IN THE NATIONAL ASSEMBLY ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON FRIDAY THE 10TH DAY OF MAY, 2019
BEFORE:

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

PETITION NO: EPT/SKT/SEN/11/2019

ELECTION TO THE OFFICE OF MEMBERSHIP TO THE SENATE, REPRESENTING SOKOTO NORTH SENATORIAL DISTRICT HELD ON THE 23RD DAY OF FEBRUARY, 2019.

BETWEEN:

1. **MUHAMMAD AHMED MACCIDO**
2. **PEOPLES'DEMOCRATIC PARTY (PDP)-----PETITIONERS/ APPLICANTS**

AND

1. **WAMAKO, ALIYU MAGATAKARDA**
2. **ALL PROGRESSIVES CONGRESS (APC)**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION----------RESPONDENTS/RESPONDENTS**

RULING

This is a Ruling on a Motion on Notice, dated on the 11th and filed on the 12th of April, 2019 brought pursuant to **Order 17 (1) of the Federal High Court Civil Procedure Rules 2009** and under the Inherent Powers of this Honourable Court

as preserved under **Section 6(6)(a) of the Constitution of the Federal Republic of Nigeria 1999** praying the Tribunal for the following orders:

1. **AN ORDER OF COURT granting leave to the Petitioners/Applicants to amend Petition No: EPT/SKT/SEN/11/2019, witnesses statements on oath and Petitioners/Applicants Reply to the Reply of the 1st Respondent pending before this Honorable Tribunal as per the underlining's marked as Exhibits A & B respectively and which amendments are fully incorporated in the amended petition and amended Petitioners Reply separately filed before this Honourable Tribunal.**
2. **AN ORDER OF COURT deeming as having been properly filed and served, a clean copy of the AMENDED PETITION NO: EPT/SKT/SEN/11/2019 and amended Petitioners/Applicants Reply to the Reply of the 1st Respondent filed alongside this application (necessary filing fees thereof having been paid in advance).**
3. **And for such further order or orders as this Honorable Tribunal may deem fit to make in the circumstance of this case.**

The grounds in support of the application are as follows:

a. **There are typographical errors in the Substantive petition as well as in the Petitioners Reply to the Reply of the 1st Respondent.**
b. **Leave is required to amend the Petitioners/Applicants Petition as well as in the Petitioners Reply to the Reply of the 1st Respondent.**
c. **Interest of justice.**

The motion is supported by a 4 paragraphs affidavit with two annexures marked as Exhibits A & B respectively. It is also supported by a Written Address of counsel.

In his written address, the learned counsel for the Petitioners, ***Ibrahim Abdullahi Esq.*** formulated a sole issue for determination as follows:

"Whether the Applicants are entitled to the grant of the reliefs sought for?"

Arguing the sole issue, learned counsel submitted that in an application of this nature, this Honourable Tribunal has the absolute discretion in the grant or refusal of such application but the exercise of such powers must be exercised both judiciously and judicially. See the case of: ***EMORDI & ORS. V. KWENTOH & ORS (1996) LPELR-1135(SC);*** **ASHAKA CEMENT PLC v. ASHARATUL MUBASHSHURUN INVESTMENT LTD (2016) LPELR-40196(CA).**

He posited that the reasons necessitating the application are as deposed to in the supporting affidavit. He maintained that the Applicants are bringing this application because an amendment cannot be made ***suo motu*** by the Tribunal without an application by the desirous party. He submitted that amendments can be made at any stage of the proceedings of a case and even for the first time on appeal and referred to the case of: ***CBN V. DINNEH (2005) LPELR-11349(CA),***where ***RHODES-VIVOUR, J.C.A*** (as he then was) stated thus**:**

> ***"Indeed amendments are allowed at any stage of the proceedings even on appeal. Amendments would be allowed before trial even to include a new cause of action provided the new cause of action occurred before the filing of the Suit. Amendments would be allowed during trial to bring pleading in line with evidence already led and after the close of evidence provided the evidence is already on record. And on appeal amendments would be allowed to bring the pleadings in line with the evidence or where the amendments would do substantial justice between the parties. See Oloto v. Attorney General 1957 SSCNLR p. 375; Oguntimehin v. Gubere 1964 1 ALL NLR p. 176."***

He submitted that the documentary evidence which the Applicants would be relying upon had been frontloaded and it is reading Form EC8A (1) but inadvertently in the course of typing was referred to as Form EC8A (II) while other typographical errors have been highlighted by the underlining's in Exhibits A & B and the fuller amendments adumbrated in the clean copies that were filed alongside the substantive petition.

He maintained that while it is true that in Election Petition cases, the rules on amendment are much more regulated, in keeping with the *sui generic* nature of election matters, the above, stringent as it is, certainly, does not appear to suggest a blanket bar to amendment of the process, where such amendment relates to obvious errors (typographical, clerical or blunder of Counsel) which do not go to the root of the petition or are substantial enough to alter the case presented by the Petitioners. He maintained that where the error can be corrected, without over-reaching the other party; or giving advantage to the petitioner; or visiting prejudice or injustice on the opponent, an order of amendment can be made by this Honourable Tribunal. He

referred to the recent case of: ***APC v. MBAWIKE & ORS (2017) LPELR-41434(CA),*** where **MBABA, J.C.A. at pp. 31-33, Paras. C-E** stated thus;

