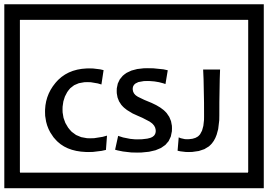
The Judiciary and Nigeria's 2015 Elections



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(Mainstreaming Social Justice In Public Life)

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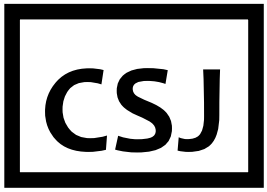

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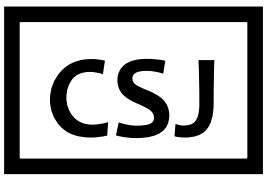

Centre for Social Justice (CSJ)

(Mainstreaming Social Justice in Public Life)

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Centre for Social Justice (CSJ)

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LIST OF ACRONYMS

Anor	Another
APC	All Progressives Congress
APGA	All Progressives Grand Alliance
CJN	Chief Justice of Nigeria
CSJ	Centre for Social Justice
CTC	Certified True Copy
CVR	Continuous Voter Registration
EFCC	Economic and Financial Crimes Commission
FCT	Federal Capital Territory
Hon	Honourable
INEC	Independent National Electoral Commission
JCA	Justice of the Court of Appeal
JSC	Justice of the Supreme Court
LGA	Local Government Area
LPELR	Law Pavilion Electoral Law Report
MPPP	Mega Progressive People's Party
NEMA	National Emergency Management Authority
NWLR	Nigerian Weekly Law Report
NYSC	National Youths Service Corps
ORS	Others
PDP	People's Democratic Party
Pt.	Part

PVCs	Permanent Voter's Cards
SAN	Senior Advocate of Nigeria
SCR	Smart Card Reader

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Chapter One

INTRODUCTION

1.1 BACKGROUND

The much-awaited 2015 general elections have come and gone without wide spread violence as predicted by some doomsday analysts. Unlike the 2011 general elections, and particularly, the presidential election of that year, the outcome of which was trailed by widespread violence in several parts of the country, the 2015 general elections were relatively peaceful as there were very few reported incidents of violent protests following the declaration of the results. The presidential election is usually recognised as the most important of all the elections, and so, whatever reaction that follows the declaration of the presidential election result, to a large extent, sets the tone and characterises the entire elections in that particular electoral season.

The 2015 general elections in Nigeria will remain ingrained in the memories of Nigerians for many years to come. This is because for the first time, in the history of Nigeria, an opposition party upstaged the ruling party in the presidential election. However, the mere fact that violence did not erupt after the announcement of the election result is not an indicator that the outcome of the election was acceptable to all the actors. On the contrary, there was a general sense of loss and a suppressed feeling of discontent among supporters of the People's Democratic Party (PDP), the party which had maintained a firm grip on power at the centre since the return of civil rule in 1999. Quite unlike what had become the culture in Nigeria, the former President, Dr. Goodluck Ebele Jonathan, was in no mood to contest the loss. In a move which surprised many political observers, President Jonathan quickly conceded defeat and congratulated the winner, retired General Muhammadu Buhari, who was the candidate of the All Progressives Congress (APC) at the election. This singular gesture of former President Jonathan, which has earned him worldwide acclaim, besides averting post-election violence in the country, also put paid to what was to be a long-drawn legal battle at the Presidential Election Petition Tribunal, all the way up to the Supreme Court.

There were several complaints of irregularities and flaws in the general elections, and as expected, many aggrieved candidates and political parties headed to the Election Petition Tribunals to ventilate their grievances on the conduct of the polls. A total of 658 petitions were filed before Election Tribunals in Nigeria following the elections. This is about 10% lower than the 732 petitions filed in the Election Tribunals after the 2011 general elections.

This raises the following posers; why are large numbers of petitions usually filed before Election Tribunals in Nigeria after every election? Is it that the electoral process contains inherent flaws that make it difficult, if not impossible for clear and generally acceptable winners to emerge? Or is it about an unyielding attitude among Nigerian politicians that propels them to reject every declared election result? Again, could it be that the Election Tribunals are perceived as being imbued with some measure of omniscience and integrity that they offer greater chances of achieving electoral justice than is possible through the ballot? Perhaps, it is a combination of all the above factors that is responsible for the high incidence of resort to litigation as a means of achieving electoral success in Nigeria.

The Universal Declaration of Human Rights states that:

> *"The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by any equivalent free voting procedures"*[1].

When the right to choose leadership is subverted by electoral malpractices and unpopular candidates are declared as winners, it is the duty of the Judiciary, which has been aptly described as the last hope of common person to dispense justice and restore the subverted right of the people. This is the business of the Tribunals and Appellate Courts as established by the Constitution of the Federal Republic of Nigeria 1999 (Constitution) and other enabling laws. Election disputes are not just civil claims in which individuals ventilate their private grievances or pursue personal aggrandisement. The claims have wider significance for the integrity of our constitutional democracy and the political stability of Nigeria. They also border on the collective interest of society to be governed by a democratic government founded on the will of the people, expressed in periodic and genuine elections.

1.2 THE PROJECT ANCHORING THE MONITORING EXERCISE

The 2015 general election was the fifth Nigerian general election since the return to civil rule in 1999. All the previous elections have been followed by large number of petitions presented before Tribunals. This was based on the dissatisfaction of candidates and political parties with election results declared by the electoral management body - the Independent National Electoral Commission (INEC or

[1] See article 21 (3) of the Universal Declaration of Human Rights, reinforced by article 25 (2) of the International Covenant on Civil and Political Rights.

Commission). There is the expectation that the process of organising elections is bound to improve after taking cognisance of flaws and mistakes and drawing lessons from earlier elections. The expectation is also that the adjudication process was bound to improve after every election.

Moreover, Nigeria's organised civil society, in the four years preceding the 2015 elections, exerted itself to facilitate the deepening of democracy and ensure that its underlying principles are held sacrosanct. The Centre for Social Justice (CSJ), for instance, organised several programmes in the intervening years, to build a new democratic culture based on popular participation and government accountability. The 2015 elections presented an important opportunity to evaluate the nation's democracy based on how open and credible the electoral process would be. It was also an opportunity to monitor and report on the elections, to possibly indicate whether the country was gaining ground on its march to a stable democracy or whether it was paying lip service to democratic principles.

The present intervention is focused on contributing to the transparent, free, fair and credible resolution of electoral disputes in accordance with the Constitution, Electoral Act 2010 as amended (Electoral Act or Act) and other extant laws and policies. The specific objectives were to:

- Build the capacity of 37 Election Tribunal monitors on how to carry out effective monitoring of the Tribunals established to deal with challenges arising from the electoral system;
- Deploy monitors and conduct monitoring of the work of Election Tribunals across the 36 states and the Federal Capital Territory;
- Document the outcome of the monitoring in an analytical report.

CSJ organised a two day workshop for chosen Tribunal monitors. The first focus of the training was to make the monitors understand the legal framework for election dispute resolution. Effective monitoring can only be done from an informed position on the laws and policies guiding the work of Tribunals and the Appeal Tribunals. This involved analysing the amended 1999 Constitution, the Electoral Act 2010 and other relevant laws. The second focus of the training was on the Tribunal process and techniques for data gathering. It also reviewed interview techniques. The third focus was on the monitoring forms and checklists which were reviewed to ensure that participants understood how to use them to gather the required information including number of petitions filed and the nature of the allegations for requesting that the election be voided or the petitioner be declared the winner of the election. The fourth focus of the training was on the objective criteria for the evaluation of the work of the Tribunals using quantitative

and qualitative analysis. The core issues were the resources available to the Tribunals for the discharge of their duties, conduciveness of the venues, the process employed by the Tribunals including good practices in fair hearing and substantial compliance with the enabling laws, timeliness of proceedings, the role of INEC, security of Tribunals, witnesses, litigants and their counsel, openness and access including cost of justice, corruption and bias, etc. Generally, the training provided answers to the questions: Why do we seek to monitor? What are the monitoring points? How do we monitor? When do we monitor? CSJ chose participants for the training who eventually became monitors from the list of personnel who it had worked with in previous monitoring exercises as this ensured that monitors built on their previous experience to deliver quality monitoring reports. Persons with legal or paralegal background were prioritised in the selection of monitors.

Monitors were deployed as soon as the Tribunals commenced their work. One monitor covered one state. They attended and observed Tribunal and Court sessions and appeals from the Courts of first instance and submitted periodic reports of their monitoring activities. They obtained certified true copies of court processes and judgements. Project staff from CSJ were also occasionally involved in the monitoring exercise. The project conducted interviews with counsel, candidates, security personnel and other stakeholders involved in the Tribunals to elicit more detailed information relating to specific aspects of proceedings where they were involved. The project also monitored reports in the print and electronic media on the conduct of the electoral proceedings before the Tribunals and the Courts. Further, the project reviewed reported cases arising from appeals on the judgements of the Tribunals.

Unlike the 2011 exercise when we could not secure accreditation from the President of the Court of Appeal; Hon Justice Bulkachuwa, the current President of the Court of Appeal granted our request for accreditation to observe the Election Tribunals and gave each monitor a letter indicating the approval. This facilitated the monitoring work across the federation. However, there were difficulties in gathering information in some states; some Tribunal secretaries insisted on the monitors paying unreasonable amounts of money for photocopying and obtaining certified true copies of rulings and judgments.

1.3 THE REPORT SUMMARY

This report is an analytical effort at evaluating the activities of the Election Tribunals in their resolution of disputes arising from the 2015 elections. This report is divided into seven chapters with an Appendix. Chapter One introduces the

project out of which this report was generated. It describes the reasons for the project, the methodology adopted and report summary. Chapter Two provides the background information and the underlying political events prior to the 2015 general elections. The chapter particularly emphasises those events that impacted on preparations and management of the 2015 elections. They include events surrounding the amendment of the Electoral Act, continuous voter registration and distribution of permanent voters' cards, challenges of the card reader and release of the election timetable. In the conduct of party primaries, the report showed that political parties were yet to entrench internal democracy in their selection of candidates for elections.

Chapter Three examines legal and constitutional provisions relating to the establishment and jurisdiction of the Election Tribunals. The law, as it was in 2011, did not change in 2015. The Tribunals were still the courts of first instance and appeals went to the Court of Appeal and ended there in legislative petitions whilst governorship appeals ended at the Supreme Court.

Chapter Four reviews the actual activities of the Tribunals across the country, while also providing information and data on number of petitions filed and the decisions reached. There was no challenge to the return in the presidential election but a harvest of gubernatorial and legislative petitions. The preponderance of technicalities in arriving at decisions manifested in the adjudication process and a number of petitions were lost on the strength of these technicalities. The basic idea informing the technicalities is that election petitions are *sui generis* and little deviations from the procedural rules would lead to the case being dismissed. However, there were many sound judgements that reflected substantial justice aimed at giving effect to the will of the electorate.

Chapter Five reports on the appeals filed and how they were resolved. Chapter Six examines the quality of justice obtained from the Tribunals and Courts. It sought to define the ultimate goal of the adjudication of electoral petitions and came to the conclusion that petitions are filed and adjudicated upon to ensure that the votes count. As such, a resort to technicalities which fails to ensure that the wish of the electorate is respected deviates from the norm. It reviews the knotty issue of the burden and standard of proof in electoral petitions; conflicting Tribunal decisions, time frame for the determination of petitions and pre-election cases. The chapter further reviews the late amendment of the Electoral Act, the card reader quagmire, security challenges and openness of the Tribunals.

Chapter Seven is the conclusion and recommendations. Some of the recommendations are as follows:

- Rethinking the Electoral Jurisprudence: It is imperative that the ultimate goal of electoral adjudication be determined and this should be - to ensure that the votes count which tallies with the idea of substantial justice.

- The Electoral Act should be amended to state categorically the status of the card reader vis-a-vis the voters register and the consequence of refusing to use the card reader in accreditation.

- Except in serious and unforeseen circumstances, amendment of election related laws should be concluded not later than six months to the election.

- The timeframe in section 285 (5) – (7) of the Constitution for filing and determining petitions and appeals should be amended: To exclude weekends, public holidays, court vacations and strikes. The time frame for appeal should only start running after the compilation and transmission of the records of appeal. For cases remitted for re-trial to the Tribunal or Court of Appeal, the time for determination of such a petition should run de-novo from the commencement of the new trial.

