IN THE NATIONAL ASSEMBLY ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON FRIDAY THE 2ND DAY OF AUGUST, 2019
BEFORE:

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

PETITION NO: EPT/SKT/HR/08/19

ELECTION TO THE OFFICE OF MEMBER, HOUSE OF REPRESENTATIVES FOR GORONYO/GADA FEDERAL CONSTITUENCY HELD ON THE 23RD DAY OF FEBRUARY 2019.

BETWEEN:

1. MUHAMMAD BELLO ALIYU
2. PEOPLES DEMOCRATIC PARTY (PDP) } PETITIONERS

AND

1. MUSA S. ADAR
2. ALL PROGRESSIVE CONGRESS (APC)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION } RESPONDENTS
4. COMMISSIONER OF POLICE, SOKOTO STATE

JUDGMENT
DELIVERED BY HON. JUSTICE P.A.AKHIHIERO (CHAIRMAN)

This judgment is in respect of an election petition filed by the Petitioners on the 17th day of March, 2019 challenging the election of the 1st Respondent on the platform of the 2nd Respondent to the office of member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State held on the 23rd day of February, 2019.

At the said election, the 3rd Respondent returned the 1st Respondent as the winner of the election to the office of member, House of Representatives representing Goronyo/Gada Federal Constituency with a total score of 45,143 (forty five thousand, one hundred and forty three) votes.

Dissatisfied with the declaration of the 1st Respondent as the winner of the said election, the Petitioners initially filed this petition against five Respondents, challenging the declaration of the 1st Respondent as the winner of the said election on the following grounds:

1. The election was invalid by reason of corrupt practices and/or non – compliance with the provisions of the Electoral Act 2010 (as amended); and INEC Regulations and Guidelines for the conduct of Election 2019;
2. The 1st Respondent was not duly elected by majority of lawful votes cast at the said election; and
3. The 4th and 5th Respondents in their bid to aid the 1st and 2nd Respondent threatened, intimidated and prevented many registered voters from exercising their franchise.

In this petition, the Petitioners are seeking the following reliefs:

a. That the election for the office of member, House of Representatives for Goronyo/Gada Federal Constituency held on 23rd day of February, 2019 is invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations & Guidelines for the conduct of Elections 2019;
b. That the 1st Respondent, Musa Adar of All Progressive Congress (APC), the 2nd Respondent was not duly elected or returned by majority of lawful votes cast at the election for the office of member, House of Representatives for Goronyo/Gada Federal Constituency held on the 2nd of March, 2019;
c. That the actions of the 4th and 5th Respondents threatening and intimidating the eligible voters which disenfranchised many supporters of the petitioners amount to infringement on the fundamental rights of the petitioners' supporters and therefore null and void;
d. That the certificate of Return issued to the 1st Respondent, Musa Adar of the All Progressive Congress (APC) the 2nd Respondent as member, House of Representative for Goronyo/Gada Federal constituency on the election held on the 23rd day of February 2019 is null and void and of no effect whatsoever;

e. That the 1st Petitioner, Muhammad Bello Aliyu of the Peoples' Democratic Party, the 2nd Petitioner should be returned as member, House of Representatives Goronyo/Gada Federal Constituency in the Election held on 23rd February 2019; and
f. That the 3rd Respondents be directed forthwith to issue to the 1st Petitioner, Muhammad Bello Aliyu, a Certificate of Return as member, House of Representatives representing Goronyo/Gada Federal Constituency in the election held on the 23rd day of February 2019.

ALTERNATIVELY the Petitioners are praying that the said election should be nullified and/or cancelled and the 3rd Respondents be mandated to conduct fresh election for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency.

The Petitioners accompanied their Petition with Witnesses Statements on Oath, List of Documents to be relied on during trial, List of Witnesses to be called during trial and some frontloaded documents which they relied upon.

Upon filing the Petition, all the Respondents were served with the Petition and the Respondents entered their appearances except the Commissioner of Police (4th Respondent).

Subsequently, the counsel for the 5th Respondent (Nigerian Army, 8th Division, Sokoto) filed a Notice of Preliminary Objection and urged the Tribunal to strike out the name of the 5th Respondent from the petition on the ground that he was a non-juristic entity. The Petitioner's counsel conceded to the objection and the 5th Respondent was accordingly struck out.

The 1st Respondent filed a Memorandum of Appearance and Reply to the Petition on the 26th of March and 1st of April, 2019 respectively. The 2nd Respondent also filed their Memorandum of Appearance and Reply to the Petition on the 26th of March and 1st of April, 2019 respectively and the 3rd Respondent filed their Memorandum of Appearance and Reply to the Petition on the 26th of March and 3rd of April, 2019 respectively. The 4th Respondent did not file any process neither was he represented by counsel.

In proof off the petition, the 1st Petitioner testified for himself and called 8 other witnesses. The petitioners also tendered some documents admitted and marked as Exhibits P, P1A, P1B, P1C, P1D, P2, P3, and P4A to P4k, P5A to P5I, P6A to P6J, P7A and P7B. The exhibits are as follows:

- Exhibit P is the original receipt of payment for Certified True Copies of documents from the 3rd Respondent;

- Exhibit P1A is the voters Register for Kiri ward, Gada Local Government Area, polling unit code 013 (Tambuwal Kame polling unit);
- Exhibit P1B is the voters Register for Masuki polling unit code 012, Gada Ward of Gada Local Government Area;
- Exhibit P1C is the voters Register for Benidi polling unit code 009 Gada Ward of Gada Local Government Area.;
- Exhibit P1D is the voters Register for Shiyar Rafi/Magaji dispensary polling unit code 001 at Rimawa ward in Goronyo Local Government;
- Exhibit P2 is form EC8C (II) i.e. summary of result from Registration Area for Goronyo Local Government;
- Exhibit P3 is Form EC8E (II) i.e. declaration of result for Goronyo/Gada Federal Constituency;
- Exhibit P4A – P4K are 11 copies of Forms EC8A (II) i.e. statement of result from polling unit, Gada Local Government;
- Exhibit P5A – P5 I are 9 copies of Forms ECC8B (II) i.e. summary of result from Registration Areas of Gada LGA;
- Exhibit P6A – P6J are 10 copies of Forms EC8A (II) i.e. statement of result for polling units for Goronyo Local Government Area; and
- Exhibit P7A & P7B which are 2 copies of Forms EC8B (II) i.e. summary of result from collation centres at Registration Area level for Goronyo Local Government Area.

The 1st Respondent on his part called a total of 7 witnesses in defence of the petition while the 2nd and 3rd Respondents relied on the evidence proffered by the 1st Respondent's witnesses and did not call any witness. At the close of evidence, the Honourable Tribunal ordered filling of written addresses by the learned counsel for the parties.

On the 17th of July, 2019 the learned counsel for the parties adopted their Written Addresses and the matter was adjourned for judgment.

In a nutshell, the Petitioners' case is that the 1st Petitioner who is a member of the Peoples Democratic Party (PDP), 2nd Petitioner, contested the election for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency in the National Assembly Elections held on the 23rd February, 2019 under the platform of the 2nd Petitioner.

The Petitioners claim that they should have been returned as the winners of the election having allegedly polled the majority of the lawful votes cast at the said election but the 1st Respondent who was sponsored by the 2nd Respondent was returned elected as Member, House of Representatives representing Goronyo/Gada

Federal Constituency by the 3rd Respondent, the statutory body charged with the conduct of elections for elective offices at the Federal and State levels.

According to the Petitioners, the 4th Respondent has the primary responsibility of maintaining law and order in Sokoto State during the conduct of the said elections.

They alleged that the 3rd Respondent returned the 1st Respondent as duly elected with a purported score of 45,143 (forty five thousand, one hundred and forty three) votes and apportioned 34,256 (thirty four thousand, two hundred and fifty six) votes to the 1st Petitioner.

According to the Petitioners, Goronyo/Gada Federal Constituency is comprised of two Local Government Areas to wit: Goronyo Local Government Area and Gada Local Government Area. That there are 22 wards in Goronyo/Gada Federal Constituency which are as follows:

GORONYO LOCAL GOVERNMENT AREA

i. BOYEKAI WARD
ii. KOJIYO WARD
iii. GORAU TAKAKUME WARD
iv. SHINAKA WARD
v. GIYAWA WARD
vi. GORONYO WARD
vii. SABON GARI DOLE/DANTASAKKO WARD
viii. RIMAWA WADA
ix. BIRJINGO WARD
x. KWAKWAZO WARD
xi. KAGARA WARD

GADA LOCAL GOVERNMENT AREA

i. GADA WARD
ii. TSITSE WARD
iii. KADDI WARD
iv. GILBADI WARD
v. ILAH/DUKAMAJE WARD
vi. KADASSAKA WARD
vii. KYADAWA HOLAI WARD
viii. KAFFE WARD
ix. KIRI WARD

x. KADADIN BUDA WARD.
xi. KWARMA WARD

The Petitioners stated that the Petition is based on the following grounds:

1. That the election was invalid by reason of corrupt practices and/or non – compliance with the provisions of the Electoral Act 2010 (as amended); and INEC Regulations and Guidelines for the conduct of Election 2019;
2. That the 1st Respondent was not duly elected by majority of lawful votes cast at the said election; and
3. That the 4th Respondent in their bid to aid the 1st and 2nd Respondents threatened, intimidated and prevented many registered voters from exercising their franchise.

The Petitioners maintained that the 3rd Respondent is a creation of section 153 of the Constitution of the Federal Republic of Nigeria 1999 as amended and its constitutional powers are as stated in paragraph 14 of Part 1 of the 3rd Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended).

That pursuant to its constitutional and statutory powers, the 3rd Respondent issued the INEC Regulations and Guidelines for the Conduct of the 2019 Elections. That any vote at an election that is not returned in strict compliance with the provisions of the Electoral Act 2010 as amended and INEC Regulations and Guidelines is not a lawful vote. That in both the Electoral Act, 2010 (as amended) and the INEC Regulations and Guidelines, the following are mandatory:

i. To use the Smart Card Reader (SCR) for voters accreditation before voting proper;
ii. To count the votes loudly and announce the results of elections by:
    a. The presiding officer at the polling unit; and
    b. The ward collation officer at the ward collation centre e.tc.
iii. For electoral officers including presiding officers to be neutral during elections;
iv. For the 3rd Respondent not to appoint persons who have sympathy for a political party as electoral officer;
v. For the 3rd Respondent, to provide adequate polling units to accommodate the registered voters;
vi. For the 3rd Respondent or its agent to accredit registered voters with the use of Smart Card Readers (SCR) in polling units to cast their votes simultaneously;
vii. For the 3rd Respondent or its agents to accredit registered voters at polling units before allowing them to cast their votes;

viii. For the 3rd Respondent not to allow non-accredited persons to vote at the election of 23rdFebruary 2019; and

ix. For the Presiding Officers to follow strictly the steps prescribed in the INEC Regulations and Guidelines for the Conduct of Elections 2019 for the sorting and counting of ballots and allow the polling agents, voters and observers to watch the process.

That it was the advertised regulation of the 3rd Respondent that accreditation and voting shall take place simultaneously between 8:00 a.m. and 2:00 p.m.

According to them, the mandatory steps for accreditation and voting under the extant law are as follows:

i. Request for the Permanent Voters Card (PVC) simpliciter;

ii. Examine the voter's card through the card reader to ascertain that all the biometrics features of a person conforms with the information in the Smart Card Reader (SCR) and the photo on the Permanent Voter's Card (PVC) is that of the voter and that the polling Unit details are correct for that Polling Unit;

iii. In cases of Smart Card Reader (SCR) failures, to check the register of voters to confirm that the voter's name, photo and Voter Identification Number (VIN) as contained on the Permanent Voters Card (PVC) are in the Register of voters;

iv. Request the voter to thumb print the appropriate box in the register of voters; provide his/her phone number in the appropriate box in the register of voters.

v. In cases where the Permanent Voters Card (PVC) fails to be read by the Smart Card Reader (SRC) then the Assistant Polling Officer (APO I) shall refer the voter to the Polling Officer (PO) who shall request the voter to leave the polling unit;

vi. In circumstances where the Smart Card Reader (SCR) shows wrong details but correct details are in the register of voters, the APO I and APO II shall if satisfied that the details of the voter is in the register, record the phone number of the voter in the appropriate box in the register of voters and continue accreditation;

vii. Apply indelible ink to the cuticle of the appropriate finger on the left hand;

viii. Enter form EC.8A and/or EC.8A (I), EC.8A (II) "statement of result of poll" the number of voters in the register of voters, the number of accredited voters, the number of ballot papers issued in the polling unit, the number of unused ballot papers, the number of spoiled ballot papers, the number of rejected ballots, the total number of valid votes and the total number of used ballot papers;

ix. Enter in forms EC.8A and/or EC.8A (I) EC.8A (II) "statement of result of poll" the name of the assistant presiding officer, his signature, stamp and date certifying that the information in form EC.8A and/or EC.8A (I) EC.8A (II) "statement of result of poll" are true and accurate account of votes cast in the polling Unit and that the Election was either contested or not contested;

x. Give a dully completed form EC.8A and/or EC.8A (I) EC.8A (II) "statement of result of poll" to the respective party agent of the political parties; and

xi. The mandatory steps for the accreditation, voting, sorting and counting of ballots, procedure for collation and declaration of results all stated in the INEC Registrations and Guidelines for the conduct of Elections 2019.

They maintained that the votes credited to the 1st Respondent are not votes cast by registered voters duly accredited to vote in accordance with the Electoral Act 2010 as amended and the INEC regulations and guidelines for the conduct of elections in the various polling units. According to them, the exercise was voided by corrupt practices and non-compliance with the INEC Regulations and Guidelines.

They stated that at Gidan-Karo polling unit, code 014 in Gada ward, INEC ad hoc staff did not conduct any election but the 3rd Respondent allotted votes to the candidates as they wished as reflected in forms EC8A (II) and EC8B (II). They maintained that the Petitioners' polling agents were present at Gidan Karo polling unit, as early as 8:00am and witnessed no election before they left the polling unit at 5:00pm.

They also stated that at Gidan Madugu polling units' codes 021 and 022 in Gada ward, no election took place but the 3rd respondent announced some results from those polling units despite the complaint from the petitioners and votes were credited to the parties in forms EC8A (II) and EC8B (II).

That at Kadadin Maidabo primary school polling unit code 009 at Kadadin Buda ward in Gada Local Government Area of Sokoto State, few hours after the commencement of election, a fight ensued and all the election materials were scattered. They said that the members of staff of the 3rd Respondent were unable to proceed with the election but at the collation centre the ad hoc staff of the 3rd Respondent fabricated the result on Form EC8B (II) despite the fact that the election was never concluded at the said polling unit.

