IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON THURSDAY, THE 5TH DAY OF SEPTEMBER, 2019
BEFORE THEIR LORDSHIPS:

HON. JUSTICE----------P.A. AKHIHIERO (CHAIRMAN)
HON. JUSTICE----------A.N. YAKUBU (MEMBER I)
HIS WORSHIP ----------S.T. BELLO (MRS.) (MEMBER II)

PETITION NO: EPT/SKT/HA/27/19

BETWEEN:

1. BALA ALH. AMINU A.
2. PEOPLES DEMOCRATIC PARTY } **PETITIONERS**

AND

1. TUKUR BALA
2. ALL PROGRESSIVES CONGRESS
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION RESPS

JUDGEMENT
DELIVERED BY HIS WORSHIP S.T. BELLO (MRS)

The Petitioners vide a Petition dated the 29th day of March 2019 and filed on 30th day of March 2019 are challenging the election of the 1st Respondent on the platform of the 2nd Respondent to the office of member, House of Assembly for Bodinga South Constituency of Sokoto State held on the 9th day of March 2019.
The grounds for presenting the Petition are as follows:

(i) The 1st Respondent was not duly elected by majority of lawful votes cast at the election. Rather, your 1st Petitioner was the candidate who scored the highest number of lawful votes cast at the election and ought to have been declared winner and returned as duly elected as member representing Bodinga South Constituency of Sokoto State at the Sokoto State House of Assembly

(ii) The election of the 1st Respondent is invalid by reason of corrupt practices or noncompliance with the provisions of the Electoral Act, as amended and Regulations and Guidelines for the conduct of elections January 2019, etc.

(iii) The 1st Respondent was at all material times to the said election not qualified to contest and be elected to the office of member House of Assembly representing Bodinga South Constituency of Sokoto State at the Sokoto State House of Assembly having not attained the requisite age of 30 years.

While the reliefs sought are as follows;

1. The 1st Respondent was at the time of the election held between 23rd February, 2019 and 9th march, 2019 not qualified to contest and be returned as elected to the office of member of House of Assembly representing Bodinga South Constituency of Sokoto State having not attained the compulsory age of 30 years.
2. The 1st Respondent did not obtain majority of lawful votes cast at the said election hence was not duly returned as elected to the office of member House of Assembly representing Bodinga South Constituency of Sokoto State.
3. Your 1st Petitioner is the person with majority of lawful votes cast at the said election held on 9th March, 2019 and ought to have been declared/returned as the person duly elected to the office of Member House Assembly representing Bodinga South Constituency of Sokoto State.
4. AN ORDER setting aside the return of the 1st Respondent for being invalid and contrary to the provisions of the Electoral Act, 2010 (as amended) and the 3rd Respondent's Regulations and Guidelines for Election 2019.
5. AN ORDER setting aside the certificate of return (if any) issued by the 3rd Respondent to the 1st Respondent and in its stead, direct the 3rd Respondent to issue a certificate of return to the 1st Petitioner being the person duly elected as member of House of Assembly representing Bodinga South Constituency of Sokoto State.
6. In the alternative, An Order directing the 3rd Respondent to conduct supplementary elections in all the polling units/voting points within the constituency affected by over voting to determine the person with the majority of lawful votes.
7. AND such further orders that the Honorable Tribunal may deem fit to make in the circumstances.

Upon service of the Petition on the Respondents, the 1st and 2nd Respondents filed their Reply to the Petition on the 16th day of April 2019 while the 3rd Respondent filed hers on the 23rd of April 2019. It is noteworthy that the 3rd Respondent incorporated a preliminary objection into her reply which the Tribunal urged should be argued along with the substantive petition in line with extant laws. The Petitioners did not file any reply to the 1st and 2nd Reply. The learned counsel to the petitioner later withdrew the Reply to the 3rd Respondents preliminary objection same having been filed out of the time.

At the close of the pre-hearing session, the Tribunal formulated three (3) issues which were distilled from the issues formulated by the parties themselves with a slight adjustment as follows;

i. Whether the Petitioners have led sufficient and credible evidence to prove that the 1st Respondent was not duly elected and returned by majority of lawful votes cast at the election for the office of Member House of Assembly representing Bodinga South constituency of Sokoto State held on the 9th day of March, 2019.

ii. Whether the Petitioner have led sufficient and credible evidence to prove that the election of the 1st Respondent was invalid by reason of corrupt practice or noncompliance with the provisions of the Electoral Act (as amended) and other Regulations and Guidelines for the conduct of the said elections; and

iii. Whether the Petitioners have led sufficient and credible evidence to prove that the 1st Petitioner was duly elected and returned by majority of lawful votes cast at the election into the office of Member of House of Assembly representing Bodinga south constituency of Sokoto State held on the 9th day of March, 2019.

Trial began in this case on the 10th day of June 2019. The Petitioners eventually called three (3) witnesses in proof of their case despite listing four (4) witnesses. A summary of the case presented by the Petitioner at the hearing is as follows:

PW1, Buhari Umar adopted his written deposition. The content of the said written deposition is to the effect that he was a polling agent for the Petitioners at Kwalfa Runtuwo 011 polling unit under Tulluwa Kulafas Ward/Registration Area (RA), Bodinga Local Government Area of Sokoto State during the Governorship and House of Assembly elections which was conducted by the 3rd Respondent on Saturday the 9th day of March, 2019.

According to him, election commenced and voting came to a conclusion peacefully but when the presiding officers attempted to open the box for the votes of all

candidates to be counted in the view of all present, agents and members of the 2nd Respondent present at the said polling unit disrupted the process and insisted that the votes must not be counted there. A struggle ensued between those who wanted the votes counted there and those who preferred that it be counted somewhere else. Eventually the police man posted on election to that polling unit seized the box in conjunction with Babuga Dikko and Alhaji Labbo (agents of the 1st and 2nd Respondents) and Babuga Horo and Manuga Ruwa (leaders of the 2nd Respondent) forced it into a car and went away unaccompanied by other party agents to an unknown destination. That for this reason those of them who acted as agents at the polling unit and or voted there did not know the scores or votes credited by candidates at the said polling unit to date and no fresh election has been conducted by the 3rd Respondent in place of that of 9th day of March, 2019 unlawfully disrupted.

Under Cross-examination, he informed the Tribunal that he cannot read and write in Arabic though he studied in an Islamic School. He also cannot read and write in English Language. He confirmed thumb printing his deposition. His complaint about the election is basically that they did not allow them to count the votes. He has no idea of the Party who won in his polling unit because the votes were not counted. There were three PDP agents in that polling unit, the others are Aminu Abubakar and Shehu Aliyu. He insisted that the result from his unit was not signed by any PDP agent. He voted at this polling unit and is an indigene of that polling unit. He was also insistent that the counting process was disrupted by Babuga Dikko and Alhaji Labbo who are both from his village. He maintained that both names mentioned are parties to this petition.

P.W.2, Babagida Sani, also adopted his written deposition. A summary of the said written deposition is to the effect that he was an accredited polling agent for the Petitioners at Kwalfa Kaurare 010 polling unit under Tulluwa/Kulafasa Ward/Registration Area (RA), Bodinga Local Government Area of Sokoto State during the Governorship and State House of Assembly elections. According to him, on the 9th day of March 2019, he was at Kwalfa/Kaurari 010 to vote and discharge his duties as agent to keep watch for the Petitioners at said polling unit. Other agents on duty with him at said polling unit are Junaidu Abubakar and Mallami Abdullahi.

Also according to him, save for mere occasional disagreement and argument between agents of all political parties which sponsored candidates at the polling unit, election commenced peacefully and was going on without any serious problems before one Alh. Muhammadu Maigari Dingyadi, the Sokoto State

campaign Coordinator for 2nd Respondent arrived at the polling unit in a convoy/company of a team of Police Mobile men to disrupt the election process.
That upon their arrival, they inquired about the problem and were informed about the ensuing argument. They later drove off as if satisfied. A few minutes later however, one of the vehicles in the convoy carrying Mobile policemen returned and identified all the agents of the Petitioners (i.e. himself, Junaidu Abubakar and Mallami Abdullahi) out of the lot present. He was thoroughly beaten up and injured, while the remaining two agents were arrested, handcuffed and taken away by the team of mobile policemen. That following his injuries he was taken to the nearest Patent medicine Shop at Dingyadi town for treatment and never returned to the polling unit for the remaining duration of the election thus no other person was left at the polling unit to keep watch for the Petitioners to ensure that voting continued properly at the unit and up till date no fresh election has been conducted by the 3rd Respondent in place of that of 9th March which was unlawfully disrupted.
Under cross-examination, he confirmed not having any evidence to show that he was a PDP agent at this polling unit. He confirmed that he can read and write and signed his deposition. He insisted that he wrote Bab Sani as his signature on the deposition and admitted not knowing the names of those who beat him up. He also confirmed being treated at Dingyadi Clinic which is a Private Clinic. He however does not have the prescription given to him at the said Clinic. According to him, the vehicle that was used to cart his colleagues at the polling unit away had mobile Police number but he cannot remember it. The mobile policemen who took them away took them to Garba polling unit after that TudunBuba Polling unit and Dingyadi polling unit. He confirmed not following them to all these places. He also confirmed that the two agents taken away are still alive.

P.W.3, Mallam Abdullahi also adopted his deposition the content of which is to the effect that he was a polling agent for the Petitioners at Kwalfa Kaurare 010 polling unit under Tulluwa/Kulafasa Ward/Registration Area (RA), Bodinga Local Government Area of Sokoto State during the Governorship and State House of Assembly elections which was conducted by the 3rd Respondent on Saturday the 9th day of March, 2019. He was at Kwalfa Kaurari 010 on the day of the election to vote and discharge his duties as agent to keep watch for the Petitioners at said polling unit. Other agents on duty with him at said polling unit are Babangida Sani and Mallami Abdullahi.
According to him save for mere occasional disagreement and argument between agents of all political parties which sponsored candidates at the polling unit,

election commenced peacefully and was going on without any serious problems before one Alh. Muhammadu Maigari Dingyadi, the Sokoto State campaign Coordinator for the 2nd Respondent arrived at the polling unit in a convoy/company of a team of Police Mobile men to disrupt the election process.

That upon their arrival they inquired to know what the problem was and they were informed about the ensuing argument and they drove off as if satisfied but a few minutes later one of the vehicles in the convoy carrying Mobile policemen returned and identified all the agents of the Petitioners (i.e. myself, Babangida Sani and Junaidu Abubakar). Out of the lot present, himself and Junaidu Abubakar were arrested, handcuffed and taken away by the team of mobile policemen, while Babangida Sani was thoroughly beaten up and injured.

He stated further that they were taken on a wild excursion to about 12 polling units in the neighborhood by the said mobile police men and Alh. Muhammadu Maigari Dingyadi until about 6.00pm before they were dropped in the bush to find their way home by which time everything about election at the polling unit was over. After Babangida Sani was injured and taken for treatment and himself and agent Junaidu Abubakar arrested were taken away, there was no other person left at the polling unit to keep watch for the Petitioners to ensure that voting continued properly at the unit and up till date no fresh election has been conducted by the 3rd Respondent in place of that of 9th March unlawfully disrupted.

Under cross –examination, he confirmed knowing Alhaji Muhammadu Maigari Dingyadi and insisted that the said Alhaji Dingyadi was the one who disrupted the election in that polling unit on that day. According to him, Alhaji Dingyadi is a Respondent in this petition. He also confirmed not voting at that polling unit on that day. Though he is a registered voter, he did not bring his PDP identity card as an agent to court. He denied being a thug. He maintained that he was arrested by the Police at the polling unit. He also confirmed that there were other Political party agents at that polling unit but the Police did not arrest all the other agents. He had his PDP agent identity card with him on that day. Also according to him, Alhaji Maigari Dingyadi came with the Police. It was the said Maigari who gave signal and identified them to the Police. The other PDP agent was also beaten on the instruction of Maigari.