- In reviewing the Electoral Act 2010, it is imperative to consider the recommendation of the Electoral Reform Committee to shift the burden of proof from the petitioner to INEC to show, on a balance of probability that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate. If this recommendation is difficult to accept, it is recommended that in deciding matters brought under section 139 (1) of the Electoral Act for non-compliance, once the petitioner proves non-compliance, the burden of proof should be shifted to INEC to show that the non-compliance did not substantially affect the result of the election. This would involve a presumption that once non-compliance is proved, a rebuttable presumption that the results were affected by non compliance arises.

- Where allegations of crime are made in an election petition, insisting on proof beyond reasonable doubt is to place an onerous burden on the petitioner. The standard should be on a balance of probabilities considering that no penal sanctions will be meted to the respondent(s) on the basis of the petitioner proving his case. The amendment of relevant sections of the Evidence Act will be imperative.

Chapter Two

POLITICAL AND LEGAL BACKGROUND TO THE 2015 ELECTIONS

2.1 BACKGROUND

The Constitution and the Electoral Act are the two main laws that regulate the conduct of elections and electoral dispute adjudication in Nigeria. The Constitution prescribes a four-year term for elected public officers[2] and all elections are held at the same season for various political office holders ranging from the office of the President, the Governors, National Assembly and various State Houses of Assembly. However, owing to judicial interventions, the gubernatorial elections in some states like Anambra, Edo, Ekiti and Bayelsa have now become staggered and do not coincide with the general electoral calendar.

Unlike the preparation for previous elections, proposed amendments to the Constitution in 2015 did not sail through as the President vetoed the constitutional amendment process. However, there was an obscure amendment to the Electoral Act in the Electoral (Amendment) Act 2015. The obscure description is based on the fact it was passed by the House of Representatives on March 5, 2015 and by the Senate on March 10, 2015; certified by the Clerk of the National Assembly and forwarded to the President on March 20, 2015 while it was signed into law by President Goodluck Jonathan on March 26, 2015. Indeed, it was signed into law two days to the presidential election. During electoral adjudication, no counsel or court in the entire petitions filed in Nigeria made reference to any of its provisions. This development throws up issues about the propriety of amending the Electoral Act a few days to the election. It also questions the process of gazetting and publicising a law that ensures that no one gets access to it until the election petitions are over.

The long title to the Electoral (Amendment) Act 2015 states that it is an Act to provide for the tenure of the Secretary to the Commission; increase in the number of days for application for and issuance of duplicate voter's card and determine voting procedure as well as addressing other related issues to facilitate electioneering in Nigeria. Section 52 (2) of the Principal Act was amended. The old section stated that:

> *"The use of electronic voting machine for the time being is prohibited"*

In the amendment, section 52 (2) now reads as follows:

[2] See sections 64 (1), 105 (1), 135 (2) and 180 (2) of the Constitution.

Voting at an election under this Act shall be in accordance with the procedure determined by the Independent National Electoral Commission"

This new provision effectively removed the prohibition of the use of electronic voting machine.

Before the elections, some previously existing political parties merged and changed their names to All Progressives Congress. The merger produced a united front for major opposition parties to engage the ruling party from a position of strength. The prelude to the elections witnessed a suit challenging the eligibility of the All Progressives Congress presidential candidate, Muhammadu Buhari to contest the presidential election on the basis that he did not possess the minimum academic qualifications. In a suit filed by a legal practitioner[3], Chukwunweike Okafor, the plaintiff averred that the information contained in General Buhari's affidavit dated November 24, 2014 stating that the secretary to the Military Board was in custody of his West African School Certificate was false and thereby disqualifies him from contesting the 2015 general elections. He therefore sought to compel INEC to withdraw, remove and or delete the name of General Buhari and the APC as eligible candidates and political party to contest the presidential election.

2.2 CONTINUOUS VOTER REGISTRATION AND DISTRIBUTION OF PERMANENT VOTERS' CARDS

Registration of eligible voters is a fundamental aspect of any electoral process. INEC is charged with the compilation of a national register of voters, continuous voter registration and production of voters cards[4]. There were challenges in meeting this mandate especially those bordering on distribution of permanent voters card (PVCs). The activities of the Boko Haram terrorist group in the North East hampered the exercise. INEC carried out the nationwide distribution of PVCs and the Continuous Voter Registration (CVR) exercise in three phases as follows:

- Phase one states: Taraba, Gombe, Zamfara, Kebbi, Benue, Kogi, Abia, Enugu, Akwa Ibom, Bayelsa;

- Phase two states: Yobe, Bauchi, Jigawa, Sokoto, FCT, Kwara, Anambra, Ebonyi, Ondo, Oyo, Delta, Cross River;

- Phase 3 states: Edo, Imo, Kano, Ogun, Plateau, Adamawa, Nassarawa, Rivers, Lagos, Kaduna, Katsina, Borno and Niger.

[3] Suit No. FHC/ABJ/CS/01/2015
[4] See sections 10 and 11 of the Electoral Act.

The collection of the PVCs was supposed to end on January 31 2015. However, following the postponement of elections, the deadline for collection of PVCs was first extended to 8th February, 2015; then to March 8th 2015 and finally to March 22, 2015 [5]. All these tentative steps and postponements cast INEC in the mould of an agency that had four years to prepare for elections and was still not ready at the appointed hour.

2.3 ELECTION TIME TABLE

The 2015 general elections commenced with the release of election time table by the Commission. Section 30 (1) of the Electoral Act, 2010 (as amended), states that the Commission shall not later than 90 days before the day appointed for holding of election under this Act, publish a notice in each state of the Federation and the Federal Capital Territory-

(a) stating the date of the election; and
(b) appointing the place at which nomination papers are to be delivered

By virtue of the provisions of the Constitution, elections into political offices shall hold not earlier than one hundred and fifty days and not later than thirty days before the expiration of the term of office of the last holder. The Commission, by virtue of Section 30 (1) of the Electoral Act had a duty to issue notice for the elections not later than ninety days before the date of the election[6].

The tenures of the offices of the president, vice president, governors and deputy governors of all the states of the Federation except Anambra, Bayelsa, Kogi, Edo, Ondo, Ekiti and Osun States were billed to expire on 28th May 2015 and the membership of the National and State Assemblies was to expire on the 28th day of May, 2015. Consequently, the earliest date for the elections into the offices necessarily had to be 29th December, 2014 and the latest day for election, as constitutionally stipulated had to be 28th day of April 2015[7].

In the exercise of the powers conferred on INEC by the Electoral Act, the Commission released the "Time Table and Schedule of Activities for General Elections, 2015" as follows:

[5] http://www.premiumtimesng.com/news/176080-breaking-inec-extends-deadline-collection-permanent-voter-cards.html
[6] INEC, Time Table and Schedule of Activities for General Elections, 2015; See http://www.inecnigeria.org/wp-content/uploads/2014/02/General-Elections.pdf
[7] INEC, supra.

S/N	**Activity**	**Date**	**REMARK**
1	Notice of election	1st October 2014	Section 30(1) of the Electoral Act, 2010 (as amended) provides not later than 90 days before the election.
2.	Commencement of campaign by Political Parties.	Presidential and National Assembly - 16th November, 2014. Governorship and State House of Assembly - 30th November, 2014.	Section 99 (1) of the Electoral Act 2010 (as amended) provides 90 days before polling day.
3	Collection of Forms for all elections by Political Parties at INEC Headquarters.	4th - 11th November, 2014	For Political Parties to issue to their candidates.
4.	Conduct of Party Primaries including resolution of disputes arising from the Primaries.	Commencement date 2nd October 2014 Ends 11th December, 2014.	To enable Political Parties democratically nominate candidates for the election as required by Section 87 of the Electoral Act, 2010 (as amended).
5	Last day of submission of Forms CF001 and CF002 at the INEC Headquarters (for all elections).	Presidential and National Assembly - 18th December, 2014. Governorship and State House of Assembly - 25th December, 2014.	Section 31 (1) of the Electoral Act, 2010 (as amended) provides for not later than 60 days before the election.
6	Publication of Personal Particulars of Candidates (CF001)	Presidential and National Assembly - 25th December, 2014	Section 31(3) of the Electoral Act, 2010 (as amended) provides for publication within 7 days of the receipt of

	(for all elections)	Governorship and State House of Assembly - 1st January, 2015.	the Form CF001.
7	Last day of withdrawal by candidate(s)/ replacement of withdrawn candidate(s) by Political Parties.	Presidential and National Assembly - 30th December, 2014. Governorship and State House of Assembly - 13th January, 2015.	Section 35 of the Electoral Act, 2010 (as amended) provides for not later than 45 days before the election.
8	Last day for the submission of Nomination forms by Political Parties.	Presidential and National Assembly - 6th January, 2015. Governorship and State House of Assembly - 20th January, 2015.	Section 32, 37, 38, 39 of the Electoral Act, 2010 (as amended). (Commission to appoint time for submission).
9	Publication of official Register of Voters for the election.	13th January, 2015.	Section 30 of the Electoral Act, 2010 (as amended) provides not later than 30 days before the election.
10	Publication of list of nominated candidates.	Presidential and National Assembly - 13th January, 2015; Governorship and State House of Assembly - 27th January, 2015.	Section 34 of the Election Act, 2010 (as amended) provides at least 30 days before the day of the election.
11	Publication of Notice of Poll (**for all elections**)	28th January, 2015	Section 46 of the Electoral Act, 2010 (as amended) provides not later than 14 days before the election.
12	Submission of names of Party Agents for the Election to the Electoral Officer of the Local Government Areas or	Presidential and National Assembly - 29th January, 2015 Governorship and State House of Assembly - 12th February,	Section 45 of the Electoral Act, 2010 (as amended) provides not later than 7 days before the election.

	Area Council.	2015	
13.	Last day for campaigns	Presidential and National Assembly - 12th February, 2015. Governorship and State House of Assembly - 26th February, 2015.	Section 99 (1) of the Electoral Act, 2010 (as amended) prohibits advertisements or broadcasts of campaigns 24 hours prior to the day of the election.
14	Dates of Elections National Assembly/Presidential Governorship/State House of Assembly	Presidential and National Assembly - 14th February, 2015 Governorship and State House of Assembly - 28th February, 2015.	Section 25 of the Electoral Act, 2010 (as amended) provides that the Commission is to appoint a date not earlier than 150 days but not later than 30 days before the expiration of the term of office of the last holder of that office.

Source: http://www.inecnigeria.org/wp-content/uploads/2014/02/General-Elections.pdf

2.4 THE CONTROVERSY AND LEGALITY OF THE USE OF CARD READERS IN 2015 GENERAL ELECTIONS AND THE ELECTORAL ACT

There were too many controversies that trailed the elections, beginning with the stand of INEC on the use of Smart Card Readers (SCR), and its opposition by the PDP, to the low-rate of distribution of permanent voter's cards (PVCs) in the southern part of the country.

There were arguments and counter arguments for and against the use of the SCR vis-à-vis the provisions of the Electoral Act. The argument in opposition to the use of the card reader stemmed mainly from the perception in certain quarters that the use of card-reading machines in the election was tantamount to electronic voting, and was therefore in violation of section 52 (2) of the Electoral Act, 2010 before the late amendment in March 2015; the provision had prohibited electronic voting. On the other hand, proponents of the use of the SCR for the election were always prompt to draw attention to the wide powers vested on INEC to organise, undertake and supervise all elections in Nigeria. Section 16 of the Electoral Act, 2010 (as amended) gives power to INEC to cause to design, print and control the issuance of voter cards to voters whose names appear on the register. Such was the tenor of the debate that dogged INEC's decision to use smart card readers in

the conduct of the 2015 general elections. The Commission had the onerous task of countering such line of argument by heightening its awareness-creation on the issue. Notwithstanding all of the above, the elections themselves threw up logistics challenges as elections were shifted from an initial date of 14th February, 2015 to 28th March, 2015 and from 28th February, 2015 to 11th April, 2015 for the presidential and gubernatorial elections respectively.

There have been divergent views pertaining to the validity of the use of SCR in the 2015 general elections in Nigeria. On the one hand, proponents of the SCR have viewed the innovation as a deliberate effort at ensuring the conduct of a free and fair election, while on the other hand there have been arguments that INEC neither has the legitimate authority nor capacity to use the card readers. A careful study of the constitutional and statutory powers of INEC is needed to determine whether the use of SCR falls within the confines of the law.

First, INEC is a creation of the law, as it is established under section 153 of the 1999 Constitution as a federal executive body. Under paragraph 15 of Part 1 of the Third Schedule to the 1999 Constitution, INEC is mandated to organise, undertake and supervise all elections in Nigeria with the exception of local government elections; conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election. It is also empowered to carry out the functions conferred upon it by virtue of the Electoral Act, 2010 (as amended).