That at Gidan Gulbi polling unit code 005 in Tsitse ward of Gada Local Government Area of Sokoto State, the Smart Card Reader (SCR) was not functioning and the petitioners informed the staff of the 3rd respondent to wait until same was rectified or election postponed but the 3rd Respondent declined and

went ahead to conduct the election at the said polling unit without the use of the Smart Card Reader (SCR), therefore the agents of the petitioners refused to sign the result sheet in form EC8A (II). That the staff of the 3rd Respondent thereafter forged the signature of the Petitioners' agents in the said polling unit.

They maintained that at the said Gidan Gulbi polling unit, Mallam Bashir, APO1 and Kabir APO 2 both ad hoc staffs of the 3rd Respondent, advised the presiding officer not to proceed with voting when the smart card reader was not functioning but the presiding officer refused to yield to the said advise. That at the same Gidan Gulbi polling units, the agents of the 1st and 2nd Respondents were thumb printing ballot papers on behalf of the eligible voters.

That at Gidan Hasimu polling unit code 013 in Tsitse ward, in Gada Local Government Area, some soldiers and military personnel shot into the air to scare eligible voters, the voters fled and there was no voting there.

That at polling units code 006, 009 and 012 at Gada ward, in Gada Local government Area, where the petitioners have larger supporters, the elections were cancelled. That at Kiri ward of Gada Local Government Area, the elections in the polling units' codes 010,011 and 013 were cancelled when the 3rd Respondent noticed that the petitioners had a large majority of lawful votes cast.

That at Gidan Hashimu1code 003 polling unit in Tsitse ward of Gada Local Government Area, soldiers also shot into the air to scare eligible voters from coming out to vote.

That at Basana polling unit in Tsitse ward in Gada Local Government Area, the Smart Card Reader did not function and the presiding officer of the 3rd Respondent proceeded with the voting manually, without confirming the voters Identification Number (VIN) in the voters register.

That in Kardade Buda ward in Tufful Baba Danfili polling unit code 018, in Gada Local Government Area, many women armed with their PVCs came out to vote but they were disenfranchised by the presiding officer of the 3rd Respondent hence the PDP agents refused to sign the result sheet since majority of their supporters were disenfranchised.

That election did not take place at Gadabo polling units A and B codes 012 and 015 in Kadi ward in Gada Local Government Area.

That at Holai-Tabki polling unit code 012 in Kyadawa Holai ward in Gada Local Government Area; the petitioners' supporters were prevented from voting by the 1st and 2nd Respondents touts while the supporters of the 1st and 2nd Respondents were allowed to carry on with the voting. They stated that the Smart Card Reader (SRC) was never used at the said Holai-Tabki polling unit 012 in Kyadawa Holai ward.

That at Kadadin Madabo polling unit A and B code 009 and in Kadadin Buda ward of Gada Local Government Area, the election never took place,

however the 3rd Respondent apportioned scores for the said polling units in forms EC8A (II) and EC8B (II).

That at Kadadin dispensary polling unit code 001 in Kadadin Buda ward of Gada Local Government Area, one Balarabe Musa, a stalwart of the 2nd Respondent who was the presiding officer, thumb printed ballot papers and presented a result which the petitioners' agent refused to sign. They maintained that the election at the said polling units was marred by irregularities and malpractices.

They alleged that at Dajiro polling unit code 006 in Kagara ward in Goronyo Local Government Area of Sokoto State, the election was marred by intimidation from touts of the 1st and 2nd Respondents thereby preventing many eligible voters who are supporters of the petitioners from voting.

That at Shiyar Marafa polling unit code 001, in Kagara ward, Goronyo Local Government area, Sokoto State some Fulani herdsmen came with horse whips to intimidate the eligible voters and prevented many supporters of the petitioners from voting.

They maintained that men and officers of the 3rd and 4th Respondents were not available at many polling units in Kagara ward thereby giving opportunity for the 1st and 2nd Respondents' touts to take charge and control the conduct of the elections there.

That at Mallam Garba polling Unit in Goronyo ward of Goronyo Local Government Area, voting did not commence until 5pm and at 6pm, the supporters of the 1st Respondent and agents of the 3rd Respondent went away with the ballot box without announcing the result at the polling unit.

That at Sabon Gari Dole/Dantasakk Polling unit and Mallam Faru polling unit, elections did not take place due to the failure of Smart card readers.

That there were incidents of over voting at Kirare polling unit in Goronyo ward and at polling unit code No. 001 at Rimawa ward both in Goronyo Local Government which they reported to the 3rd Respondent at the ward collation centre.

They maintained that the information contained in the smart Card Reader used for the conduct of election for the House of Representative of Goronyo/Gada Federal Constituency did not tally with the information in forms EC8A (II), EC8B (II), EC8E (II) and other result sheets. That the non-compliance with the INEC Regulations and Guidelines for the Conduct of Election, 2019 affected the fortunes of the petitioners at the said election and same benefited the 1st and 2nd Respondents.

That the actions of the 4th respondents by threatening, intimidating and shooting in the air to scare away many eligible voters actually affected the conduct of election in Goronyo/Gada Federal Constituency.

That the information on the Electoral forms purported to have been used in the said Election were inconsistent with the data base in the smart card Reader and some of the Electoral forms used for the elections were not stamped and signed.

That the scores entered for the 1st and 2nd Respondents in form EC8A (i), EC8A (ii) and EC8B for the various polling units complained of in Goronyo/Gada Federal Constituency were not in accordance with the INEC Regulations and Guidelines for the Conduct of elections, 2019.

That if the votes from the aforementioned polling units complained of are deducted, the election into the office of a member representing Goronyo/Gada Federal constituency will become inconclusive and the 1st Respondent cannot be adjudged to have scored a majority of lawful votes.

As earlier stated, the 1st Respondent did not testify in person but he called a total of 7 witnesses in defence of this petition. In their evidence, they admitted that the 3rd respondent returned the 1st respondent of the All Progressive Congress (APC) as the duly elected member of the House of Representatives representing Goronyo/Gada Federal Constituency, having scored a total number of 45,143 votes against the 1st Petitioner who scored 34,256 votes. That he was duly elected by majority of the lawful votes cast at the said election.

They maintained that the election is not invalid by reason of corrupt practices and/or non-compliance with the provisions of the Electoral Act 2010 (as amended) and the INEC guidelines for election officials 2019 and the 4th Respondent did not aid the 1st respondent's victory at the election neither did they threaten, intimidate or prevent any voter from exercising their franchise in the election.

According to them, the votes scored by the 1st and 2nd respondents in the election were votes cast by registered voters who were duly accredited to vote and who actually voted at the various polling units were they voted and all ballot papers used by these voters were duly stamped and signed by the duly appointed presiding officers for the respective units.

They maintained that contrary to the assertions of the Petitioners, elections were held at Gidan Karo polling unit Code 014 and Gidan Madugu polling unit Code 021 and at no time did any police officer attached to the polling units complain to the 3rd Respondent's officers that no election took place at the polling units.

They stated that the scores recorded in favour of the 1st and 2nd Respondents were results of election conducted in strict compliance with the provisions of the Electoral Act 2010 as amended and the Manual for Election Officials 2019, devoid of any disenfranchisement, irregularities/malpractices and that the votes announced

and recorded in favour of the 1st and 2nd respondents in those polling units were valid votes cast by duly accredited voters.

As earlier stated, the 2nd, 3rd and 4th Respondents did not lead any evidence in defence of this petition.

At the close of evidence, the learned counsel for the Petitioners and the 1st, 2nd and 3rd Respondents filed their Written Addresses.

In his Final Written Address dated and filed on the 21st of June, 2019, the learned counsel for the 3rd Respondent, ***M.M.Aliyu Esq.*** identified the sole issue for determination in this petition as follows:

> **"*Whether the election of the 1st Respondent to the Office of Member, House of Representatives for Goronyo/Gada Federal Constituency held on the 23 day of February, 2019 is invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act 2010 (as amended) and INEC guidelines and regulations for the conduct of 2019 general elections."***

Thereafter, the learned counsel marshalled out his arguments on the said issue. He posited that the above issue for determination forms part of the 1st Petitioner's relief in this petition and he urged the Tribunal to resolve the issue against the Petitioner.

He submitted that the law is long settled that election petition relief is in the nature of a declaratory relief. Consequently, he said that the onus is on the petitioner to establish his clams on his own evidence without relying on the weakness of the case of the respondent. He posited that the petitioner must satisfy the tribunal upon enough credible and cogent evidence which if found established, entitles the petitioner to the declaration sought. See: ***UCHA v ELECHI (2012) 13 N WL R (PT 1317) 330.***

He submitted that a claim for declaration cannot be established by the admission of a respondent or defendant and referred to the case of: ***AREGBESOLA v OYINLOLA (2011) 9 NWLR (PT1253) 458, 594,*** where the Court of Appeal held thus:

> ***"The requirement of the law regarding the onus placed on a party claiming a declaratory relief as claimed by the appellant in the present case is trite. A claim for relief of declaration, whether of title to land or not is not established by an admission by the defendant, because the plaintiff must satisfy the court by cogent and credible evidence called by him to prove that as a claimant, he is entitled to the declaratory relief. It is the law that a court does not grant***

declaration on admission of parties because the court must be satisfied that the plaintiff on his own evidence is entitled to the relief claimed."

Again he referred to the case of: ***CPC v INEC (2011) 18 NWLR (PT 1279) 493, 560*****,** where the Supreme Court held thus:

"By its very nature, an election petition is principally predicated on complaints on the conduct of election and is usually conducted with reliefs being sought most of which are declaratory in nature. No wonder therefore, of the 4 remaining reliefs in the appellant's petition which were refused and dismissed by the Court of Appeal at the end of the hearing of the petition, 3 of the reliefs are declaratory in nature while the remaining one is in form of a possible determination in the event of the success of the declaratory reliefs. The law however is trite as rightly found by the Court of Appeal in its judgment that a plaintiff like the appellant, in this case claiming declaratory reliefs, must rely on the strength of his own case not on the weakness of the defence. This principle of law applies not only where the defendant calls no evidence which is the main complaint of the appellant in the present case but even where there is admission of the plaintiff's case by the defendant."

Having posited as above, the learned counsel went further to dissect the salient points enshrined in the above issue for determination, vis- a vis the evidence adduced by the petitioners:

ALLEGATION OF CORRUPT PRACTICES

Learned counsel submitted that it is clear that the Petitioners are challenging the election of the Respondent in this petition on allegation of corrupt practices during the election. That for a petitioner to prove allegation of corrupt practices during an election beyond reasonable doubt, a petitioner must lead concrete evidence to establish that:

(a) The respondent personally committed the corrupt acts or aided, abetted, counselled, or procured the commission of the alleged acts of corrupt practices;

(b) The alleged acts were committed through an agent, that the agent was expressly authorized to act in that capacity or granted authority; and

(c) The corrupt practices substantially affected the outcome of the election and how it affected it.

He submitted that these factors have not been sufficiently proved to substantiate the allegation of corrupt practices in the petition. That a clear and unequivocal proof is required before a petitioner can establish a case of corrupt practices. That it has to be shown that either the candidate committed it by himself or through his authorized agent or that he authorized what was done or that he subsequently ratified it.

He said that some of the Petitioners' witnesses in their statements on oath stated that they saw multiple voting, forgeries of election results etc., etc., but they never led any credible and reliable evidence connecting all the allegations to the respondent. He referred to the case of: ***WALI v BAFARAWA (2004) 16 NWLR (PT 898) CA 1, 43 – 44***, where the Court of Appeal per ***Thomas, JCA*** held thus:

> ***"In my considered opinion, the issue is begging the question whether the appellants had in fact identified an agent of the 1st and 2nd respondents who committed electoral or corrupt practices or undue influence. In resolving issues 2 and 3 above, it has been established that the acts of the pre-caretaker chairman of Tireta Local Government 7th respondent in distributing money to policemen could not be traced to 1st and 2nd respondents as the necessary evidence of conspiracy was not made out. Thus, the evidence of PW12 was of no value as far as it is intended to establish agency relationship between the 7th respondent and 1st and 2nd respondents. The same applied to the evidence of PW18 who asserted that some traditional rulers influenced the outcome of the election in favour of the 1st and 2nd respondents. Agency relationship must be established by credible evidence not on mere assumptions……"***

Furthermore, counsel submitted that the allegation of corrupt practices in an election, particularly concerning falsification of results and forgery, intimidation, threat to life etc., etc., requires a standard of proof beyond reasonable doubt. He referred to the decision of the Supreme Court in: ***IKPEAZU v OTTI & ORS (2016) LPELR – 40055 (SC)*** where they stated thus:

> ***"We shall consider the issue of criminal allegations made by the petitioners committed during the election in form of violence, hijacking of electoral materials, intimidation, threat to life, corrupt practices, falsification and fabrication of results highlighted and particularized in para***

30(a)(d)……...therefore, the trial Tribunal, after considering the mandatory provisions of Section 139 (1) (as amended) of the Evidence Act vis-à-vis proof of allegations in any criminal proceedings…. the Tribunal held that grave criminal allegations were made in the petition but were not proved beyond reasonable doubt……That is the law. It has not changed. Where in an election petition, the petitioner makes an allegation of crime against a Respondent and he makes the commission of the crime the basis of his petition, Section 135 (1) of the Evidence Act 2011 imposes strict burden on the said petitioner to prove the crime beyond reasonable doubt. If he fails to discharge the burden, his petition fails".

See also the case of: **OKECHUKWU v INEC (2014) 17 NWLR (PT) 1436 255**.

In view of the above Supreme Court decision, he urged the Tribunal to resolve this issue against the Petitioners having failed to prove the allegation of corrupt practices against the Respondents.

ALLEGATION OF NON-COMPLIANCE WITH THE PROVISIONS OF THE ELECTORAL ACT 2010 (AS AMENDED) AND INEC GUIDELINES AND REGULATIONS FOR THE CONDUCT OF 2019 GENERAL ELECTIONS

Learned counsel submitted that the result of the election of the 1st Respondent to the Office of Member, House of Representatives for Goronyo/Gada Federal Constituency held on the 23 day of February, 2019 is presumed to be regular and in substantial compliance with the provisions of the Electoral Act 2010 (as amended) and INEC Guidelines and Regulations for the conduct of the 2019 General Election. He referred to the case of: ***AJASIN v OMOBORIOWO (1981 - 1990) LRECN 332 at 353*** where the Supreme Court held thus:

"there is in law a rebuttable presumption that the result of any election declared by the returning officer is correct and authentic and the burden is on the person who denies the correctness and authenticity of the return to rebut the presumption ……. Again, polling booths are the base of the pyramid which forms the electoral process under the provisions of the Electoral process……. Where a Petitioner challenged the correctness of the return of an election declared by a returning officer then, except in cases of arithmetic errors in collation, the Petitioner must lead evidence

which directly or indirectly establish the votes scored by him or his opponent at the polling booth."