> ***"It is true that in Election Petition cases, the rules on amendment are much more regulated, in keeping with the sui generic nature of election matters. Paragraph 14(1) & (2) of the 1st Schedule to the Electoral Act, 2010, as amended, provides: (1) "Subject to Sub-paragraph (2) of this paragraph, the provisions of the Civil Procedure Rules relating to amendment of pleadings shall apply in relation to an election petition or a reply to the election petition as if for the words "any proceedings" in those provisions there were substituted the words "the election petition or reply" (2) After the expiration of the time limited by - (a) Section 134(1) of this Act for presenting the election petition, no amendment shall be made: (i) Introducing any of the requirements of Sub-Paragraph (1) of Paragraph 4 of this Schedule not contained in the original Election Petition filed, or (ii) Effecting a substantial alteration of the ground for, or the prayer in, the election petition, or (iii) Except anything which may be done under the provisions of Sub-Paragraph (2) (a) (ii) of this Paragraph, effecting a substantial alteration of or addition to the statement of facts relied on to support the ground for or sustain the prayer in the election petition..." Section 134(1) of the Electoral Act, 2010 is now the provision that an election petition shall be filed within 21 days after the date of declaration of result of the election. See Section 285(5) of the 1999 Constitution (as amended). And Paragraph 4(1) of the 1st Schedule relates to the duty for petitioner to specify: (a) The parties interested in the election (b) The right of the Petitioner to present the petition (c) State the holding of the election, the scores of the candidates and the person returned as the winner of the election and (d) State clearly the facts of the election petition and the ground(s) on which the petition is based and relief sought. As it were, the law***

bars amendment of the petition in the above areas (Paragraph 4(1) of the 1st Schedule) and amendment leading to substantial alteration of the grounds or prayers in the petition, or leading to substantial alteration of or addition to the statement of fact relied on to support of the ground(s) for or sustain the prayer in the petition. The above, stringent as it is, certainly, does not appear to suggest a blanket bar to amendment of the process, where such amendment relates to obvious errors (typographical, clerical or blunder of Counsel) which do not go to the root of the petition or are substantial enough to alter the case presented by the Petitioner; and where the error can be corrected, without over-reaching the other party; or giving advantage to petitioner; or visiting prejudice or injustice on the opponent."

He submitted that the amendments sought are merely to filter away the dross - clerical and typographical errors - from the Petition, to enable this Honourable Tribunal pursue the course of justice of the case. That where such is the case, an amendment ought to be granted. Again, he referred to the case of: ***APC v. MBAWIKE & ORS (2017) LPELR-41434(CA),*** **where MBABA, J.C.A. at pp 35-36, Paras. D-C** stated thus;

"I think the amendment was necessary, in the circumstances, as it merely filtered away the drosses - clerical and typographical errors - from the Petition, to enable the Tribunal pursue the course of justice of the case. See the case of Yusufu Vs Obasanjo (2003) 16 NWLR (pt.847) 554; (2003) LPELR - 3540 (SC), where Tobi JSC, (of blessed memory) said: "The basic principle governing the granting of leave to amend is for the purpose of determining the real issue or issues in controversy between the parties... The Courts have always followed the established principle that the fundamental object of adjudication is to decide the rights of the parties, and not to impose sanctions merely for mistakes they make in the

conduct of their cases by deciding otherwise than in accordance with their rights." See also Alsthon S.A. Vs Chief Saraki (2000) 14 NWLR (pt.687) 415 at 427."

He said that the reasons of the inadvertence are strictly that of counsel, which should not be visited on the Applicants.

According to him, the categories of factors that constitute special circumstances are never closed. He said that the mistake of counsel qualified as such special circumstance. See the case of: ***ALRAINE SHIPPINNG AGENCIES (NIG) LTD vs. CROSS MARINE SERVICES & ORS v. NIGERIAN SHIPPERS' COUNCIL & ANOR (2017) LPELR-41860(CA),*** **at Pp. 15-17, Paras. F** where **GARBA, J.C.A.** stated the position of the law thus:

"It is a known practice and attitude of the Courts not to penalize a litigant for the fault, mistake or inadvertence of his Counsel because the primary object of the Courts is to decide the rights of the parties on the merit and not to punish them for procedural mistakes made in the conduct of the cases by Counsel. In the case of Imegwu v. Okolocha (2013) 9 NWLR (1359) 347 @ 370, Paragraph. E-H; Ariwoola, JSC, in the lead judgment had restated the position when he said:- "In view of the settled principle of law that a litigant should not be punished for the mistake or inadvertence of his counsel, an application for extension of time to appeal ought to be granted if the Court is satisfied that the failure to appeal within the period prescribed by law was due to the true and genuine mistake or error of judgment of counsel. In other words, the Court must be satisfied that the excuse is availing having regard to the facts and circumstances of the case. See: Iroegbu v. Okowordu (1990) 6 NWLR (Pt. 159) 643. Where it appears to the Court that the delay was actually occasioned by the genuine mistake of counsel, it will be up to the respondent to show in what respect he would be prejudiced if the indulgence sought is granted." See also Ukawu v. Bunge (1991) 3 NWLR

(182) 677: Shanu v. Afribank (2000) 11-12 SC, 1 @ 11-12: Alabe v. Abimbola (1978) 2 SC 99."

Learned counsel also referred to the views of the Court of Appeal of Nigeria per ***SAULAWA, J.C.A. at pp. 29-30, paras. E-A*** in the case of: ***HON. MINISTER OF ENVIRONMENT Housing and Urban Development & ANOR V. COUNTY & CITY BRICKS DEVELOPMENT COMPANYLIMITED (2011) LPELR-4256(CA)*** where he stated thus:

"...It's a trite and well settled general principle, that a mistake, complacence and/or incompetence of counsel, as evidently established in the instant case, may serve as a veritable qualification for a specific circumstance. That's to say, the court may grant an application under order 7 Rule 10 of the Court of Appeal Rules 2007 (order 7 Rule 10, Court of Appeal Rules, 2011), if it's established that the failure by a party to do the act within the statutory time limit was as a result of his counsel's negligence, incompetence or inadvertence. See DOHERTY V. DOHERTY (1964) 1 ALL NLR 299; AHMADU V. SALAWU (1974) 11 SC 43; BOWAJE V. ADEDIWURA (1976) 6 SC 143."

He said that by granting this application, the Respondents will not be prejudiced since they have not filed a counter affidavit, which presupposes that they have accepted as correct all the depositions of the applicants in his supporting affidavit. He said that the amended processes would enable the court to determine the substantive matter on the merits.

He submitted that this is a non-contentious application and it is now trite that these kinds of amendments can be made at any time before judgment. See the case of: ***DIKO VS IBADAN SOUTH WEST L.G (1997) 2 NWLR (PT 486) AT 235.***

He therefore urged the Tribunal to resolve the lone issue formulated for determination in favour of the applicant and grant the application as prayed.