In addition, Section 118 of the aforementioned Constitution subjects the registration of voters and the conduct of elections to INEC's direction and supervision, while section 16 of the Electoral Act, 2010 (as amended) gives power to INEC to cause to design, print and control the issuance of voters card to voters whose names appear on the register. Therefore, INEC has express and implied powers to design the means, procedures and processes that enable it to properly exercise the powers granted to it under the Constitution including for example, the use of smart card readers in the 2015 general elections.

Nonetheless, despite INEC's powers under the Constitution and the Electoral Act to regulate the conduct of elections in Nigeria, the divergent views on the legality of the SCR appear to be as a result of section 52 of the Electoral Act, 2010 (as amended), which prohibits electronic voting. However, proponents of the SCR often distinguish the voting procedure outlawed by section 52 from the authentication process which they claim that the SCR seeks to achieve. This is because section 52 merely regulates electronic voting, not electronic devices such as the card reader, which authenticates the identity of a voter by verifying that his

fingerprints match the biometrics stored on the embedded chip of his or her PVC. Furthermore, a more in-depth study of electronic voting reveals that in countries where electronic voting is used, the personal attendance of a voter at a polling unit is not necessarily required as he or she is able to vote from a different location electronically. This is not the case with the SCR. Therefore, on a closer reading of section 52 (2), it would appear that a card reader is not an electronic voting machine but merely a system put in place to curb electoral fraud and impersonation. It also reduces the possibility of results from a polling unit from being liable to nullification and voidance. However, all these arguments were within the context of the Electoral Act before the March 2015 further amendment which deleted the prohibition of electronic voting.

In spite of the clear advantages of the SCR, fears surrounding its use may be as a result of some of its apparent flaws that were highlighted during the elections. For instance, despite INEC's assurances that it had achieved a hundred per cent success in its objective of verifying the authenticity of PVC's presented by voters during the mock demonstrations conducted in 12 states on 7th March, 2015, only 57 per cent of voters who came out for the demonstration had their fingerprints authenticated. Similarly, in the presidential election on March 28, 2015, the failure of the card reader in some polling units eventually led to INEC allowing manual accreditation where the card reader failed. However, available reports indicate that only 450 card readers out of 150,000 used in the elections failed.

There were concerns in the run up to the elections as to whether the card readers should be used to experiment in elections as important and as widespread as the presidential and gubernatorial elections without first being tested in smaller bye elections. The inadequate training of the Commission's staff that handled the SCR might have also contributed to the failure of the SCR in some polling units. In a statement credited to Mr. Kayode Idowu, the Chief Press Secretary to the former INEC Chairman, he attributed the failure of the SCR in some instances to the non-removal of the protective film, making it difficult in some instances and impossible in others, for the machine to detect thumbprints. Despite its shortcomings however, the SCR remains one of the greatest innovations of the 2015 general elections and INEC ought to be commended for introducing such innovation. However, rapid technological revolution worldwide may call for a quick determination on whether the card readers will be used in the 2019 elections[8].

[8] http://saharareporters.com/2015/03/22/delta-ssg-criticizes-inec-card-reader-carpets-opposition

Proponents of the SCR have argued that its use cannot be mistaken as amounting to electronic voting. To buttress their point, they define a card reader as:

> *"a data input device that reads data from a card-shaped storage medium…. Modern card readers are electronic devices that can read plastic cards with either a barcode, magnetic strip, computer chip or another storage medium. On the other hand, "electronic voting" or "e-voting" refers to both the electronic means of casting a vote and the electronic means of tabulating votes…. This can include punch card systems, optical scan voting systems, Direct-Recording Electronic (DRE) and Internet voting."*[9]

Electronic voting machine can then be described as a device or machine by which electronic vote can be cast without the use of ballot papers. From the foregoing, it is clear that the electronic voting machine and the card reader are two different devices that are not necessarily deployed together for all purposes. The further import of which is that electronic voting or the use of electronic voting machine for voting is not the same thing as using the card reader to determine the identity of voters in the process of accreditation of voters. What the hitherto section 52 (2) of the Electoral Act, 2010 (as amended) prohibits, is the use of electronic voting machine but not the use of card reader for accreditation of voters and that is where it stops. Thus, for all intents and purposes, a card reader simply verifies and authenticates the identity of the voter.

A further distinguishing factor is that in electronic voting, ballot papers are not used and cannot be used, but the 2015 general elections were ballot paper-based. The use of card readers for the purpose of accreditation only sought to improve the efficiency of the accreditation process. The use of the card reader in the 2015 general elections was a necessary corollary to the use of the PVCs, ensuring that fake and purloined PVCs could be easily detected. This in effect assisted in preventing certain electoral malpractices and enhanced the delivery of free, fair, credible and relatively peaceful elections across the country.

It should be noted that none of the above-mentioned e-voting methods or technologies was deployed by INEC for the purpose of voting during the 2015 general elections. The implication therefore is that INEC did not contravene section 52 (2) of the Electoral Act 2010. The Commission carefully avoided what was expressly prohibited by law, and rather took advantage of a technology, the use of which was impliedly permitted under the law. The position of the law is that

[9] See http://www.sourcewatch.org/index.phptitle=electronic_voting

what is not prohibited is permitted. According to the Court of Appeal in *Ojo Bolarinwa Theophilus v. Federal Republic of Nigeria*[10], the basic canon of interpretation or construction of statutory provisions remains that what is not expressly prohibited by a statute is impliedly permitted. Thus, since the use of card reader for the purpose of accreditation of voters is not prohibited by the Electoral Act, same is definitely permitted.

Furthermore, accreditation of voters is not the same thing as casting of votes, as a person who has been accredited may end up not presenting himself to vote. The difference between accreditation and voting is underscored by Section 49 (1) and (2) of the Electoral Act 2010 (as amended). Section 49 (1) and (2) states:

> *(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 Officer 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 Voter Register that the person has voted."*

The implication of the above is that the process of presenting oneself to a presiding officer with one's voter's card and the process of checking of a voter's name on the voter's register including the ticking of the name constitute what is referred to as accreditation. In order to separate accreditation from actual voting, the INEC Guidelines and Manual for Election Officials provide that:

> *"Accreditation shall hold between 8.00 am and 1pm or such time as the last person on the queue finishes, while, voting commences at 1.30pm or so soon thereafter when accreditation must have been completed till the last person concludes*[11]*."*

2.5 POLITICAL PARTY PRIMARIES AND SELECTION OF CANDIDATES

Political party primaries form an important part of the presidential system of government adopted under the Nigerian Constitution. It affords a political party the opportunity of electing individuals to its executive positions and nominating candidates to contest elections in its name. The 1999 Constitution (as amended) provides that:

[10] (2012) LPELR-9846 (CA)
[11] http://dailyindependentnig.com/2015/03/card-reader-electoral-act-conflict/

> *"No association, other than a political party shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election[12]."*

The above provision compels any politician wishing to contest for a political office to do so under the platform of a political party. This provision removed the idea of independent candidacy in Nigerian electioneering. Every political party in Nigeria is required by law to have a constitution setting forth its objectives, internal procedures and relation with its members. No association by whatever name called is permitted to function in Nigeria as a political party unless it has a constitution, a copy of which is registered with the INEC.[13] The constitution of a political party contains provisions on how to nominate candidates who will fly the flag of the party during elections. Section 31 (1) of the Electoral Act provides that:

> *"Every political party shall not later than 60 days before the date appointed for a general election under the provisions of this Act, submit to the Commission in the prescribed form, the list of the candidates the party proposes to sponsor at the elections."*

In compliance with the INEC Timetable for the 2015 general elections, political parties conducted their primaries and elected flag bearers for the April polls. Section 87 (1)-(5) of the Electoral Act laid down the procedure for the nomination of candidates by political parties. It is either by direct or indirect primaries. This report will now review the different sets of primaries conducted by the political parties, especially those primaries that were hotly contested.

A. Presidential Primaries

The PDP presidential primary election was a mere affirmation of Dr. Goodluck Jonathan as the candidate for the 2015 presidential election. The PDP convention held at the Eagle Square, Abuja was the ratification of President Goodluck Jonathan as the party's candidate in the March 28 presidential election and that of Adamu Mu'azu and Wale Oladipo as the party's national chairman and national secretary, respectively.

Over 3,050 delegates from the 36 states and the FCT participated in the convention and validated the candidacy of Dr. Jonathan[14]. It would be recalled that Dr. Jonathan was adopted as the PDP candidate on September 18, 2015 – a

[12] Section 221 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[13] Section 222 (c), Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[14] See the PDP spokesperson, Olisa Metuh comment on: http://www.premiumtimesng.com/investigationspecial-reports/172890-nigeria2015-pdp-presidential-primaries-live-updates.html

move which triggered heated debates both in the political circles and among ordinary Nigerians. Some characterised such decision as “shameful” and “against the general interest of party men and women.” That decision made other aspirants to withdraw from the race. It is also worth mentioning that this move made history, as it marked the first time the PDP would successfully reach a consensus on a single candidate prior to its presidential primaries, with no one breaking the ranks.

A former Head of State, General Mohammed Buhari (Rtd.) emerged winner of the APC presidential primary election conducted in Lagos. He polled 3,430 votes to get the ticket. His closest rivals, the former Kano State governor, Dr. Rabiu Kwankwanso and former Vice President, Atiku Abubakar polled 974 and 954 votes respectively. Governor Rochas Okorocha polled 624 votes, whilst the media mogul, Sam Nda-Isaiah scored 10 votes, as16 voided votes were recorded.

B. Gubernatorial Primaries

In Abia State**,** Dr. Okezie Ikpeazu won the PDP ticket at the primaries after scoring 487 votes. He defeated seven other contestants to emerge the winner. Alex Otti emerged winner for the All Progressives Grand Alliance (APGA). The PDP primaries in Akwa Ibom were marked by a tensed atmosphere, as all the aspirants, except for Governor Akpabio’s preferred candidate, Udom Gabriel Emmanuel (who won with 1,201 votes), boycotted the poll. The other aspirants characterised the process as undemocratic, alleging that Akpabio employed a fake delegates list, which was not made available for agents of each aspirant to vet and ascertain those listed to vote in the polls. For the APC, a former secretary to the state government, Mr. Umana Umana emerged as the governorship candidate.

The former chairman of the Economic and Financial Crimes Commission, Malam Nuhu Ribadu won the PDP primary election in Adamawa State, having polled 688 votes. Governor Bala James Ngilari and several other aspirants did not participate in the primaries. Bindo Jibrilla of APC won the party’s governorship ticket. In Cross River State, vice chairman, Senate Committee on Environment and Ecology, Senator Ben Ayade, got 752 votes, with 4 out of 10 aspirants having withdrawn before the polls in favor of Ayade. Odey Ochicha won the ticket for APC.

A then serving Senator, Ifeanyi Okowa representing Delta North senatorial district in the upper chamber of the National Assembly polled 406 votes to defeat his closest rival, David Edevbie, who scored 299 votes in the PDP gubernatorial contest in Delta State. Also, Olorogun O’tega Emerhor won the APC ticket in the state. In Ebonyi State, the deputy governor and former PDP chairman in the

person of Chief Dave Umahi won the PDP polls with 541 votes. However, another aspirant, the former minister of health, Professor Onyebuchi Chukwu, did not participate in the primaries. In another development, Mr. Edward Nkwegu of the Labour Party and Senator Julius Ucha of APC won in their respective parties.

At least, four candidates "won" in the parallel PDP gubernatorial primaries held in different parts of the Enugu State capital, Enugu. Senator Ayogu Eze's faction left the Nnamdi Azikiwe Stadium to conduct a separate primary at Filbon Hotel, Enugu, after learning that the list of delegates approved by the National Working Committee of the party had been changed by the Ikeje Asogwa's faction. Eze emerged the winner of the polls. At the Nnamdi Azikiwe Stadium, Hon. Ifeanyi Ugwuanyi coasted to victory. In a similar vein, Dr. Sam Maduka Onyishi boycotted the event over the allegation of changed list of candidates and held a separate primary election at a different location in the state capital. At the end of the day, it was Hon. Ifeanyi Ugwuanyi who flew the party's flag. Chief Okey Ezea of APC emerged as his party's governorship candidate.

In Imo State, the erstwhile Deputy Speaker of the House of Representatives, Hon. Emeka Ihedioha, scored 346 votes and thus defeated Senator Ifeanyi Araraume, who polled 336 votes at the Imo State PDP primaries. For the APC, on the other hand, Governor Rochas Okorocha was returned to fly the party's flag. The former chief of staff to Jigawa State governor, Malam Aminu Ibrahim Ringim, emerged the unopposed winner of the PDP primaries (with 1,020 votes) after two other contestants cleared by the party had withdrawn from the race moments before the start. For APC, Badaru Abubakar won the party's ticket.