Learned counsel submitted that the presumption of the due return of the 1st Respondent as candidate with majority of lawful votes can only be rebutted by a valid, cogent, probable and compelling evidence which the Petitioners have failed to adduce before this Tribunal.

He submitted that the 1st Petitioner did not state the supposed scores that should have been credited to him by the 3rd Respondent to enable this Tribunal to arrive at a conclusion that he (1st Petitioner) indeed won the majority of lawful votes cast at the election. In the circumstance, he submitted that the Petitioners are deemed to have abandoned their claim of winning the majority of lawful votes cast.

Furthermore, he submitted that it is not enough for the Petitioners to plead substantial non-compliance. He said that they must lead evidence to show how the non-compliance complained of would upset the result of the election as declared. He said that the Petitioners have failed to do so and urged the Tribunal to so hold. He referred to the case of: ***CPC v INEC (2011) 18 NWLR (Pt 1279) 493, 571*** where the Supreme Court held thus:

"This Court has consistently held that for petition to succeed on non-compliance with the provisions of the Act, the petitioner must prove not only that there was noncompliance with the provisions of the Act but that the non-compliance substantially affected the result of the election. In other words, the petitioner has two burdens to prove –

(1) That the noncompliance took place: and

(2) That the noncompliance substantially affected the result of the election.

See BUHARI v INEC (2008) 19 NWLR (PT 1120) 246 at 435: BUHARI v OBASANJO (2005) 13 NWLR (PT 941) at 80; AWOLOWO v SHAGARI (1979) 6-9 SC 51."

He submitted that the mandatory requirement as to the satisfaction of the two limbs of S. 139 (1) of the Electoral Act, 2010 (as amended) regarding non-compliance was also confirmed in **OKE v MIMIKO (2014) 1 N W L R (PT 1388) 332, 359 – 396**, where the Supreme Court held thus:

"…… in sum, what I am saying here is that the two limbs of the said section have to be read together conjunctively and must be satisfied by a petitioner alleging non-compliance as

> ***the appellants in the instant appeal in order to nullify an election (as the instant election). I must emphasize on the authorities cannot be construed disjunctively. Flowing from the foregoing it is clear that the said provisions have placed the onus of proving the acts of non-compliance as alleged in an election squarely on the party who is so asserting them as that party stands to fall where no evidence is called in proof of the same as the appellant in this matter."***

With respect to the exhibits admitted at the trial, learned counsel submitted that the petitioners merely tendered the documents from the bar without any evidence linking the documents with the credible evidence of any witness. He submitted that the documents were dumped documents and this Tribunal cannot look into them. See the case of: ***Gayol v. INEC (No.2) (2012) 11 NWLR (Pt 1311) 218 CA.***

He submitted that it is trite law that a party relying on a document in proof his case must specifically relate such document to the part of his case in respect of which the document is being tendered. That a court cannot assume the duty of tying each bundle of documentary exhibits to a specific aspect of a case for a party when that party has not done so. That it is the duty of any party that tenders a document to establish before the court its relevance and what he expects the court to do with it. He said that to do otherwise will amount to dumping documents on the court which would negate the probative value of the documents in the proceedings.

He referred to the case of: ***Gov. of Kwara State v. Eyitayo (1997) 2 NWLR (Pt 485) 118*** and submitted that all the exhibits tendered by the petitioners were dumped documents since the petitioners failed to explain their purpose and link them with their case ***vide*** oral evidence.

Counsel submitted that to prove the allegations of over voting and ballot stuffing, the boxes containing the ballot papers must be brought before the court and tendered in evidence. He said that the Petitioners must also demonstrate before the Tribunal how the ballot boxes were stuffed with illegal ballot papers. He referred to the case of: ***AUDU v INEC (No 2) (2010) 13 NWLR (Pt 1212) 456, 546*** where the Court of Appeal held thus:

> ***"In <u>Haruna v Modibo (supra), at pages 551 paras F – G 552, paras D – E,</u> this court laid down the type of evidence that is acceptable in proof of allegation of stuffing of ballot boxes. This Court held as follows:***

> ***The tribunal was dealing with vital documentary evidence kept in a ballot box. To give the evidence on this issue of credibility, the ballot boxes in which these ballot papers were allegedly stuffed must be tendered before the tribunal and opened there…. It is only when the ballot boxes are tendered before a tribunal and opened before it for the contents to be seen by everyone present in the tribunal that the allegation of the petition can be said prima facie to be sustainable."***

He submitted that the Petitioners have failed to prove non-compliance as alleged. That the burden the law placed on them is to prove such allegations beyond reasonable doubt and the declaration of the 1st Respondent by the 3rd Respondent cannot be invalidated on the basis of the Petitioners' hearsay evidence. He maintained that invalidation of an election is a serious business which must be based on solid evidence of substantial non-compliance which is capable of vitiating the elections. He referred to the case of: ***PDP v INEC (2008) 3 LRECN 14 at 33-34*** where the court held as follows:

> ***"Before a court could nullify an election duly conducted by the authority saddled with the assignment, all the necessary factors must be meticulously taken into consideration with the aim of ensuring that there are compelling factors to warrant or justify such decision. This is buttressed by the fact that nullification or invalidation of an election is the gravest punishment that a candidate duly elected and the authority charged with conducting such an election can experience."***

Again, he referred to the case of**: BUHARI v OBASANJO (2005) 13 NWLR (PT 941) 1** where the court held thus:

> ***"The burden on the Petitioner to prove that non-compliance has not taken place but that it has substantially affected the result of the election has not been fulfilled. There must be clear evidence of non-compliance, then that the non-compliance has substantially affected the election. The meaning of this is that when a petition alleges non-compliance, he must satisfy the count that such non-compliance was substantially enough to affect the overall result of the election."***

Counsel posited that what the Petitioners have done is an abdication of their responsibilities to reconcile evidence with pleadings or link them up properly. He

said that no court of law is empowered to do for a party what that party ought to have done to advance his case. That the duty of a court is simply to evaluate evidence that is validly and properly presented to it.

In light of the foregoing, he submitted that, the Petitioners have failed to discharge the onus of proof placed on them and urged the tribunal to resolve the sole issue in favour of the Respondents.

On the Reliefs sought by the Petitioners, learned counsel referred to Paragraphs 20 (a) and (e) of the petition where the Petitioners sought two reliefs and submitted that Paragraph 4(1) 3(a) of the First Schedule to the Electoral Act provides for the contents of an election petition and what manner of reliefs or prayers can be sought by a Petitioner.

He posited that the relief being claimed in an election petition constitutes the bedrock of the petition and where the relief does not reflect the cause of action and the available evidence, a court of law will throw out the matter. He referred to the case of: ***UZOUKWU v EZEONU (1991) 6 NWLR (PT 200) 700 at 783 – 785*** where the court held thus:

> ***"The language of a relief should not be bombastic, fluid, vague and unnecessarily generic."***

He contended that Relief 20(a) of the Petition is totally disconnected from the evidence adduced by the Petitioners. That there is no scintilla of evidence to establish the vitiating element of corrupt practices and substantial non-compliance.

He submitted that Relief 20 (e) cannot stand because there is no evidence upon which the Tribunal can rely to declare the 1st Petitioner as the winner of an election which he (the 1st Petitioner) claimed to be invalid.

He posited that the court cannot make an order in vain and that an election cannot be invalidated by reason of non-compliance unless it is proved that the said non-compliance has substantially affected the outcome of the election. He referred to ***section 139 (1) of Electoral Act, 2010 (as amended)*** which stipulates that:

> ***"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 principle of this Act and that the non-compliance did not affect substantially the result of the election."***

Finally he emphasised that the Petitioners have not established any incidence of non-compliance talk less of substantial non-compliance affecting the outcome of the election and urged the Tribunal to dismiss this petition.

In his Final Written Address dated and filed on the 21st of June, 2019, the learned counsel for the 1st Respondent, ***Chief J.E.Ochidi*** adopted the two issues for determination as formulated by the Tribunal at the Pre-Hearing Session as follows:

ISSUE ONE

Whether 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 held on the 23rd day of February, 2019 for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State.

ISSUE TWO

Whether the petitioners have led sufficient and credible evidence to prove that the election of the 1st respondent held on the 23rd day of February, 2019 for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State is invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC guidelines and regulations for the conduct of the 2019 general elections.

Thereafter, the learned counsel articulated his arguments on the issues ***seriatim.***

ISSUE ONE

Learned counsel posited that this Issue One is distilled from the second ground of the petition as contained in paragraph 17.2 of the petition.

He submitted that in an election petition, the onus remains on the petitioners to establish their case to the satisfaction of the election tribunal without placing any reliance on the weakness of the case of the respondents. He referred to the decision of the Supreme Court in the case of: ***UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 262*** where Mohammed JSC held as follows: -

> ***"The appellants have also laid a lot of emphasis on the requirement of minimal proof of their petition because of the failure of the respondents to call relevant evidence in support of their case as found by the trial tribunal. The appellants seemed to have forgotten that having regard to the nature of the reliefs sought by them in their petition which are declaratory in nature, the law is indeed well settled that in such claims for declaratory reliefs which***

are in fact the backbone in all election petitions, the onus remains on the petitioners to prove and establish their claim on their own evidence without relying on the weakness of the case of the respondents. In other words, the petitioners must satisfy the Election Tribunal upon enough credible and cogent evidence which ought reasonably to be believed and which, if found established, entitles the petitioners to the declaration sought."

Learned counsel also relied on the following cases: ***C.P.C. V. I.N.E.C. (2012) All FWLR (PT 617) 605 at 6345;*** and ***BUHARI V. OBASANJO (2005) 2 NWLR (PT 910) 241***.

He submitted that in the instant petition, the petitioners pleaded allegation of sundry electoral malpractices in the under-listed polling units:

(a) Gidan Karo 014 Polling Unit
(b) Gidan Madugu 021 Polling Unit
(c) Kadadin Maidabo Primary School 009 Polling Unit
(d) Gidan Gulbi 005 Polling Unit
(e) Gidan Hasimu 013 Polling Unit
(f) Unnamed Polling Units Code 006, 009 and 012 in Gada Ward of Gada Local Government Area of Sokoto State
(g) Unnamed Polling Units Code 010, 011 and 013 in Kiri Ward of Gada Local Government Area of Sokoto State
(h) Gidan Hashimu 003 Polling Unit
(i) Bassana Polling Unit
(j) Tufful Baba Dan Fili 018 Polling Unit
(k) Gadabo Polling Unit A 012
(l) Gadabo Polling Unit B 015
(m) Holai – Tabki 012 Polling Unit
(n) Kadadin Madabo Polling Unit A and B Code 009
(o) Kadadin Dispensary 001 Polling Unit
(p) Dajiro 006 Polling Unit
(q) Shiyar Marafa 001 Polling Unit
(r) Sabon Gari Dole / Dantasakk Polling Unit
(s) Mallam Faru Polling Unit and
(t) Kirare Polling Unit

He said that the petitioners made allegations of electoral malpractices in 20 polling units spread across Goronyo and Gada Local Government Areas of Sokoto State which Local Government Areas make up the Goronyo/Gada Federal Constituency in issue.

Counsel submitted that from the record of this Tribunal, the evidence of PW1 (Sanusi Mohammed Gada) does not form part of the deposition of witnesses front-loaded before this Tribunal. He said that the said Sanusi Mohammed Gada who testified as PW1 that he acted as the supervisor of the petitioners in Gada ward Kyadawa Holai wards stated clearly that he used the name "Sanusi" in his witness statement on oath before this tribunal. He submitted that no such name or initial exists in the list of witnesses filed by the petitioners before this Tribunal. He therefore submitted that the testimony of the PW1 is of no moment in this petition and should be expunged from the records.

Again, learned counsel submitted that the PW2 who gave his name as Abdulkadir Mohammed claimed to have used the initials A.I. in his witness statement on oath but upon a close scrutiny of all the depositions before this Tribunal as well as the list of witnesses filed by the petitioners, there is no witness with such initials. Accordingly, he urged us to expunge the evidence of P.W.2 from the records.

He said that the evidence of PW3, Abubakar Aliyu that Smart Card Reader was not used for accreditation and that supporters and agents of the 2nd respondent thumb printed ballot papers for eligible voters was debunked by the evidence of the RW5 who stated that Smart Card Reader was used for accreditation at Bassana Polling Unit 011 in Tistse Ward of Gada Local Government Area of Sokoto State.

He pointed out that the PW3 never identified the polling unit result from Bassana Polling Unit 011 in the course of trial neither did he analyse the contents of the said polling unit result in his deposition before this tribunal.

Moreover, he maintained that no other witness analysed the polling unit result of Bassana Polling Unit which is in issue. Accordingly, he submitted that the admitted polling unit results from Bassana Polling Unit were simply dumped before this tribunal and this is not permissible in judicial proceedings. For this view, he relied on the decision of the Supreme Court in the case of: ***UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 258*** where ***Rhodes – Vivour JSC*** held as follows:-

> ***"When a party decides to rely on documents to prove his case, there must be a link between the document and the specific area of the petition. He must relate each document to the specific area of his case for which the document was tendered. On no account must counsel dump documents on a trial court. No court will spend precious judicial time linking documents to specific areas of a party's case."***

He also relied on the case of: ***MAKU V. AL-MAKURA (2017) ALL FWLR (PT 909) 1 AT 77*** where ***Agube JCA*** stated ***inter alia*** thus:-

> ***"…the position of the law on dumping of documents on courts is that the party is under an obligation to tie his documents to the facts or evidence or admitted facts in the open court and not through counsel's oral or written address. As for the contention of the learned counsel for the appellants that no barrier was on the way of the tribunal to evaluate the documents tendered, the tribunal also was on very strong wicket when it held that from plethora of authorities, it is not the duty of a court or tribunal to embark on inquiry outside the court, not even by examination of documents which were in evidence when the documents had not been examined or analyzed as in the instant case by the party who tendered them."***

Counsel submitted that in the instant case, the 1st petitioner who testified as a witness in this petition merely identified the documents which he enumerated in paragraph 65 of his deposition. That since he did not analyse the contents of the documents which he identified before this Tribunal, all the documents which were admitted in evidence were dumped on the tribunal and same have no evidential value.