In opposition to this application, the 1st Respondent filed a Counter-Affidavit of 4 paragraphs, and a Written Address of Counsel dated and filed on the 24th of April, 2019. In his written address, the learned counsel for the 1st Respondent, ***Dr. Hassan M. Liman SAN,*** formulated two issues for determination as follows:

1. ***Whether the said motion of the petitioners can be heard and determined by this tribunal when the prior challenge raised by the 2nd respondent touching on the competence and the jurisdiction of this Honorable Tribunal to entertain the said petition has not been heard and determined by this Honorable Tribunal; and***
2. ***Whether the petitioners can validly amend the said petition at this stage of the proceedings when the statutory time limited to the petitioners for presentation of an election petition has since lapsed.***

Thereafter, the learned senior advocate argued the two issues seriatim.

ISSUE 1:

Whether the said motion of the petitioners can be heard and determined by this tribunal when the prior challenge raised by the 2nd respondent touching on the competence and the jurisdiction of this Honorable Tribunal to entertain the said petition has not been heard and determined by this Honorable Tribunal.

Arguing the first issue, learned counsel submitted that it is settled law that jurisdiction is the bedrock of adjudication and once it is raised in any proceedings, the issue must be resolved first before any party to the said proceedings can take further steps in the said proceedings. He referred to the case of: ***GAFAR VS THE GOVERNMENT OF KWARA STATE (2007) ALL FWLR (PT 360) 1415 AT 1440*****,** where ***Onnoghen JSC*** (as he then was) held as follows:-

> **"*Jurisdiction is a radical or crucial question of competence since if a court has no jurisdiction to entertain a matter, the proceedings is a nullity however well conducted and brilliantly well decided as the defect in competence is not intrinsic but extrinsic to the adjudication. It is for this reason that jurisdiction is described variously as the livewire, blood, bedrock, and or foundation of adjudication and once challenged, the issue must be settled first before taking any further step in the matter."***

He also relied on the decision of the apex court in the case of: **AJAYI VS. ADEBIYI (2012) ALL FWLR (PT 634) 1 AT 25** where ***Adekeye JSC*** held thus:-

> ***"It is trite law that where the issue of limitation is raised in defence of an action, it is only proper that the issue should be addressed first as it makes no sense to decide the merit of a matter that is statute –barred. In***

the event of a successful plea of limitation law against a plaintiff's right of action, the action becomes extinguished and unmaintainable at law."

Again, he referred to the decision of ***Uwaifo JSC*** in: ***NDIC VS. CBN (2002) FWLR (PT 99) 1021 AT 1034*** where his lordship held thus:-

"The court must not give an order in the suit affecting the defendants until the issue of jurisdiction is settled when it is raised."

He posited that in the instant petition, the 1st respondent raised a preliminary objection in his reply to the said petition contending that Petition No. EPT/SKT/SEN/11/2019 now sought to be amended by the petitioners by this instant application is statute barred and that this Honorable Tribunal is divested of jurisdiction to entertain same.

He said that while the challenge raised by the 1st respondent touching on the jurisdiction of this tribunal to adjudicate on same is yet to be determined, the petitioners have decided to take further steps by filling this instant application for leave to amend the petition. He submitted that the petitioners cannot do this at this stage of the proceedings. That the petitioners can only seek the leave of this tribunal to amend the said petition after the challenge raised by the 1st respondent respecting the competence of the said petition is resolved in favour of the petitioners.

He therefore urged the Tribunal to resolve this issue as formulated in favour of the 2nd respondent (sic).

ISSUE 2:

Whether the petitioners can validly amend the said petition at this stage of the proceedings when the statutory time limited to the petitioners for presentation of an election petition has since lapsed.

Before commencing his arguments, the learned silk informed the Tribunal that this issue is being argued in the alternative and that the issue becomes relevant for consideration by this tribunal if issue one argued above is resolved in favour of the petitioners.

Arguing this issue, he submitted that the jurisdiction vested on this Honorable Tribunal to amend an election petition is as stipulated in ***paragraph 14(2) (a) (i), (ii) and (iii) of the First Schedule to the Electoral Act, 2010 (as amended)*** which provides as follows:-

"(2) After the expiration of the time limited by-

(a) Section 134(1) of this Act for presenting the election petition, no amendment shall be made:-

- ***i. Introducing any of the requirements of sub paragraph (1) of paragraph 4 of this Schedule not contained in the original election petition filed, or***
- ***ii. Effecting a substantial alteration of the ground for, or the prayer in, the election petition, or***
- ***iii. Except anything which may be done under the provisions of subparagraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition".***

Counsel submitted that in the instant petition, it is crystal clear that the time limited for the petitioners to file the instant petition has since elapsed. He said that the nature of the amendment now sought to be made by the petitioners in the said petition *vide* this instant application are not matters of mere typographical errors as being alleged by the petitioners but involves a substantial alteration of the statement of facts being relied upon by the petitioners to support the grounds of the petition i.e. that the election was invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended) and that the 1st respondent was not duly elected by majority of lawful votes cast at the said election.

He said that a careful perusal of the amendment proposed to be made by the petitioners will reveal that in each of the paragraphs of the original petition filed by the petitioners on the 18th of March, 2019, the petitioner in an attempt to prove that the 1st respondent was not elected by majority of lawful votes cast at the election, pleaded instances of occurrence of over voting at several polling units as disclosed in Form EC 8A (II) issued by the 3rd respondent at several polling units in the Senatorial District. He referred in particular to the facts pleaded by the petitioners in paragraphs 18.9-18.93 of the petition.

He posited that in the proposed amended petition, the said petitioners are attempting to make a summersault of the said facts as previously pleaded in the petition filed on the 18th of March, 2019 by now contending that the alleged instances of over voting at the said polling units in the Senatorial District which supports the ground of the petition to the effect that the 1st respondent was not elected by majority of lawful votes cast at the election are disclosed in Form EC 8A(I) of the 3rd respondent and no longer on Form EC 8A(ii) of the 3rd respondent as previously alleged in the

petition filed on the 18th of March, 2019. He referred us to paragraphs 18.9-18.93 of the proposed amended petition (exhibit "A").