In Katsina State PDP, Engr. Musa Nashuni, the anointed candidate of Governor Ibrahim Shema, received 1,309 votes and defeated 8 other candidates, who staged a mass walkout after governor Shema had cast his vote. Former speaker of House of Representatives, Aminu Bello Masari won the APC governorship ticket. Governor Mukhtar Ramalan Yero retained the PDP gubernatorial ticket in Kaduna state with 970 votes, while his opponent Senator Zego Aziz got only one vote. For APC, a former Minister of the Federal Capital Territory, Mallam Nasir el-Rufai picked the party's ticket as governorship candidate.

Alhaji Umar Mohammed Nasko, former Chief of Staff to the Governor of Niger State polled 908 votes to win the PDP governorship primary election, while Abubakar Sani Bello emerged the winner of APC gubernatorial primary in Niger State. In Kwara state, Governor Abdulfattah Ahmed emerged as the APC

governorship candidate[15] whilst the PDP nominated Senator Simeon Sule Ajibola. In Lagos State, businessman Jimi Agbaje, barely four months after joining PDP, prevailed over the former Minister of State for Defence, Ambassador Musiliu Obanikoro, having received 432 votes against Obanikoro's 343. The PDP primaries in Lagos were characterised by violence as hoodlums in their hundreds stormed the Oregun, Ikeja, venue of the exercise. The police reportedly fired teargas, which resulted in a stampede. In the APC, Akinwunmi Ambode, defeated 12 other aspirants to emerge winner of the party's ticket. Those defeated by Ambode included the former Speaker of the Lagos State House of Assembly for the past eight years, Adeyemi Ikuforiji and the serving senator representing Lagos West in the National Assembly, Ganiyu Olanrewaju Solomon.

A retired federal civil servant, Dr. Yusuf Agabi, emerged the winner of the PDP primaries in Nasarawa State with 214 votes. He defeated the former Information Minister, Labaran Maku, who scored 129 votes. Governor Umaru Al-Makura emerged the APC candidate, while defeated Labaran Maku defected to APGA and emerged as its candidate.[16] Ex Senate Leader, Teslim Folarin got the PDP ticket in Oyo State. Six governorship aspirants boycotted the primaries, while two others staged a walk-out mid-way into the exercise. For the APC, Governor Abiola Ajimobi emerged as the party's candidate.

In Ogun State, where governor Ibikunle Amosun was the sole aspirant at the APC gubernatorial primary election, it was a smooth ride for him. His deputy, Prince Segun Adesegun, had defected to opposition Social Democratic Party in the hope of actualising his own dream of becoming the governor of the State. Gboyega Nasir Isiaka emerged as the candidate of the PDP. The PDP primaries in Plateau State were almost marred by a near breakdown of law and order. The pandemonium started before the polls commenced at the Rwang Pam Township Stadium, in Jos. The agents of some aspirants rejected the provided ballot boxes because they were labelled with names of local government areas. Gyang Pwajok was declared the winner, with 435 votes, while Solomon Lalong of the APC won the APC primary to clinch his party's ticket. In Rivers State, Nyesom Wike emerged the PDP gubernatorial candidate after polling 1,083 votes. However 17 aggrieved aspirants described the primaries as a sham, saying that the whole pre-voting process was meant to produce Wike as a winner. For APC, Dakuku Peterside emerged as the party's candidate. The governorship primary, which

[15] http://www.osundefender.org/2015-guber-election-here-are-the-apc-flag-bearers-winners-of-apc-primaries-across-the-country.

[16] https://www.naij.com/338978-results-of-pdp-primaries-across-the-state.htm

was held at the Alfred Diete-Spiff Civic Centre in Port Harcourt, became a platform to formally endorse Peterside as the party's candidate.

C. Legislative Primaries

Dramatic upsets and a gale of parallel elections rocked PDP's primaries held to elect candidates to contest for seats in the 2015 National Assembly election. Parallel primaries were held in different locations in Anambra, Bayelsa, Ebonyi and Enugu states.

Former Senate Leader, Victor Ndoma-Egba (SAN) and Senator Uche Chukwumerije (now deceased), both three-term senators, led the pack of high profile incumbents that lost out in the primaries. In a keenly contested primary held in Ikom, Hon John Enoh of the House of Representatives defeated the Senate Leader, Victor Ndoma-Egba, and one other candidate to clinch PDP's ticket for Cross River Central. Out of the 276 total votes cast, Enoh polled 217 votes while Ndoma-Egba had 37. In another development, Senator Aloysius Akpan Etok lost his bid to return to the Senate after his dramatic last minute withdrawal to pave the way for immediate past Akwa Ibom State governor, Godswill Akpabio. Another senator who lost out is Nenadi Usman who lost her seat to represent Kaduna South in the Senate.

However, it was a sweet tale for other Senate bigwigs: Senate President David Mark, his deputy Ike Ekweremmadu and deputy Senate Leader Abdul Ningi, all of whom won their respective primaries. In Benue State, Senate President, David Mark, Benue State Governor, Gabriel Suswam and Chief Mike Mku won the senatorial tickets of the PDP primaries in the state. Mark polled 384 out of 389 delegates accredited. Governor Suswam won the ticket with 312 out of 321 delegates while Chief Mku had 168 votes. Suswam and Mark won through affirmation voting, as they had no opponents while Mku defeated Laha Dzever and Terseer Tsumba, a former speaker of the Benue State House of Assembly. Mark sought to represent Benue South for the fifth time; Suswam sought to replace former PDP national chairman Barnabas Gemade for Benue North East while Mku aimed to represent Benue North West, respectively.

Ike Ekweremadu emerged the PDP candidate for Enugu West senatorial district for the 2015 election. He was returned unopposed after polling a total of 294 out of the 299 votes cast by the accredited delegates. Ekweremadu became PDP's sole aspirant after the former state governor, Sullivan Chime, withdrew from the race. However, three parallel PDP primaries were held in Enugu East senatorial district. It was a worrisome trend that pre-election disputes were allowed to fester in the run up to the 2015 general elections, leading to factionalisation and the holding of parallel primaries. This ugly trend manifested mostly in the PDP camp.

This is an indictment of some sorts, not only on PDP as a party, but also on the effectiveness of the efforts made by INEC to help political parties amicably resolve their internal disputes. While Gilbert Nnaji, the senator who represented Enugu East in the 7th Senate, emerged victorious in the primary conducted at Nkwo Nike in Enugu East Local Government Area, the former chief of staff, Enugu Government House, Mrs. Ifeoma Nwobodo, emerged victorious in the primary election held at Nnamdi Azikiwe Stadium. Former minister of information Mr. Frank Nweke Jnr. emerged victorious in another primary conducted at a different location in the state. However, it was Gilbert Nnaji who eventually flew the party's flag for the senatorial contest.

As expected, all PDP governors that contested for Senate seats won at the primaries. They are: Gabriel Suswam (Benue), Babangida Aliyu (Niger), Godswill Akpabio (Akwa Ibom), Theodore Orji (Abia) and Jonah Jang (Plateau). It will be recalled that the governors of Delta and Enugu states, Emmanuel Uduaghan and Sullivan Chime, dropped their bids to come to the Senate in 2015. Governor Theodore Orji at the Umuahia Township Stadium clinched the PDP senatorial ticket for Abia Central. He was the sole candidate and polled 221 votes in an open secret ballot system that recorded only one void vote. At the Enyimba Stadium, Aba, Senate spokesperson, Enyinnaya Abaribe recorded a land slide victory with 169 votes to pick the ticket to represent Abia Central for a third term. His only rival Chief Prince Ojeh got only 2 votes. The primary which was peaceful and transparent recorded six void votes. Similarly, in the primary held at the Ohafia local government secretariat, Mao Ohuabunwa beat his closet rival, Chief David Ogba Onuoha, by 103 to 67 votes while the incumbent, Senator Uche Chukwumerije, came a distant third with 21 votes.

In Adamawa State, a former political adviser to President Goodluck Jonathan Ahmed Gulak, former minister of health, Dr Idi Hong and Sen. Silas Zwingina emerged candidates for Adamawa North, Central and South senatorial zones. Silas Zwingina scored 274 to beat Ahmed Barata who got 39 votes. In Adamawa Central, Dr Aliyu Idi Hong scored 242 votes to beat Hon. Aishatu Biyani with two votes. For Adamawa North, Gulak got 184 votes while all other contestants scored zero. In Bauchi State, the Deputy Senate Leader, Senator Abdul Ningi was unanimously returned unopposed during the senatorial elections for Bauchi Central Senatorial District

The immediate past minister of Aviation, Stella Oduah, won the PDP ticket for Anambra North senatorial seat by polling 259 votes to defeat Margery Okadigbo, the incumbent who got 8 votes. Other contestants for the ticket included Sam Ikefuna, 10 votes, and John Emeka, 15 votes. It emerged that five parallel PDP senatorial primaries were held in Anambra. Stella Oduah won in Anambra North,

Uche Ekwunife won in Anambra Central, Annie Okonkwo also won in Anambra Central, Andy Uba won in Anambra South, his brother Chris Uba also purportedly won in Anambra South.

Former Ebonyi State governor, Dr. Sam Egwu, former PDP state chairman, Chief Obinna Ogba, the embattled Speaker of the State House of Assembly Hon. Chukwuma Nwazunku and the erstwhile chairman of Ezza South local government area, Chief Laz Ogbe emerged PDP senatorial candidates in the Chief Joseph Onwe-led faction of the primaries. Others who emerged at the primaries include the senator representing Ebonyi South, Sunny Ogbuoji, the younger brother to the national president of Ohanaeze Ndigbo and former chairman of Afikpo North LGA, Chief Idu Igariye, the member representing Ohanaivo federal constituency Hon. Linus Okorie, and the member representing Abakaliki/Izzi federal constituency, Hon. Sylvester Ogbaga among others. The primaries which were conducted amidst tight security witnessed low turn-out of party faithful, following a court injunction restraining INEC from recognising any primaries conducted by the state deputy chairman of the party, Chief Joseph Onwe.

In a freely contested primary, Senator Odion Ugbesia of Edo Central polled 62 votes against Clifford Ordia who polled 141 votes to stop the incumbent lawmaker's return bid to the Senate. In Imo State, Chief Hope Uzodinma, incumbent senator representing Orlu, Imo State clinched the PDP ticket in the senatorial primary election for the Imo West senatorial zone. He defeated his closest rival with 200 votes.

In former President Goodluck Jonathan's home state, Bayelsa, drama played out with parallel PDP senatorial primaries taking place. The chairman, Senate Committee on Oil and Gas, Downstream Sector, Senator Emmanuel Paulker, and former Director-General, Nigerian Television Authority, Ben Murray Bruce, emerged PDP flag bearers for Bayelsa Central and Bayelsa East senatorial districts respectively. Senator Heneiken Lokpobiri and Dr. Foster Oguola emerged in separate primaries at the Bayelsa West senatorial district. Former Niger State governor, Mu'azu Babangida Aliyu and Senator Zainab Kure secured the PDP senatorial tickets of Niger East and Niger South respectively, while Hon. Halidu Abba was returned unopposed for Niger North. For Niger East, Aliyu defeated Alhaji Adamu Idris Kuta with 281 votes against 86 votes to pick the ticket. In Bida, Senator Kure defeated the immediate past chairman of PDP in the State, Hon. Abdurahaman Mahmud Enagi with 328 votes to 8 votes to clinch the ticket for Niger South. There was no contest in Niger North as Hon. Halidu was the only candidate of the party. He was just affirmed by the delegates at Kontagora, the headquarters of the zone.

Senator Suleiman Adokwe secured PDP's senatorial ticket for Nasarawa South Zone. He scored 163 votes to defeat Alhaji Bala Zakari who scored 46. Hon. Philip Gyunka emerged as the candidate for Nasarawa North in the primaries. He polled 89 votes to beat Prof. Onje Gye-Wado, a former deputy governor, who got 55 votes. Two other contestants, Ezekiel Maichibi and Sen. John Damboyi, scored zero votes, while the fifth contestant, Musa Umaru, withdrew at the last minute. However, Maichibi and Sen. Danboyi filed a petition before the electoral committee of the PDP and left the premises of the primary election. In Katsina State, the speaker of Katsina State House of Assembly, Yau Umar Gwajo-Gwajo, emerged the PDP senatorial flag-bearer for Daura zone. The speaker was the consensus candidate and received the endorsement of over 2,000 delegates who affirmed his candidacy.