That was the case for the Petitioners.

It is noteworthy that the 1st Petitioner was listed as a witness in the Petition but was not called as a witness in this suit thus his deposition is deemed abandoned and hereby struck out.

Upon the close of the Petitioners' case, the learned counsels to all the Respondents informed the Tribunal that they do not intend to call any witness in rebuttal thus the Petition was adjourned for adoption of final address.

The Petitioners adopted their final written address filed on the 18th day of July 2019 while

the 1st and 2nd Respondents adopted their own written address filed on the 24th day of July 2019. The 3rd Respondent adopted their final address filed on the 4th day of August 2019.

J.C. Shaka Esq, learned counsel to the Petitioners prayed the Tribunal for permission to argue issues 1 and 3 together and thereafter submitted that it is the position of the law that he who assert must prove affirmatively and the standard required of him is balance of probability. He referred the Tribunal to S. 131(1), 132 and 136 of the Evidence Act 2011(as amended) and the case of *Chinekwe v. Chinekwe (2010) 12 NWLR (Pt.1208) 226@ 231.*

According to the learned counsel, the Petitioner clearly stated in his petition that the 1st Respondent was not duly elected and returned by majority of lawful votes cast at the election of the office of member House of Assembly representing Bodinga South Constituency of Sokoto state held on the 9th day of March, 2019. He referred to paragraphs 4, 5 and 6 of PW1's statement on oath and noted that the ballot box at the Petitioner's polling unit (Kwalfa Runtun 011 Polling Unit under Tulluwa Kulafas Ward) was seized by agents of 1st and 2nd Respondents therefore the representatives of the petitioners were not there at the counting of votes. Learned counsel thereafter quoted vermatim the said paragraphs.

According to the learned counsel, this piece of evidence was unchallenged and uncontroverted even during cross examination. He referred to the case of *Okoro v.Okoro (2011) All FWLR (PT.572)pg. 1749 @ 1787, paras D-F where* the court held thus:

> *"The law is that evidence not successfully challenged or discredited and which is relevant to the facts in controversy is entitled to be relied on"*

He therefore prayed the Tribunal to hold that the Petitioners have led sufficient and credible evidence to prove that the 1st Respondent was not duly elected or returned by majority of lawful votes cast at the election but that the 1st Petitioner was duly elected or returned by majority of lawful votes cast at election for the office of Member House of Assembly representing Bodinga South Constituency of Sokoto State held on 9th day of March, 2019.

With respect to the 2nd issue, learned counsel submitted that it is crystal clear that the election of the 1st Respondent was marred by substantial irregularities and non-compliance with the provisions of the Electoral Act (as amended) and other

Regulations and Guidelines for the conduct of the said elections. The PW3 deposed in paragraphs 5, 7, 8 and 9 of his statement on oath that at Kwalfa Kaurari 010 polling unit of Tulluwa/Kulfasa ward, thugs and miscreants sympathetic to the 1st and 2nd respondent came and took away the agents of the petitioner from polling unit on wild excursion to about 12 polling units before they were dropped in the bush later in the day after voting exercise (paragraph 8 of PW3's statement on oath). He stated further that PW2 was seriously beaten and injured supporting the PW2's statement on oath in paragraphs 7, 8 and 9.

Once again, the Respondents' counsels did not challenge these in their pleadings nor under cross examination and the law is settled that where the evidence given by a party to any proceeding was not challenged by adverse party who had the opportunity to do so, it is always open to the court seized of the case to act on such unchallenged evidence before it. See *Atiku Aderonnpe vs. Alh. Sobalaje Eleran & 2 Ors (2019) 25 WRN 58 SC*. He urged the Tribunal to so hold.

In conclusion, learned counsel submitted that with all the credible evidence led before this Hon. Tribunal, the Tribunal can authoritatively believe that the Petitioners have successfully prove their case. He thus prayed the Tribunal to grant all the reliefs of the petitioners.

A Zubairu Esq, learned counsel to the 1st and 2nd Respondents submitted that before dwelling into the1st issue to find out whether there was substantial non-compliance with the Electoral Act, 2010 (as amended) and INEC Election Guidelines, 2019 in the conduct of election to the office of Member of Sokoto State House of Assembly representing Bodinga South State Constituency conducted on the 9th day of March 2019, it is pertinent to define and construe the operative word *"substantial compliance"* with a view to finding out whether the said election was indeed conducted in substantial non-compliance with the Electoral Act, 2010 (as amended) and INEC Election Guidelines, 2019 or not.

Learned counsel referred to the provisions of section 138(1) (b) of the Electoral Act, 2010 (as amended) which stipulates that an election may be questioned on ground of non-compliance with the provision of the Electoral Act. However, section 139(1) of the Electoral Act, provide 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.*

According to the learned counsel, it is against this background that he submits that the Apex Court in construing the provisions of Sections 138(1)(b), and 139(1) of the Electoral Act, 2010 (as amended) have remained constant as stated in the case of AWOLOWO V. SHAGARI NSCC (VOL.12) 87 AT 123 on the question of non-compliance in circumstances as here as follows:

"If this proposition is closely examined it will be found to be equivalent to this that the non-observation of these rules or forms which is to render the election invalid must be so great as to amount to a concluding of the election in a manner contrary to the principle of an election by ballot and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the votes, in other words the result of the election". See the case of OKE & ANOR V MIMIKO & ORS (2013) LPELR 21368 (SC); (2014) 1 NWLR PT 1388 P.332.

Learned counsel posed the question whether from the evidence before this Honourable Tribunal it can be said that there was substantial non-compliance with the Electoral Act 2010 (as amended) and INEC Guidelines for 2019 General Election, as the Petitioners want this Honourable Tribunal to believe?. Learned counsel thereafter appraised the evidence presented by the Petitioner at the trial and submitted that the Petitioners did not plead the content of the PW1's statement on oath to this effect that "the police man posted on election to that polling unit seized the box and together with Babuga Dikko and Alhaji Labbo, Babuga Horo and Manuga Ruwa forced it into a car and went away unaccompanied by other parties' agents to an unknown destination"

For the avoidance of doubt, paragraph 17 of the petition read as follows:

> *"Your Petitioners state that there was over voting at Shiyar Hakimi Kwalfa 011 polling unit. Also midway in the course of voting the ballot box containing votes already cast was snatched by one Manuga Ruwa, a known member and stalwart of the 2nd Respondent who was making rounds on polling unit during the election. The said ballot box eventually surfaced at*

the collation center at Tulluwa after it had been stuffed full with pre-thumb printing ballots in favor of the respondents and votes were purportedly counted and the form EC8A1 for the unit was completed. In the form EC8A1 AND EC8B issued by the 3rd respondent your petitioners were credited with 89 votes, while the 1st and 2nd respondents were credited with 267 votes. Your petitioners object to the 267 votes credited in favor of the 1st and 2nd respondents same having been procured unlawfully."

In paragraph 17 of the Petition which the evidence of PW I ought to have been tied with, the Petitioners made frivolous allegation against one Manuga Ruwa who was not made a party in the Petition.

It is a trite law that no court of justice can proceed against a party or person in a matter which may damnify his action, without making him a party thereto. Thus, where there are criminal allegations made by the Petitioner against persons whom they did not join as parties in the Petition, failure to join them in the Petition render the said allegations otiose and speculative. The Tribunal cannot make pronouncement against the conduct of such persons, this is because the fundamental right of fair hearing of such person will be breached, should the Tribunal proceed against them, in their absence, as parties to the petition.

He referred to the cases of KALU V. CHUKWUMERIJE (2012) 12 NWLR (PRT.1315) 425 AT 459, PARA C-F,ACN V ADELOWO & ORS (2012) LPELR-19718 AT 47-48 AND NWANKWO V. YAR'ADUA (2010) 12 NWLR (PT. 1209) 518 AT 583-584 and submitted further that in the instant Petition, the Petitioners made certain allegation against one Manuga Ruwa who was not joined as a party in the Petition. Thus, since the said Manuga Ruwa is not an Agent of the 3rd Respondent, the said paragraph is liable to be struck out. He therefore urged the Tribunal to strike out Paragraph 17 of the petition for being incompetent.

Furthermore, PWI made certain allegation against the Police man posted on election day to that Polling unit and went ahead to cast aspersions on one Babuga Dikko, Alhaji Labbo, Babuga Horo and Manuga Ruwa and submitted that these people mentioned by PWI in his statement were not pleaded in the Petition.

For avoidance of doubt, the relevant portion of PW I's statement is reproduced hereunder:

"5. That a struggle ensued between those who wanted the votes counted there and then and those who preferred that it be counted somewhere else.

Eventually the police man posted on election to that polling unit seized the box and together with Babuga Dikko and Alhaji Labbo (agents of the 1st and 2ndRespondents) and Babuga Horo and Manuga Ruwa (leader of the 1st and 2nd Respondents) forced it into a car and went away unaccompanied by other parties agents to an unknown destination."

He also submitted that these facts were not pleaded in the Petition. The law is trite that evidence that was not pleaded go to no issue and that where the unpleaded facts have been received in evidence in a proceeding, they are bound to be discountenanced and indeed expunged from the record. See KUBOR & ANOR V DICKSON & ORS (2013) 4 NWLR (PRT 1345) P 534. See also the case of IPINLAIYE II V. OLUKOTUN (1996) 6 NWLR PT 453 P. 148; (1996) LPELP-1532 (S.C).

Of more worry is the fact that PW I stated that he was the Agent of the Petitioners at "Kwalfa Runtuwa 011 polling unit" under Tulluwa Kulafas ward/Registration Area (R.A), Bodinga Local Government Area of Sokoto state, whereas, the pleaded facts were in relation to "Shiyar Hakimi Kwalfa 011 polling unit". And there was no evidence before the Honourable Tribunal to show that "Shiyar Hakimi Kwalfa 011 polling unit" was in "Tulluwa Kulafas ward/Registration Area (R.A)"; or that "Shiyar Hakimi Kwalfa 011 polling unit" and "Kwalfa Runtuwa 011 polling unit" are one and the same. He therefore submitted that to conclude that "Shiyar Hakimi Kwalfa 011 polling unit" is in "Tulluwa Kulafas ward/Registration Area (R.A)" or that "Kwalfa Runtuwa 011 polling unit" and "Shiyar Hakimi Kwalfa 011 polling unit" are one and the same is speculative which this Honourable Tribunal is enjoined not to accede to. See the case of IKENTA BEST (NIG) LTD V A.G RIVERS STATE (2008) LPELR-1476 (SC), where the Apex court made the following remarks:

"…..Speculation has no place in our Courts. Neither the parties nor the Court is permitted or entitled to speculate anything."

Assuming but not conceding, that the written statement on oath of PW I which he adopted before this Honourable Tribunal and the facts therein are pleaded in the Petition, can the statement be ascribed to PWI who adopted it before this Honourable Tribunal under any guise? He submitted that PW I was not the maker of the statement he adopted before the Honourable Tribunal and the statement he adopted cannot be ascribed to him in any way, because PWI stated under cross

Examination that: *"……Yes I thumb printed on my witness deposition because I don't know how to read and write".* Alas! A glance at the Witness Statement of Buhari Umar which PW I adopted shows that it was signed and not thumb printed. Thus, by any stretch of imagination, the said Witness Statement of Buhari Umar cannot be the statement of PWI which he adopted before this Honourable Tribunal. He urged this Honourable Tribunal to so hold.