He submitted that by the nature of the amendment herein being sought by the petitioners, the said proposed amendment is tantamount to effecting a substantial alteration to the statement of facts being relied upon by the petitioners to support the grounds of the petition and or to sustain the prayers in the election petition.

He submitted that the law is settled that such a substantial amendment to facts being relied upon to support the grounds of the petition or to sustain the prayers in the petition can only be granted if same is made before the expiration of the time limited for presentation of an election petition. He referred to the case of: ***OKEREKE VS YAR'ADUA (2008) ALL FWLR (PT 430) 626 AT 665,*** where ***Tabai JSC*** held thus:-

> ***"Amendment of substantial nature can only be sought and granted before the expiration of 30 days from the date the result of the election was declared. In the instant case, the petitioner sought amendment of his petition outside the prescribed time frame for such amendment. Therefore, the petition was rightly struck out on appeal for being incompetent."***

He also relied on the decision of the Court of Appeal in: ***DALHATU VS DIKKO (2005) ALL FWLR (PT 242) 483 AT 501*** where the said court held thus:-

> ***"By virtue is Section 14(2) (a) of the Electoral Act 2002, after the time limited by section 154 of the Electoral Act for presentation of an election petition, no amendment shall be made. In the instant case, by the 4th of June, 2003 when the motion for amendment was brought by the appellant, the time for presenting the election petition had expired and as such, it was too late to effect any amendment in the petition."***

Again, he relied on the case of: ***MUSTAPHA V GAMAWA & ORS*** *(2011) LPELR-9226 (CA),* where his Lordship, ***JAURO, JCA*** stated thus:

> ***"Consequently amendment in an election petition is subjected to restriction as to time limitation. The applications for amendments were filed on 21st May 2011 and 26th May 2011. By section 134 (1) of the electoral Act 2010 (as amended), the petitioner has 21 days after the date of declaration of result within which to file his petition. It therefore follows that any substantial amendment or amendment relating to the contents of a petition as envisaged by paragraph 4 of the first schedule must be done within the 21 days limited for filling an election petition. The nature of the amendment sought by the petitioner was substantial in the sense that it related or was aimed at introducing the statutory requirement of the contents of a petition and bringing in prayers/reliefs which were not part of the petition. The attempt to***

amend the petition at that late stage is statute- barred hence futile, it is like an attempt to cure leprosy with cough syrup. The tribunal was therefore right in refusing to grant the two applications for amendment."

Learned counsel submitted that it is too late in the day for the petitioners to be granted leave by this Honorable Tribunal to amend the said petition in the manner herein proposed by the petitioners. He urged us to so hold and to resolve this issue in favour of the 2nd respondent (sic).

In conclusion, the learned counsel for the 1st respondent submitted that the instant application seeking the leave to amend the petition cannot be entertained at this stage of the proceedings regard being had to the fact that there is a prior challenge raised by the 1st respondent touching the competence and jurisdiction of this tribunal to entertain the said petition. Furthermore, that no further steps can be taken by the petitioners in the petition unless and until the said issue is resolved one way or the other by this Honorable Tribunal.

In the alternative he submitted that since this Honorable Tribunal has resolved to hear and determine this instant application of the petitioners on its merit, same cannot be granted as the said application was filed before this tribunal after the time limited to the petitioners to present an election petition had lapsed. He said more so, as the nature of the amendment sought to be made is tantamount to a substantial alteration to the facts being relied upon by the petitioners to sustain the petition.

He therefore urged the Tribunal to strike out this application or dismiss same for lack of merit.

In his additional oral submission in opposition to the application, the learned senior advocate maintained that the proposed amendments go beyond typographical errors and are intended to alter the petition filed on 18/3/19.

Also in In opposition to this application, the 2nd Respondent filed a Counter-Affidavit of 4 paragraphs, and a Written Address of Counsel dated and filed on the 18th of April, 2019.

In his written address, the learned counsel for the 2nd Respondent, ***Chief J.E. Ochidi***, formulated two issues for determination. The two issues are ***ipsissima verba*** (word for word the same) with those formulated by the learned silk for the 1st Respondent. The issues are as follows:

1. ***Whether the said motion on notice of the petitioners can be heard and determined by this tribunal when the prior challenge raised by the 2nd respondent touching on***

the competence and the jurisdiction of this Honourable Tribunal to entertain the said petition has not been heard and determined by this Honourable Tribunal; and

2. ***Whether the petitioners can validly amend the said petition at this stage of the proceedings when the statutory time limited to the petitioners for presentation of an election petition has since lapsed.***

Thereafter, the learned counsel argued the two issues *seriatim*.

Going through the entire gamut of the arguments canvassed in the written address, we again observed that the contents are again a verbatim regurgitation of the arguments contained in the written address of the 1st Respondent.

At first glance one is tempted to conclude that the learned counsel for the 2nd Respondent copied the written address of the 1st Respondent. However, on a closer scrutiny, it appears it is the other way round. The written address of the 2nd respondent was dated and filed on the 18th of April, 2019 while that of the 1st Respondent was dated and filed on the 24th of April, 2019, latter in time. The presumption is that the latter address must have been copied from the earlier one. This presumption is reinforced by some portions of the latter address where the learned counsel for the 1st respondent occasionally argued on behalf of the 2nd respondent when he mistakenly urged the Tribunal to resolve his issue: ***"as formulated in favour of the 2nd respondent (sic)."***

We think that rather than this wholesale repetition of the contents of another counsel's written address, a simpler and less controversial approach would be for counsel to simply inform the court that he is adopting and relying on the arguments contained in the written address filed by the first counsel. That will save all of us the time and energy dissipated in going through the same arguments ***ad nauseam.***

In any event, since we have discovered the repetition, it will suffice for us at this stage to simply state that the arguments articulated by the learned counsel for the 2nd respondent is the same as those canvassed by the 1st respondent in his written address. He equally urged the Tribunal to strike out this application or to dismiss same for lacking in merit.

At the hearing of this motion, one ***Henry K. Eni-Otu Esq.*** appeared for the 3rd Respondent in opposition to the application. He relied on their Counter-Affidavit of 14 paragraphs, and a Written Address of Counsel dated and filed on the 20th of April, 2019.