In Ogun State, Buruji Kashamu, clinched the ticket for Ogun East Senatorial District. Kashamu garnered 365 votes to beat two other aspirants, Dayo Oriola - 4 votes, and Taiwo Akintan - no vote. The former Plateau State governor, Jonah Jang was declared winner of the Plateau North senatorial primaries of the PDP held at Treasure Inn Hotel, Rayfield, Jos. Jang polled 73 votes to defeat his closest and only opponent, Ambassador Ibrahim Kassai, who polled 18 votes. Former governor of Plateau State and the senator representing Plateau Central Senatorial District, Chief Joshua Dariye, won the ticket of the PDP for the Plateau Central District. Dariye got 104 votes to beat Alexander Mwolwus who received 84 votes; Satty Gogwim who had 12 votes, as well as Emmanuel Go'ar and Andrew Abbas who got 14 votes each.

Senators Adetunji Adeleke, Babajide Omoworare and Sola Adeyeye emerged APC candidates for the senatorial elections for Osun West, East and Central senatorial zones. For the PDP, Chief Francis Adenigbagbe Fadahunsi, a retired Deputy Comptroller-General of Nigeria Custom Service, and former Minister of Youth Affairs, Senator Akinlabi Olasunkanmi, emerged the senatorial candidates for the PDP in Osun East and West senatorial districts respectively. Fadahunsi defeated former National Emergency Management Authority (NEMA) boss, Chief (Mrs.) Remi Olowu with 265 votes to 116 to clinch the PDP ticket for Osun East.

Chapter Three

ESTABLISHMENT, JURISDICTION AND ACTIVITES OF THE TRIBUNALS

3.1 EXTANT LEGAL FOUNDATIONS

Election Petition Tribunals in Nigeria are the creation of the Constitution. Their establishment is in furtherance of the exercise of the judicial powers of the federation provided in section 6 of the Constitution for the resolution of all disputes related to the determination of the civil rights and obligations of persons living within the Nigerian jurisdiction. They were specifically created under section 285 of the 1999 Constitution of the Federal Republic of Nigeria as amended. Section 285 of the Constitution creates the National and State Houses of Assembly Election Tribunals[17] which shall to the exclusion of any Court or Tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected as a member of the National Assembly or any person has been validly elected as a member of the House of Assembly of a State. A learned commentator raised the poser as to the reasons informing the decision to give the name "Tribunals" to electoral dispute resolution Courts. He considered the name a misnomer and a hangover from the military era[18].

The above section also establishes another Election Tribunal known as the Governorship Election Tribunal[19] which shall to the exclusion of any Court or Tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State. Instead of the Court of Appeal being the final Court, appeals in governorship petitions now progress to the Supreme Court as the final appeal Court. The amendment of the Constitution allowing appeals up to the Supreme Court was a fall-out of conflicting decisions of the Court of Appeal and what was generally considered by the populace, to be poor judicial outcome in several cases which made the law uncertain. Therefore, the Supreme Court as the final arbiter was permitted by the Constitution to introduce certainty in the law.

[17] The quorum for the Tribunal is a chairman and one other member.
[18] *The Performance of Election Petition Tribunals in the North Central Zone* (Page 2) being a presentation by J.S Okutepa (SAN) at the Nigerian Bar Association Conference on the Performance of Election Petition Tribunals.
[19] The quorum for the Tribunal is a chairman and one other member.

By section 239 of the Constitution, the Court of Appeal to the exclusion of any other court of law in Nigeria has original jurisdiction to hear and determine any question as to whether any person has been validly elected to the office of the President and Vice President; the term of office of the President or Vice President has ceased or the office of the President or Vice President has become vacant[20].

Section 285 (7) of the Constitution states that an appeal from a decision of an Election Tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal or Court of Appeal. However, Section 134 (3) of the Electoral Act provides that an appeal from a decision of an Election Tribunal or Court shall be heard and disposed of within 90 days from the date of the delivery of the judgment of the Tribunal. The 90 days provision of the Electoral Act is inconsistent with the constitutional provision and the Constitution being the *grundnorm* and the supreme law, the provision of the Electoral Act is null and void[21]. Section 134 (4) is also null and void for contradicting section 285 (8) of the Constitution for while the Constitution states that the court in all ***final appeals*** from an election tribunal or court may adopt the practice of first giving its decision and reserving the reasons therefore to a later date, the Electoral Act provision missed out the word "final" before "appeals". Section 1 (3) of the Constitution provides that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void[22].

The Electoral Act provides in section 133 (1) the procedure for challenging the return of an election:

> *"No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition") presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party".*

A petition is presented when it is actually brought by the petitioner or his counsel, if any, named at the foot of the petition to the secretary or registrar of the Tribunal for filing, coupled with the payment of filing fees and obtaining a receipt for same and payment of security for costs[23]. It is very important for filing fees to be paid.

[20] The quorum of the Court in this instance is three Justices of the Court of Appeal.
[21] See section 1 (3) of the Constitution.
[22] *See Osun State Independent Electoral Commission & 3 Ors v Action Congress & 4 Ors* (2010) 12 S.C (Pt.IV)108
[23] See Paragraph 2 and 3 of the Rules of Procedure for Election Petitions in the First Schedule of the Electoral Act in furtherance of sections 140 (4) and 145 (1). See also *Ozobia v Anah* (1999) 5 NWLR (PT.60) 1.

Failure to pay filing fees renders the petition invalid and same shall be struck out as it will be deemed not to have been filed at all.[24] The Electoral Act specifies the persons who can present election petitions. Section 137 (1)[25] provides that an election petition may be presented by a candidate in an election and a political party which participated in the election. Any person who was a candidate at an election may file a petition challenging the conduct of the election itself or its result. Thus, it is expected that such a person should be the one who lost the election as there seems to be no reason why the winner of an election should file a petition challenging his return. However, an election petition can be filed on the ground that the petitioner or its candidate was validly nominated to contest the election but was wrongfully excluded from contesting[26].

The petition must indicate the status or capacity in which the petitioner is presenting the petition. This is to determine whether he has the *locus standi* to bring the petition as provided under the Act. Thus, in *Egolum v Obasanjo*[27], the Court of Appeal and Supreme Court refused to entertain a petition filed by a petitioner who did not contest the presidential election and was not even fielded by any political party but still filed a petition. The Court held that the petitioner had no *locus standi* to invoke the jurisdiction of the Courts.

The Electoral Act provided four grounds upon which an election may be questioned. Section 138 (1) provides that:

> *An election may be questioned on any of the following grounds, that is to say-*
>
> > *(a) that a person whose election is questioned was at the time of the election not qualified to contest the election;*
> >
> > *(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;*
> >
> > *(c) that the respondent was not duly elected by majority of lawful votes cast at the election; or*
> >
> > *(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.*

[24] *Ezeani v Okosi* (1999) 3 NWLR (Pt.596) 623 para. 3.
[25] Electoral Act 2010
[26] Section 138 (1) (d) of the Electoral Act.
[27] (1999) 7 NWLR (Pt.611) 423.

Under the first ground, a person is not qualified to contest an election if he is caught within the provisions of the 1999 Constitution that spells out the grounds of disqualification[28]. These grounds are basically the same except for variation in age as a qualification for persons contesting election into the various offices. Generally, under the various constitutional provisions, a person is not qualified to contest an election if;

- he is not a citizen of Nigeria; candidates for presidential and governorship elections must be citizens of Nigeria by birth[29].
- he has been elected to such office at any two previous occasions (applicable to presidential and governorship candidates only);
- he is adjudged a lunatic or a person of unsound mind;
- he is under a death sentence or a sentence of imprisonment for an offence involving dishonesty or fraud;
- within a period of less than ten years prior to the election, he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of a contravention of the code of conduct;
- he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Nigeria;
- he is employed by the public service of the Federation or a State and he does not resign, withdraw or retire from such employment thirty days before the date of the election;
- he is a member of any secret society;
- he has presented a forged certificate to the Independent National Electoral Commission.

In addition to the above grounds for disqualification, the Constitution also provides that a person contesting for election must be a member of a political party and is sponsored by that political party[30]. In determining whether a person in public service has resigned, withdrawn or retired at least thirty days before the date of election, it has been held that the relevant conditions of service relating to the

[28] S.137 for presidential election, S.182 for governorship election, S.66 for National Assembly election and S.107 for the House of Assembly election.
[29] Sections 131 and 177 of the 1999 Constitution.
[30] See section 221 of the Constitution.

mode of resignation, withdrawal or retirement must be complied with[31]. In *Mbukurta v Abbo*[32]*,* it was held that a person on leave of absence was still in the employment of his employer for the period of the leave and had not met the requirement of the resignation, withdrawal or retirement.

Membership of a secret society is also a ground for disqualification of a candidate at an election. The Constitution defines a secret society in the following words:

- "*secret society" includes any society, association, group or body of persons (whether registered or not) -*

- *that uses signs, oaths, rites or symbols and which is formed to promote a cause, the purpose or part of the purpose of which is to foster the interest of its members and to aid one another under any circumstances without due regard to merit, fair play or justice, to the detriment of the legitimate interests of those who are not members;*

- *the membership of which is incompatible with the function or dignity of any public office under this Constitution and whose members are sworn to observe oaths of secrecy; or*

- *the activities of which are not known to the public at large, the names of whose members are kept secret and whose meetings and other activities are held in secret*[33]*.*

The Supreme Court in interpreting a similar provision under the 1979 Constitution[34] in *Registered Trustees of AMORC V Awoniyi*[35] held that any organisation that practices occult, uses secret signs, secret passwords, secret handclaps and teaches that Jesus Christ was a member of secret societies and an advocate of occult teachings is a secret and satanic society.

An election may be challenged on grounds of corrupt practices or non-compliance with the provisions of the Electoral Act. An allegation of corrupt practices like bribery, forgery or falsification is criminal and so proof beyond reasonable doubt is required[36]. But this standard of proof need not necessarily be so as we shall demonstrate in later parts of this Report. The standard of proof should have been set on a balance of probabilities. One of the circumstances for challenging

[31] *Mele v Mohammed* (1999) 3 NWLR (595) 425.
[32] (1998) 6 NWLR (PT.554) 425.
[33] See the interpretative section 318 Constitution of the Federal Republic of Nigeria 1999.
[34] S.35 (4)
[35] (1994) 7 NWLR (Pt.355) at page 154; (1994) 7-8 SCNJ (390) at 419.
[36] *Anazodo v Audu* (1999) 4 NWLR (Pt.597)111.

elections is over-voting. By section 53 (2) and (3) of the Electoral Act, where there is over-voting i.e. the votes cast exceed the number of registered voters in a constituency or polling booth, the result shall be nullified and there shall be no return made until a fresh election has been held in the affected areas[37].

Further, the Electoral Act goes further in section 139 (1) to provide as follows:

> *An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that non-compliance did not affect substantially the result of the election*

To prove non-compliance and that the non-compliance substantially affected the result of an election is almost an impossibility when considered against the background of the evidential presumption that official acts of government institutions have been properly conducted until the contrary is proved[38]. Thus, election results are deemed by law to be correct until the contrary is proved. This hurdle is so difficult to cross when the section is understood in its proper context. Not only must the petitioner show that the election was not conducted in compliance with the Act, he must go further to demonstrate that non-compliance substantially affected the result of the election to justify its nullification[39]. How can any candidate or political party prove this when virtually, all the information needed to prove this is in the hands of INEC that tends to collaborate with the respondent against the case of the petitioner? Apparently, it was in recognition of this great difficulty that the Uwais Electoral Reform Committee recommended that the Electoral Act 2006 should be amended to shift the burden of proof from the petitioners to INEC to show, on the balance of probability, that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate. This recommendation did not scale through the legislative hurdle and the full incidence of the burden of proof remained with the petitioner.

3.2 CONSTITUTION OF ELECTION PETITION TRIBUNALS

Election Petition Tribunals were constituted prior to the conduct of the election by Chief Justice of Nigeria, Honourable Justice Mahmoud Mohammed. This was to avail parties who may not be satisfied with the conduct of the elections to

[37] Subsection (4) of the section permits INEC, if satisfied that the result of the election will not be substantially affected by voting in that area where the election is cancelled, to direct that the return of the election be made.
[38] See section 168 (1) of the Evidence Act, 2011.
[39] See *Buhari v Obasanjo* (2005) 7 S.C. (Pt.1) 1; *Buhari v INEC & 4 Ors* (2008) 12 SC (Pt.1)

challenge the result at the Election Petition Tribunal rather than resort to violence or self help.