Learned counsel submitted further that PW II and PW III, BABANGIDA SANI and MALLAMI ABDULLAHI, were the Petitioners' Agents at "Kwalfa Kaurare 010 polling unit" under Tulluwa/Kulafasa Ward, Bodinga Local Government Area of Sokoto state during the Governorship and state House of Assembly elections which was conducted by the 3rd Respondent on Saturday the 9th day of March, 2019. Learned counsel submitted that the Polling unit where both PW II and PW III claimed to be the Agents of the Petitioners was not pleaded in the Petition. Thus in as much as the PW II and PW III were not the Petitioners' Agents at Nizamiwa Dangaladima 001, Primary School Garba Garba 011 and Danfili Andu 015 polling units Dingyadi/Badawa Ward, they cannot, therefore, authoritatively give accounts of the happenings at these Polling Units. Thus, whatever they said in respect of these Polling Units amount to hearsay which is inadmissible in law. See Section 38 of the Evidence Act, 2011 (as amended).

According to the learned counsel, one funny thing and act that made the Petition to crumble is the failure of the Petitioners to construe, contrast and connect the evidence of either PW II or PW III with any paragraph of the petition. Perhaps, the most likely and closely related paragraph of the petition that seems to depict what PW II or PW III said is paragraph 19 of the Petition. This paragraph, with all sense of responsibility, is at variance with the evidence of PW II and PW III, vague and even parallel with their deposition which they adopted before this Honourable Tribunal. He urged this Honourable Tribunal to so hold. For clarity and ease of reference, Paragraph 19 of the Petition is reproduced hereunder:

> *"Your Petitioners state that there was multiple voting and unlawful thumb printing of ballot papers in favor of the 1st and 2nd respondent in Nizamiwa Dangaladima 001, primary school Garba Garba 011 and Danfili Runji Audu 015 polling unit in Digyadi/Badawa ward. Midway into the election process in the said units voting was disturbed by the police mobile escort team in the entourage of one Alhaji Muhammad Maigari Dingyadi, the Sokoto state campaign coordinator for the 2nd Respondent who for no apparent reason*

or cause falsely arrested and took away the agent of your petitioners at the polling units to enable pre-thumb printed ballot papers to be stuffed into the ballot boxes in favor of the 1st and 2nd respondents. After achieving their purpose, the agents were discharged without charges and dropped off far away from their duty points".

Whereas, PW II stated in the witness statement he adopted before the Honourable Tribunal, that –

*"That on 9/3/2019 I was at Kwalfa/Kaurari 010 to vote and discharge my duties as agent to keep watch for the Petitioners at the said Polling unit. Others on duty with me at said polling unit are Junaidu Abubakar and Mallami Abdullahi".*Similarly, PW III also stated thus: *"That on 9/3/2019 I was at Kwalfa Kaurari 010 to vote and discharge my duties as agent to keep watch for the Petitioners at the said Polling unit. Other agents on duty with me at said polling unit are Babangida Sani and Mallami Abdullahi".*

He submitted further that the above depositions of PW II and PW III confirmed and reinforced their submission that neither PWII nor PWIII was close to Nizamiwa Dangaladima 001, primary school Garba Garba 011 and Danfili Runji Audu 015 polling units in Digyadi/Badawa ward. And as at 9th day of March 2019, PW II and PW III were at Kwalfa/Kaurari 010 polling unit. In view of the above, he urged the Tribunal to discountenance with the evidence of PW II and PW III and expunge them accordingly.

By and large, whether there was a substantial compliance with the Electoral Act, 2010 (as amended) and INEC Election guidelines for 2019 Election or not is a matter of fact to be proved by direct and unshaken evidence, a burden that lies squarely on the Petitioners. In ABUBAKAR AUDU V INEC (2011) 9 EPR PG 414 AT 430 RATIO 16, the Court of Appeal per J.O Bada JCA held at page 51 that *"In an election Petition, a Petitioner who alleges non-compliance with the Electoral Rules or Electoral Act has two-fold burden on him to prove and satisfy the Tribunal namely: -That the alleged non-compliance occurred or took place, and that the non-compliance affected the result of the election. The burden of proving the invalidity of an election by reason of non-compliance with the provision of the Electoral Act is on the Petitioner."*

This position was given approval by the Supreme Court in the case of SENATOR IYIOLA OMISORE V OGBENI RAUF ADESOLA (2015) AELR 6716 (SC) PP 103-104.

According to the learned counsel, a careful examination of the evidence of PW I, PW II and PW III, if at all this Honourable Tribunal will attach any probative value to them, reveal the fact that there were no trace, link or connotation whatsoever between those evidences and these two-fold burden that lies on the Petitioners to prove. In other words, the Petitioners failed to discharge this two-fold burden lying on them. From the evidence of PW I, PW II and PW III, it was not shown that the Election that ushered in the 1st Respondent into the corridors of Law Making as a member Sokoto State House of Assembly, was marred with substantial non-compliance with the Electoral Act, 2010 (as amended) or INEC Guidelines for 2019 Election; and where this is the situation, the Tribunal will not nullify the election on ground of non-compliance with the Electoral Act, 2010 (as amended).

The sacred principles consecrated in Section 139 (1) of the Electoral Act, 2010 (as amended), that is, the doctrine of substantial compliance is that its consideration will only arise where the petitioners have succeeded in establishing substantial non-compliance with the principles of the Electoral Act or, in the alternative, substantial defect on the election result or any infraction of the said Act no matter how minuscule the transgression may be. See BUHARI V. OBASANJO (2005) 50 WRN 1, 177; SWEN V. DZUNGWE (1966) NMLR 297; AGAGU V. MIMIKO (2010) 32 WRN 16, 80; YUSUF AND ANOR V. OBASANJO AND ORS (2005) 18 NWLR (PT. 956) 96, 222.

Having said that, the law is settled that in the absence of credible evidence in proof of the allegation of non-compliance with the principles of the Electoral Act, 2010 (as amended) or INEC Election Guidelines 2019, all the pleadings of the Petitioners are merely speculative or, at best, hypothetical. See SENATOR IYIOLA OMISORE V OGBENI RAUF ADESOLA (SUPRA)

With regards to the 1st and 2nd Respondents' refusal to call evidence in rebuttal to the allegation of the Petitioners, learned counsel submitted that the Respondents are not bound to call evidence in rebuttal if the Petitioners failed to establish their claim by credible evidence as in this case. The law is settled that where a petitioner complains of non-compliance with the provisions of the Electoral Act 2010 (as amended), he has a duty to prove it polling unit by polling unit, ward by ward. He

must establish that the non-compliance was substantial, that it affected the result of the election. It is only then that the Respondents are to lead evidence in rebuttal. See UCHA V ELECHI (2012) 3 SC (PT I) 26 AT 59; PEOPLES DEMOCRATIC PARTY (PDP) V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (2014) AELR 5002 (SC).

With respect to the 2nd issue, learned counsel submitted that from the analysis rendered, it is glaringly clear that the evidence before this Honourable Tribunal did not establish that the 1st Respondent was not duly elected or returned by majority of lawful votes cast at the election for the office of Member House of Assembly for Bodinga South Constituency of Sokoto State held on the 9th day of March, 2019.

The Petitioners in various paragraphs of the Petition pleaded that the 1st Respondent was not duly elected or returned as a member Sokoto State House of Assembly for Bodinga South State constituency, Sokoto state, see paragraphs 28, 29 and 30 of the Petition but ironically, no evidence to prove the allegation contained in those paragraphs. To make it worse, the Petitioners failed to tender any result of the alleged polling units where the alleged infraction complained about occurred.

It is a trite law that a petitioner who contests the legality or lawfulness of votes cast in an election and the subsequent result must tender in evidence all the necessary documents by way of forms and other documents used at the election. He should not stop there. He must call witnesses to testify to the illegality or unlawfulness of the votes cast and prove that the illegality or unlawfulness substantially affected the result of the election. The documents are amongst those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of the election; not those who picked the evidence from an eye witness. No. They must be eye witnesses too. Both forms and witnesses are vital for contesting the legality or lawfulness of the votes cast and the subsequent result of the election. One cannot be a substitute for the other. It is not enough for the petitioners to tender only the documents. It is incumbent on him to lead evidence in respect of the wrong doings or irregularities both in the conduct of the election and the recording of the votes; wrong doings and irregularities which affected substantially the result of the election. See BUHARI V. INEC & ORS (2008) LPELR-814 (SC) PER TOBI J.S.C. (PP. 172-173, PARAS. E-D).

He submitted further that the Petitioners failed to prove that the result declared by 3rd Respondent is not the actual result; and that the 1st Respondent did not score the

majority of lawful votes in the election. Thus, the presumption of law is that the result declared by the 3rd Respondent is the correct and authentic result, he referred to the case of OMOBORIOWO ORS V AJASIN (1983) 10 SC P.178.

Having said that, Paragraphs 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 were not tied to any evidence and no document was tendered in respect of the polling units and the facts stated therein. According to the learned counsel, these paragraphs relate to allegations of non-voting in several polling units, disruption of election, non-conclusion of the election, thumb-printing of ballot papers, falsification of election results, wide spread disruption, irregularities and malpractice without providing particulars or evidence from the polling units where the alleged malpractices took place.

It was also his submission that these paragraphs are too generic, vague and lacking in any particulars as they were not tied specifically to any polling unit, evidence or particular number of people who were alleged to have been disenfranchised. It is settled law that a petitioner's obligation to plead particulars of fraud or falsification is sacrosanct without which the allegation is a non-starter. SEE PDP V. INEC & ORS (2012) LPELR-9724 (SC) PER MUNTAKA-COOMASSIE JSC (PP. 18-19, PARAS C-B).

In conclusion, learned counsel submitted that since the Petitioners have failed woefully to prove any of the allegations contained in the Petition; or rather prove that there was a substantial non-compliance with the Electoral Act, 2010 (as amended) or INEC Election Guidelines for 2019 General election; or that the 1st Respondent did not score the majority of lawful votes cast at the election, this Honourable Tribunal is urged to presume that the result declared by the 3rd Respondent is the correct and authentic result; and that the 1st Respondent was dully declared and returned by the 3rd Respondent. He referred to the case of CPC V. INEC & ORS (2011) 18 NWLR PT. 1279 P. 493; (2011) LPELR-8257 (SC).

He therefore urged the Tribunal to dismiss the Petition with cost.

The learned counsel to the 3rd Respondent raised three issues for determination with respect to the preliminary object incorporated in their reply to petition to wit;

1. *WHETHER THIS PETITION IS COMPETENT FOR NON- JOINDER OF NECESSARY PARTIES.*
2. *WHETHER THIS PETITION IS COMPETENT FOR FAILING TO PROVIDE NECESSARY PARTICULARS / INFORMATION IN SUPPORT OF ITS*

ALLEGATION OF CORRUPT PRACTICES AND NON COMPLIANCE WITH THE PROVISIONS OF THE ELECTORAL ACT.

3. *WHETHER THIS TRIBUNAL HAS THE JURISDCTION TO ENTERTAIN THIS PETITION FOR CONTAINING PRE-ELECTION MATTERS WHICH IS NOW STATUTE BARRED IN PURSUANCE OF THE PROVISIONS OF SECTION 285 (9) AND (14) (B) OF THE FOURTH ALTERATION OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA ACT. NO 21 OF 2018.*

With respect to the 1st issue, learned counsel submitted that this petition is incompetent for non-joinder of necessary parties. According to the learned counsel, the principle of joinder is germane and touches on the issue of fair hearing as guaranteed by Section 36 (6) of the Constitution of Federal Republic of Nigeria, 1999 (as amended). According to the learned counsel, the Petitioner in his petition made bogus allegations against the officials of the 3rd Respondent stating their purported involvements in the alleged mutilation of Form EC 8A at collation centers at the behest of the 1st and 2nd Respondents specifically contained in Paragraphs 15 to 17 of the Petition, made allegations against one Manuga Ruwa in Paragraph 17 and allegations against Members of the Police Force allegedly assigned as escort mobile team in the entourage of Alhaji Muhammed Maigari Dingyadi , the Sokoto State Campaign Coordinator of the 2nd Respondent but however failed to provide particulars and join the said officials of the 3rd Respondent, or the Nigerian Police force to defend themselves.