In the written address filed on behalf of the 3rd Respondent by one ***P.I.N. Ikwueto SAN*** they formulated a sole issue for determination as follows:

"Whether or not the Honourable Court has the jurisdiction to grant this Application."

Opening his arguments on the sole issue for determination, learned counsel posited that all authorities, both ancient and modern, have stated and restated that Election Petition proceedings are ***sui generis***, in ''its own class'' and creates a special jurisdiction to which the ordinary rules of civil or criminal procedure do not always apply. See the decisions in: ***ONITIRI V. BENSON (1960) 5 F.S.C. 50, (1960) S.C.N.L.R. 414 and OYEKAN V. AKINJIDE (1965) NM.L.R. 381; and the recent cases of AMAECHI V. INEC (2008) 1 S.C. (pt. 1) 36 at 146 (2008) 5 N.W.I.R.(pt. 1080) 227 at 342-342 ;and UGBA V. SUSWAN (2013) 4 N.W.L.R. (pt.1345)428 at 457-458.***

He posited that these proceedings are in respect of an Election Petition and that by Section 145 of the Electoral Act 2010 (as amended), the proceedings of this Honourable Tribunal are chiefly regulated by the First Schedule to the Electoral Act. On the issue of amendment of a Petition, he reproduced the provisions of Paragraph 14(2) of the said First Schedule.

He said that in the instant case, the Petitioners are contending that there are typographical errors in the substantive Petition as well as in the Petitioners Reply to the Reply of the 1st Respondent. That what the Petitioners have set out to do is to amend the description of the electoral Forms they pleaded in the Petition by correcting all references to Forms EC 8A (II) to now read Forms EC 8A (I).

He submitted that it is now too late in the day for the Petitioners/Applicants to make the amendments sought for the following reasons:

1) ***The proposed amendments relate to a question of Law which are substantial and goes to the root of the Petition;***
2) ***A Court (including this Honourable Tribunal) is entitled to take judicial notice of all Laws or enactments and any subsidiary legislation made under them having the force of law now or previously in force, in any part of Nigeria. See: Section 122(2)(a) of the Evidence Act, 2011;***
3) ***The INEC Guidelines and Manual made for the conduct of elections are subsidiary legislations having the force of law. See: INEC V. OSHIOMOLE (2009) 4 NWLR (pt. 1132) 607 at 675; AJADI V. AJIBOLA (2004) 1 LRECN 283 at 341.***

He submitted that although the Tribunal is entitled to take judicial notice of the said INEC Guidelines and Manual, the 3rd Respondent went the extra mile and annexed the INEC Guidelines and the relevant part of the INEC Manual to its Counter Affidavit as exhibits in opposition to this motion.

He referred to Paragraph 28(b)(viii) of the INEC Guidelines and Paragraph 1.4.(b) at page 18 of the INEC Manual (Exhibits INEC 1 INEC 2) Forms deployed and used by INEC for the conduct of the 2019 General Elections and submitted that they are sensitive materials.

According to him, while Forms EC 8A (I) are statutorily meant to be utilized for the conduct of elections into Senate, Forms EC 8A (II) are statutorily meant to be utilized for the conduct of elections into the House of Representatives.

Counsel submitted that what has happened in the instant case goes beyond mere typographical or clerical error. He maintained that the Petitioners have wittingly or unwittingly, pleaded the wrong statutory Forms in the Petition. He contended that having delved into the realm of the law by pleading the wrong statutory Forms for House of Representatives Election (EC8A (II) in an Election Petition concerning a Senatorial Election (EC8A (I), the error or omission is substantial and goes deep into the root of the Petition and the application for amendment having not been filed within the time prescribed by Paragraph 14 of the First Schedule to the Electoral Act, it is belated, incompetent and without jurisdiction.

He maintained that the case of: ***APC V. MBAKWE (2017) LPELR – 41434 (CA)*** relied upon by the petitioners is against them because it restricted amendments at this stage to only those ***"which do not go to the root of the petition or are substantial enough to alter the case presented by the Petitioner; and where the error can be corrected, without overreaching the other party; or giving advantage to petitioner; or visiting prejudice or injustice on the opponent''***

He submitted that the situation in the instant case is on all fours with that of the case of: ***HASHIDU V. GOJE (2003) 15 NWLR (pt. 843)352*** where the appellants pleaded Forms EC8A, EC8B EC8C, EC8D which are the statutory Forms for Presidential Election instead of Forms EC8A (1), EC8B (1), EC8C (1) and EC8D (1) used for the conduct of the Governorship elections then.

On the question whether the appellants/Petitioners could later amend their pleadings in the Petition to reflect the proper Forms used for the election, he referred to the comments of ***Ekpe, J.C.A*** at pages 380-381D-B of the Report as follows:

"***Indeed any amendment WHATEVER to the petition by the by the appellants at any state during hearing to plead or introduce the unpleaded Forms EC8A(1), EC8B(1),EC8C(1) and EC8D(1) would have failed for being late in making having regard to the provisions of paragraphs 14(1) and (16) of the First Schedule to the Electoral Act, 2002." (Emphasis supplied.)***

Learned counsel also referred to the decision of the apex court in the case of: ***OKE V. MIMIKO (2014 1 N.W.L.R (pt. 1388) 232 at 247 – 248***, where they affirmed the decisions of the two lower Courts on the issue of amendment and reiterated thus:

*"**By the provision of paragraphs 14(2)(a) and (b) of the First Schedule to the Electoral Act, 2010 (as amendment), no amendment WHATSOEVER can be entertained by the election tribunal after the expiration of the period within which to present an election petition and an exercise of discretion is not allowed.''***

He therefore submitted that the Applicants' subtle submission that they frontloaded the correct Forms EC8A (1) etc., is of no moment. He said that at the appropriate time, the Tribunal will be urged to reject and discountenance all the Forms EC8A (1) now sought to be tendered for being patently inadmissible and at variance with the pleadings.

On the issue of not visiting the mistake of Counsel on the party, he submitted that the principle admits of several exceptions.