Over 200 judicial officers comprising High Court Judges and Chief Magistrates were inaugurated on Monday 2nd February, 2015. The inauguration was in tandem with provision of the Electoral Act which provides in section 133 (3) (a-b) provides that Election Tribunals shall be constituted not later than 14 days before the election, and when constituted, open their registries for business 7 days before the election. Though the election was later rescheduled to March 28 from the previous February original date, the inauguration was in order.

However, the Chief Justice of Nigeria (CJN) seriously warned the Tribunal members to shun corruption in the course of discharging their duties. According to the CJN, who led the judicial officers to take their oaths of allegiance, the National Judicial Council will not spare anyone found wanting in the course of discharging their duties. The Tribunal members were urged to treat cases before them with honesty in line with the law and not by personal conviction:

> "*You must ensure that all petitions must be founded upon grounds .. contained in section 138 of the Electoral Act... All your considerations must be founded in law only. You must ensure that your acts are in strict conformity with the law. Therefore, you must shun acts such as favours from councils or politicians, or unmeaningful communications with parties whose act will erode the integrity of the tribunal in the face of the public*"[40].

[40] http://nigeriapoliticsonline.com/2015-elections-cjn-inaugurates-tribunal-in-36-states.

Chapter Four

ACTIVITIES OF THE TRIBUNALS ACROSS THE COUNTRY

4.1. PRESIDENTIAL ELECTIONS TRIBUNAL CLOSES SHOP AS IT RECEIVES NO PETITION

Following the successful conduct of the presidential election on 28th March, 2015 and the concession made by then incumbent president, the ruling party, PDP did not file any petition to challenge the return of APC's presidential candidate. Section 134 (1) provides that an election petition shall be filed within 21 days after the date of the declaration of result of the election. The 21 day window provided for filing of petitions at the Tribunal by aggrieved candidates expired with no petition from either the PDP or any other political party challenging the victory of Muhammadu Buhari, the candidate of the All Progressive Congress (APC). This is unprecedented considering Nigeria's recent political history.

It will be recalled that General Muhammadu Buhari had on three different occasions in the past filed petitions before the Presidential Election Petition Tribunal to challenge the election victories of former president Olusegun Obasanjo in 2003, late Umaru Musa Yar'adua in 2007, and that of Goodluck Jonathan in 2011.

4.2 HARVEST OF GUBERNATORIAL AND LEGISLATIVE PETITIONS

Not satisfied with the results of National Assembly, Gubernatorial and State House of Assemblies elections, aggrieved candidates approached Election Petition Tribunals in their various states challenging the return of fellow contestants. Table 2 below shows the distribution of petitions across the states of the Federation.

TABLE 2: DISTRIBUTION OF PETITIONS IN STATES

STATE	GOVERNORSHIP	SENATE	HOUSE OF REPRESENTATIVE	STATE HOUSE OF ASSEMBLY	TOTAL NUMBER OF PETITIONS FILED
ABIA	3	3	4	20	30
ADAMAWA	-	1	2	5	8
AKWA IBOM	2	3	8	25	38
ANAMBRA	-	4	12	21	37

BAUCHI	-	-	2	2	4
BAYELSA	-	4	2	16	22
BENUE	1	2	6	17	26
BORNO	1	-	2	3	6
CROSS RIVER	1	4	9	12	26
DELTA	3	3	7	30	43
EBONYI	1	3	5	6	15
EDO	-	2	2	7	11
EKITI	-	3	-	3	6
ENUGU	1	6	10	3	20
GOMBE	2	2	8	8	20
IMO	1	8	18	14	41
JIGAWA	-	-	2	6	8
KADUNA	1	-	3	4	8
KANO	-	1	2	1	4
KATSINA	1	-	-	3	4
KEBBI	1	-	1	4	6
KOGI	-	3	7	19	29
KWARA	1	2	2	-	5
LAGOS	1	2	15	21	39
NASARAWA	1	4	4	6	15
NIGER	-	-	3	4	7
OGUN	2	1	1	10	14
ONDO	-	1	4	12	17
OSUN	-	1	2	10	13
OYO	1	2	10	24	37
PLATEAU	1	2	6	16	25
RIVERS	5	3	14	33	55
SOKOTO	1	1	3	-	5
TARABA STATE	1	5	4	13	23
YOBE	1	-	1	1	3
ZAMFARA	2	-	-	2	4
FCT	-	1	2	-	3
TOTAL	**37**	**75**	**172**	**374**	**658**

Table 2 shows the uneven distribution of petitions across the states. States like Rivers, Imo, Anambra, Akwa Ibom, Abia, Oyo and Lagos recorded very high numbers of petitions whilst there were minimal petitions in Ekiti, Bauchi, Borno, Katsina, Yobe, Zamfara and Kwara states. Whether the number of petitions filed in the states was reflective of the level of electoral malpractice cannot be determined through a study of this nature.

In Abia State, there were thirty petitions filed before the Election Petition Tribunal sitting in the state. Out of these petitions, three were for Governorship, three for Senate, four for House of Representatives and twenty for State House of Assembly. The major petition of interest in Abia State gubernatorial petitions was primarily the case between *Alex Otti & Anor. v Okezie Victor Ikpeazu & 2 Ors*[41] where the Petitioner was challenging the return of the 1st Respondent on the following grounds; namely that the 1st Respondent did not score majority of lawful votes cast at the election; substantial non-compliance with the provisions of the Electoral Act. That the election and the return of the 1st Respondent was invalid by reason of corrupt practices which vitiated the election. Finally, that the 1st Respondent did not satisfy the mandatory threshold and spread across the LGAs of Abia State. At the conclusion of the gubernatorial election, the result was declared inconclusive as there were some problems with the election in some LGAs. A supplementary election was held on 25/04/2015 in the affected LGAs.

Over 26 lawyers appeared for the Petitioner led by six Senior Advocates of Nigeria (SAN) who maintained physical presence at the Tribunal. The SANs are Chief Akinlolu Olujinmi, Rotimi Akeredolu, Prof. Awa U. Kalu, Rickey Tarfa, Chief Chris Uche and A.J. Owonikoko. The governorship petition attracted mammoth crowd of party supporters on both sides and this led to tightening of security around the High Court premises where the Tribunal sat. At the end of hearing, the Tribunal found the petition unmeritorious and dismissed it. In delivering judgment, the chairman of the Tribunal, Hon. Justice Usman B. Bwala held as follows:

> "*It is our considered opinion based on the evidence adduced vis-a-viz relevant laws and decided authorities that the claims of the petitioners are not grantable. As stated by the Supreme Court, there can never be a perfect election anywhere, what the law requires is substantial compliance with the requirements of the electoral law and procedure (Okechukwu vs INEC Supra). Consequently the petition fails and it is hereby dismissed. The election of the 1st Respondent as declared by INEC is hereby affirmed*".[42]

[41] Petition Number AB/EPT/GOV/2/2015.
[42] See page 45 of the Certified True Copy of the judgment in petition No AB/EPT/GOV/2/2015, unreported.

In *Ezechimerem Ihuoma v Hon. Martins Okechukwu Azubuike & 5 Ors*[43]; the Petitioner challenged the return of the 1st Respondent on the ground that the declaration of the 1st Respondent as winner by the 2nd to 4th Respondent was based on a result obtained fraudulently and absolute non-compliance to the Electoral Act 2010. While dismissing the petition, the National and State Houses of Assembly Election Petition Tribunal chairman, Hon. Justice S. Yahuza stated as follows:

> "*Election is democracy and it is a game of number, this petition ought not to have been filed because there is no enough evidence to prosecute the petition. There is no where the petitioner said exactly how much was the lawful votes he scored other than the figure supplied by the 2nd respondent. And the 4,029 extra votes has been adequately explained by 2DW2 which to us is quite reasonable. And even if, the votes is given to the petitioner, it will not take him anywhere.*
>
> *Therefore, before a petitioner thinks of filling his petition, he ought to consider his chances of winning even where there is apparent non-compliance once it is not substantial to affect the result of the election. For these reasons, we feel and we are of the humble view that this petition lacks merit and same is hereby set aside for failing to establish substantial non compliance with the Electoral Act 2010 as amended"*[44].

The Tribunal upheld six petitions but twenty-one petitions were dismissed for lacking merit. Among the petitions upheld include the petition between *Hon. Dame Blessing Okwuchi Nwagba & Anor v Emeka Sunny Nnamani & 4 Ors*[45] where the Petitioner challenged the return of the 1st Respondent on the grounds that the 1st Respondent was at the time of the election not qualified to contest the election. The particulars of this ground were that the 1st Respondent was not qualified to contest the election in that he was and still is not a registered voter in Eziama Ward 1 where he hails from. And since he is not a registered voter, he is not entitled to vote and be voted for in the said Eziama Ward 1. That the 1st Respondent was not qualified to contest the election because he was rusticated and expelled from the university for being involved in cult activities and violation of oath of matriculation of the said university requiring students to be of good behaviour while being a student. Thus, the 1st Respondent did not graduate from the University of Port Harcourt and could not have produced a valid NYSC discharge certificate. Upholding this submission, the Tribunal held the 1st Respondent was not qualified to contest the election at the time he did and had breached the provision of Section 107(1) (h) of the Constitution. The Tribunal

[43] Petition number AB/EPT/HA/16/2015.
[44] See pages 19 -20 of the Certified True Copy of the judgment in petition no: AB/EPT/HA/16/2015, unreported.
[45] Petition Number AB/EPT/HA/20/2015.

ordered a re-run and relied on section 140 (2) of the Electoral Act which states as follows:

> "Where *an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the election tribunal or court shall not declare the person with the second highest votes as elected but shall order a fresh election"*

The Tribunal further held as follows:

> *"However, since the 1st Respondent is not only found to be not qualified to be voted, as he is not a voter in Aba North Constituency, he is also disqualified for presenting forged certificate to INEC.*
>
> *We therefore advice police authority in Abia South State Command to look into the issue of forged certificate in the possession of the 1st Respondent for purpose of possible prosecution"*[46]*.*

This decision for re-run instead of declaring the petitioner who scored the second highest number of votes the winner contrasts with the decisions in *Hon Ali Yakubu & Anor v Sabo Garba and 2 Ors*[47]where the Tribunal in Yobe State relied on the case of *Ejiogu v Irona*[48] and declared that the 1st petitioner is the winner of the Nengere/Potiskum Federal Constituency of Yobe State having scored the majority of the lawful votes cast at the election. It also further ordered INEC to issue the 1st Petitioner with a Certificate of Return as the duly elected member of House of Representatives. The gravamen of the decision is that being disqualified, a candidate is deemed not to have contested the election *ab initio.* When a political party decides to field a candidate who does not possess the required qualification(s), it does so at its own peril. Thus, the candidate with the highest number of lawful votes effectively becomes the candidate with the second number of highest votes. It should be recalled that in *Labour Party v INEC & Anor*[49]*,* Justice G.O. Kolawole of the Federal High Court in a judgement dated 21/7/2011 nullified section 140 (2) of the Electoral Act. The Tribunal in Abia State should have followed the decision of Yobe State Tribunal to declare the petitioner winner in this petition.

The Abia Tribunal ordered re-run in three wards comprising ten polling units in petition number AB/EPT/HA/14/2015, while re-run was ordered to be conducted by the INEC in 43 polling units in petition number AB/HA/12/2015. The Tribunal

[46] See page 18 of the CTC of the judgment in Petition No:AB/EPT/HA/20/2015; unreported.
[47] EPT/YB/REP/01/2015.
[48] (2009) 4NWLR (PT.1132) 513.
[49] Unreported Suit No. FHC/ABJ/CS/399/2011.

equally ordered re-run in 25 polling units within 90 days in petition number AB/EPT/HA/15/2015.

The Adamawa National and State Houses of Assembly Election Petition Tribunal was relocated to Abuja due to security reasons. It had eight petitions made up of one for Senate, two for House of Representatives and five State House of Assembly election petitions. There was no petition challenging the governorship election in the State. The petition between *Professor Andrawus P.Sawa & Anor v. INEC & 2 Ors*[50] was withdrawn by the petitioner; consequently it was struck out. The remaining seven petitions were dismissed by the Tribunal for lacking merit.

Akwa Ibom Election Petition Tribunals sat in Uyo but later moved to Abuja due to security concerns. It had thirty-eight election petitions made up of two gubernatorial, three senatorial, eight House of Representatives and twenty five State House of Assembly election petitions.