He further submitted that the totality of the evidence of PW3 is that no accreditation of voters took place at Bassana Polling Unit. He said that it is now settled law that to establish accreditation or lack of it, resort must be made to the voters' register where it can be ascertained whether or not same is marked or ticked as required by law. See the case of: ***EMERHOR V. OKOWA (2017) ALL FWLR (PT 896) 1868 AT 1916 – 1917*** where ***Onnoghen JSC*** (as he then was) held thus:-

> ***"It is now settled law that section 49 of the Electoral Act, 2010, as amended governs the process of accreditation of voters in Nigeria. Under the section, a prospective registered voter presents his voters card (PVC) to the presiding officer, who, upon being satisfied of the details vis-à-vis the information on the voters register, issues the voter with a ballot paper and marks his name in the register. In the circumstance and as provided by law, to establish accreditation or lack of it,***

in any election, production of the relevant voters register is a must. It cannot be otherwise. It is true that in the recent general election, the card reader concept was introduced by INEC. I hold the strong view that the card reader which was introduced is not a substitute for the voters register particularly as there is no legislation backing that concept vis-à-vis the voters register. If anything, I hold the view that the card reader is introduced as an aid to the process of accreditation of voters in that after the voters card of the prospective voter is verified by the card reader, the presiding officer still has the duty to confirm the name of the said voter in the voters register before proceeding to mark it accredited and before issuing the ballot paper to the voter."

He therefore submitted that the testimony of PW3 as highlighted above has fallen short of discrediting the election conducted by the 3rd respondent at Bassana Polling Unit because the voters register for the said polling unit was not identified and analysed by PW3 before this Tribunal to show that accreditation of voters did not take place at the said polling unit as alleged by the petitioners. He maintained that the petitioners have failed to prove that election was conducted at the said polling unit without recourse to the process of accreditation of registered voters for the said polling unit.

Counsel submitted that the above submissions made in respect of the evidence of PW3 apply with equal force to the testimonies of PW4, PW5, PW6, PW7 and PW8 before this Tribunal.

He submitted that the learned counsel for the petitioners claimed that the deposition of PW4 is at pages 19 – 21 of the petition but the PW4 himself informed this Honourable Tribunal that he used the abbreviation "A.C." in his deposition and not "B.G.H." as stated on pages 19 – 21 of the petition. He submitted that the PW4 has no deposition in this petition and therefore no evidence in chief before this Tribunal.

However, counsel posited that in the unlikely event that this Honourable Tribunal is prepared to accept the deposition of B.G.H. as the deposition of PW4, he submitted that the contention of the said PW4 that election conducted at Rumfa Sarkin Polling Unit and Buda Sabon Gari Polling Unit in Tsitse ward of Gada Local Government Area were disrupted by thugs was not substantiated. He referred to the evidence of RW6 – Zubairu Abdullahi to the effect that election was peacefully conducted at the said polling unit and that the result of same was declared by the presiding officer.

He submitted that to prove that no election was conducted at the said polling units; it is incumbent on the petitioners to tender in evidence the voters register for the said polling units and demonstrate to the tribunal that the said voters registers were not marked as required by law and the INEC regulations. He said that such voters' registers have not been tendered and demonstrated by the petitioners in this case.

Consequently, he maintained that the petitioners have failed to prove that the election which was supposed to be conducted at Rumfa Sarkin Yaki Polling Unit and Buda Sabi Gari Polling Unit in Tsitse ward of Gada Local Government Area of Sokoto State did not take place.

On the evidence of PW5, counsel pointed out that under cross examination, P.W.5 alleged that he was the agent of the petitioners at Gidan Karo polling unit but in paragraphs 1, 2 and 3 of his deposition, he stated that he acted as the agent of the petitioners at both Gidan Karo and Gidan Madugu Polling Units in Gada ward of Gada Local Government Area of Sokoto State. He said that the effect of the oral admission is that the PW5 has two material contradictory statements on oath before this Tribunal and it is settled law that where a witness has two contradictory evidence on oath, such a witness has no credibility. He referred to the case of: ***AYANWALE V. ATANDA (1988) 1 SC 1 AT 5***, where ***Obaseki JSC*** held thus:-

> ***"No witness is entitled to the honour of "credibility" when he has two material inconsistent evidence given on oath by him on record."***

Again he submitted that in law, a witness is either a credible witness whose evidence is to be believed by the court or an incredible witness whose evidence is to be disbelieved by the court. He referred to the case of: ***GBADAMOSI V. STATE (1991) 6 NWLR (PT 196) 182 AT 206 – 207*** where ***Tobi JSC*** held thus:-

> ***"A trial judge has no jurisdiction to believe the evidence of a witness in instalments. He either believes the entire evidence or disbelieves it. As a general rule, a witness can either be a truthful witness or a liar. He cannot be both at the same time."***

He therefore submitted that the PW5 is not a credible witness and urged the Tribunal not to believe him. Furthermore, he submitted that the evidence of the PW5 that no election took place at Gidan Karo polling unit was rebutted by the testimony of RW1 (Aminu Gidan Karo) who asserted that election was conducted at this polling unit and the result of same was declared.

He further submitted that since the petitioners are alleging that no election was conducted at Gidan Karo Polling Unit and that the voters thereat were disfranchised, it behoves on them to call the registered voters who did not vote and also tender the register of voters for the polling unit. For this view, he relied on the cases of: ***NGIGE V. INEC (2015) 1 NWLR (PT 1440) 281 AT 326;*** and ***KAKIH V. PDP (2014) 15 NWLR (PT 1430) 374 AT 419.***

He said that in the instant case, the petitioners failed to call any registered voter in Gidan Karo Polling Unit to testify on the allegation that no election was conducted at the said polling unit and no permanent voter's card of the registered voters in the said polling unit was tendered in evidence. Similarly, he said that the register of voters for the said polling unit was not tendered and analysed by the petitioners' witnesses. He therefore urged the Tribunal to hold that the petitioners have failed to prove that no election was conducted at Gidan Karo Polling Unit.

He referred to the evidence of PW6 (Abubakar Chika Isah) on incidents of multiple voting in Rufan Marafa Polling Unit, Danjiro Polling Unit and in all the polling units in Kagara Ward and submitted that an allegation of multiple voting can only be established by tendering the voters register and the ballot papers cast at the said election. He maintained that it is not enough for the witness to merely inform the tribunal that multiple voting was resorted to in all the polling units in Kagara ward without documentary pieces of evidence to back up same as was done by the PW6 in the instant case.

He submitted that it is settled law that a petitioner who challenges the lawfulness of votes cast in an election and the subsequent result declared thereat must tender in evidence and openly analyse all the necessary INEC documents used in the conduct of the said election. He added that the witnesses in respect of such an allegation must also show by their testimonies that the unlawful votes recorded at the said election affected the result of the said election. For this view, he relied on the decision of Supreme Court in the cases of: ***EMERHOR V. OKOWA (2017) ALL FLWR (PT 896) 1868 AT 1911; ABUBAKAR V. YAR'ADUA (2008) 18 NWLR (PT 1120) 1 AT 173 – 174.***

Again, learned counsel referred to the evidence of the PW7 (Alhaji Yau Mallam Isah) on over voting at an unnamed polling unit 001 in Rimawa and at Kirare Polling Unit both in Goronyo ward in Goronyo Local Government Area and submitted that his evidence did not also satisfy the requirements of the law to prove over voting. See: ***EMERHOR V. OKOWA (2017) ALL FLWR (PT 896) 1868 AT 1911.***

On the evidence of the PW8 (Sani Muhammed Baba Ahmed) that election did not take place at Sabon Gari Dole/Dantasakko Polling Unit and Mallam Faro Polling Unit in Goronyo Ward of Goronyo Local Government Area due to failure of Smart Card Reader he submitted that the testimony of this witness who is not a

registered voter in the said 2 polling units is insufficient to enable this tribunal come to the conclusion that elections were not conducted at the said 2 polling units.

He further submitted that the allegation of the PW8 is an allegation of disenfranchisement of voters and the law is settled that in order to prove disenfranchisement, a petitioner should call as witnesses the disenfranchised voters from each of the polling units complained of to testify to this effect. For this view, he relied on the decision of the Supreme Court in: ***EMMANUEL V. UMANA (2016) ALL FWLR (PT 856) 214 AT 271*** which followed the earlier decisions of: ***NGIGE V.INEC (2015) 1 NWLR (PT 1440) 281; UCHA V. ELECHI (2012)13NWLR (PT 1317); and OKE V. MIMIKO (2014) 1 NWLR (PT 1388) 322***.

He reiterated that in the instant case, none of the registered voters in the two polling units was summoned to testify before this tribunal on this issue whereas the PW8 who testified on the said issue before this tribunal is not a registered voter in any of the said two polling units. He therefore submitted that the testimony of PW8 before this tribunal has no evidential value whatsoever.

Counsel referred to the evidence of the 1st petitioner who tendered some documents mentioned in paragraph 65 of his deposition which were admitted as Exhibits P – P7 (B) at the trial. He submitted that apart from identifying the said exhibits P – P7 (B), the 1st petitioner did not carry out an analysis of each of the said documents in his deposition or in his oral testimony. He therefore submitted that the said documents were dumped on the tribunal and the consequence is that the allegations of the petitioners are not supported by reliable documentary pieces of evidence.

Counsel submitted under this issue one under consideration that a ground in an election petition alleging that the respondent was not duly elected by majority of lawful votes cast at the election is tantamount to an allegation that the declaration of result made by the 3rd respondent is a falsified result. He said that it is settled law that before such an allegation can succeed, the petitioner must tender in evidence two set of results: one being the result declared by INEC and the other being the result available to the petitioner upon which the petitioner want the tribunal to declare that the respondent was not duly elected by majority of lawful votes. For this view, he relied on the case of: ***HERO V. SHERIFF (2016) ALL FWLR (PT 861) 1309 AT 1363 – 1364*** where ***Barka JCA*** held thus: -

> ***"The position of the law has been established to the effect that in proving falsity or falsification of declared results, there should be two set of results, one to be genuine and the other false or falsified."***

He posited that in the instant petition, the only result available before this tribunal is EXHIBIT P3 which is the result declared by INEC (the 3rd respondent) wherein the 1st respondent scored the majority of lawful votes cast at the said election by polling 45,143 votes while the 1st petitioner scored 34,256 votes. He said that the petitioners did not tender any other result in respect of the said election to contradict the contents of the said EXHIBIT P3. He submitted that since EXHIBIT P3 is the only result available before this tribunal, the tribunal is obliged to accept same as the only authentic result declared by the 3rd respondent in respect the said election.

On the whole therefore, he urged the Tribunal to resolve Issue One in favour of the 1st respondent and to hold that the 1st respondent was duly elected by majority of lawful votes cast at the said election.

ARGUMENT ON ISSUE TWO

This issue is whether the petitioners have led sufficient and credible evidence to prove that the election of the 1st respondent held on the 23rd of February, 2019 for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC guidelines and regulations for the conduct of the 2019 general elections.

Counsel submitted that it is settled law that where a petitioner contends that an election or return of a respondent should be nullified by reason of corrupt practices perpetuated in the conduct of the said election or by reason of non-compliance with the provisions of the relevant electoral statutes and guidelines, such a petitioner must prove that the corrupt practice or non-compliance actually took place and that same substantially affected the result of the said election.

He said that the two conditions must be proved cumulatively by the petitioner before such a petitioner can succeed on the allegation and relied on the case of: ***OGBORU V. ARTHUR (2016) ALL FWLR (PT 833) 1805 AT 1855*** where ***Ogunbiyi JSC*** held thus: -

> ***"Where however the petitioner contends that an election or return in an election should be invalidated by reason of corrupt practices or non-compliance, the proof must be shown forth:***
>
> ***(i) That the corrupt practice or non-compliance took place and***
>
> ***(ii) That the corrupt practice or non-compliance substantially affected the result of the election.***

The quantum of measurement and consideration is not to show that there was a proof of non-compliance, as it is almost impossible to have a perfect election anywhere in the world. The measurement however, is whether the degree of non-compliance is sufficient enough so as to vitiate the credibility of the election held."

See also the decision of the Supreme Court in: ***NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1635***.

He further submitted that in establishing the substantiality of the corrupt practice and or non-compliance, the petitioner must prove the effect of such acts on each polling unit and that the required standard of proof is on the balance of probabilities. See the decisions of the Supreme Court in the cases of: ***EMERHOR V. OKOWA*** (supra) ***at Page 1927***; and ***UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 256***.

Learned counsel submitted that from the totality of the evidence adduced by the petitioners, they have not proved any acts of corrupt practice and non-compliance with the provisions of the Electoral Act and INEC guidelines in the conduct of the said election.

Accordingly, he urged the Tribunal to resolve Issue two in favour of the 1st respondent.

Before concluding his address, learned counsel raised an issue which allegedly bothers on the competence of this petition and of the jurisdiction of this tribunal to entertain same as it relates to the 1st respondent.

In a nutshell, he contended that the 1st respondent as constituted in this petition is not a competent party to this petition. According to him, the name of the 1st respondent as constituted in this instant petition is ***"Musa S. Adar"*** whereas by EXHIBIT P3 (the declaration of result), the name of the candidate of the 2nd respondent is ***"Musa Sarkin Adar".***

He submitted that by ***paragraph 4(1) (a) of the First Schedule to the Electoral Act, 2010 (as amended)***, an election petition shall specify the parties interested in the election petition. He further submitted that any default by the petitioner in complying with the provision of paragraph 4(1) (a) of the First Schedule to the Electoral Act is fatal to the petition and he cited the case of: ***UJAM V. NNAMANI & ORS (2003) LPELR – 7216 (CA)***.

He further submitted that the non-joinder of Musa Sarkin Adar in the instant petition who was the candidate of the 2nd respondent and who was the person declared by the 3rd respondent as the winner of the said election has deprived this Honourable Tribunal of the requisite jurisdiction to entertain this petition. See the cases of: ***UMAR V. ONIKATA (1999) 3 NWLR (PT 596) 588; and UBOM V. ANAKA (1999) 6 NWLR (PT 290) 719***.

He posited that as the nature of the reliefs being claimed by the petitioners are declaratory reliefs, no admission made by the 1st respondent on this issue in his reply to the petition can avail the petitioners more so as parties cannot by consent or acquiescence confer jurisdiction on a court or tribunal.

He submitted that this issue which bothers on the competence of the petition itself and of the jurisdiction of the tribunal can be raised at any stage of the proceedings. Accordingly, he urged the Tribunal to hold that this petition as constituted is incompetent and should be struck out for want of jurisdiction of the tribunal to adjudicate on same.