According to him, the issue involved in this Application is an issue of Law since the use of Forms EC8A (1) or EC8A (II) is governed by the INEC Guidelines and Manual, which are subsidiary legislations. He submitted that where the mistake or inadvertence touches on a substantial point of law, the court will readily make a finding of tardiness or incompetence of the counsel. He relied on the case of: ***ENYADIKE V. OMEHIA (2010) 11 N.W.L.R (pt. 1204)92 at 135-136 H-D,*** where ***the Court of Appeal per Ogunwumiju, J.C.A*** reiterated thus:

''In Okafor v. Nweke, (2007) 10 NWLR (pt.1043)pg. 521, the Supreme Court held that the principle that mistake of counsel cannot be visited on a litigant cannot be called in aid to save a badly conducted case where the mistake was on a substantial point of law.'' Likewise, in OKORIE V. EFCC (2008) 5 N.W.L.R. (pt. 1081) 508 at 517 B-E Adekeye, J.C.A. (later J.S.C) reiterated thus: ''I have always entertained the impression that the

inadvertence of counsel, which is a leeway to not visiting the sin of counsel on his client, should be accepted with caution. <u>It should not be a scoreboard or shield for allowing counsel to encourage non-compliance with statutory provisions affecting appeal.''</u>

He referred to the 3rd Respondent's Reply to the Petition filed on 10 April 2019 and served on the parties, including the Petitioners/Applicants where they pleaded thus:

> **''In specific answer to the allegations contained in paragraphs 18.9-18.93 (pages 11-33) of the Petition, the 3rd Respondent state that it never deployed nor used Forms EC 8A (II) for the conduct of the elections for Sokoto North Senatorial District on 23rd February, 2019 as alleged or at all.''**

He submitted that the Petitioners/Applicants have brought the instant Application after they had been served with the 3rd Respondent's Reply in order to overreach the 3rd Respondent's said Reply and occasion injustice on the 3rd Respondent.

He argued that the mistake or inadvertence of Counsel will bind the litigant where, having regard to all the circumstances of the case, it best serves the interest of Justice and a litigant will suffer the legal consequences for the mistake or inadvertence of his Counsel where the mistake or inadvertence will occasion injustice on the adverse party. See: ***OLUMESAN V. OGUNDEPO (1996) 2 N.W.L.R (pt. 433 at 648 H.***

He referred to the case of: ***ONYEMELUKWE V. W.A.C.C. (1995) 4 N.W.L.R (pt. 387) 44 at 56 A-D, Tobi, JCA*** (later J.S.C) clarified the position thus**:**

"The whole essence of the principle of law is to ensure that substantial justice is done to the party whose counsel committed the mistake. Therefore, if in the course of trying to do that substantial justice to the party, injustice will be done to the adverse party; the court will be entitled to learned in favour of the adverse party.''

He emphasized that even in ordinary civil proceedings the law is settled that an amendment of pleadings cannot be granted where, as shown above, it is intended to overreach the case of the respondent. See also the case of: ***YUSUF V. ADEGOKE (2007) 11 N.W.L.R. (pt. 1045) 332 at 370 B-E.***

In conclusion, he urged the Tribunal to dismiss the Motion for being incompetent and without jurisdiction.

In his additional oral submission in opposition to the application, the learned counsel who appeared for the 3rd Respondent submitted that the Reply filed by the Petitioners on 24/4/19 to the 3rd Respondents counter Affidavit is incompetent and liable to be struck out. He maintained that by the mandatory provision of Paragraph 47 (5) of the 1st Schedule of the Electoral Act 2010 the Petitioners can only file a reply on point of Law. He said that the reply before the Court is an affidavit supported by a written Address. That the points raised in the written address cannot qualify as a reply on point of Law having raised new issues not contemplated by the 3rd Respondent. He therefore urged the Tribunal to strike out the purported Reply on Oath.

At the hearing of the motion, the learned counsel for the Petitioners/Applicants responded to all the submissions of the respondents counsel. In reply to the application by the 3rd Respondent to strike out their Reply, he submitted that paragraph 47 (5) gives the applicant the right to file a further affidavit and a Reply.

In relation to case of HASHIDU I. GOJE referred to in the written address of one of the 3rd respondent, he submitted that the case was fought on the basis of the wrong document pleaded without any application for amendment, hence the trial court and the appellate court refused the petitioner from relying on any other documents other than the one pleaded. He maintained that in the HASHIDU case there was no application to amend the petition. He said that apart from the wrongly pleaded document which they seek to amend, there is nothing else they are amending. That the Respondents cannot be prejudiced by amending the pleading to reflect an already front loaded document since they are already put on notice.

Finally, he urged the Tribunal to grant the application in order not to punish the party for the sin of his counsel.

We have carefully examined all the processes filed in this application together with the submissions of counsel on the matter.

Upon a careful examination of the issues formulated by the parties in the application we adopt the sole issue as formulated by the Applicants.

However before determining the sole issue we will briefly address the point canvassed severally by the respondents that the preliminary issue of jurisdiction raised in an earlier motion must be determined first.

In this regard, ***Paragraph 12(5) of the 1st Schedule to the Electoral Act, 2010 (as amended)*** is quite relevant. It provides as follows:

"(5) A respondent who has an objection to the hearing of the petition shall file his reply and state his objection to therein, and the objection shall be heard along with the substantive suit on grounds of law may file a conditional memorandum of appearance."

In essence, the above provision is to the effect that where there is a challenge to the tribunal hearing the petition whether the objection is stated in the reply or is brought by motion on notice, the tribunal has jurisdiction to hear it along with the substantive petition. At the end of the substantive trial, the Tribunal will deliver its ruling on the issue of jurisdiction raised in the earlier motion which incidentally has already been argued.

Paragraph 12(5) of the first schedule to the Electoral Act is intended to reflect the ***sui generic*** nature of election petitions. The mischief it intends to cure is to ensure that objections raised do not derail the determination of the merit of a case by undue and unwarranted delay occasioned by the preliminary objection.