In *Hon. Mfon Ekerette & Anor v Hon. Ime Bassey Okon & 2 Ors*[51] where the petitioner was challenging the return of the 1st Respondent as a member for the House of Assembly representing Ibiono Ibom State Constituency of Akwa Ibom State on the grounds that the 1st Respondent was not duly or validly elected and returned as the member of House of Assembly representing Ibiono Ibom State Constituency at the State House of Assembly Election of April 11th, 2015 as required by the Electoral Act and that all the votes recorded by the 3rd Respondent for both the 1st Petitioner and the 1st Respondent are invalid and unlawful having not been obtained in compliance with the provisions of the Electoral Act. The Tribunal upheld the Petitioner's submissions and nullified the election. The Tribunal further stated as follows:

> "*In the instant petition, while the Petitioner has succeeded in proving its case, the Respondents have not led any credible evidence in rebuttal. The tribunal holds without any hesitation that the Respondents have failed to discharge the onus placed on them.*
>
> *Considering the credible oral evidence of the Petitioner's witnesses which cover numerous polling units and the evidence of disparities as shown in Exhibit E,F and G series, the tribunal has come to a conclusion that the non-compliance established by the Petitioners substantially affected the election results and fundamentally impaired the validity and integrity of the election. Clearly, the result of voting credited to the 1st Respondent did not constitute lawful votes. This is a classic case of deprivation of the constitutional right of the electorate to elect their representatives.*

[50] Petition number EPT/AD/SEN/01/2015.
[51] Petition number EPT/AK/SH/17/2015.

> *The election conducted on the 11th April, 2015, in the Ibiono Ibom State Constituency of Akwa Ibom State was a sham. For the reasons hereto adumbrated, this petition succeeds. The election into the Akwa Ibom State House of Assembly for the Ibiono Ibom State Constituency held on 11th day of April, 2015 is hereby nullified in its entirety. The 3rd Respondent herein, the Independent National Electoral Commission (INEC) is hereby ordered to conduct a fresh election in the constituency".*[52]

The Governorship Election Tribunal ordered a re-run *in Umana Okon Umana & Anor. v Udom Gabriel Emmanuel*[53] in eighteen local government areas so as to enable those whose constitutional rights were breached to exercise their right of franchise and the votes will close the gap between the results declared in favour of the 1st Respondent and the actual choice of voters in the state. The Tribunal stated as follows:

> *"Let me caution that the 2nd respondent (Independent National Electoral Commission) should always strike to sincerely remain and be seen to be an impartial institution and an arbiter in the conduct of elections into all public office in the country… that would drastically reduce the incessant disputes arising from the conduct of such election…*[54]

However, the Tribunal's decision had been overruled as the Supreme Court upheld the return of the 1st Respondent as the governor of Akwa Ibom State. Also, in Petition number EPT/AK/SH/21/2015, rerun was order in 43 polling units in Uyo constituency of Akwa Ibom State House of Assembly. The re-run will form the basis of the computation of who actually won the election. Other petitions were dismissed by the Tribunal for lacking merit.

In Anambra State, 37 petitions were filed before the Election Petition Tribunals sitting in Awka. These petitions include four senatorial, twelve House of Representatives and twenty-one for State House of Assembly elections. In *Ekweozoh C. Nkem v Hon. Uche Lilian Ekwunife & 3 Ors*[55] where the petitioner was challenging the return of the 1st Respondent for Anambra Central Senatorial District on the following grounds namely; that the election was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, which corrupt practices substantially affected the outcome of the election. And that the 1st Respondent was not duly elected by majority of lawful votes cast at the

[52] See pages 83-83 of the CTC of the judgment in Petition No: EPT/AK/SH/17/2015, unreported.
[53] Petition number EPT/AK/GOV/1/2015.
[54] See pages 155-156 of the CTC of the judgment in petition no EPT/AK/GOV/1/2015, unreported. See also the case of *Emelumba* (2008) 9NWLR (PT.1092)371 at 413-414 para.H-B.
[55] Petition number EPT/AWK/S/20/2015.

election. The Petitioner withdrew the petition. Also withdrawn were petition numbers EPT/AWK/SHA/06/2015 and EPT/AWK/SHA/25/2015. The Tribunal dismissed about sixteen petitions for lacking merit. In dismissing the petition in *Engr Ernest Ndukwe & Anor v Andy Uba & 3 Ors*[56] where the Petitioner challenged the return of the 1st Respondent on grounds inter alia that the 1st Respondent , Andy Uba, was not at time of the election, qualified to contest the election, the Tribunal held that:

> *"A person shall be qualified for election…if he has been educated up to at least school certificate level or its equivalent… Holding of school certificate is not a constitutional requirement. There is no evidence before us that 1st Respondent is not educated up to school certificate level as interpreted. The onus is on the Petitioner to show prima facie evidence that he is not educated before any rebuttal evidence from the 1st Respondent will be considered… To simply allege that one is not so qualified is not such prima facie evidence. From the above, it is clear that the issue of the non-qualification of the 1st Respondent to contest the election into Senate of the Federal Republic of Nigeria is not proved and the issue is resolved in favour of the Respondents.*
>
> *Having resolved the two main issues in favour of the Respondents, the case of the Petitioners collapses like a pack of cards. This petition has suffered from extreme dosage of lack of proof and has become terminally ill. There is nothing more to do than to order for its dismissal. In view of the foregoing, this petition is hereby dismissed*[57]".

However, the Tribunal upheld the following petitions: *Okoye Charles & Anor v INEC & 2 Ors, APGA & Anor v INEC & 2 Ors and Comrade Tony Nwoye v Barrister Peter Madubueze & 7 Ors*[58]*.* The Tribunal ordered INEC to issue certificates of return to the petitioners respectively.

Bauchi State National and State Houses of Assembly Election Petition Tribunal received only four petitions made up of two House of Representatives and two State House of Assembly petitions. The Tribunal struck out the petition between *Alhamdu Shagaiya & Anor v Markus Makama B. & 2 Ors*[59] where the Petitioner challenged the return of the 1st Respondent in Bogoro State Constituency on the following grounds: That at the time of the election, the 1st Respondent was not

[56] Petition number EPT/AWK/12/S/2015.
[57] See pages 29-30 of the Judgment in Petition no: EPT/AWK/12/S/2015 unreported. See also Section 65 (1-2) of the 1999 Constitution as amended.
[58] Petition numbers EPT/AWK/SHA/35/2015; EPT/AWK/HR/10/2015 and EPT/AWK/HR/09/2015 respectively.
[59] Petition number EPT/BA/NASS/004/2015.

qualified to contest the election into Bauchi State House of Assembly; that the 1st Respondent did not possess the minimum educational qualification under the Constitution and that the 1st Respondent presented a forged certificate to INEC. The striking out was sequel to a motion on notice filed by the Petitioner asking for withdrawal of the petition which was granted by the Tribunal pursuant to paragraph 29 (1) of the 1st Schedule of the Electoral Act 2010 as amended.

The Tribunal upheld petition number EPT/BA/NASS/003/2015 between *Ibrahim Abdullahi & Anor v Baba Madugu & 2 Ors* where the Petitioner was challenging the return of the 1st Respondent as the winner of the Bauchi State House of Assembly election for Sade Constituency on grounds that the 1st Respondent was not duly elected by the majority of lawful votes cast at the election and prayed the Tribunal to declare him winner of the said election judging from results obtained from Forms EC8A and Forms EC8B. The Tribunal held that the Petitioners have proved their case by direct and credible evidence through the witnesses and exhibits tendered on the preponderance of evidence and declared the 1st Petitioner winner of the election. The Tribunal further held as follows:-

> *"…the implication is that there is merit in the petition. Accordingly, we grant the prayers of the petitioners as follows.*
>
> *i. That the 1st Respondent, Baba Madugu was not duly elected or returned by the majority of lawful votes cast at the Bauchi State House of Assembly Election for Sade Constituency held on Saturday the 11th April, 2015.*
>
> *ii. That 1st Petitioner ought to have been returned at the said election judging by the results obtained from the 3rd Respondent's FORMS EC8A and FORMS EC8B.*
>
> *iii. It is hereby ordered that the 3rd Respondent to withdraw the certificate of return issued to the 1st Respondent and issue the said certificate of return to the 1st Petitioner who scored the majority of lawful votes cast at the Bauchi State House of Assembly Election for Sade Constituency held on the 11th of April, 2015…"*[60]

The Tribunal dismissed the petition in *Hon Aminu Mohammed Damalaki & Anor v Shehu Aliyu Musa & 2 Ors*[61]*;* the Petitioner had prayed the Tribunal to declare him winner and return as elected into Bauchi Federal Constituency of the House of Representatives on the grounds that the election and return of the 1st Respondent was undue; at the time of the election, the 1st Respondent was not qualified to contest the election having not been validly sponsored by the 2nd Respondent. The Tribunal held that the 1st Respondent, who won the primary election of 7th

[60] See page 83 of the CTC of the judgment in Petition No: EPT/BA/NASS/003/2015, unreported.
[61] Petition number EPT/BA/NASS/001/2015.

December, 2014 was qualified to contest the general election. The Tribunal further held that:

> '*Having resolved the third and fourth issues as hereinabove, we hold that the petition lacks merit and is hereby dismissed*."[62]

Bayelsa State National and State Houses of Assembly Election Petition Tribunal had twenty-two petitions before it. These comprise of four senatorial, two for House of Representatives, and sixteen State House of Assembly petitions. In the petition between *Chief Timipre Sylva & Anor v Chief Ben Murray Bruce & 2 Ors*[63] where the Petitioner was challenging the return of the 1st Respondent for Bayelsa East Senatorial District on the ground that the 1st Respondent is not qualified to contest the election. The 1st Respondent was alleged to have dual citizenship and refused to relinquish same before the election. The Petitioner also alleged irregularities and manipulations carried out by the 1st and 3rd Respondents. The petition was struck out by Tribunal after it was withdrawn by the Petitioner. The Tribunal also dismissed the petition in *Eddi Mietunde Smith & Anor v INEC & 2 Ors* and upheld the return of the Respondent[64].

The Election Petition Tribunals sitting in Benue state had twenty-five petitions. These petitions comprise one gubernatorial, two senatorial, six for House of Representatives and sixteen State House Assembly election petitions. The Tribunal on the 2nd June, 2015 struck out the petition between *Gabriel T. Suswam & Anor. v Senator Barnabas A. I. Gemade & 78 Ors*[65] wherein the Petitioner was challenging the return of the 1st Respondent on the ground that the 1st Respondent did not win the election with the majority of lawful votes cast. This was as a result of Petitioner's voluntary withdrawal of the petition because according to the Petitioner, he was no longer interested in pursuing the case. The Tribunal also dismissed the petition between *Hon. Catherine Une Egba v Hon. Adamu Ochepo Entonu & 2 Ors*[66]. The petition was dismissed on 9th June, 2015.

The gubernatorial petition in *Tarmen Tarzoor v Ortom Samuel Ioraer & 2 Ors* was dismissed for lack of merit[67]. At the end of the trials in Benue State, two of the petitions succeeded in part and re-run was ordered in some polling units so as to determine the real winner; one petition was upheld and other petitions were

[62] See page 33 of the CTC of the judgment in Petition No: EPT/BA/NASS/001/2015, unreported.
[63] Petition number EPT/BY/SEN/003/2015.
[64] Petition number EPT/BY/SEN/002/2015.
[65] Petition number EPT/BEN/SEN/04/2015.
[66] Petition number EPT/BEN/HR/08/2015.
[67] *Tarmen Tarzoor v Ortom Samuel Ioraer & 2 Ors;* Petition Number EPT/BEN/GOV/01/2015.

dismissed by the Tribunal. In *Paul Shinyo Biam & Anor v Daniel Abbagu & 25 Ors*[68] where the petitioner was challenging the return of the 1st Respondent for the Benue State House of Assembly, Ukum State Constituency and prayed the Tribunal to declare that the 3,842 votes scored by the 1st Petitioner and 760 votes scored by the 1st Respondent from the polling units of Mbazu Registration Area/Ward that were purportedly voided or cancelled by the 4th Respondent are valid and lawful votes, and if added to the votes of 9,845 for the 1st Petitioner and 12,913 for 1st Respondent, 1st Petitioner would have had the majority of the lawful votes cast at 13,687 as against the 1st Respondent with 13, 673 votes at the Benue State House of Assembly. He prayed to be returned winner of the election held on the 11th day of April, 2015. The Tribunal held that the cancellation of the said results by the 3rd Respondent through the 4th Respondent was unlawful and should not be allowed to stand. The Tribunal further held that based on the pleadings, evidence led and exhibits admitted, the 1st Respondent was not duly elected by the majority of lawful votes cast in the Benue State House of Assembly, Ukum State Constituency election held on the 11th day of April, 2015. The Tribunal declared the Petitioner winner and ordered the withdrawal of the certificate of return earlier issued to the 1st Respondent and for the same to be issued to the 1st Petitioner.