In conclusion, he urged the Tribunal to strike out or dismiss this petition with substantial cost and uphold the election of Musa Sarkin Adar as the duly elected Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State at the election held on the 23rd day of February, 2019.

In his Final Written Address dated and filed on the 27th of June, 2019, the learned counsel for the 2nd Respondent, ***Chief S.U.Nwoke*** identified the same two issues for determination as formulated by the Tribunal at the Pre-Hearing Session.

He thereafter articulated his arguments on the two issues, ***seriatim***. Essentially, the arguments of learned counsel are quite similar to the arguments canvassed on behalf of the 1st and 3rd Respondents. We will only briefly highlight his submissions on non- compliance canvassed under Issue Two.

Learned counsel submitted that once an election is conducted and the result announced by the Independent National Electoral Commission, (the 3rd respondent) the result so announced is sacrosanct and taken to be correct until the contrary is proved.

That where a petitioner challenges the election on the ground that it was not conducted in compliance with the provisions of the Electoral Act, 2010, he must plead facts that not only show the non-compliance but also that the non-compliance substantially affected the result of the election and how the non-compliance has affected the result of the election otherwise the petition would not have disclosed a reasonable cause of action. See: **OJUKWU V YAR'ADUA** (2009) 12 NWLR (PT. 1154) 50 where the apex court stated thus:

> "***I am inclined to agree with the Court below about the duty of the Petitioner Appellant to plead not only non-compliance but also that the non-compliance substantially affected the result of the election.***"

He submitted that to succeed in this case bordering on non-compliance with the provisions of the Electoral Act, the petitioners were expected to plead the instances of non-compliance polling unit by polling unit, ward by ward and local government by local government with the figures of the affected votes from these units which will enable this Tribunal to hold that there was non-compliance and that the non-compliance substantially affected the result of the election in the constituency.

He maintained that in the present petition, the petitioners did not plead that the non-compliance substantially affected the election, neither did they did state the figures of the affected votes in the wards and local government areas to enable the tribunal to know that the alleged non-compliance substantially affected the result of the election in accordance with the combined reading of Sections 145 (1) (b) and 146 (1) of the Electoral Act 2010 (as amended).

He said that the failure of the petitioners to so plead is fatal to the petition and the petition is liable to be struck out without more and cited the cases of: ***OGU V EKWEREMADU (2006) 1 NWLR (PT961) 255 @ 281- 282; BELGORE V AHMED (201308 NWLR (PT.1355) 60 @95-96.***

In conclusion, the learned counsel submitted that the petition is unmeritorious as it is apparent that same is packaged with unproven allegations which are merely tailored to discredit a creditable election conducted by the 3rd respondent and he urged us to strike same out or dismiss it this with substantial cost and uphold the election of Musa Sarkin Adar as the duly elected Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State at the election held on the 23rd day of February, 2019.

In the Petitioners' Final Written Address dated and filed on the 28th of June, 2019, the learned counsel for the Petitioners, ***R.T. Mustapha Esq.*** identified the same two issues for determination as formulated by the Tribunal at the Pre-Hearing Session and articulated their arguments on them ***seriatim***.

ISSUE ONE

Opening arguments on Issue One, learned counsel submitted that it is trite law that he who asserts must prove and in civil matters, the burden of proof on the preponderance of evidence lies on the party that brings the claim. See the case of: ***ADEYEMO ONIFADE V. MUSLIM RAHEEM (199) LPELR CCN/1/2/99*** where ***Onalaja JCA held at p. 21, paras E-G thus:***

> ***"An election petition is a civil matter; the burden placed on petitioner is as laid down in sections 135, 136 and 137 of the Evidence Act and to succeed by credible satisfactory evidence***

> ***of probability and on the strength of his own case and not on the weakness of respondent's case. The exception is that where the evidence of the respondent supports the case of the petitioner, he can rely on that piece of evidence which supports his case to establish the petitioner's case.***"

See also ***BUKAYE V. ACTION CONGRESS (2009) 36 WRN 30 @ 40 Ratio 10*** where it was held thus:

> ***"The cardinal rule in civil proceedings including election matters is that the burden of proof is on he who would fail if no evidence is led in proof of the claim before the court."***

Counsel submitted that the burden of proof in election petition like every civil matter shifts from one side to the other see: ***BUKOYE & ORS V. ACTION CONGRESS & ORS SUPRA***.

She said that the petitioner by paragraphs 18.8 – 18.33 clearly stated the polling units/wards where irregularity, misconduct, noncompliance with the Electoral Act, 2010 (as amended) and INEC guidelines and regulations for the conduct of the said election took place.

That the PW1 whose evidence was not shaken during cross-examination testified that the 1st and 2nd Respondents' thugs disturbed the election at Holai Tabki and as a result no election took place there.

She urged the Tribunal to discountenance the submission of the counsel to the 1st Respondent as regards the evidence of PW1 as same amounts to technicality since PW1 was able to identify his statement on oath to the satisfaction of the tribunal. That the Respondent cross-examined PW1 based on his statement on oath, and his evidence was not discredited.

She then undertook an analysis of the evidence of the Petitioners' witnesses.

That the PW2 gave evidence that the agents of the 1st and 2nd Respondents were the ones thumb printing ballot papers on behalf of the eligible voters and that the smart card reader was malfunctioning on the day of the election.

She urged the Tribunal to discountenance the submission of the 1st respondent's counsel to expunge the testimony of PW2 on the ground that he failed to identify the alphabets with which his deposition was filed. She submitted that the PW2 was able to identify his witness statement on oath at the trial and urged the Tribunal to look beyond the technicality posed by the respondents' counsel as the PW2 was rightly led in chief as well as cross-examined over the content of the purported unidentified witness statement on oath over which the PW2 was able to demonstrate his mastery of the contents. She therefore urged the Tribunal to deem the evidence of PW2 as credible and act on same.

She said that the PW3 gave evidence that the supporters of the 2nd Respondent were the ones that thumb printed ballot papers on behalf of the eligible

voters on the guise that they did not want the voters to destroy the ballot papers. On the evidence of PW4, she said that he was as an agent at Rumfa Sarkin Yaki polling unit and Buda Sabon Gani polling unit in Tsitse ward where the supporters/thugs of the 2nd Respondent disrupted the election on the 23rd of February, 2019 and carted away the ballot boxes and other election material with the support of military personnel who shot in the air to disperse the voters.

She said that the PW5 gave evidence that no election was conducted at Gidan Karo polling unit. That his evidence was not discredited under cross examination rather the testimony of RW2 under cross examination corroborated the evidence of PW5 that the 3rd Respondent did not bring complete electoral materials to the said polling unit.

Counsel referred to the evidence of PW6 that Fulani people beat up many eligible voters, disenfranchised them and went ahead to thumb print ballot papers for eligible voters. She said that this evidence was not impeached under cross examination.

That the PW7 gave evidence concerning Kirare polling unit in Rimawa ward which was also unshaken during cross-examination.

That the evidence of PW8 was that at Sabon Gari Dole/Dan Tasakko ward in Mallam Faro polling Unit a wrong card reader was brought thereby disenfranchising many eligible voters.

Learned counsel referred to the evidence of the 1st Petitioner who she said clearly identified all the exhibits tendered before this tribunal and demonstrated various elements of malpractices and non-compliance with the Electoral Act 2010 as amended as well as the INEC guidelines and regulations for the conduct of election 2019 in his witness statement on oath. She said that the evidence of the petitioner was not discredited under cross-examination.

Learned counsel submitted that it is trite law that where a petitioner is alleging irregularities, he must lead credible evidence that the alleged irregularities, malpractices or non-compliance with the Electoral Act, had effect on the result of the election. See the case of: ***Rini v. Maradun (2009) 11 WRN p.126 @ 132-133.***

She submitted that the petitioners had led credible evidence both oral and documentary to show that there were various forms of malpractices and irregularities which clearly impacted on the result of election.

She also submitted that based on the evidence of PW1 – PW8 as well as the testimony of the petitioner, the petitioners have given sufficient proof that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the election held on the 23rd of February, 2019 for the office member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto state due to multiple thumb printing and over voting by the 1st respondent. She therefore urged the Tribunal to resolve issue 1 in favor of the petitioners.

ISSUE TWO

On Issue Two, learned counsel referred to the provision of the law in this regard and reproduced **section 138(1) (b) of the Electoral Act** which provides thus:

> ***"An election may be questioned on any of the following grounds, that is to say.***
> ***(b) That the election was invalid by reason of corrupt practices or noncompliance with the provisions of this Act.***

She referred to the evidence of the PW5 that at Gidan Karo polling unit, the agents of the 2nd Respondent disrupted the elections. That the RW1 corroborated PW5's testimony when he stated under cross examination that violence erupted at the polling unit and the security personnel tried their best but could not control the crowd. He said that this resulted in the non-counting of votes at the polling unit but at the collation Centre.

On the petitioners' compliant that elections did not hold in Gidan Madugu polling unit, counsel referred to the evidence of the RW 2 under cross examination who in one breath testified that the 3rd Respondent brought incomplete electoral materials to that polling unit and in another breath claimed that elections were conducted at the said polling unit.

For Gidan Gulbi, she referred to the evidence of the PW2 who testified at paragraph 8 of his statement on oath that at Gidan Gulbi polling unit, the agents of the 2nd Respondent were thumb printing ballot papers for voters to the knowledge of the agents of the 3rd Respondent. She said that this fact was corroborated by the testimony of RW4 under cross-examination.

That the testimony of RW4 under cross examination by the petitioners counsel revealed that when the Smart Card Reader in their polling unit malfunctioned they agreed to continue with the voting without accreditation pending when another Smart Card Reader would be brought for the accreditation of those who had already voted and that by this, the 3rd respondent did not comply with the INEC guidelines and regulations for the conduct of general elections, 2019.

Learned counsel referred to ***Section 53 (1) of the Electoral Act*** which provides thus:

> ***"No voter shall vote for more than one candidate or record more than one vote in favour of any candidate at any election".***

She said that the testimony of RW4 corroborated the fact of non-compliance with electoral laws by the Respondents.

Furthermore, she posited that the petitioner testified that elections were cancelled at polling unit 010, 011 and 013 in Kiri ward and polling units 006, 009 and 012 in Gada ward all of Gada Local Government Area. She maintained that there are documentary evidence in forms EC8B(II) for Gada ward and Kiri ward admitted as Exhibits P5A to P5I wherein the above polling units were omitted and not reflected in the final computation of the scores for each candidate. She submitted that this is ***prima facie*** evidence of irregularity at those polling units wherein elections were cancelled.

She referred to the case of: ***Samuel Onu Aja V. Abba Odin & 9ors (2011) 41WRN at 39 at p.73 (ratio II)*** where the court stated thus:

> ***"An election matter, in which substantial part of the evidence is documentary in value, the trial tribunal is in a good position to examine the documentary evidence and draw inference therefore as was done in this case. See MBUKURTA V. ABBO (1998) 6 NWLR (pt. 554) 456."***

She also referred to the case of: ***AGAGU V. MIMIKO (2010) 32 WRN 16 at p.84 (ratio 20)*** where the court stated thus:

> ***"It is a settled principle of law that where an adversary or a witness called by him testified on a material fact in controversy in a case, the other party should if he does not accept the witnesses testimony as true, cross-examine him on the fact, or at least show that he does not accept the evidence as true. Whereas in this case, he fails to do either, a court can take silence as acceptance, that the party does not dispute the facts."***

She said that the 1st petitioner was not cross-examined regarding the cancelled elections neither did the Respondents adduce any evidence to prove otherwise, so it is taken as proved.

In respect of Basana polling unit 011 in Tsitse ward of Gada Local Government, she said that PW3 gave evidence to the effect that there was no accreditation because the smart card reader did not work. That this evidence was not shaken during cross examination. That the testimony of RW5 who made an inconsistent Statement on oath wherein he referred to Gidan Karo polling unit instead of Basana polling is not credible or consistent to be believed by this Tribunal. She pointed out that RW5 also stated during cross examination that those who the card reader could not identify were not accredited with the voters register and were not allowed to vote at Basana polling unit. She said that this is evidence

of non-compliance being contrary to **Section 49 of the Electoral Act** which provides thus:

> 1. ***A person intending to vote with his voter's card shall present himself to a presiding officer at the polling unit in the constituency in which his name is registered with his voter's card.***
> 2. ***The presiding office shall, on being satisfied that the name of the person is on the register of voters, issue him a ballot paper and indicate on the register that the person has voted.***

Counsel submitted that the use of smart card reader does not do away with this provision as same must be complied with and failure to do so amounts to serious non-compliance with our Electoral Laws.

Regarding the elections held at Kagara ward in Goronyo Local Government, she referred to the PW6, the coordinator for the petitioners who gave evidence that there were irregularities in all the polling units as thugs of the 1st and 2nd Respondents voted repeatedly and there was beating and intimidating of voters by Fulani people acting on behalf of the 1st and 2nd Respondents.

She said that the PW6 gave evidence that at Rufan Marafe polling unit in Kagara ward there was multiple voting and vote buying by agents of the 1st and 2nd Respondents. That at Dajiro polling unit code 006, there was multiple voting and Fulani men were chasing eligible voters and beating them up with sticks. She said that the testimony of PW 6 was not successfully challenged during cross-examination, rather the 1st Respondent called RW7 who testified that there was violence at Dajiro polling unit and multiple voting caused by the agents of the 1st and 2nd Respondents, although the RW 7 says it was caused by the agents of the petitioners.

Counsel submitted that the fact of violence remains unchallenged and the 3rd Respondent who could have explained what happened refused to call any evidence. She contended that by the principle in the case of: ***AGAGU V. MIMIKO (Supra),*** the testimony of PW6 regarding violence caused by the 1st and 2nd Respondents in all the polling units in Kagara ward ought to be taken as sufficient proof of the fact of non-compliance with the extant electoral laws in respect of the said election more so, since the 1st and 2nd Respondents failed to call evidence with respect to the other polling units in Kagara ward for which the PW6 had testified of non-compliance. She submitted that vote buying is an offence under section 130 of the Electoral Act and causing violence or threatening same is an offence under section 313 of the Electoral Act.

She submitted that the same law applies to Sabon Gari Dole/Dantasakko polling unit and Mallam Faro polling unit in Goronyo ward of Gronyo Local Government where PW8 testified that no election took place due to failure of the Smart Card Reader because the 3rd Respondent brought the Smart Card Reader programmed for polling unit 11 instead of that for polling unit 10. She maintained that voting did not take place there and the voters recorded were not votes cast by registered voters duly accredited to vote according to INEC laws.