In this instance, we will invoke the provisions of paragraph 12(5) of the first schedule to the Electoral Act 2010 to determine the issue of jurisdiction along with the substantive petition. See the following decisions on the point: ***Oke & Ors. v. Mimiko & Ors (2013) 9 SCM 155, (2014) 1 NWLR (Pt.1388) 332; PDP V. INEC (2012) 7 NWLR (Pt.1130) 538; Belgore v. Ahmed (2013) 6 NWLR (Pt.1355) 60***

Amendment of pleadings in ordinary civil suit is allowed at any stage, in order to settle the dispute between the parties. The courts have very wide discretion in granting or refusing leave to amend. ***See: Ojoh & Ors V Ogboni (1976) 1 NMLR 95, Oguntimehin V Gubere (1964) 1 All NLR 176***.

In election petitions however, considering its peculiar and ***sui generis*** nature, time is of great essence .See: ***Asunbor V Ashiomole (2007) 1 NWLR (Pt.1065) 32 at 40, Odon V Barigha-Amange (no.1) (2010) 12 NWLR (Pt. 1207) 1 at 10***.

Consequently amendment in an election petition is subjected to restriction as to time limitation.

On the amendment of Election Petitions, ***Paragraph 14 of the 1st Schedule to the Electoral Act, 2010 (as amended)*** provides as follows:

"14. (1) Subject to subparagraph (2) of this paragraph, the provisions of the Civil Procedure Rules relating to amendment of pleadings shall apply in relation to an election petition or a reply to the election petition as if for the words "any proceedings" in those provisions there were substituted the words "the election petition or reply".

(2) After the expiration of the time limited by-

(a) Section 134 (1) of this Act for presenting the election

petition, no amendment shall be made:

(i) introducing any of the requirements of subparagraph (1) of paragraph 4 of this Schedule not contained in the original Election petition filed, or;

(ii) effecting a substantial alteration of the ground for, or the prayer in, the election petition, or;

(iii) except anything which may be done under the provisions of subparagraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition; and

(b) Paragraph 12 of the Schedule for filing the reply, no amendment shall be made-

(i) alleging that the claim of the seat or office by the petitioner is incorrect or false; or

(ii) except anything which may be done under the provisions of subparagraph (2) (a) (ii) of this paragraph, effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply.

By virtue of the aforesaid paragraph 14 (2) of the Schedule the courts have consistently held that no substantial amendments to the petition or reply can be made at the expiration of the time prescribed by section 134 of the Electoral Act. Substantial amendments to the petition or reply are excluded, where not made within the time for filing petition or reply under the provision stipulated by section 134 of the Electoral Act. See: ***JANG v. DARIYE (2003) 15 NWLR (Pt.843) 436; OBI-ODU v. DUKE (2005) 10 NWLR (Pt. 932) 105 @ 143.*** No amendment outside the period prescribed for presenting a petition will be allowed if the amendment will be substantial. See: ***YUSUFU v. OBASANJO (2003) 16 NWLR (Pt.847) 554 @ 606; OJUKWU v. ONWUDIWE (2007) 3 EPR 892.***

It must however be noted that the said section 134 has been deleted from the present Electoral Act. So there is no provision in the Electoral Act that prescribes the time for the filing of a petition or for the hearing and determination of petitions. However, by virtue of ***section 9(5) of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010***, the time for filing and

determination of petitions are now matters of Constitutional provisions. ***Section 9(5) of the second Alteration Act*** stipulates that ***"an election petition shall be filed within 21 days after the date of the declaration of result of the elections."***

Thus, the cross reference in Paragraph 14(2)a of the Schedule to the deleted section 134 of the Electoral Act should now be to section 9(5) of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010.

In the light of this statutory development, previous decisions of the courts that took cognizance of the provisions of the deleted section 134 of the Act can still be considered as precedents in considering applications for amendments. See: ***OKE v. MIMIKO (No. 1) (2014) 1 NWLR (Pt.1388) 225,*** where the Supreme Court noted the fact of the non-existence of section 134 of the Electoral Act.

Where a petitioner intends to make substantial amendments to the petition or the respondent to the reply, such application for amendment has to be made within the time prescribed for the filing of petition (in the case of an amendment to a petition or reply).

However, the electoral Act does not define what amounts to substantial alteration or addition to the contents of a petition. It is to be determined in the light of the nature of the particular amendment sought.

In the instant application it is not in dispute that the application for amendment was filed long after the expiration of the 21 days limited for filing an election petition. The main thrust of the objection of the respondents is that the intended amendments are substantial and that they go beyond correction of typographical errors.

What are the proposed amendments as reflected in the proposed Amended Petition attached to the supporting affidavit as Exhibit A?

To get a clear picture of the nature of the proposed amendments it will be expedient to reproduce some salient paragraphs of the Applicants affidavit in support of this application. The relevant paragraphs are reproduced hereunder as follows:

> ***"g) That the Petitioners/Applicants annexed to their petition as well as Petitioners/Applicants reply to the reply of the 1st Respondent, various forms EC8A (1) in respect of various polling units they are contesting;***
>
> ***h) That however, in the cause of preparing the petition and the speed at which it was prepared so that the***

Petitioners/Applicants would not be out of time, there were typographical errors committed in the process wherein amongst other errors, Forms EC8A(1) which was annexed by the petitioners/Applicants in their petition, was inadvertently referred to as Form EC8A(II) both in the petition and the witnesses statement on oath of the petitions as well as in the Petitioners/Applicants reply to the reply of the 1st Respondent;

i) That there were equally, other typographical errors noticeable in the petition and which typographical errors have now been corrected and underlined as per Exhibit A annexed hereto;

j) That the amendments sought to be made are as underlined in the proposed amended Petition and Proposed amended Petitioners Reply to the Reply of the 1st Respondent herewith annexed as <u>Exhibits A & B</u>."

Upon a careful examination of Exhibit A, we observed that the amendments are mainly to substitute the words "***Form EC8A (II)"*** with the words "***Form EC8A (I)"*** where they appear it the in the petition, the witnesses statement on oath and the Petitioners reply to the reply of the 1st Respondent.

In their vehement opposition to the application to amend, the respondents are seriously contending that the proposed amended petition will introduce new facts to substantiate the over voting at the said polling units in the Senatorial District through the substitution of the words "***Form EC8A (II)"*** with the words "***Form EC8A (I)".***They maintain that the amendment amounts to effecting a substantial alteration to the statement of facts being relied upon by the petitioners to support the grounds of the petition.

