Exhibit, we find that they are not the original documents but copies thereof. We further find that the Exhibits belong to INEC, a statutory body of Government. But contrary to the submission of counsel not all of the said exhibits that were not certified. Some were indeed certified. Those certified are exhibits PA1-PA6 and Exhibit PB3. Those that were not certified are Exhibits PD1, PD2, and PD4-PD6. As noted above, the exhibits belong to INEC, a statutory body. By virtue of section 102 of the evidence Act they are classified as public documents. The documents tendered are secondary documents since they were copies. We agree with learned counsel that secondary evidence of a public

document must be certified by virtue of section 104 of the Evidence Act 2011, and if they are not so certified, they become inadmissible.

See **AJAO VS. AMBROSE FAMILY & ORS. (1969)1 NWLR 25, 30 the Supreme Court Held:-**

''…………in the case of a public document, the only type of secondary evidence permissible is a certified true copy of the document and none other……………a Photostat copy is inadmissible as secondary evidence of a public document which it purports to be………..''

In view of this the objection of counsel in respect of Exhibits not certified, is hereby upheld. These exhibits are PD1, PD2 and PD4-PD6. They were improperly admitted for non certification and are accordingly expunged from the Record. However the objection in respect of certified exhibits that is Exhibits PA1-PA6, is misconceived and overruled.

Before delving into the sole issue of the Reliefs sought, we will like to dispose of some ancillary issues raised in the petitioner's address. He had argued that the evidence of 5 witnesses call by the petitioner was not challenged or controverted. 1st and 2nd Respondent's counsel on his part contended that the submission is misleading. With respect we disagree with the petitioner's counsel submission. The record of proceedings provides an answer as to whether the evidence of the said 5 witnesses was controverted or not challenged.

The said witnesses gave evidence of malpractices that took place in other polling units outside their own. Under cross-examination they admitted that they did not visit other polling unit outside their own, and information in their deposition of those other polling units were supplied by agents. As can be seen, this cross-examination did more than controvert or challenge the evidence of witnesses called by the petitioner.

The petitioner's counsel also drew our attention to exhibits PE and PF that is the Card Reader print out, and the report of inspection of INEC documents. He submitted that the combination of these two exhibits which analysed in the minutest details, all the 205 polling units in the constituency has shown that there

is over voting in all the polling units. We disagree with learned counsel as the exhibits have been declared of no evidential value in this Judgment because their content were not analysed or explained by oral evidence in court. The two documents having been declared of no evidential value cannot be used to prove over voting contrary to counsel's submission.

Having disposed of the ancillary issues, we propose to consider the sole issue for determination namely:

1. Whether the petitioner is entitle to any of the reliefs sought before this Honourable Tribunal.

A petitioner that wants a tribunal to void an election or nullify same, must tell the tribunal the reason and prove same before it can be granted. In this case, the reason given by the petitioner is the allegation of corrupt practices and non compliance with the provisions of the electoral Act 2010 (as amended). It is trite law that before an election can be nullified on this ground, the petitioner must plead particulars of non compliance or corrupt practices which affected the votes returned in the polling unit being challenged. He must also plead that the non compliance substantially affected the result of the election. Both requirements must be proved. See **OJUKWU VS. YAR'ADUA (2009)12NWLR (pt. 1154)50, 126.** See also section 139(1) of the Electoral Act (2010) as amended.

In this petition, the petitioner pleaded particulars of non compliance or corrupt practices in all the polling units of each of the electoral wards for Tambuwal West constituency. The Electoral wards are:-

1. Romo Sarki ward.
2. Bakaya/Sabon Birni ward.
3. Fagga/Alasan ward.
4. Bashire/Maikada ward.
5. Bagida Lukkingo ward.
6. Tambuwal Shinfire ward.

The malpractices listed and common to each of the wards are:-

1. Election not based on majority of lawful votes,
2. Vote buying
3. Fake Ballot paper
4. Multiple voting
5. Non used of Smart Card Reader
6. Violence/arson
7. Ballot Box snatching
8. Assault by mobile police

See paragraphs D5-D18 of the petition.