She pointed out that the respondents did not call any evidence to disprove these allegations, neither was the testimony of the PW8 discredited during cross-examination. She therefore urged the Tribunal to hold that they have established non-compliance with the provisions of the Electoral Act as well as the INEC Regulations and Guidelines for conduct of elections.

She referred to the decision of Supreme Court in the case of: ***YAHAYA V. DANKWABO (2016) 41 WRN 73 at p. 97*** where they stated thus:

> ***"When the ground for challenging the return of a candidate in an election petition is by reason of corrupt practices or noncompliance with the provisions of the Electoral Act, the petitioner has the duly to prove:***
>
> ***a. That the corrupt practice or non –compliance took place; and***
> ***b. That the corrupt practice or noncompliance substantially affected the result of election."***

In response to paragraph 6.0 and 6.1 of the 1st Respondent's final written address learned counsel for the Petitioners submitted that issues have already been joined as regards this subject wherein the 1st Respondent counsel in their reply to the petition admitted particularly in their paragraph 3 that "the 1st respondent admits paragraph 12 to the extent that the 3rd respondent returned the 1st respondent of All progressive congress (APC) as duly elected and returned having scored a total number of 45,143 votes against the 1st petitioner's 34,256 votes".

She maintained that the 1st respondent clearly admitted in their reply to the petition that the 1st respondent who is sued in the name of 'Musa S. Adar' was duly returned by the 3rd respondent and that he scored a total number of 45,143 votes as against 34,256 votes of the petitioners, he therefore submitted that the respondents have already admitted this fact and they cannot turn around and say that the real respondent was not joined in the instant petition thereby robbing this Honourable Tribunal of the requisite jurisdiction to entertain this petition for mere technicalities such as this.

She referred to the case of: ***ADAMS V. UMAR (2009) 21 WRN at page 110 (ratio 35)*** where the Court held thus.

> ***"Tribunals need not rely heavily on technicalities to the detriment of the serious issues needing scrutiny and determination. In a situation where very grave allegations are made by the other party to suit him (sic) up does much harm to the cause of justice. The trend these days is to as much as possible hear election petitions on their merit, where such petitions can be saved. This was been the consistent position of courts of justice and equity over the years as is attested to by Uwais, CJN (as he then was), in the case of Jim NWOBODO V. ONOH (2004) 10 WRN 27 thus:***
>
> ***"Election petitions are by their very nature peculiar from other proceedings and are very important from point of view of public policy. It is the duty of courts therefore to hear them without allowing technicalities to unduly fetter their jurisdiction".***
>
> *See also* ***the case of OLAFEMI V. AYO (2009) 19 WRN page 43 (ratio 13)***
>
> ***"It is the attitude of the courts now that cases where strict adherences to the rules of court or practice Direction would clash with that of fundamental principles of justice, the courts have invariably leaned heavily on the side of doing Justice. Strict reliance on technicalities lead to injustice as Justice can only be done if substance of the matter rather than form is examined. Election matters are to be heard without regard to technicalities which may unduly fetter the Jurisdiction of the tribunals."***

She submitted that the incidents of non-compliance enumerated and proved in this petition are substantial and grievous and substantially affected the results of the 2019 election to the office of member representing Gada/Goronyo Federal Constituency.

In conclusion, she urged the Tribunal to resolve the issues involved in this Petition in favour of the Petitioners and grant the reliefs sought in this petition.

We have carefully considered all the processes filed in respect of this Petition together with the arguments of learned counsel for the parties on all the issues formulated together with some other ancillary objections raised in this petition. Before we determine this petition on the merits, we shall resolve some ancillary objections raised in this petition.

The first major ancillary objection raised by the learned Counsel for the 1st Respondent is relating to the name of the 1st Respondent as contained in this petition. According to him, the name of the 1st respondent as constituted in this petition is **"Musa S. Adar"** whereas by Exhibit P3 (the declaration of result), the name of the candidate of the 2nd respondent is **"Musa Sarkin Adar"**.

He hinged his objection on paragraph 4(1)(a) of the First Schedule to the Electoral Act, 2010 (as amended) which stipulates that an election petition shall specify the parties interested in the election petition. He seriously contended that any default by the petitioner in complying with the provision of paragraph 4(1) (a) of the First Schedule to the Electoral Act is fatal to the petition and that the non-joinder of Musa Sarkin Adar in the petition has deprived this Tribunal of the requisite jurisdiction to entertain the petition.

It is settled law that where an incorrect name is given in a writ and the parties are not misled, in that they know the identity of the person suing or being sued, such is to be regarded as a mere misnomer. See the cases of: ***Osawaru & Anor Vs Fay - Dessy Cathering (2011) LPELR - 4872 (CA); Agbonmagbe Bank Ltd and Anor Vs C.F.A.O) (1961)1 All NCR (Pt.1) 116; AB Manu & Co. Vs Costain (W.A) Ltd (1994)8 NWLR (Pt.360)1 12, Njemanze Vs Shell BP (1966) All NLR 8; Nkwocha Vs Fed. University of Technology (1996)1 NWLR (PT.442) 112; Njoku Vs U.A.C Foods (1999) 12 NWLR (Pt.632) 557. See also Njoku & Ors Vs Onwunelega (2017) LPELR - 43384 CA...***

In the instant case, the 1st Respondent appears to have also owned up to the name with which he was sued because in his Reply to the Petition and all subsequent processes, he used the same name: **"Musa S. Adar"** as pleaded by the Petitioners.

As rightly observed by the learned counsel for the Petitioners, issues have already been joined as regards this name. In paragraph 3 of the 1st Respondent's Reply he pleaded that: ***"the 1st respondent admits paragraph 12 to the extent that the 3rd respondent returned the 1st respondent of All progressive congress (APC) as duly elected and returned having scored a total number of 45,143 voter against the 1st petitioner's 34,256 voter".*** This is the same 1st respondent who was sued in the name of **'Musa S. Adar'** that they admitted was duly returned by the 3rd respondent having scored a total number of 45,143 votes as against 34,256 votes of the petitioners. We are of the view that the 1st Respondent cannot approbate and reprobate at the same time on the issue of the name of the 1st Respondent.

Furthermore, we are of the view that the 1st Respondent was not misled in any way by the alleged error in the name since he identified himself as the person

being sued. On the authorities earlier cited, the alleged error is to be regarded as a mere misnomer which cannot rob this Tribunal of the requisite jurisdiction to entertain this petition. The objection on the name is therefore overruled.

The next set of objections raised by the learned counsel for the 1st Respondent relate to the depositions of some of the Petitioners' witnesses.

First, he alleged that the evidence of PW1 (Sanusi Mohammed Gada) does not form part of the deposition of witnesses front-loaded before this Tribunal because the said witness stated that he used the name "Sanusi" in his deposition whereas there is no such name on the list of witnesses filed by the petitioners before this Tribunal. He therefore submitted that the testimony of the PW1 is of no moment in this petition and urged us to expunge same from the record.

Again, learned counsel alleged that the PW2 (Abdulkadir Mohammed) claimed to have used the initials A.I. in his deposition whereas; there is no deposition before this Tribunal as well as the list of witnesses filed by the petitioners with such initials. So he also urged us to expunge the evidence of P.W.2 from the records.

Also with regard to the PW 4, he alleged that the learned counsel for the petitioners claimed that the deposition of PW4 is at pages 19 – 21 of the petition but the PW4 himself informed this Honourable Tribunal that he used the abbreviation "A.C." in his deposition and not "B.G.H." as stated on pages 19 – 21 of the petition. He thus submitted that the PW4 has no deposition in this petition and therefore no evidence-in chief before this Tribunal.

We have examined the depositions filed by Petitioners together with our record of proceedings in this case and we confirmed that the P.W 1 testified that he used the name **Sanusi Muhammad** but going through all the depositions filed by the Petitioners there is no deposition bearing that name.

The requirement of filing of a deposition is an essential part of the evidence of a witness. ***Paragraph 41(3) of the 1st Schedule to the Electoral Act, 2010 (as amended)*** stipulates as follows:

> ***"41(3)There shall be no oral examination of a witness during his evidence-in-chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in the deposition."***

The purported evidence of the P.W.1 is not in compliance with the provisions of ***Paragraph 41(3) of the 1st Schedule to the Electoral Act, 2010 (as amended)***. In the absence of any deposition filed on behalf of the P.W.1, there is

nothing for the witness to adopt as his evidence. The evidence of the P.W.1 is fundamentally defective and it is accordingly expunged from the records.

Coming to the evidence of the P.W.2 (Abdulkadir Mohammed) who claimed to have used the initials A.I. in his deposition, we also discovered that no such deposition was filed by the petitioners. Accordingly, the evidence of the P.W.2 is also expunged from the records.

With regard to the deposition of PW 4, the allegation that the learned counsel for the petitioners claimed that the deposition of PW4 is at pages 19 – 21 of the petition is not borne out of our records. From our records, the PW4 informed this Tribunal that he used the abbreviation "B.G.H." in his deposition and he identified the said deposition before the Tribunal when he testified. Consequently, we hold that the PW4 has a valid deposition which he adopted as his evidence in-chief before this Tribunal.

Having dealt with the foregoing preliminary matters, we will go into the merits of the petition.

Upon a careful examination of the Issues formulated by the learned Counsel for the parties, we wish to observe that the two issues for determination as formulated by the Tribunal at the Pre-Hearing Session are as follows:

ISSUE ONE

Whether 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 held on the 23rd day of February, 2019 for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State.

ISSUE TWO

Whether the petitioners have led sufficient and credible evidence to prove that the election of the 1st respondent held on the 23rd day of February, 2019 for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State is invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC guidelines and regulations for the conduct of the 2019 general elections.

We will now proceed to determine the issues ***seriatim***.

ISSUE 1:

Whether 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 held on the 23rd day of February, 2019 for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State.

It is settled law that in election petition matters, the petitioner who filed the petition has the burden to prove the grounds. This is because he is the party alleging the grounds and he has a duty to prove the affirmative. He is the party who will lose if no evidence is given on the grounds. If the petitioner does not prove his case, the petition will be dismissed.

In the case of: ***Buhari V. INEC (2008) 19 NWLR (Pt. 1120)246 at 350 para. E; Tobi, J.S.C*** enunciated and restated the time honoured legal principle on the fixation of the burden of proof in election petitions when he exposited thus:

> ***"The petitioner who files a petition under Section 145 (1) of the Electoral Act has the burden to prove the grounds. This is because he is the party alleging the grounds and he has a duty to prove the affirmative. He is the party who will lose if no evidence is given on the grounds. If the petitioner does not prove his case under Section 145 (1) of the Act, the action fails."***

Where as in the instant case, the Petitioners are alleging that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the election, the onus is on them to prove the allegations on the balance of probability, otherwise their petition would be dismissed.

Thus, the burden is on the Petitioners to adduce evidence to establish their case before the Respondents can become obliged to call any evidence in rebuttal of the evidence adduced by the Petitioners.

The question now is whether the Petitioners have adduced sufficient evidence before this Tribunal to prove that the 1st respondent did not obtain the majority of lawful votes cast at the election.

In order to ascertain whether the Petitioners discharged the burden on them it will be expedient to carefully examine the evidence adduced in that regard.

In proof of their case, the 1st Petitioner testified for himself and called 8 other witnesses. The petitioner also tendered some documents admitted and

marked as Exhibits P, P1A, P1B, P1C, P1D, P2, P3, P4A, to P4k, P5A to P5I, P6A to P6J, P7A & P7B.

It is settled law that where a ground of petition is that the respondent was not elected by majority of lawful votes, the ***petitioner ought to plead and prove the votes cast at the various polling stations, the votes illegally credited to the "winner", the votes which ought to have been credited to him and also the votes which should be deducted from that of the supposed winner*** in order to see if it will affect the result of the election. Where this is not done, it will be difficult for the Court to address the issue. See***: Awolowo vs. Shagari (1976) 6-9 S.C.51; and Nadabo vs. Dubai (2011) 7 NWLR (Pt.1245) 155 at 177.***

Furthermore, it is settled law that in order to prove the aforementioned salient factors; the proof is largely based on documentary evidence. In the reported case of: ***IKPONMWOSA V. EGHAREVBA & ORS (2009) LPELR-4685(CA),*** the Court opined thus:

"It is settled law that in an election petition, the decision on who had majority of lawful votes is based largely on documentary evidence mainly election results Forms. This is because documents when tendered and admitted in Court are like words uttered and do speak for themselves. They are more reliable and authentic than words as they bear an eloquent testimony of what really transpired. See NGIGE V. OBI (2006) 14 NWLR (PT. 999) 233 and AIKI V. IDOWU (2006) 9 NWLR (PT. 984) 47,"

Thus in the determination of this issue, we will focus much on documentary exhibits. In the instant case, the Petitioners tendered a host of documents marked as Exhibits P, P1A, P1B, P1C, P1D, P2, P3, P4A, to P4k, P5A to P5I, P6A to p6J, P7A & P7B.

- Exhibit P is the original receipt of payment foe certified True Copies of documents from the 3rd Respondent;
- Exhibit P1A is the voters Register for Kiri ward, Gada Local Government Area, polling unit code 013 (Tambuwal Kame polling unit);
- Exhibit P1B is the voters Register for Masuki polling unit code 012, Gada Ward of Gada Local Government Area;
- Exhibit P1c is the voters register for Benidi polling unit code 009 Gada Ward of Gada Local Government Area;
- Exhibit P1D is the voter Register for Shiyar Rafi/magaji dispensary polling unit code 001 at Rimawa ward in Goronyo Local Government;

- Exhibit P2 is form EC8C (II) i.e. summary of result from Registration Area for Goronyo Local Government;
- Exhibit P3 is Form EC8E (II) i.e. declaration of result for Goronyo/Gada Federal Constituency;
- Exhibit P4A – P4K are 11 copies of Form EC8A (II) i.e. statement of result from polling unit, Gada Local Government;
- Exhibit P5A – P5 I are 9 copies of Form ECC8B (II) i.e. summary of result from Registration Areas of Gada;
- Exhibit P6A – P6J are 10 copies of Form EC8A (II) i.e. statement of result for polling units for Goronyo Local Government Area; and
- Exhibit P7A & P7B which are 2 copies of Form EC8B (II) i.e. summary of result from collation centers at Registration Area level for Goronyo Local Government Area.

The learned counsels for the Respondents have forcefully contended that most of these documentary exhibits were merely dumped before the Tribunal. It is settled law that documentary exhibits must be analysed by the party tendering same and not by the court.