Contrariwise, the learned counsel for the Applicants has seriously contended that the reflection of "***Form EC8A (II)"*** in the extant petition was a typographical error and a mistake of counsel due to the haste in meeting the timeline.

Upon a careful examination of the proposed amendments attached as Exhibit A to the motion, we are of the view that when the Petitioners counsel was preparing the petition it was evident that he was concerned with ***Form EC8A (I)*** which he actually frontloaded along with his petition. By frontloading ***Form EC8A (I)***, he was putting the respondents on notice that the said document would be tendered at the trial. He never frontloaded any ***Form EC8A (II)*** along with the petition.

We agree with the learned counsel for the Petitioners/Applicants that ***Form EC8A (I1)*** appearing in the pleading was either a typographical error or due to the inadvertence of counsel. The learned counsel for the 3rd Respondent even conceded that much in his address when he pointed out that it was when the 3rd Respondent served the Petitioners with their Reply wherein they raised the error of pleading ***Form EC8 (11)*** that the Petitioners/Applicants realised their mistake and brought this Application to correct the error.

We also agree with the learned counsel that where the amendment relates to obvious errors (typographical, clerical or blunder of Counsel) which do not go to the root of the petition or are substantial enough to alter the case presented by the Petitioner; and where the error can be corrected, without over-reaching the other party; or giving advantage to petitioner; or visiting prejudice or injustice on the opponent, the amendment should be granted. See the case of: ***APC v. MBAWIKE & ORS (2017) LPELR-41434(CA).***

The respondents have not shown how the amendment will prejudice any of them or occasion any miscarriage of justice. We are of the view that the amendment will not overreach any of the respondents in any way nor give the petitioner any advantage because evidence have not been adduced by any party.

The mere fact that the 3rd Respondent pleaded that **"they never deployed nor used Forms EC 8A (II) for the conduct of the elections for Sokoto North Senatorial District on 23rd February, 2019 as alleged or at all''** does not mean that they would be overreached or placed at any disadvantage at the trial. As a matter of fact this amendment goes to confirm the position of the 3rd Respondent that they never deployed nor used Forms EC 8A (II) for the conduct of the elections for Sokoto North Senatorial District on 23rd February, 2019. The amendment goes to support the case of the 3rd Respondent.

We agree with the learned counsel for the Applicants that the Respondents cannot be prejudiced by amending the pleading to reflect an already front loaded document since they are already put on notice.

Where the error was actually occasioned by the mistake of counsel it will be up to the respondent to show in what respect he would be prejudiced if the indulgence sought is granted. See the following decisions: ***Ukawu v. Bunge (1991) 3 NWLR (182) 677: Shanu v. Afribank (2000) 11-12 SC, 1 @ 11-12: Alabe v. Abimbola (1978) 2 SC 99.***

It is a settled principle of law that the courts should not visit the sin of the counsel on the litigant. More so, in a case of this nature where the counsel was under a bounding obligation to expedite action according to the stringent time lines. See: ***Imegwu v. Okolocha (2013) 9 NWLR (1359) 347 @ 370.***

With particular reference to the assertion of ***Ekpe, J.C.A*** in the HASHIDU CASE at pages 380-381D-B of the Report that ***"any amendment WHATEVER to the petition by the by the appellants at any stage during hearing to plead or introduce the unpleaded Forms EC8A(1),EC8B(1),EC8C(1) and EC8D(1) would have failed for being late in making having regard to the provisions of paragraphs 14(1) and (16) of the First Schedule to the Electoral Act, 2002"*** ,we are of the view that the statement must be regarded as mere ***obiter dicta*** because the case was not on amendment of pleadings but on the admissibility of evidence which was at variance with facts pleaded. It is settled law that it is only the ***ratio decidendi*** that is binding in a case, not the obiter dicta. See: ***Nepa vs. Onah (1997) 1NWLR (Pt.484) 680 at 689***.

In the said HASHIDU VS GOJE case supra, ***Walter Nkanu Onnoghen JCA*** (as he then was) observed that the Petitioner never made any application to amend the petition to plead the correct forms. In the said judgment he opined as follows: ***"In short, it is my view that the said Paragraph 2 attempted to smuggle in the different forms, through the back door without a formal application for leave to amend the necessary paragraphs of the petition. Since no such application was presented, nor any granted by the Tribunal, it is my view that the forms as pleaded in the paragraphs of the petition remain the case of the appellants and the Tribunal was right in so holding."*** See: ***ALHAJI ABUBAKAR HABU HASHIDU & ANOR v. ALHAJI MOHAMMED DANJUMA GOJE & ORS (2003) LPELR-10310(CA)***) per ***Walter Nkanu Onnoghen JCA*** (as he then was).

Consequently, in view of our salient findings above, we are of the view that this petition can still be amended at this stage. The sole issue for determination is resolved in favour of the Petitioners/Applicants.

The application succeeds and it is granted as follows:

1. ***AN ORDER OF COURT granting leave to the Petitioners/Applicants to amend Petition No: EPT/SKT/SEN/11/2019, witnesses statements on oath and Petitioners/Applicants Reply to the Reply of the 1st Respondent pending before this Honorable Tribunal as per the underlining's marked as Exhibits A & B respectively and which amendments are fully incorporated in the amended petition and amended Petitioners Reply separately filed before this Honourable Tribunal; and***
2. ***AN ORDER OF COURT deeming as having been properly filed and served, a clean copy of the AMENDED PETITION NO: EPT/SKT/SEN/11/2019 and amended Petitioners/Applicants Reply to the Reply of the 1st Respondent filed alongside this application (necessary filing fees thereof having been paid in advance).***

Costs is assessed at N20, 000.00 (twenty thousand naira) in favour of the Petitioners/Applicants against each of the Respondents.

HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

COUNSEL:

1. **IBRAHIM ABDULLAHI ESQ….1ST & 2ND PETITIONERS/APPLICANTS**
2. **DR.HASSAN. M. LIMAN SAN…….1ST RESPONDENT/RESPONDENT**
3. **CHIEF J.E.OCHIDI……2ND RESPONDENT/RESPONDENT**
4. **P.I.N. IKWUETO SAN……..3RD RESPONDENT/RESPONDENT**