Learned counsel submitted that for any person to be directly affected by an order of the court he ought to be heard by the court before such orders can be made as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which will afford the person an opportunity to make representations before a decision or order affecting him is made. By making criminal and civil allegations against named and unnamed individuals and institutions, the Petitioners by their claim, desire that the alleged persons be adjudged guilty of or liable to the wrong doing alleged against them. This makes these individuals and institutions necessary, proper or desirable parties who ought to be joined for the court to have jurisdiction over them. These individuals have not been joined as parties in this proceedings. This honorable court is therefore, without jurisdiction to adjudicate

over allegations made against persons not made parties to the proceedings in which the allegations have been raised.

The law is settled that the failure to join proper parties to an action render the action improperly constituted and divests the court of jurisdiction to entertain the matter. **Bambe vs Adetunji(1997) 1 SC at 8**; **Oloriede vs Oyebi(1984) SC 1 at 5**. The Court of Appeal in **Olawuyi vs Adeyemi(1990) 4 NWLR(Pt. 147),746 at 785,** considered extensively the effect of not joining proper parties in an action and after considering the cases of **Bambe vs Adetunji (supra),Oloriede vs Oyebi (Supra), Green vs Green (Supra)** and other cases came to the conclusion that failure to join desirable, proper and necessary parties to an action divests the court of jurisdiction over the matter.

In **TAFIDA V BAFARAWA (1999) 4 NWLR (PT. 597) 70**, **(1999) LPELR-6510 (CA) ,** the court held that where a necessary party is omitted in a petition , the tribunal lacks the jurisdiction to entertain the case as failure to join such a necessary party is fatal to the action and is not curable. **See also MAIKORI V LERE (1992) 3 NWLR (PT. 231) 525**.In Ubom vs Araka (1999) 6 NWLR(Pt.605) 99 at 112, it was held: *"…non joinder of a necessary party in an election petition is fatal to the petition as it rubs the tribunal of jurisdiction."* Learned counsel therefore submitted that this petition is incompetent for non-joinder of necessary parties to this suit.

With respect to the second issue posited, learned counsel submitted that this petition is incompetent for failing to provide detailed specific particulars / information in support of the petitioner's allegation of corrupt practices and non-compliance with the provisions of the Electoral Act. According to the learned counsel, the purpose of pleadings in civil proceedings, including an election petition , is to put the other party clearly and unambiguously on notice of the case he/she is to meet in court so that he/she can also clearly and unambiguously join issue if he so desires. **AG Anambra vs Onuselogu Ent. Ltd (1987) 4 NWLR(Pt.6) 547 at 559 E-F.** The above position is underscored in the provisions of paragraph 4(1)(d) of the first Schedule to the Electoral Act, 2010(as amended) to the effect that:

4(d) State clearly the facts of the election petition and the ground or grounds on which the petition is based on the reliefs sought by the Petitioner.

It flows from the above that paragraph 4(1)(d) prohibits vague, general, imprecise, nebulous and non-particularistic pleading. See Uzodinmma vs Udenwa(2004) NWLR(pt854) 303, Ojukwu vs Yar'adua(2009) 12 NWLR(Pt.1154) 50 at 148-149. He therefore submitted that majority of the Petitioners averments are vague, generic, imprecise, nebulous and fails to provide specific particulars of non – compliance and did not provide details of officers of the 3rd Respondent allegedly involved in aiding / direct involvement in over-voting or mutilation of ballot papers, Form EC 8A or any electoral material or in any form of participation of electoral fraud.

Learned counsel referred to the case of **ATANDA V. B.F L Ltd (2007) VOL. 28 WRN 127 at 144** , the Court of Appeal held as follows ***" It is well settled that a mere and vague general allegation of fraud is useless. Facts and particulars constituting the fraud must be supplied. That is to say one of the fundamental rules about the pleading of fraud is that the pleading must contain full allegation of facts and circumstances with all necessary particulars leading to the reasonable inference that the plaintiff is fraudulent. "*** See Also **OLUFUNMISHE V. FALANA (1990) 3 NWLR (PT. 136) 13 , (1990) LPELR – 2616 (SC).** He once again submitted that the Petition is incompetent for failing to provide the necessary particulars.

With respect to the third issue, learned counsel submitted that this petition is statute barred for containing facts relating to age qualification of the Petitioners contained in Paragraphs 15(iii) and averments contained in 1st and 2nd Respondents affidavit attached to his form CF 001 qualifies as pre-election issues and this tribunal lacks the jurisdiction to entertain same for being a pre-election matter and statue barred. According to the learned counsel, the issue of qualifications to contest the elections or entries made in the 1st Respondents Form CF 001 submitted to the 3rd Respondent is a pre-election cause of action within the contemplation of Section 31(5) and (6) of Electoral Act, 2010 (As amended) becomes statute barred by virtue of Section 285 (9) of the Constitution of the Federal Republic of Nigeria (Fourth Alteration) Act, No. 21 of 2018.For the purpose of clarity, Section 31 (5) of the Electoral Act, 2010 (As amended) provides as follows:

"Any person who has reasonable grounds to believe that information given by a candidate in an affidavit is false may file a suit at the Federal High Court, High Court of a state or FCT against such person seeking a declaration that the information contained in the affidavit is false"

Section 31(6) of the Electoral Act, 2010 (as amended) also provides that "if the court determines that any of the information contained in the affidavit or any document submitted by that candidate is false , the court shall issue an order disqualifying the candidate from contesting the election".

Learned counsel submitted that the right forum for the Petitioners to raise these issues is the Federal High Court, High Court of a state of FCT and not this Honourable Tribunal and failure to have raised these issues in the right tribunal robs this court of jurisdiction to entertain this petition. Section 285 (14) (b) of the Constitution of the Federal Republic of Nigeria (Fourth Alteration) Act. No. 21 of 2018, pre-election matter was described to mean any suit by an aspirant challenging the actions, decision or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the selection or nomination of candidates and participation in an election.

Section 285(9) of the Constitution of the Federal Republic of Nigeria (Fourth Alteration) Act. No. 21 of 2018 also provides that notwithstanding anything to the contrary in this Constitution, every pre-election matter **shall be filed not later than 14 days** from the date of the occurrence of the event, decision or action complained of in the suit. Flowing from the foregoing, the right of the petitioners to challenge the actions of the Respondents on the said pre-elections issues enumerated in Paragraphs 32, 33, 34, and 35 of the petition expired on 27th September, 2018 and 26th October, 2018 respectively being 14 days after the alleged commissioning of the affidavits and not later. He thus urged the Tribunal to strike out this petition for containing grounds that are statute barred or in the alternative, strike out the said paragraphs for being statue barred.

The learned counsel thereafter submitted that the irregularities alleged by the Petitioners were not established before the Tribunal. Further that the Petitioners

chose to leave the allegations to conjecture without the Petitioner himself nor any of his witnesses leading any evidence to prove such irregularities. Of course the law is trite that pleading does not amount to evidence; it merely serves as the foundation upon which a party can build his case. Therefore, where no evidence is led in support of facts pleaded, such pleading is deemed abandoned and the entire case crumbles.

With respect to the substantive petition, learned counsel went on to formulate a lone issue for determination as follows:

> ***Whether the Petitioner has made out a case on the preponderance of evidence to entitle him to judgment***?

In support of this lone issue, learned counsel submitted that a close examination of the Petition vis a vis the pieces of evidence adduced on record will show that the Petitioner has failed to establish cogent, compelling and convincing evidence that will entitle the Tribunal to nullify the results of the contested elections of March 9, 2019 as declared by the 3rd Respondent or grant any of the Petitioners reliefs as contained in this Petition. The law is well settled that an election shall not be invalidated by reasons of non-compliance with the provisions of the Electoral Act (the Act) if it appears to the tribunal that the election was conducted substantially in accordance with the principles of the Electoral Act and that the non-compliance did not substantially affect the result of the election –**Section 139(1)** of the **Electoral Act 2010 (as amended)**.

Learned counsel submitted that for the Petition to succeed on the ground that the election was not conducted in substantial compliance with the Electoral Act, the Petitioners ought to plead and prove the act of noncompliance and must further prove that the said act of noncompliance substantially affected the outcome/result of the election and not just allege same. By the interpretation **of Section 139(1)** of Electoral Act, 2010 (as amended), he submitted that the election under scrutiny was conducted in substantial compliance with the provisions of ***the Act***.

According to the learned counsel, the Petitioners alleged several acts of officers of the 3rd Respondent which said acts are criminal and a violation of the **Electoral Act** yet failed to lead any shred of evidence to establish such criminal allegations and certainly did not prove the allegations beyond reasonable doubt as required by the **Section 135 (1) of the Evidence Act, 2010 (as amended).** Allegations such as snatching and stuffing of ballot boxes with pre-thumb printed ballot papers, multiple voting, and other malpractice alleged to have occurred throughout Bodinga South Constituency are all criminalized by **Section 123** of the **Electoral Act, 2010 (as amended)**, yet no cogent evidence was adduced in proof of these

criminal allegations. Therefore, these allegations ought to be held as not established for the simple reason that paragraphs of pleading not supported by evidence is deemed abandoned. **See Alao v. Kure & Anor (2000) 9 NWLR (Pt. 672) 423; (2002) LPELR -10467 (CA), Pastor I.F Olaniyan &Ors.v. E.O Oyewole&Ors (2010) LPELR-9109 (CA), B.V Magnusson v. Koiki&Ors (1993) LPELR – 1818 (SC); (1993) NWLR (Pt. 317) 287**

The Petitioners also alleged snatching and stuffing of ballot boxes with pre-thumb-printed ballot paper, multiple voting and other malpractices, etc. these allegations are criminal in nature because they are all punishable under the Electoral Act. Therefore the Petitioners are bound to establish same beyond reasonable doubt. However, the Petitioners failed in that regard because no single ballot box was recovered and tendered in evidence in proof of the allegation of rigging and stuffing of ballot boxes and none of his witnesses during hearing led any evidence to demonstrate any of the electoral offences alleged and no single mutilated result sheet was tendered in open court.

The law is settled that in an election petition, where criminal allegations are made, it must be proved beyond reasonable doubt. ***Adun vs Osunde (2013) 16 NWLR (Pt 847) 643 at 672***; ***Nwobodo vs Onoh (1980) 1 ALL NLR 1 at 2*** and **Section 135** of the **Evidence Act 2011**. He referred to paragraphs 20 and 21 of the Petition where the Petitioner averred that the scores credited to the 1st and 2nd Respondent ought to have been cancelled for being unlawfully procured having been proceeds of alteration, cancellation, mutilation and vote suppression in Paragraph 25 of the petition without providing particulars of the people alleged to have committed the alleged offence and submitted that these paragraph in simple terms suggests that the 3rd Respondent altered, suppressed, deducted votes and falsified results contained in forms **EC8B(1)**, **EC8C(1) and EC8D (1)** in favour of the 1st and 2nd Respondents. Learned counsel opined that tampering is a variant of forgery and it is a criminal offense.