In the case of: ***Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330 at 360, Rhodes-Vivour (JSC),*** incisively, re-echoed the principle thus:

"...When a party decides to rely on documents to prove his case, there must be a link between the document and the specific areas of the petition. He must relate each document to the specific area of his case for which the document was tendered. On no account must counsel dump documents on a trial Court. No Court would spend precious judicial time linking documents to specific areas of a party's case. See: A.A.P.P.P. v. I.N.E.C. (2010) 13 NWLR (Pt. 1212) p. 549. See also Bornu Holding Co. Ltd. v. Bogogo (1971) 1 All NLR 324 at 330-331; Onibudo v. Akibu (1982) 7 SC 29; Ivienagbor v. Bazuaye (1999) 5 SCNJ 235 (1999) 9 NWLR (Pt. 620) 552; A.C.N. v. Lamido (2012) 8 NWLR (Pt. 1303) 560; A.C.N. v. Nyako (2013) All FWLR (Pt. 636) 424; Sa'eed v. Yakowa (2013) 7 NWLR (Pt. 1352) 124."

Upon a careful review of the documentary exhibits tendered on behalf of the Petitioners, we observed that all the exhibits were tendered from the Bar by the learned counsel for the Petitioners without any objection from the Respondents on the 31st of May 2019. This was after the Petitioners had called eight witnesses and were about to field the 1st Petitioner as their last witness.

In essence, all the eight witnesses fielded by the Petitioners did not identify or analyse any of the documentary exhibits. It was only when the 1st Petitioner

adopted his deposition that his counsel led him to simply identify the host of documents already tendered as exhibits which he mentioned in paragraph 65 of his deposition.

In the case of: ***CPC v. INEC & ORS (2012) LPELR-15522(SC)*** the Supreme Court explained the implications of adopting this procedure when they exposited thus:

"This issue has raised a pertinent question of the Court evaluating documents allegedly dumped on it where there is no oral evidence linking the documents to the appellant's case. It is significant that these documents as per Exhibits P1-P201 have been tendered from the Bar with the consent of both sides. The appellant's contention is that they have been taken as read and that it is the duty of Court to appraise the documents without more. I think the appellant has misconceived the law in this regard that where the documents so tendered are not examined in the open Court by oral evidence showing the purpose for tendering them and thus linking them precisely to a part of the case of the appellant as per the pleadings of the petition. Otherwise there is no duty on the Court to embark on a cloistered justice to examine them on its own outside the Court. The Court is not supposed to do a party's case for him. I am fortified for so holding by a plethora of cases including Jang v. Dariye (supra), Anyanwu v. Uzowuaka (supra) to mention but a few. To contend that the documents speak for themselves thereof is not to appreciate that it is the appellant's duty to call direct evidence to support its case."

Applying the foregoing principles to the instant case, we are of the view that the Petitioners failed in their adjectival duty to connect these documents with the Petitioners case. The learned counsel for the Petitioners simply dumped them before the Tribunal. He never bothered to examine any of his witnesses to analyse or demonstrate any of the exhibits in the open Court.

For the Tribunal to begin to analyse the exhibits at this stage will amount to doing cloistered justice by examining them in the recess of our chambers. The law does not give the Tribunal the licence to privately analyse exhibits in order to establish a party's case. That would smack of investigation of documents. Judicial authorities are settled that a Court of law is an adjudicator and not an investigator. See the cases of: ***Durimininiya vs. C.O.P (1961) NRNLR 70; Queen vs. Wilcox (1961) All NLR 633; and Dennis Ivienagbor vs Henry 6 SCNJ 235 at 243.***

Still on the issue of documentary evidence, we are in agreement with the Respondents' counsel that in order to establish accreditation of voters, resort must be made to the voters' register where it can be ascertained whether or not same was marked or ticked as required by law. See the case of: ***EMERHOR V. OKOWA***

(2017) ALL FWLR (PT 896) 1868 AT 1916 – 1917 aptly relied upon by learned counsel. See also: ***NWOBASI v. OGBAGA & ORS (2015) LPELR-40669(CA); AJI v. DANLELE & ORS (2015) LPELR-40362(CA); and IKPEAZU v. OTTI & ORS (2016) LPELR-40055(SC).***

In this case, although the Petitioners tendered some voters registers, as already observed, the voters registers for the affected polling units were not identified and analysed by any of the witnesses to show that accreditation of voters did not take place in the said polling units as alleged by the petitioners.

In the event we are of the view that the petitioners have failed to prove that election was conducted at the said polling units without recourse to the process of accreditation of registered voters for the said polling units.

Furthermore, we agree with the Respondents' counsel that in order to prove that no election was conducted at the said polling units; it is also incumbent on the petitioners to tender the voters register for the said polling units and demonstrate to the tribunal that the said voters registers were not marked as required by law and the INEC regulations. As we have reiterated, even when such voters registers were tendered in this case, the contents were not demonstrated or analysed by the petitioners' witnesses.

Consequently, we hold that the petitioners have failed to prove that the elections were not conducted in any of the polling units which they complained of in this petition.

Again, the Petitioners alleged that since elections were not conducted at some of the named polling units, the voters thereat were consequently disfranchised. It is settled law that in order to prove disenfranchisement; a petitioner must call as witnesses, the disenfranchised voters from each of the polling units complained of to testify to this effect. For this view, see the decision of the Supreme Court in: ***EMMANUEL V. UMANA (2016) ALL FWLR (PT 856) 214 AT 271*** which followed the earlier decisions of: ***NGIGE V.INEC (2015) 1 NWLR (PT 1440) 281; UCHA V. ELECHI (2012)13NWLR (PT 1317); and OKE V. MIMIKO (2014) 1 NWLR (PT 1388) 322***.

In the instant case, none of the registered voters in the named polling units was summoned to testify before this tribunal on this issue. Furthermore, as earlier stated, the register of voters for the affected polling units were not tendered and analysed by any of the petitioners' witnesses. We therefore hold that the petitioners have failed to prove disenfranchisement of voters.

We agree with the Respondents' counsel's submission that a ground in an election petition alleging that the respondent was not duly elected by majority of lawful votes cast at the election is tantamount to an allegation that the declaration of result made by the 3rd respondent is a falsified result. To establish such an allegation, the petitioner must tender in evidence two set of results: one being the

result declared by INEC and the other being the result available to the petitioners upon which they are urging the tribunal to declare that the respondent was not duly elected by majority of lawful votes.

In the case of: ***ABARI & ORS v. ADUDA & ORS (2011) LPELR-19750(CA),*** the Court of Appeal stated the position thus:

"It is more than settled in a long line of cases by both this Court and the Supreme Court that when a Petitioner challenges the return of a statutory Respondent on account of falsity of result, it is incumbent on such Petitioner to plead and produce in evidence two sets of results one correct and the other stigmatized as false."

See also the case of: ***HERO V. SHERIFF (2016) ALL FWLR (PT 861) 1309 AT 1363 – 1364***, aptly cited by learned counsel.

In the instant petition, the only result available before this tribunal is EXHIBIT P3 which is the result declared by INEC (the 3rd respondent) wherein the 1st respondent scored the majority of lawful votes cast at the said election by polling 45,143 votes while the 1st petitioner scored 34,256 votes. The petitioners did not plead or tender any other result in respect of the said election to contradict the contents of the said EXHIBIT P3. Since EXHIBIT P3 is the only result available before this tribunal, the tribunal is obliged to accept same as the only authentic result declared by the 3rd respondent in respect of the said election.

Furthermore, applying the principle laid down in the earlier cited decisions of: ***Awolowo vs. Shagari (1976) 6-9 S.C.51; and Nadabo vs. Dubai (2011) 7 NWLR (Pt.1245) 155 at 177,*** we are of the view that the petitioners also failed to plead and prove the votes cast at the various polling stations, the votes illegally credited to the 1st Respondent, the votes which ought to have been credited to him and also the votes which should be deducted from that of the 1st Respondent in order to see if it will affect the result of the election. Having failed to do this, it will be impossible to resolve this issue in favour of the Petitioners.

In view of our findings made so far, we are of the view that the petitioners have not 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 held on the 23rd day of February, 2019 for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State. This first issue is therefore resolved in favour of the Respondents.

ISSUE TWO

Whether the petitioners have led sufficient and credible evidence to prove that the election of the 1st respondent held on the 23rd day of February, 2019 for the office of Member, House of Representatives for Goronyo/Gada Federal

Constituency of Sokoto State is invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC guidelines and regulations for the conduct of the 2019 general elections.

This issue is based on the Ground of the Petition which is an off-shoot ***of Section 138(1) (b) of the Electoral Act, 2010 (as amended)*** which stipulates as follows:

> ***"138. (1) An election may be questioned on any of the following grounds, that is to say:***
> ***(b) that the election was invalid by reason of corrupt practices or non- compliance with the provisions of this Act."***

In an Election Petition, the burden of proof rests permanently on the Petitioners, to prove their petition. Under this ground the burden is on them to prove that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act.

In the case of: ***ORAEKWE & ANOR v. CHUKWUKA & ORS (2010) LPELR-9128(CA),*** the Court of Appeal shed some light on this ground thus:
"***The Appellants challenged the Petition at the Tribunal on the grounds of - (a) Corrupt practices, and (b) Substantial non-compliance with the provisions of the Electoral Act. The two grounds have a common base. Every established act of corrupt practice amounts to non-compliance with the provisions of the Electoral act, but it is not every act of non-compliance that would amount to corrupt practice because corrupt practice imputes a criminal element, the burden of which is proof beyond reasonable doubt. In effect, the burden of proof in any allegation of corrupt practice is higher than the burden on a Petitioner who alleges a mere non-compliance with the provision of the Electoral Act, 2006. Any allegation of corrupt practice must be proved beyond reasonable doubt, and the burden is on the Petitioner to prove same - see Onuigwe V. Emelumba (2008) 1 NWLR (Pt. 1092) 371; ANPP v. Usman (2008) 12 NWLR (Pt. 1100) 1."***

To determine this issue we will first of all look at the aspect of corrupt practices. In the case of: ***IBEZI & ANOR v. INEC & ORS (2016) LPELR-41574(CA),*** the Court of Appeal made some salient pronouncements on the proof of corrupt practices thus:

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

of corrupt practices are in nature criminal charges and ought to be proved beyond reasonable doubt. It is not sufficient to show that there are reasonable grounds to believe or suspect that there has been a corrupt practice. See NWOBODO v. ONOH (1984) 1 SCNLR page1; OMOBORIOWO v. AJASIN (1984) 1 SCNLR page 108; Oyegun v. Igbinedion & Ors (1992) 2 NWLR (pt.226) at 747. The Petitioner i.e. the 1st Respondent herein and his witnesses had alleged in their statements on oaths that there was violence, and threats to the peaceful atmosphere at C.B.N. Enugu where the materials for the election were to be collected. In my humble view, where as in this case a petitioner makes an allegation of crime against a respondent in an election petition, and makes the commission of crime the basis of his petition as could be seen from Paragraphs 12B and 12C of the petition that there were no ballot boxes, no forms EC8A and no ballot papers or any other electoral materials for election on both 14/4/2007 and 28/4/2007 and further that there was violence on 14/4/2007 such a petitioner has a strict burden by virtue of Section 138(1) of the Evidence Act to prove the commission of the crime beyond reasonable doubt. If the petitioner fails to discharge this burden his petition fails.

And in Eze v. Okoloagu (2013) 3 NWLR (pt.1180) 183 at 233, this Court again stated thus:

My Lords, the case of malpractices, constitute allegation of commission of criminal activities, in an election petition, the petitioner had the burden of proving the allegation beyond reasonable doubt. To discharge the burden, it must be established that the respondents, particularly, the 1st respondent before the Tribunal (appellant herein), committed the act personally or aided, abetted, counseled or procured the commission of these alleged wrong doings. Moreover, the acts were committed by an agent or servant, there must be evidence that the agent was permitted to act in that capacity or had a general authority to act. Our law did not say that if the winner of the election benefitted from the alleged irregularities and or malpractices then the election or votes will be nullified. It says, participated either directly or indirectly.(Underlining, ours) ***In Wali v. Bafarawa (2004) 16 NWLR (pt.898) 1 at 44-45 this Court, Kaduna Division, said:***

A respondent who is a candidate in an election cannot be held responsible for what other people did in the form of unsolicited act of which the candidate or his agent was ignorant."

Coming to the instant case, in order to establish corrupt practices, the Petitioners called eight witnesses and the 1st Petitioner who testified of the events that transpired in some polling units on the Election Day.

In his written address, the learned counsel for the Petitioners highlighted some of the evidence adduced to substantiate the allegations of corrupt practices.

We will scrutinise the allegations and make some preliminary findings on them as we proceed.

The learned counsel for the petitioners referred to the evidence of the PW5 that at Gidan Karo polling unit, the agents of the 2nd Respondent disrupted the elections and that the RW1 corroborated PW5's testimony when he stated under cross examination that violence erupted at the polling unit and the security personnel tried their best but could not control the crowd.

The evidence of this witness needs some close scrutiny. The sum total of his evidence is that election did not take place at Gidan Karo polling unit. The implication is that voters thereat were disenfranchised. As earlier held in this judgment, to prove such disenfranchisement, the petitioners have the burden to call the registered voters in the polling unit who did not vote and also tender in evidence the register of voters for the polling unit. See the case of ***NGIGE V. INEC (2015) 1 NWLR (PT 1440) 281 AT 326*** where the Supreme Court held thus:-

> ***"A voter is disenfranchised when his right to vote is taken away. That is to say he claims to be registered but was not allowed to vote. When would the court be satisfied that voters were disfranchised?***
>
> ***(a) The disenfranchised voters must give evidence to establish the fact they were registered but were not allowed to vote.***
>
> ***(b) The voters card and voters register for the polling unit must be tendered.***
>
> ***(c) All the disenfranchised voters must testify to show that if they were allowed to vote, their candidate would have won."***

See also the case of: ***KAKIH V. PDP (2014) 15 NWLR (PT 1430) 374 AT 419*** where the Supreme Court also held as follows:-

> ***"He made non-voting or misconduct or non-conduct of election the pivot of his case. It behoves on him to call at least one disenfranchised voter from each of the polling booths or units or stations in the affected constituencies or district/area as a witness to testify in support of this allegation."***

In the instant case, the petitioners failed to call any registered voter from Gidan Karo Polling Unit to testify on the allegation that no election was conducted at the said polling unit. Again, no permanent voter's card of the registered voters in the said polling unit was tendered in evidence before this tribunal. Similarly, the register of voters for the said polling unit was not put in evidence and analysed before this Tribunal by any of the petitioners' witnesses.