The petitioner must prove the above particulars of non compliance or malpractices in order to be entitled to all the reliefs sought by him. We have earlier own in this Judgment declared that oral evidence of all the witnesses called by the petitioner did not prove the malpractices because it was based on hearsay which is not admissible. They could not prove the allegations in their polling units because they were supervisory agents, and not polling units agents. They could not prove the events that took place outside their pollings because evidence under cross-examination reveals that they did not go outside their polling units on the election date. Besides the malpractice took place in 6 wards with 117 polling units. There is no way that 5 witnesses can even give an account of events in 117 polling units unless they are Roving witnesses, whose evidence is not even admissible. So all the malpractices were not proved by oral evidence. We shall examined each of the malpractice and see how they are to be proved:-

1. Election not based on majority of lawful votes. This is also a form of non compliance as it mean falsification of votes. In paragraph 24 of the petition, the petitioner specifically aver that 1st Respondent did not win the election with majority of lawful votes cast at the election. That all the votes were as a result of the above listed malpractices or non compliance. It is trite law that:-
   " When a petitioner is alleging that the Respondent was not elected by majority of lawful votes, he ought to plead and prove the votes cast at the various polling stations, the votes illegally credited to the winner, the votes which ought to be credited to him, and also the votes which will be deducted from the supposed

winner in order to see if it will affect the result of the election. Where this is not done, it will be difficult for the court to effectively address the issue.'' See **NADABO VS. DUBAI(2011)7NWLR(pt. 1245)155 at 177. See also AWOLOWO VS. SHAGARI(1976)6-9 SC 51.**

In the instant case the petitioner merely alleged in paragraph 24 that all the votes were the result of malpractice. He did not tell us the vote attracted by each malpractice of even X-ray his complaint in the manner stated in the above case.

2. Allegations of vote buying, fake Ballot papers, multiple voting, violence, Box snatching are criminal in nature and must be proved as follows:-
    A. The Respondent personally committed the corrupt Acts or aided, aborted, counseled or procured the commission of the alledged acts of corrupt practices or if
    B. the alledged acts were committed through an agent, that the agent was expressed authorized to act in that capacity or granted authority and
    C. That the corrupt practices substantially affected the outcome of the allegations and how it affected it. See **AUDU VS. INEC (NO.2)(2010)13NWLR (pt. 1212)456 at 544. See also EZE VS. OKOLOAGU (2013)3 NWLR(pt. 1180)183 at 233.**

The petitioner in the instant case was not able to prove the above against the Respondent. There was no fake Ballot papers shown and tendered in the tribunal. For over voting, the petitioner must tender in evidence the statement of results in the appropriate form which will show:-

a. The number of Registered voters
b. The number of accredited voters
c. The number of actual voters.

No such forms or exhibits is before the tribunal since they have been expunged from the Record for non certification and that of none evidential value.

As for non use of smart Card Reader, the law is that it does not vitiate an election see **NYISOM VS. PETERSIDE(2016)7 NWLR(pt.1526)179 at 256-257.** For the allegation of vote buying. This is contained in the deposition of PW1, PW2,

PW3 and PW4. This is also known as Bribery. For this allegation to be proved the names and identity of the people must be disclosed. In Iloji 001 polling unit of Bakaya/Sabon birni ward, PW3 stated that it was the PDP that was involved in vote buying. Their identities were not disclosed. Thus this allegation remain unproved. For Ballot Box stuffing, no Ballot box was produced in tribunal as required by law. It therefore remains unproved.

Aside from showing that the Respondent personally committed the offence or counseled, abated, procured the commission for the Electoral offences stated above. The perpetrators must be joined or made parties and the case against them proved beyond reasonable doubt. In the case of **NWOBODO VS. ONOH (1984) ALL NLR 1 at 77** the court held:-

1. That the allegations must be made to a party to the case.
2. That the commission of the crime that must be proved before the plaintiff or petitioner could succeed in his action.

In the instant Petition, those who committed the electoral offences were never joined to defend the allegation against them. This is a breach of their right to fair hearing. The PW1 and PW2 in their depositions stated that mobile police men and other security operatives connived with agents of 1st and 2nd Respondents to intimidate supporters of the petitioner. But no security operative has been joined in the case to defend the allegation against them. So the allegation remains unproved.

On the whole, we hold that the petitioner has failed to prove that the Election of the Respondent was invalid by reason of Corrupt Practices or non compliance with the provisions of the Electoral Act, 2010 (as amended). He is not therefore entitled to any of the Reliefs sought by him. The Petition lacks merit and ought to be dismissed.It is accordingly dismissed with N20,000 Naira costs in favour of each of the Respondents.

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HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

--
HIS WORSHIP S.T BELLO
2ND MEMBER

COUNSEL:

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2. M.M.YABO ESQ.--1ST & 2ND RESPONDENTS.
3. M.B.ABDALLAH ESQ.-----------------------------------3RD RESPONDENT.