With regards to the allegation of falsification of results in an election, the Petitioner must plead two sets of results; one considered genuine or authentic and the other falsified or fake. Facts in support must also be pleaded and established-one in respect of the false result and the other relating to the result the Petitioner considers to be correct or genuine. The Petitioner failed to do that here, all he did was to allege a separate result but he led no evidence in support of same. It is the two sets of results that will be compared to determine the falsity or otherwise. **Ojo vs Esotie (1999) 5 NWLR (Pt 603) 444** and **Bello vs Aruwa (1999) 8 NWLR (Pt 615) 454.**

Learned counsel noted that the only result before this Tribunal is the one declared by the 3rd Respondents which enjoys the presumption of regularity as provided by **Section 68(1)** of the **Electoral Act** and **Section 168** of the **Evidence Act**. He therefore submitted that the Tribunal are bound to act on the result as declared by the 3rd Respondent and pleaded by the Petitioner and 1st and 2nd Respondents. In so far as the petitioner has not established before this court two sets of results which this court can infer falsification of results from, this Petition ought to be dismissed on that score alone.

The Petitioner also alleged that there were cases of over voting or excessive voting in some registration areas and therefore asked for the nullification of the election results on that basis. Unfortunately, these allegations were not established before this Tribunal because the respective Voters Register in the Polling Units where the alleged over voting took place were not tendered before this Court in order to determine whether there were indeed cases of over voting. As a matter of fact, the Petitioners only made general averments without going into specifics. It is trite that the conclusive proof of argument of over voting is the Voters Register, and where it is tendered, the Petitioner must go further by demonstrating in open court the cases of over voting as identified in the Voters Register through a witness.

The second ground of the Petition is that the 1st Respondent was not duly elected by the majority of the lawful votes cast at the elections of March 9, 2019. We submit that this ground has also not been proved before this Honourable Tribunal. This is because a complaint that a candidate did not score the majority of lawful votes cast at an election is an invitation to compare and contrast figures. To establish this complaint, there must be proper tabulation of votes secured by each of the candidates. A party to an election who alleges that he was entitled to more votes at an election than he was credited with or that his opponent scored less votes, must:

a. Obtain leave of court to file the head of votes;

b. file the list of such votes to support his complaint that his votes were short counted or given to his opponent.

c. show that those votes when added to his own would have tilted the election in his favour. See the case of **ChumaAnozie vs Dr. Ken Obichere&Ors (2006) 8 NWLR (Pt 981) 140**

Further and in addition to paragraphs 4.9, from the totality of the evidence adduced, it is clear that the Petitioner did not adduce any shred of evidence as highlighted above. As a matter of fact, the only result before this court is the one

declared by the 3rd Respondent wherein the 1st Respondent scored **14,281votes** and the Petitioner scored **12,823 votes**. This same result is what the Petitioner is relying on in his Petition. Therefore, the Tribunal is bound to rely and act on same, as the only result before this Tribunal. If the Tribunal rely on the same result as being urged by the 3rd Respondent, this Tribunal will come to the inevitable conclusion that the 1st Respondent scored the majority of the lawful votes cast at the election and was rightly returned by the 3rd Respondent, having met the requirement of the 1999 Constitution as Amended.

On the effect of the bundle of exhibits tendered before this Honourable Tribunal without demonstrating them in open court or tying them to specific part of the Petition, learned counsel submitted that the law is settled that a party that tenders in open Court a piece of documentary evidence is bound to demonstrate in open Court how such document supports his case. In addition, such a party is expected to relate the documents to his pleading, otherwise the court is not bound to give effect to the documents because as an impartial arbiter, the Tribunal cannot help the petitioners in demonstrating the effect of the documents tendered before the court when the said documents were not demonstrated in open Court. See the case of **Terab Vs. Lawani (1992) 3 NWLR (Pt. 231)569 at 590**. ***Aikawa JCA*** said:

> ***"…the correct view of the law is that a party relying on documents in proof of his case must specifically relate each document to that part of his case in respect of which the document is being tendered. The court cannot assume the duty of tying each bundle of documentary exhibits to the specific aspect of the case for a party when that party has not himself done so. The foundation of the principle is that it is an infraction of fair hearing for the court to do so in the recess of its chambers what a party himself has not done in the advancement of his case in open court***."

In the instant Petition, the Petitioners tendered a plethora of documents without relating them to any part of their case. Therefore, dumping those said documents on the Tribunal. By that token, he submitted that the Tribunal is not bound to give effect to those exhibits. Investigation is not the work of the Tribunal.

On the presumption of correctness and regularity of the election, learned counsel submitted that the burden of proving the Petition rests squarely on the Petitioner and this burden, which is an onerous one, does not shift until the Petitioner has adduced credible, compelling and cogent evidence in support of the ground(s) and facts in support of its Petition. It is only when sufficient evidence is adduced that the burden then shifts to the Respondent(s). The reasons for this are two folds, The

combined effect of **Section 68(1)** of the **Electoral Act 2010 as amended** and **Section 168(1)** of the **Evidence Act** which provides as follows –

> **Section 68(1)Electoral Act**: "***the decision of the Returning Officer on the declaration of scores of candidates and the return of a candidate, shall be final...":***
>
> ***Section 168(1) Evidence Act: "When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with"***.

Is to the effect that there is presumption of regularity, correctness and validity of every election until the contrary is proved. He therefore submitted that this Honourable Tribunal is bound to presume the validity and regularity of all the processes leading to the election of 09/03/2019 and the return made thereof in favour of the 1st Respondent as provided by the sections quoted above. **Buhari vs INEC 19 NWLR (Pt 1120) 246 at 320**; **Awuse vs Odili (2004) 8 NWLR (Pt 876) 641** and **Chime vs Onyia (2009) 2 NWLR (Pt 1124) 1**.

Learned counsel noted that the reliefs sought by the 1st and 2nd Petitioners herein are all declaratory in nature and the law is settled that in an election petition (as well as in ordinary civil procedure) where the reliefs urged upon the Court are declaratory, the onus is on the Petitioner to prove its Petition taking into consideration that his case succeeds on its strength and not the weakness of the case of the defence. **Iyaji vs. Eyigebe (1987) 3 NWLR (Pt 61) 523**; **Obioso vs Okoye (1989) 2 NWLR (Pt 118) 80** and **Atunanya vs. Onyejekwe (1975) 9 NSCC 899 at 93**.

A petition is bound to fail or succeed exclusively on the strength of the evidence called by the Petitioner. Therefore, the Respondents are not bound to call any evidence at all. Put differently, the Petitioner can only rely on the strength of his own case and not the weakness of the defence. This is because the weakness or absence of a defence cannot as a matter of principle add strength or credibility to the case of the Petitioner. **PDP vs INEC (2012) 1 ILR P 381**. This onus never shifts and where the Petitioner fails to discharge this burden, the proper order to make is that of dismissal of the Petition.

With regards to the issue of substantial compliance with the Electoral Act, learned counsel submitted that it is trite that by provision of the **Section 139(1)** of the **Electoral Act 2010**, substantial compliance with the provision of the Electoral Act is the standard that is expected from the 3rd Respondent while conducting an election. Now in interpreting **Section 135(1)** of the ***Electoral Act, (2002)*** which is

in pari material with **Section 139(1) of the Electoral Act, 2010 (as amended)**, **Belgore JSC (as he then was) in *Buhari vs Obasanjo (2005) ALL FWLR (Pt 273) 1* said-**

"It is manifest that an election by virtue of section 135(1) of the Act shall not be invalidated by mere reason that it was not conducted substantially in accordance with the provisions of the Act, it must be shown clearly by evidence that the non-substantiality has affected the result of the election.Election and its victory is like soccer and goals scored. The Petitioner must not only show substantial non compliance, but also figures i.e. votes that the compliances attracted or omitted. The elementary evidential burden of "the person asserting must prove" has not been derogated from by Section 135(1). The Petitioners must not only assert but must satisfy the court that the non compliance has so affected the election result to justify nullification."

Learned counsel commended this reasoning to the Tribunal and submitted that the expectant interpretation of the electoral provision [**Section 139(1)**] is that the petitioner to succeed must not only prove non-compliance, but in addition must also establish that the non-compliance has affected the result of the election. He thus submitted that having regards to the pieces of evidence before the Tribunal with respect to the Election, the Petitioner has failed to establish that the election was not held in compliance with the Act and that the non-compliance affected the outcome of the election. He therefore urged the Tribunal to dismiss the petition.

It was also his submission that the Petitioner has failed to establish that the election conducted by the 3rd Respondent on the 9th day of March, 2019 was marred by corrupt practices because the law is settled that for a petitioner to succeed in a petition founded on corrupt practices, he has to prove beyond reasonable doubt that:

a) The Respondent(s) personally committed the corrupt act or aided, abetted, counseled or procured the commission of the alleged act of corrupt practice;

b) Where the alleged act was committed through an agent, that the agent was authorized to act in that capacity or granted general authority; and

c) The corrupt practice or undue influence affected the outcome of the election and how it affected it. See **Adeola vs Owoade (1999) 9 NWLR (Pt 617) at 30**

In this instant Petition, there is nowhere the alleged malpractices have been proved against the **3rd Respondent** or any of its officers beyond reasonable doubt as required by **Section 135(1)** of the **Evidence Act**. Rather, it would appear that this ground has been abandoned by the Petitioner because in the hearing entire Petition no averment was made by any witness and no evidence was adduced to substantiate all the alleged infractions by the 3rd Respondent in favour of the 1st Respondent.

In conclusion, learned counsel urged the Tribunal to hold that the Petitioners have not discharged the burden imposed on them by law with respect to the quantum of evidence they ought to adduce to nullify the election under scrutiny. Therefore, the entire case of the Petitioners ought to be dismissed and the return of the 1st Respondent upheld.

We have carefully considered all the pleadings filed by the parties, the evidence tendered at the trial and the final addresses adopted by the parties. It is noteworthy that the 3rd Respondent raised a preliminary objection in his Reply to the Petition filed on the 23rd day of April 2019 praying the Tribunal to strike out the petition for being incompetent on the following grounds;

a. The election cannot be valid for the purpose of declaring the 1st Petitioner as the winner of the election on the ground that the 1st Petitioner won the majority of the lawful votes cast at the election and at the same time invalid for the purpose of nullifying the return of the 1st Respondent on any ground whatsoever in the same election.
b. That paragraph 15 (iii) of the Petition as constituted is incompetent as same fall under pre-election matters as provided by section 285 (14)(b) of the constitution of the Federal Republic of Nigeria (Fourth Alteration NO 21) Act 2017 NO 8.
c. Paragraphs which alleged violent acts of intimidation, harassment and disruption should be struck out as the individuals and the agencies (Nigerian Police) were not joined as parties to the Petition namely paragraph 17 (Managu Ruwa) and paragraph 18 (Alhaji Muhammadu Maigari Dingiyadi).
d. Paragraph 15 (iii) as well as relief 37 (i) should be struck out in that they are outside the contemplation of S 138 (1) of the Electoral Act 2010 and within the context of S 31 (5) and (6) of the Electoral Act and outside the

jurisdiction of the this Honourable court sitting as a court of first instance in a legislative House Election Petition.

e. Paragraphs 32, 33, 34 and 35 of the Petition should be struck out in that they deal with propriety of the information supplied by the 1st Respondent in his form CF 001 which is a pre election cause of action within the context of S 31 (5) and (6) of the Electoral Act and which is statute barred by virtue of S 285 (9) of the Fourth Alteration of the Constitution of the Federal Republic of Nigeria Act NO 21 of 2018.
f. The underlisted paragraphs which allege improper accreditation over voting, ballot stuffing, inflation and deflation of votes, noncompliance, infraction, widespread irregularities and wrong entries in Form EC8As should be struck out for being imprecise, short of particulars and vague in that they are nebulous for failing to identify the polling units where the infraction took place namely paragraph 16-31 of the Petition.
g. If the above stated grounds of the preliminary objection are granted, it is contended that there will be nothing remaining on which the petition can be sustained. This honourable Tribunal is urged on these grounds to strike out the Petition or the affected paragraphs in limine.