In the absence of such corroborative evidence it is difficult to rely on the mere ***ipse dixit*** of the P.W.5. More so, when this evidence was rebutted by the testimony of RW1 (Aminu Gidan Karo) who asserted that election was conducted at this polling unit and the result of same was declared.

He also referred to the evidence of the PW2 who testified at paragraph 8 of his statement on oath that at Gidan Gulbi polling unit, the agents of the 2nd Respondent were thumb printing ballot papers for voters to the knowledge of the agents of the 3rd Respondent. As may be recalled, based on the objection raised by the learned counsel for the 1st Respondent, the evidence of the P.W.2 has been expunged from the records. Thus, this allegation of corrupt practices remains not proved.

Regarding the elections held at Kagara ward in Goronyo Local Government, counsel referred to the evidence of PW6, the coordinator for the petitioners who testified that there were irregularities in all the polling units as thugs of the 1st and 2nd Respondents voted repeatedly and that voters were intimidated and beaten by Fulani people who were acting on behalf of the 1st and 2nd Respondents.

He also referred to the evidence of the said PW6 where he stated that at Rufan Marafe polling unit in Kagara ward there was multiple voting and vote buying by agents of the 1st and 2nd Respondents.

Actually in his evidence in chief, the witness stated that <u>agents of the 2nd Respondent</u> (not agents of 1st and 2nd) were paying people money to vote for the 1st

and 2nd Respondents. However, he did not disclose the identity of these alleged agents of the 2nd Respondent or explain how he identified them as agents of the 2nd Respondent. This is not surprising because he claimed that he was a coordinator over Danjiro polling unit, Marafa polling unit and Illela Dawagari polling unit and that he gathered his information from some of the polling agents. Upon this disclosure, we are of the view that his evidence amounts to hearsay and we cannot rely on it. In the case of: ***BAKUT & ANOR v. ISHAKU & ORS (2015) LPELR-41858(CA)*** a witness testified in a similar vein thus:

"Yes our party agents briefed me on all the polling units upon which I complained. My deposition on all the polling units as to the conduct of the election is based on the results handed over to me by the polling agents."

In rejecting the aforesaid piece of evidence, the Court of Appeal re-emphasized the rule against hearsay evidence when they opined thus:

"From the foregoing, it is not in dispute that the 1st appellant (PW1) was not an eye-witness nor has he direct first-hand information of the events, activities or happening of the 28 polling units, during the election conducted on the 11th of April, 2015 in Zonkwa State Constituency of Kaduna State. By the definition of hear-say evidence under Section 37 of the Evidence Act , and the authorities cited (supra), the deposition in the witness statement on oath of the 1st appellant (PW1), is hear-say… Hear-say evidence is not admissible except as provided in this part or by or under any other provision of this or any other Act. Once it has been established that an assertion, oral or documentary is hear-say, such assertions or information cannot be admitted in evidence in so far it is intended to prove or establish what has been asserted or given as information. In election petition matters, the only person who can testify in an election petition, in proving what took place or occurred at a polling station or any collation centre, etc., must be such person that was actually physically present at the polling unit. Any other person who was not at the polling unit cannot testify on what might have taken place or occurred thereat."

Again, learned counsel pointed out that at Dajiro polling unit code 006, there was multiple voting and Fulani men were chasing eligible voters and beating them up with sticks. He said that the testimony of PW 6 was not successfully challenged during cross-examination and that the RW7 confirmed that there was violence at Dajiro polling unit and multiple voting caused by the agents of the 1st and 2nd Respondents, although the RW 7 says it was caused by the agents of the petitioners.

On the incident at Dajiro polling unit, it is correct that the P.W.6 and the R.W.7 confirmed that there was violence at the said polling unit on the election day, but they did not identify the perpetrators. As a matter of fact, the R.W.7 categorically stated that there was multiple voting in that polling unit by PDP members who thumb printed and stuffed ballot papers into the ballot boxes and that the PDP won the election in that polling unit. From the evidence adduced, the identities of the perpetrators of the offences were not established. Again, it must be re-emphasised that these are criminal allegations which must be proved beyond reasonable doubt.

In the case of: ***Eze v. Okoloagu (2013) 3 NWLR (pt.1180) 183 at 233***, the Court of Appeal again stated thus:

"…the case of malpractices, constitute allegation of commission of criminal activities. In an election petition, the petitioner has the burden of proving the allegation beyond reasonable doubt. To discharge the burden, it must be established that the respondents, particularly, the 1st respondent before the Tribunal (appellant herein), committed the act personally or aided, abetted, counselled or procured the commission of these alleged wrong doings. Moreover, if the acts were committed by an agent or servant, there must be evidence that the agent was permitted to act in that capacity or had a general authority to act. Our law did not say that if the winner of the election benefitted from the alleged irregularities and or malpractices then the election or votes will be nullified. It says, participated either directly or indirectly."

Again in the case of: ***Wali v. Bafarawa (2004) 16 NWLR (pt.898) 1 at 44-45*** the Kaduna Division of the Court of Appeal stated thus:

"A respondent who is a candidate in an election cannot be held responsible for what other people did in the form of unsolicited acts of which the candidate or his agent was ignorant."

Also in the case of: ***Adediji v. Kolawole (2006) 2 EPR 70 at 92*** , the Court held that the petitioner must not only prove the alleged corrupt practices and the malpractices, but he must show that same was committed in favour of the winner of the election with his knowledge or consent by a person acting under his general or special authority.

It is quite clear that on the state of the pleadings and evidence led in this trial, the petitioners anchored this petition on allegations of corrupt practices such as multiple voting, falsification of results, thuggery, threat to lives, and other electoral offences. It is settled law that such allegations of corrupt practices are

criminal offences. To establish them, the petitioners must surmount two hurdles. The first hurdle is to prove them beyond reasonable doubt.

After scaling the first hurdle, the second hurdle is that of establishing the salient factors earlier mentioned in this judgment, to wit:

(a) That the 1st respondent personally committed the corrupt act or aided, abetted, etc. the alleged commission of the alleged corrupt practice or offence;

(b) That where the alleged act was committed through an agent, the said agent must have been authorized by the 1st respondent;

(c) That the corrupt practice or offence affected the outcome of the election and how it affected it; and

(d) The petitioner must go further to prove that but for the corrupt practice he would have won the election.

See: ***Section 138(1) of the Evidence Act ; Section 122(2) of the Electoral Act ; Oyegun v. Igbinedion (1992) 2 NWLR (Pt. 226) 747 at 759-760; Opia v. Ibru (1992) 3 NWLR (Pt. 231) 658 at 708 to 709; Ebebe v. Ezenduka (1998) 7 NWLR (Pt. 556) 74; Haruna v. Modibbo (2004) 16 NWLR (Pt. 900) 487 at 561***.

Going through the entire gamut of the petitioners' evidence, we are of the view that they have abysmally failed to prove the allegations of corrupt practices beyond reasonable doubt. Furthermore, it is evident that there is no scintilla of evidence to establish any of the salient conditions enumerated in paragraphs (a) to (d) above.

The second aspect of this Issue Two is on non-compliance with the provisions of the Electoral Act (as amended) and the INEC guidelines and regulations for the conduct of the 2019 general elections.

In his written address, the learned counsel for the petitioners highlighted the alleged non-compliance with the provisions of the Electoral Act (as amended) and the INEC guidelines and regulations for the conduct of the 2019 general elections. We will examine these allegations of non-compliance and make our findings on them.

First, he referred to the petitioners compliant that elections did not hold in Gidan Madugu polling unit because the 3rd Respondent brought incomplete electoral materials to that polling unit. The petitioners' witness who testified about this polling unit was the P.W.5 who admitted that he was at Gidan Karo from 8:00 to 5:00 pm on the Election Day. He said that it was his trusted representative at Gidan Madugu who told him that elections were not held in Gidan Madugu polling

unit because of the violence there. The alleged trusted representative never testified before us. On the authorities earlier cited, the evidence of the P.W.5 concerning Gidan Madugu amounts to hear-say which is not admissible. Thus, the allegation of non-compliance in that polling unit was not proved.

Next with respect to Gidan Gulbi polling unit, PW2 testified that at Gidan Gulbi the agents of the 2nd Respondent were thumb printing ballot papers for voters to the knowledge of the agents of the 3rd Respondent. As already observed, upon the objection of counsel, the evidence of the P.W.2 has since been expunged from the records.

Similarly petitioners' counsel referred to the testimony of RW4 under cross examination who he alleged revealed that the 3rd respondent did not comply with the INEC guidelines and regulations for the conduct of general elections, 2019 because he stated that when the Smart Card Reader in their polling unit malfunctioned, they agreed to continue with the voting without accreditation pending when another Smart Card Reader would be brought for the accreditation of those who had already voted.

On this point, the evidence on record from the R.W.4 was that based on agreement between the APC and PDP agents, when the card reader machine was taken to the office for repair, they used manual accreditation in the interim.

The petitioners also complained of accreditation without the card reader machines in the Basana polling unit 011 in Tsitse ward of Gada Local Government Area.

It is settled law that the failure to accredit with the card reader cannot invalidate the election if the manual accreditation was done.

The Supreme Court elucidated on this point in the case of: ***NYESOM v. PETERSIDE & ORS (2016) LPELR-40036(SC)*** when they stated thus:

"The introduction of the card reader is certainly a welcome development in the electoral process. Although it is meant to improve on the integrity of those accredited to vote so as to check the incidence of rigging, it is yet to be made part of the Electoral Act. Section 138(2) of the Electoral Act envisages a situation where the Electoral Commission issues instructions or guidelines which are not carried out. The failure of the card reader machine or failure to use it for the

accreditation of voters cannot invalidate the election. The Section stipulates as follows:-

" 138(2) An act omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of election but which is not contrary to the provisions of this Act shall not of itself be a ground for questioning the election".

See also the cases of: ***EMMANUEL v. UMANA & ORS (2016) LPELR-40037(SC);*** and ***OKEREKE v. UMAHI & ORS (2016) LPELR-40035(SC)*** which are on the same point.

Furthermore, the petitioners testified that elections were cancelled at polling units 010, 011 and 013 in kiri ward; polling units 006, 009 and 012 in Gada ward all of Gada Local Government Area; Sabon Gari Dole/Dantasakko polling unit; and in Mallam Faru polling unit. On the basis of the authorities earlier cited, cancellation of election amounts to disenfranchisement of voters. To substantiate it, the disenfranchised voters from each of the affected polling units must testify to prove it. Since they failed to testify, the disenfranchisements were not established.

Where a petitioner complains of non-compliance with the provisions of the Electoral Act, the petitioner has a duty to prove the non-compliance alleged based on what happened at each polling unit. The import of that duty is that the petitioner has to ***call witnesses who were at each polling unit during the election.*** See the cases of: ***Gundiri v. NYAKO (2014) 2 NWLR (Pt.1391) 211;*** and ***Abubakar v. Yar'Adua (2008) 19 NWLR (Pt.1120) 1 @ 173.***

Also, a petitioner who alleges in his petition a particular non-compliance has the onus to establish the non-compliance and satisfy the court that it affected the result of the election. See: ***Dzungwe v. Swem 1960-1980 LRECN 313.***

In election petitions based on non-compliance with the Electoral Act, the intendment of the statute is to ensure ***substantial compliance with the provisions of the Electoral Act*** and not an ***absolute compliance*** with the Act. This principle of substantial compliance is enshrined in ***Section 139(1) of the 2010 Electoral Act (as amended)*** which stipulates as follows:

> ***"139.(1) 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."***

Consequently, a petitioner who alleges non-compliance with the Electoral Act must call credible witnesses to prove that there was ***substantial non-compliance with the Electoral Act***: see the cases of: ***EMMANUEL v. UMMANAH (No. 1) (2016) 12 NWLR (Pt.1526) 179 @ 256-257 paras G-C; NYEMSON v. PETERSIDE (2016) 7 NWLR (Pt.1512) 425.***

In the case of: ***Buhari v. I.N.E.C. (2008) 19 NWLR (Pt. 1120) 746, @ p. 442*** the Supreme Court restated the position thus:

"…the mere fact that there were irregularities or failure to strictly adhere to the provisions of the Act is not sufficient to void the election. In order to void the election it must be shown that:

(1) That the irregularities or failures constitute a substantial departure from the principles of the Act and that;

(2) The irregularities or failures have substantially affected the results of the election.

From the foregoing, it is clear that for any Court or tribunal to proceed to invalidate an election the conditions set out above must be met.

It follows therefore that a situation where the irregularities do not constitute a substantial departure from the principles of the Act and had not been shown to have affected the result of the election the Court or tribunal has no power to invalidate the election. Even in a situation where the Court considers that the proven irregularities constitute non-compliance, the Court still has to be satisfied that the non-compliance has affected the result of the election before election can be nullified."

Again, in the case of: ***Ucha & Anor v. Elechi & 1774 Ors (2012) 13 NWLR (Pt.1317) p.330,*** the Court emphasised the principle of substantial compliance thus:

"The results declared by INEC are prima facie correct and the onus is on the petitioner to prove the contrary. Where a petitioner complains of non-compliance with provisions of the Electoral Act, he has a duty to prove it polling unit by polling unit, ward by ward and the standard required is proof on the balance of probabilities and not on minimal proof. He must show figures that the adverse party was credited with as a result of the non-compliance, Forms EC8A, election materials not stamped/signed by Presiding Officers. He must establish that non-compliance was substantial, that it affected the election result. It is only then that the Respondents are to lead evidence in rebuttal...."

In the instant case the Petitioners were unable to prove the allegations of non-compliance in each of the affected polling unit on the balance of probabilities.

They could not show definite figures that the 1st and 2nd Respondents were credited with as a result of the alleged non-compliance. More importantly, they failed to establish that the alleged non-compliances were substantial and how they affected the election result.

In view of the foregoing, we are of the view that the petitioners have not led sufficient and credible evidence to prove that the election of the 1st respondent held on the 23rd day of February, 2019 for the office of Member, House of Representatives for Goronyo/Gada Federal Constituency of Sokoto State was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC guidelines and regulations for the conduct of the 2019 general elections. Issue Two is therefore resolved in favour of the Respondents.

Having resolved all the Issues in this Petition in favour of the Respondents***, we hold that the 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

COUNSEL:

1. **MOHAMMED ADELEKE ESQ…….PETITIONERS**
2. **CHIEF J.E.OCHIDI…….……1ST RESPONDENT**
3. **CHIEF S.U.NWOKE……..…….……..2ND RESPONDENT**
4. **M.M.ALIYU ESQ……...3RD RESPONDENT**