There is no doubt that a preliminary objection being a threshold matter has to be determined first whenever raised, see the case of PETGAS RESOURCES LTD v. MBANEFO(2017) LPELR-42760(SC). We shall therefore determine the preliminary objection first before considering whether there is any necessity to still determine the substantive petition.

As earlier noted, the learned counsel to the 3rd Respondent formulated three issues for determination with respect to the preliminary objection. With respect to the 1st issue posited, learned counsel submitted that this petition is incompetent for non-joinder of necessary parties which is germane and touches on the issue of fair hearing as guaranteed by Section 36 (6) of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

According to the learned counsel, the Petitioner in his petition made bogus allegations against the officials of the 3rd Respondent stating their purported involvements in the alleged mutilation of Form EC 8A at collation centers at the behest of the 1st and 2nd Respondents specifically contained in Paragraphs 15 to 17 of the Petition, made allegations against one Manuga Ruwa in Paragraph 17 and

allegations against Members of the Police Force allegedly assigned as escort mobile team in the entourage of Alhaji Muhammed Maigari Dingyadi , the Sokoto State Campaign Coordinator of the 2nd Respondent but however failed to provide particulars and join the said officials of the 3rd Respondent, or the Nigerian Police force to defend themselves. Thus non joinder of these persons divests the Tribunal of jurisdiction to entertain the matter. He therefore urged the Tribunal to hold that this petition is incompetent for non- joinder of necessary parties to this suit.

It is noteworthy that failure to join necessary parties is generally fatal to the case of the Petitioner. However, the objection raised by the 3rd Respondent is twofold. The first is against the non-joinder of the 3rd Respondents officers alleged of non-compliance while the second is with respect to Manuga Ruwa and Alhaji Muhammed Maigari Dingyadi. The position of the law with regards to the joinder of 3rd Respondents officers is that once INEC has been made a party to the suit, there is no need to join electoral officers complained against, see the case of APGA & ANOR. V. UBA & ORS. (2011) LPELR-9177(CA) the court held thus

"Section 137 of the Act while stipulating that the person whose election is complained of shall be referred to as "the respondent" goes further to provide for the joinder in the Petition of other INEC officials against who the petitioner complains of their conduct in the election as respondents. The provisions of Section 137 of the Electoral Act are however clear that once INEC is joined as a respondent in a Petition, there is no need to join any of its officials the petitioner complains of their conduct in the election as INEC having been made a respondent therein, shall be deemed to be defending the Petition on its own behalf and on behalf of its officers, to matter the nature of the complaints against such officials. It is my view that given the provisions of Sections 133(1) and 137 of the Electoral Act, the one person that must be made a party to a Petition apart from INEC, is "the person whose election or return is being questioned or challenged"." Per LOKULO-SODIPE, J.C.A. (P. 26, paras. A-E)"

Going by the above holding by the superior, we hereby hold that there is no necessity to join the electoral officers complained against in this petition in as much as INEC have already been made a party.
However with regards to the allegations levelled against Manuga Ruwa and Alhaji Muhammed Maigari Dingyadi in paragraphs in paragraphs 17 and 19 of the

petition which bothers on criminality, it is trite law that no court of justice can proceed against a party or person in a matter which may damnify his actions without making him a party thereto, see the case of Biyu V Ibrahim (2006) 8 NWLR (PT 981) 1 @ 43. See also the case of Kalu V Chukwumerije (2012) NWLR (PT 1315) 425 @ 459.
In the instant case, the Petitioners herein made criminal allegations against Manuga Ruwa and Alhaji Muhammed Maigari Dingyadi in paragraphs 17 and 19 of the petition without making them parties to this suit thereby depriving them the opportunity to defend themselves. Based on the above, the offending paragraphs 17 and 19 of the petition are hereby struck thus the 1st issue posited by the 3rd Respondent is hereby partly resolved in favour of the Respondents.

With respect to the 2nd issue posited by the 3rd Respondent while arguing the preliminary objection which has to do with failure to provide particulars of non-compliance and corrupt practices. Learned counsel to the 3rd Respondent referred to paragraph 4(1)(d) of the Electoral Act which prohibits vague, general, imprecise, nebulous and non-particularistic pleadings and submitted that majority of the Petitioners averments are vague, generic, imprecise, nebulous and fails to provide specific particulars of non –compliance and did not provide details of officers of the 3rd Respondent allegedly involved in aiding / direct involvement in over-voting or mutilation of ballot papers, Form EC 8A or any electoral material or in any form of participation of electoral fraud thus the Petition is incompetent for failing to provide the necessary particulars.

It is noteworthy that parties are required to plead facts not evidence which is expected to be tendered at the hearing, see the case of MTN v. CORPORATE COMMUNICATION INVESTMENT LTD (2019) LPELR-47042(SC).

In the meantime, the position of the law on this issue is that opposing parties reserves the right to demand for better and further particulars, see the case of ALHAJI ATIKU ABUBAKAR, GCON & ORS. V. ALHAJI UMARU MUSA YAR'ADUA & ORS.(2008) LPELR-51(SC) the court held that *"A party asks for further and better particulars where, in his view, the pleadings are not only generic and omnibus but vague, nebulous and lacking specificity. In such a situation, the party asks for further and better particulars to make the pleadings*

*more exact or precise. The purpose of further and better particulars is not to amend or rewrite the pleadings. The purpose is to explain them so that they can sound more exact and precise.*The court went on further to hold that *"the need to demand for further particulars however does not arise where the parties have joined issues in a case"*

In the case of AGBAMUCHE v. IKOLODO & ANOR (1982) LPELR-12324(CA) the court held that *"Where a party pleads insufficiently, his case does not lie to be struck out, for there are other remedies: matters not pleaded must be disregarded when given in evidence. See Usenfowoken v. Idowu (1969) 1 ALL. 1. L.R. 125. A defendant is so entitled to ask for further and better particulars. The argument that the petition "is bereft of legally pleaded facts on which evidence of triable issues could be founded" is, in my view, unsatisfactory and cannot be made the basis for holding that the petition was rightly struck out. What does this argument mean? I understand it to be holding that the pleading was not adequate and that evidence which would be given as to those facts pleaded would not suffice to establish a claim made." Per IKWECHEGH, J.C.A.(P. 23, paras. B-E)*

In the instant case, the 3rd Respondent did not make any demand for further and better particular. Furthermore, the Respondents joined issues with the petitioners herein on all issues raised. By the foregoing, this petition does not lie to be struck out based on this issue, at best, matters led on unpleaded facts will be disregarded.

We are however of the view that this is best done when the matter is being determined on its merit. Based on the above, we hereby hold that this issue is premature at this stage, more focus will be given to it at the later part of this judgement. In view of the above, issue 2 is held to be premature.

With respect to the 3rd issue, learned counsel submitted that this petition is statute barred for containing facts relating to age qualification of the Petitioners contained in Paragraphs 15(iii) and averments contained in 1st and 2nd Respondents affidavit attached to his form CF 001 qualifies as pre-election issues and this tribunal lacks the jurisdiction to entertain same for being a pre-election matter and statue barred.

According to the learned counsel, the issue of qualifications to contest the elections or entries made in the 1st Respondents Form CF 001 submitted to the 3rd Respondent is a pre-election cause of action within the contemplation of Section 31(5) and (6) of Electoral Act, 2010 (As amended) becomes statute barred by virtue of Section 285 (9) of the Constitution of the Federal Republic of Nigeria

(Fourth Alteration) Act, No. 21 of 2018. Learned counsel therefore submitted that the right forum for the Petitioners to raise these issues is the Federal High Court, High Court of a state of FCT and not this Honourable Tribunal and failure to have raised these issues in the right tribunal robs this court of jurisdiction to entertain this petition.

A careful perusal of paragraphs 15 (iii), 32, 33, 34 and 35 of the petition reveals that the petitioners are contesting the qualification of the 1st Respondent on the ground that he stated contradictory dates of birth in filing his Form CF001 and accompanying documents submitted to INEC. The particular paragraphs are reproduced below for the avoidance of any doubt;

34. *Your Petitioner in addition state that upon his emergence as candidate of the 2nd Respondent for the general election, on 30/10/2018 the 1stRespondent completed and submitted to the 3rd Respondent the prescribed Form CF 001 accompanied by a sworn declaration or affidavit attesting that all the information, answers, facts and particulars provided by him in the said form for purpose of said election are true and correct.*

35. The said Form CF 001 and declaration/affidavit commissioned on 12/10/2018 was accompanied by some documents and credentials detailing sundry personal and educational particulars which the 1st Respondent claimed as his own, namely:- Permanent Voter's Card, certificate of primary education, statutory declaration of age commissioned 5/1/1993, a general form of affidavit commissioned on 13/9/2018, etc. in which he severally stated falsely that he was born on the 01/01/1976 and 5th day of February 1976.

Notice is hereby given to the Respondents to produce the originals or certified true copy thereof at the hearing.

36. Your Petitioners state that neither of the two dates stated in the documents tendered by the 1st Respondent to the 3rd Respondent correctly reflect his age.

37. By reason of the foregoing Your Petitioners state that at all material times of the said election the 1st Respondent was not qualified to contest the said election to the seat or office of member of House of Assembly representing Bodinga South Constituency of Sokoto State conducted by the 3rd Respondent on 9th March, 2019, let alone declared winner thereof, having not attained the mandatory 30 years of age.

The court of Appeal while considering whether the issue of non-qualification of a candidate to contest an election is a pre-election or post-election matter held in the case of AIRHIAVBERE V. OSHIOMHOLE & ORS (2012) LPELR-9824(CA)

"The non-qualification of a candidate to contest an election conducted under the Electoral Act is, indeed, the first ground under section 138(1) of the Electoral Act 2010 (as amended) for presenting an election petition to the lower tribunal. In other words, it is certainly not correct, as erroneously held by the lower tribunal at pages 881-882 of the record, that the complaint of the Appellant on the academic qualification of the 1st Respondent to contest the election in question is a pre-election matter. Surely, it is a complaint clearly cognizable in the lower tribunal. In any event, this issue has been laid to rest in the recent unreported decision of the full compliment of the Supreme Court in the consolidated cases of PDP V. SAROR & ORS SC. 381/2011; SUSWAN V. SAROR & ORS SC. 383/2011 where their Lordships held as follows:- "It is not correct that the matter of the qualification of a candidate is a pre-election issue and for the regular court alone. Therefore, the Governorship Election Petition Tribunal had jurisdiction to entertain a petition founded on the grounds of alleged presentation of forged Certificate and deposition of false information on Form CF001 submitted by the 4th Respondent to the 3rd Respondent. The petition brought upon Section 138(1) (a) of the Electoral Act 2010 and Section 182(1) (i) of the 1999 Constitution do not require the prior conviction of the 4th Respondent on a charge of forgery before the tribunal below will be vested with the jurisdiction to entertain the petition which alleges presentation of a forged Certificate by the 4th Respondent to INEC." The learned law Lords at the Supreme Court concluded that S. 31(5) & (6) of the Electoral Act has not ousted the jurisdiction of the Election Tribunal to enter into the matter of qualification or false return. They held that the powers under S. 31(5) & (6) are complimentary to the powers of the Tribunal such that either of the regular courts and the Tribunal can inquire into and determine all complaints of disqualification. See also ACN V. LAMIDO & ORS (2012) 8 NWLR Pt.1303 pg. 560 at 582. The Supreme Court has clarified the state of the law beyond question in the case of O. E. DANGANA V. HON. A. A. A. USMAN (2012) LRCN Pg. 92 at pg. 130 -131 where the Supreme Court per Onnoghen JSC held as follows:- "section 738(7) (a) of the Electoral Act, 2010 (as amended) provides, inter alia, that on election may be questioned on the ground that a "person whose election is questioned was at the time of the election not qualified to contest the election." Per OGUNWUMIJU, J.C.A (Pp 42-44,Paras C-A)

The court similarly held in the case of PDP v. INEC & ORS(2014) LPELR-22892(CA) QUALIFICATION/DISQUALIFICATION OF A CANDIDATE :

"It is my considered opinion therefore that the issue of qualification, disqualification or non-qualification of a candidate to contest an election (in this case, Governorship election is a matter which the High Courts and the Election Tribunal can handle but it is at the Election Tribunal that those grievances can be presented after election has taken place. I refer to the decision of the Supreme Court in Salim v. CPC (2013) 6 NWLR (Pt. 1351) 500. "In conclusion, it has to be stated that the issue of disqualification, nomination, substitution and sponsorship of candidates for an election precede election and are therefore pre-election matters. The instant situation where the appellant as plaintiff did not complain to court before election and even then 38 days after the election to talk of a pre-election matter for the first time is a pill too difficult to swallow. He by his lack of consciousness took his matter out of the domain of pre-election can only go before the Election Tribunal to try his luck since the status of the matter was post election clearly outside the ambit of either the Federal High Court, State High Court or High Court of the FCT." Per BOLAJI-YUSUFF,J.C.A. (P.30,paras.A-F)

In view of the foregoing, we hereby hold that the ground of non-qualification raised by the petitioners can be properly determine by this Tribunal. Based on the above, the 3rd issue posited in the preliminary objection is hereby resolved against the Respondents.

It is noteworthy that the 3rd Respondent did not formulate any issues relating to the 1st ground of the preliminary objection thus ground A of the preliminary objection is hereby struck out.

For the avoidance of any doubt, while the 1st issue posited by the learned counsel for the 3rd Respondent in support of his preliminary objection was partly resolved in favour of the Respondents, the 2nd issue was held to be premature while the 3rd issue was resolved against the Respondents.

However, in case we are wrong to have partly resolved the 1st issue in favour of the 3rd Respondent, we shall now determine this petition on its merits.

It is noteworthy that the third ground of this petition was that the 1st Respondent was at all material times to this election not qualified to contest and be elected to the office of member House of Assembly representing Bodinga South

Constituency of Sokoto State at the Sokoto State House of Assembly having not attained the requisite age of 30 years. The Petitioners in paragraphs 32, 33,34,35 and 36 of the Petition alluded to this fact. At the trial however, the Petitioners did not proffer any evidence whatsoever in support of this ground. The Petitioners were also silent about this ground in their final address.
In the case of Monkon V Odili (2010) ALL FWLR PT 536 @ 565-566 the court held that "averments in pleadings are not evidence. They mainly highlight the evidence that a party is likely to present so that the other side would not be caught unaware or unprepared or to eliminate surprise. Pleadings are the body and soul of any case in a skeletal form and are built and solidified by evidence in support thereof. They are never regarded as evidence by themselves and if not supported by evidence, they are deemed abandoned"
In the instant case, the Petitioner having failed to support the 3rd ground of the petition with evidence, same is deemed abandoned and hereby struck out.

The 1st and 2nd Respondents also raised some ancillary issues. We shall determine those first before proceeding to the resolution of the issues posited by the Tribunal.
The first ancillary issue raised by the 1st and 2nd Respondents was to the effect that the Petitioners made criminal allegations against a nameless police man posted on election day to their polling unit who allegedly seized the ballot box and together with Babuga Dikko and Alhaji Labbo, Babuga Horo and Manuga Ruwa forced it into a car and went away unaccompanied by other parties' agents to an unknown destination. Learned counsel submitted that no court of justice can proceed against a party or person in a matter which may damnify his action, without making him a party thereto besides these people mentioned by PWI in his statement with the exception of Manuga Ruwa were not pleaded in the Petition. He therefore urged the Tribunal to strike out the paragraphs relating to the aforementioned names.

It is noteworthy that evidence not borne out of pleadings go to no issue. The court held in the case of ZIBIRI & ANOR v. AMUDAH (2018) LPELR-44823(CA) that *"Whereas a party is supposed to be consistent in the presentation of its case, the Court itself has a corresponding duty to confine itself to the evidence on only matters which have been included in the pleadings of the parties. See National Investment and Properties Co. Ltd. v. Thompson Organization Ltd. (1969) 1 NWLR 99; George v. U.B.A Ltd. (1972) 8-9 SC 264; African Continental Seaways Ltd. v. Nigerian Dredging Roads and General Works Ltd. (1977) 5 SC 235*

In the instant case, we have carefully perused the pleadings filed by the Petitioners and noticed that the Petitioners did not plead the facts contained in the PW1's statement on oath with reference to police man posted on election to their polling unit who allegedly seized the ballot box together with Babuga Dikko and Alhaji Labbo, Babuga Horo. Only Manuga Ruwa was alleged of snatching the ballot box in issue in paragraph 17 of the Petition.

Based on the above, the paragraphs with particular reference to the policeman, Babuga Dikko, Alhaji Labbo and Babuga Horo are hereby struck out not having been borne out of pleadings.

With respect to the criminal allegations against Manuga Ruwa and Alhaji Muhammadu Maigari Dingyadi in the PW1, PW2 and PW3's depositions, it is noteworthy these two people were never made parties to this petition. The law is clear on the constitutional provision and explicit on the principle of fair hearing wherein a person should not be condemned in his absence.

The court held in the case of PDP & ANOR v. INEC & ANOR(2011) LPELR-9236(CA) *"The provision of section 137(3)(a) and (b) of the Act is limited to cover only INEC and its staff related persons. The petition at hand on the pleadings did make serious criminal allegations against the said two persons who were non INEC staff. The constitutional provision is very clear and explicit on the principle of fair hearing wherein a person should not be condemned in his absence. This is more so where the allegation is criminal in nature. The joinder of the said two persons was very necessary as it would infringe against their fundamental constitutional rights to fair hearing. Needless to say that they needed to defend themselves and should under no circumstance be shut out. The learned Tribunal was again, I hold, certainly on a right footing in taking the steps it did. In other words by striking out the offending paragraphs 21 and 23 of the petition." Per OGUNBIYI, J.C.A. (Pp. 15-16, paras. G-D)*

Based on the above, paragraphs 17 and 19 of the Petition are hereby struck out for failure to add Manuga Ruwa and Alhaji Muhammadu Maigari Dingyadi as Respondents in this case.

Learned counsel to the 1st and 2nd Respondents also submitted that the PW I stated that he was the Agent of the Petitioners at "Kwalfa Runtuwa 011 polling unit" under Tulluwa Kulafas ward/Registration Area (R.A), Bodinga Local Government Area of Sokoto state, whereas, the pleaded facts were in relation to "Shiyar Hakimi Kwalfa 011 polling unit". And there was no evidence before the Honourable

Tribunal to show that “Shiyar Hakimi Kwalfa 011 polling unit” was in “Tulluwa Kulafas ward/Registration Area (R.A)”; or that “Shiyar Hakimi Kwalfa 011 polling unit” and “Kwalfa Runtuwa 011 polling unit” are one and the same. He therefore submitted that to conclude that “Shiyar Hakimi Kwalfa 011 polling unit” is in “Tulluwa Kulafas ward/Registration Area (R.A)” or that “Kwalfa Runtuwa 011 polling unit” and “Shiyar Hakimi Kwalfa 011 polling unit” are one and the same is speculative which this Honourable Tribunal is enjoin not to accede to.

It is noteworthy that the PW1 specifically stated in paragraph 2 of his witness statement on oath that at Kwalfa Runtuwo 011 polling unit under Tulluwa Kulafas ward/registration area in Bodinga local government of Sokoto State. It is also noteworthy that the Petition and the petitioners witness statement on oath were served on the Respondents before trial and they did not join issues with the Petitioners on this or allude to the fact that this polling unit was not where it was claimed.

At the trial, the Respondents did not join issues on this fact or elicit questions or answers tending to establish that “Kwalfa Runtuwa 011 polling unit” under Tulluwa Kulafas ward/Registration Area (R.A), Bodinga Local Government Area of Sokoto state is different from “Shiyar Hakimi Kwalfa 011 polling unit”. In as much as both bears polling units Kwalfa 011 polling units they are deemed to be one and the same no matter the nomenclature ascribed to them. In any case, the learned counsel is precluded from setting up a case in his written address different from that set up at the trial by the parties. See the case of FCDA STAFF MULTI-PURPOSE (COOP) SOCIETY & ORS v. SAMCHI & ANOR (2018) LPELR-44380(CA) where the court held that ;

"trial Court is expected to act on what was presented before it and not whimsically assume that there ought to be a valid law somewhere because a judge is not supposed to base his findings on speculation, he simply cannot act outside the evidence adduced before him or make a case for any parties before him when the parties themselves fail to make the case for themselves; see also the case of AUDU v. INEC (No. 2) (2010) 13 NWLR (Pt. 1212) 456 and ALSO ABUBAKAR V. YAR'ADUA (2009) ALL FWLR (PT. 457)

This issue did not arise at the trial thus the learned counsel to the 1st and 2nd Respondents is estopped from raising it in his written address for the first time as

address of counsel no matter how brilliant cannot be a substitute for evidence elicited at the trial, see the case of BAUCHI STATE HOUSE OF ASSEMBLY & ORS v. GUYABA(2017) LPELR-43295(CA).

Learned counsel to the 1st and 2nd Respondents also submitted that the written statement on oath of PW I which he adopted before this Honourable Tribunal cannot be ascribed to him since he informed the Tribunal that he thumb printed on his statement while the statement adopted by him was signed and urged the Tribunal to so hold.

It is noteworthy that there was no objection to the adoption of this statement during the trial, the court held in the case of MAJEKODUNMI & ORS v. OGUNSEYE (2017) LPELR-42547(CA) as follows;

"To determine this issue, I find it necessary to state the legal status of a Written Statement on Oath. It should be noted that, unlike an affidavit per se, a Written Statement on Oath filed in Court is not evidence, unless it has been duly adopted by the witness at the trial. In other words, a Written Statement on Oath will only be evidence to be used by the Court in the determination of the Plaintiff's Claim, if it has been adopted by the person who deposed to it as his testimony during the trial. If it is not so adopted, it is deemed abandoned and therefore cannot be examined by the trial Judge. An Affidavit on the other hand is the evidence of the witness made in writing. Thus, whether or not the deponent appears in Court, such depositions are capable of being evaluated by the Court as evidence. See Splinsters (Nig.) Ltd & Anor v. Oasis Finance Ltd (2013) 18 NWLR (pt.1385) p.188 at 227 per Izoba, JCA; Agagu v. Mimiko &Ors (2009) 7 NWLR (pt.1140) p.34; Orakwe v. Chukwuka (2012) NWLR (pt.1280) p.87 at 201; Thus, in the case Kalu IguUduma v. Prince AmaArunsi& 14 Ors (2010) LPELR - 9133 (CA), Ogunwumiju, JCA said: "I am minded to go a step further and to make a distinction between Affidavit evidence in procedure begun by Originating Summons as against Statement of witnesses on Oath at an election proceeding or proceeding began by Writ and to say that in respect of the latter scenario, where the Written Statement is to be adopted again on Oath by the maker before his Cross-Examination on it, whatever defect in the Original Oath in respect of the witness statement has been cured by the second Oath made in Court before the judex prior to the adoption of the witness statement by the maker and his subsequent Cross-Examination. See the

case of Udengha v. Omegara CA/PH/EPT/173/2008 unreported, delivered on 30th March, 2010."

Based on the foregoing, we hereby hold that the written statement on oath adopted by the PW1 was properly adopted by him.

The learned counsel to the 1st and 2nd Respondents also submitted that PW II and PW III, BABANGIDA SANI and MALLAMI ABDULLAHI, were the Petitioners' Agents at "Kwalfa Kaurare 010 polling unit" under Tulluwa/Kulafasa Ward, Bodinga Local Government Area of Sokoto state during the elections but the Polling unit where both PW II and PW III claimed to be the Agents of the Petitioners was not pleaded in the Petition thus the PW II and PW III were not the Petitioners' Agents at Nizamiwa Dangaladima 001, Primary School Garba Garba 011 and Danfili Andu 015 polling units Dingyadi/Badawa Ward, they cannot, therefore, authoritatively give accounts of the happenings at these Polling Units. Thus, whatever they said in respect of these Polling Units amount to hearsay which is inadmissible in law.

In the meantime, the petitioners in paragraph 9 of the petition averred that there are 100 polling units in Bodinga South Constituency but only listed the names of the wards while listing the number of polling units in each wards without specifically mentioning their names. The petitioner did not make any particular reference to "Kwalfa Kaurare 010 polling unit and Kwalfa Runtuwo 011 polling unit in the Petition.

Based on the above, we hereby agree with the learned counsel to the 1st and 2nd Respondents that the PW2 and PW3's deposition can only relate to the polling units mentioned by them.

We shall now consider the issues posited by the Tribunal for the parties seriatim. Same have already been stated above thus there is no need to reproduce them here.

With respect to the 1st and 3rd issues, the learned counsel to the Petitioners submitted that the Petitioners have led sufficient and credible evidence in support of their allegation that the 1st Respondent was not duly elected or returned by majority of the lawful votes cast and this piece of evidence was unchallenged and uncontroverted even during cross examination by the Respondents but that the 1st Petitioner was duly elected or returned by majority of lawful votes cast at election for the office of Member House of Assembly representing Bodinga South Constituency of sokoto State held on 9th day of March, 2019.

In response to this allegation, learned counsel for the Respondents submitted that the Petitioners did not tender any evidence to prove the allegation that the 1st Respondent was not returned by majority of the lawful votes cast and also failed to tender any result of the alleged polling units where the alleged infraction complained about occurred. According to the learned counsels, it is a trite law that a petitioner who contests the legality or lawfulness of votes cast in an election and the subsequent result must tender in evidence all the necessary documents by way of forms and other documents used at the election.

He should not stop there. He must call witnesses to testify to the illegality or unlawfulness of the votes cast and prove that the illegality or unlawfulness substantially affected the result of the election. The witnesses called must be eye witnesses too. They submitted further that the Petitioners failed to prove that the result declared by 3rd Respondent is not the actual result; and that the 1st Respondent did not score the majority of lawful votes in the election. Thus, the presumption of law is that the result declared by the 3rd Respondent is the correct and authentic result.

In the meantime, to establish that a candidate did not score majority of the lawful votes at an election is an invitation to compare and contrast figures. Where the allegation constituted forgery of electoral returns, it is an allegation of crime and the petitioner has a duty to prove the alleged criminal offence by evidence which should be beyond reasonable doubt, see the case of Abubakar V Yar'adua (2008) 19 NWLR PT 1120 @ 143. The court also held in the case of Udeagha V Omegara (2010) ALL FWLR PT 542 @ 1785 that

"there is a presumption that the result of an election published by INEC is correct. The onus is on the party who denies the authenticity to rebut the presumption. Where the allegation is based on crimes like forgery, this is tantamount to a criminal offence and must be proved beyond reasonable doubt"

In the instant case, the petitioners alleged that the 1st Petitioner ought to have been declared the winner and returned as duly elected as member representing Bodinga South Constituency of Sokoto State being the one who scored the highest number of lawful votes cast and alleged in paragraphs 16 – 31 (it is noteworthy that paragraphs 17 and 19 have been struck out by the Tribunal) that even though election was duly conducted at Filin Aisha 011 polling unit in Bodinga/Tauma ward and the Petitioners scored 259 votes, the 3rd Respondent failed, refused or neglected to credit the Petitioners with their votes in its collation and final

declaration forms EC8B, EC8C, EC8D and EC8E(I), 267 votes , 220, 138 & 153 votes credited in favor of the 1st and 2nd Respondents at Nizamiya Dangaladima, Primary school Gaba Gaba and Danfili Runji Audu polling units, respectively ought to have been cancelled by the 3rd Respondent same having been procured unlawfully.

The petitioners also alleged multiple voting, unlawful thumb printing of ballot papers scores recorded in Forms EC8A II not corresponding with scores recorded in Forms EC8A(I) and EC8B(I) from polling units within the ward. The total of actual votes scored by the Petitioners in all the 22 polling units in Kauran Miyo/Mazangari Jirga ward is 2173 votes. However in form EC8C(I) the 3rd Respondent credited the Petitioners with only 2098 votes. By this means the 3rd Respondent unlawfully suppressed the votes of the Petitioners with 75 Votes. Generally, in almost all polling units in the constituency the results recorded in the 3rd Respondent's Forms EC8A(I) do not correctly reflect the pattern of voting as several valid votes cast in favor of the Petitioners were suppressed or not recorded. The petitioners also alleged suppression of votes, inflation of votes, failure of accreditation of voters, etc.

Amazingly, the Petitioners did not call any witness from any of the above mentioned polling units. The Petitioners only fielded witnesses from Kwalfa Kaurare 010 and Kwalfa Runtuwo 011. These two polling units were not even pleaded in the petition. Furthermore, the petitioner did not tender a single document throughout the trial in proof of their claim that they scored the majority of the lawful votes cast. This is indeed rather pathetic.

It is now settled law that where 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 units, the votes illegally credited to the winner, the votes which ought to have been credited to him, the votes which ought to be deducted from the supposed winner in order to see if it will affect the results of the election. Where this is not done it will be difficult for the court to effectively address the issue. See the case of Nadabo V Dubai (2011) 7 NWLR PT 1245 @ 155.

In the instant case, the Petitioners herein did not call any witness from any of the alleged polling units in the petition, did not tender any documentary evidence in proof of their claim of widespread malpractices yet wants the Tribunal to declare

them the winner of the election which they claim was marred by widespread irregularities. The court held in the case of Ogboru V Uduaghan (2012) ALL FWLR PT 651 @ 1475 that

"where an election is contested on the ground that the respondent was not duly elected by majority of the lawful votes cast at the election then allegations of corrupt practices and non compliance with the provisions of the Electoral Act are excluded"

In view of the foregoing, we hereby hold that the allegation of the petitioners that the Petitioners was the one who won the majority of the lawful votes cast was not substantiated. Based on all the above, issues one and three are hereby resolved in favour of the Respondents.

With respect to the 2nd issue, learned counsel to the Petitioners submitted that it is crystal clear that the election of the 1st Respondent was marred by substantial irregularities and non-compliance with the provisions of the Electoral Act (as amended) and other Regulations and Guidelines for the conduct of the said elections. Learned counsel based this submission on the deposition of the PW3 in paragraphs 5, 7, 8 and 9 of his statement on oath that at Kwalfa Kaurari 010 polling unit of Tulluwa/Kulfasa ward thugs and miscreants sympathetic to the 1st and 2nd respondent came and took away the agents of the petitioners from polling unit on wild excursion to about 12 polling units before they were dropped in the bush later in the day after voting exercise while the PW2 was seriously beaten and injured supporting the PW2 statement on oath paragraph 7, 8 and 9.

It is noteworthy that we have already noted above that the Kwalfa Kaurari 010 polling unit was not pleaded in the Petition, the persons criminally alleged to have perpetrated the alleged criminal acts were not made parties to the petition, credible evidence was not tendered in court to back up all the spurious allegations made by the Petitioners. The Petitioners based their submission on the fact that the Respondents did not challenge their case by calling evidence in rebuttal, pleadings or under cross examination. According to the learned counsel, the law is settled that where the evidence given by a party to any proceeding was not challenged by adverse party who had the opportunity to do so, it is always open to the court seized of the case to act on such unchallenged evidence before it.

The learned counsel to the Petitioners obviously did not advert his mind to the fact that election petitions are sui generis. The court held in the case of OLAWALE OJO AMES v. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & ORS. (2013) LPELR-20322(CA)

"a petition is a declaration of the appellant's right in which reliefs sought are declaratory. The appellant is under a duty to adduce cogent and convincing evidence in support of his assertions. He has to succeed on the strength of his own case and not on the weakness in the case of the Respondents. It is the law that failure to file defence will not entitle a party claiming declaratory reliefs to judgement. Being an equitable relief, it is granted at the discretion of the court and only when the court is satisfied that the party is entitled to the declaration sought. See also the case of Salau V Parakoyi (2001) 1 NWLR PT 695 @ 446.

We are inclined to agree with their Law Lords in the above holding.

In the instant case, the petitioners alleged non-compliance with the provisions of the Electoral Act 2010 as amended. In the meantime, to prove non-compliance with the provisions of the Electoral Act, the petitioner must prove not only that there was non-compliance with the provision of the Act but that same substantially affected the result of the election. In other words, the petitioner has two burdens to prove -1. That the non-compliance took place. 2. That the non-compliance affected the result of the election. See the cases of OMISORE & ANOR v. AREGBESOLA & ORS(2015) LPELR-24803(SC), Buhari v. INEC (2008) 19 NWLR (Pt. 1120) 246 at 435; Buhari v. Obsanjo (2005) 13 NWLR (Pt. 941) 1 at 80.

The court also held in the case of LADOJA v. AJIMOBI & ORS unreported suit no SC.12/2016 (CON)(REASONS) delivered on Monday, the 15th day of February, 2016*"that the malpractices are in specific polling units, particularly every polling unit in all the 10 local government areas (10 LGAS) and beyond as per those listed the brief. It follows that the legal implication on the appellant is obvious; that is to say a petitioner, like the appellant who complains of non-compliance in specific polling units has the onus to present evidence from eye witnesses at the various polling units who can testify directly in proof of the alleged non-compliance. Reference in point can be made to ACN V. Nyako (2013) All FWLR (Pt.686) 424 at 477, Ucha V. Elechi (2012) All FWLR (Pt.625) 237 and*

Doma V. INEC (2012) 13 NWLR (Pt 1317) 297 at 321." Per OGUNBIYI, J.C.A. (P. 29, Paras. A-E)

In the instant case, the petitioners called witnesses from two polling units not even pleaded, did not tender any document to discredit the results published by INEC which is presumed to be correct, levelled all kinds of spurious criminal allegations against non-parties, alleged wide spread irregularities that was not substantiated and expect judgement in their favour.

Based on all the above, we hereby hold that the petitioner failed to establish that there was non-compliance with the provisions of the Electoral Act 2010 as amended. In view of the foregoing, the 2nd issue is also resolved in favour of the Respondents.

Having resolved all the issues for determination in favour of the Respondents, we hold that this petition lacks merit and it is accordingly dismissed with N20,000.00 (Twenty thousand naira) costs in favour of each Respondent.

HON. JUSTICE P.A. AKHIHIERO

CHAIRMAN

HON. JUSTICE A.N. YAKUBU

1ST MEMBER

HIS WORSHIP S.T BELLO

2ND MEMBER

COUNSELS:

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2. A.Zubairu Esq. ……1ST& 2ND RESPONDENTS
3. Victor Forghe Esq ……..3RD RESPONDENT