In *Hon Robert Aondona Tyough & Anor v. Barrister Benjamin Iorember Wayo & 2 Ors*[69], the Tribunal cancelled the return of the 1st Respondent and ordered INEC to conduct fresh election in 21 polling units of Kwande/Ushongo federal constituency within 60 days. The Tribunal also nullified the return of the 1st Respondent in *Hon Aphonsus Avine Agbom & Anor v Hon Martins Aza & 2 Ors*[70] and held that the 1st Respondent was not duly elected/returned by majority of lawful votes cast at the election of 11/4/2015 for Makurdi North State Constituency and ordered for fresh elections to be held in thirty-four polling units which include twenty polling units in Agan and fourteen polling units in Mbalagh council wards of Makurdi North State Constituency to determine the winner of the State House of Assembly seat.

In *Hon Sunday Adagba & Anor v Hon Joseph Adoga Onah & 3 Ors*[71], the Tribunal held that the petition failed in its entirety and accordingly dismissed it. The Tribunal stated that:

> **"***Courts and Tribunals are not Father Christmas and so not allowed to grant reliefs not prayed for by parties*".

[68] Petition number EPT/BEN/HR/13/2015.
[69] Petition Number EPT/BEN/HR/06/2015.
[70] Petition number EPT/BEN/SH/15/2015.
[71] Petition number EPT/BEN/SH/23/2015.

The Tribunal also dismissed the petition in *All Progressives Congress v Hon Sule Audu Dickson & 3 Ors*[72], where the petitioner challenged the return of the 1st Respondent on the grounds that the election of the 1st Respondent was rendered invalid by electoral malpractices and non-compliance with the Electoral Act, 2010 amongst others. The Tribunal in dismissing the petition relied on the case of *Buhari vs INEC* where Niki Tobi JSC held as follows[73]:

> ***"…****in politics; there must be irregularities. Courts of law must therefore take the irregularities for granted unless they are of such compelling proportion or magnitude as to affect substantially the result of the election. This may appear to the Nigerian mind as a stupid statement but that is the law as provided in Section 146 (1) of the Electoral Act and there is nothing anybody can do about it as long as the legislature keeps it in the Electoral Act. This subsection is like the rock of Gibraltar, solidly standing behind and for a respondent to an election petition. The way politics in this country is played frightens me every dawning day. It is a fight to finish affair. Nobody accepts defeat at the polls. The judges must be the final bus stop. And when they come to the judges and the judges in their professional minds give judgment, they call them all sorts of names. To the party who wins the case, the judiciary is the best place and real last hope of the common man. To the party who loses, the judiciary is bad*"[74]

The Tribunal had while dismissing the petition in *Nelson Godwin Alapa & Anor v INEC & Anor*[75] advised petitioners on the need to avoid unnecessary waste of energy and resources in litigation inanities in election cases[76].

Borno State Election Petition Tribunals sitting in Abuja had six petitions. These petitions comprise one gubernatorial, two House of Representatives and three State House of Assembly petitions. The Tribunal had on the 17th June, 2015 struck out the petition between *PDP v INEC & 2 Ors*[77] after the petition was withdrawn by the Petitioner. Also struck out was *Alhaji Zarma Mustapha & Anor v Kadiri Rahis & 2 Ors*[78]. It was struck out on the 9th June, 2015 after it was withdrawn by the Petitioner. The remaining four petitions went into full trial and were dismissed for lack of merit.

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[72] Petition number EPT/BEN/HR/14/2015.
[73] (2009) 4EPR 623 AT 822-823.
[74] See pages 45-46 of the CTC of the judgment in petition no: EPT/BEN/HR/14/2015, unreported.
[75] Petition number EPT/BEN/HR/01/2015.
[76] See page 38-39 of the CTC of the judgment in petition no: EPT/BEN/HR/01/2015, unreported and also the cased of *Bunge v Governor of Rivers State* (2006) 12 NWLR (Pt.995).
[77] Petition number BO/EPT/GOV/1/2015.
[78] Petition number BO/EPT/HR/01/2015.

In Cross River State, a total of twenty six petitions were filed before the Election Petition Tribunals sitting in Calabar. Out of these petitions, twelve were for State House of Assembly elections, nine for House of Representatives, four for senatorial and one for governorship. At the end of the proceedings, all the petitions were dismissed by the Tribunals for lacking merit.

In Delta State, forty-three petitions were filed before Election Petition Tribunals sitting in Asaba. Out of these petitions, three were for governorship, three senatorial, seven for House of Representatives and thirty for State House of Assembly. *Pius E. Emiko & Anor v Senator J.E. Manager & 2 Ors*[79] was struck out after it was withdrawn by the Petitioner. However, the Tribunal dismissed *Barr. Ovie A. Omo-Agege & Anor v Chief Amori & Ors* [80]for lack of merit. The Petitioner was challenging the return of the Respondent as winner of Delta Central Senatorial district on the grounds of invalid election by reason of corrupt practices and non-compliance with the Electoral Act. That the Respondent was not duly elected by majority of lawful votes cast at the election. The Tribunal's decision has been overruled by the Court of Appeal which set aside the decision of the Tribunal and returned the Petitioner as winner of Delta Central Senatorial District. None of the petitions filed in Delta State succeeded at the Tribunal of first instance.

There were fifteen petitions filed before the Election Petition Tribunals sitting in Ebonyi State. These petitions comprise one for governorship; three senatorial, five House Representatives and six House of Assembly election petitions. At the end of the proceedings, all the petitions were dismissed by the Tribunals for lacking of merit. In *Barrister Nwokporo N Fidelis & Anor v Hon Julius Ifeanyi Nwokpo & 2 Ors*[81], where the 1st Petitioner was challenging the return of the 1st Respondent as winner for the Ebonyi State House of Assembly seat for Ihielu South State Constituency on the grounds that the 1st Respondent was not duly elected by majority of lawful votes cast at the election. That the Petitioner is the person that scored the majority of valid lawful votes cast at the election and ought to have been returned by the 4th, 5th and 6th Respondents. The Tribunal in dismissing this petition held that the:

> *"1st Petitioner as PW10 had admitted that no calculations were done in the petition indicating where he won and where he lost and that he didn't know what he actually scored until the results in the places where there were malpractices were expunged. Learned counsel cannot at the stage of address place himself in the position of a witness to do the calculations which the petitioners failed to do either*

[79] EPT/DT/SE/06/15.

[80] Petition number EPT/DT/SE/41/15.

[81] Petition number EPT/SHA/EB/01/2015.

in the pleadings or during evidence. The address of petitioners' counsel cannot be allowed to take the place of evidence."

It was further held that the Petitioners have not proved any of the grounds of their petition and therefore, not entitled to any of the reliefs claimed.

Also, in *Hon. Mrs Helen Nwobasi & Anor v Hon Sylvester Ogbaga & Ors*[82], the Tribunal that held the petition was doomed for failure since the Petitioner could not discharge the burden of proof, as it is trite law that he who asserts must prove. It was dismissed in its entirety. And the return of the 1st Respondent by the 3rd Respondent as the duly elected member representing the Abakaliki/Izzi Federal Constituency of Ebonyi State was affirmed. Likewise in *Hon Godwin Nwankpuma v Hon Ogonna Francis Nwifuru & 2 Ors*[83] where the Petitioner was challenging the return of the 1st Respondent as winner for Izzi/West Constituency in the Ebonyi State House of Assembly on the grounds *inter alia* that the results upon which the 1st Respondent was declared the winner of the election were fabricated, altered and does not reflect the number of valid votes cast in the election. The Tribunal held that:

"Upon re-computing the votes by the Tribunal, the votes attracted by the candidates are lawful votes. Accordingly, the petition is dismissed. We hereby affirm the return of the 1st Respondent as duly elected member of Izzi-West Constituency in the Ebonyi State House of Assembly"[84]

In *Edward Nkwuegu Okereke & Anor v Nweze David Umahi & 2 Ors*[85], where the Petitioner was challenging the return of the 1st Respondent as winner of the gubernatorial election in Ebonyi State and prayed the Tribunal to declare that the 1st Respondent was not duly elected by majority of lawful and valid votes cast at the governorship election held on 11th April, 2015 in Ebonyi State amongst other reliefs. The Tribunal dismissed the petition and held that the Petitioner has failed to prove his case as required by law. It was further held as follows:

"At the end of the voyage through the pleadings, we did not find and locate any paragraph where the petitioner pleaded the votes cast at the various polling units, the votes illegally credited to the 1st respondent, the votes which ought to have been credited to him and the votes which should be deducted from that of "supposed winner" in order to see if it will affect the result of the election. Since this was not done, it would be difficult and indeed a herculean task for us to effectively address all the issues.

[82] Petition number EPT/REP/EB/03/2015.
[83] EPT/SHA/EB/02/2015.
[84] See page 40 of the CTC of the judgment in petition number EPT/SHA/EB/02/2015, unreported.
[85] Petition number EPT/EB/GOV/01/2015.

> *Having not been pleaded, it would be a forlorn hope to expect evidence to be led at the trial in respect of un-pleaded facts and indeed none of the witnesses of the petitioner led evidence to that effect. The petitioner only made a half hearted attempt through the PW1 whose evidence was afflicted with the virus of dumping (i.e. Exhibit GP45) at the doorstep of the Tribunal without any attempt at tying it specifically to the Petitioner's case."*[86]

In Edo State, there were eleven petitions before the Election Petition Tribunal sitting in Benin City. These petitions include two senatorial, two House of Representatives and seven State House of Assembly election petitions. In the petition between *Mr. Oladele Bankole Balogun & PDP v Hon. Peter Ohiozojeh Akpatason*[87], the Petitioners were challenging the return of the 1st Respondent on the ground that the return was invalid by reason of corrupt practices or non-compliance with the Electoral Act. That the 1st Respondent was not duly elected by majority of lawful votes cast at the election. The Respondent challenged the competence of the petition on the ground that the petition was signed but the person who signed it did not indicate his or her name as stipulated by law. And that certain paragraphs of the petition were clumsy and should be struck out. The Tribunal struck out this petition while upholding the 1st Respondent's argument and held that failure by a party to sign the petition was a clear negation of the Electoral Act. Consequently, the petition was struck out.

At the end of the trials, nine petitions were dismissed for lack of merit. A re-run was ordered in *Gallant Commander Sylvanus Peters Oshioke I. Eruaga v Dr Gowon Marughu*[88] for the State House of Assembly in Esako West Constituency 2. However, this decision was overruled by the Court of Appeal who declared the Petitioner winner and returned him as the elected candidate.

Ekiti State National and State Houses of Assembly Election Tribunal had six petitions, made up of three senatorial and three State House of Assembly elections. All were dismissed for lacking merit. In Enugu State, there were twenty petitions filed before the Election Petition Tribunals sitting in the State. These comprises; one governorship, six for senatorial, ten for the House of Representatives and three State House of Assembly election petitions. Only one petition succeeded (*Dr Chimaroke Nnamani v Senator Gilbert Emeka Nnaji*[89]) but the judgement of the Tribunal was overruled by the Court of Appeal.

[86] See pages 200 to 201 of the certified true copy of the judgment in petition number EPT/EB/GOV/01/2015, unreported.
[87] Petition number EPT/EDS/NSHA/REP/01/15.
[88] Petition number EPT/EDS/NSH/HA/08/2015.
[89] Petition number EPT/ENU/NASS/SEN/05/2015.

The Election Petition Tribunal sitting in the Federal Capital Territory, Abuja entertained three petitions. These petitions were; one senatorial and two House of Representatives petitions. In *PDP v Isa Zacharia Angulu & APC*[90], the Petitioner challenged the return of the 1st Respondent for Kuje/Gwagwalada Federal Constituency on the ground of non-compliance with the Electoral Act and massive irregularities. The petition was struck out as a result of it being withdrawn by the Petitioner. The other two petitions went into full trial and were dismissed by the Tribunal for lacking in merit. In Gombe State, there were twenty petitions before the Election Petition Tribunals sitting in the state. Two were for governorship, two senatorial, eight House of Representatives and eight State House of Assembly election petitions. All of them were struck out for lacking merit.

In Imo State, there were forty-one petitions before the Election Petition Tribunals sitting in Owerri. The petitions were as follows; one governorship petition, eight senatorial, eighteen House of Representatives and fourteen State House of Assembly election petitions.

The Tribunal dismissed the petition between *Rt.Hon. Emeka Ihedioha & Anor v Owelle Rochas Anayo Okorocha & 36 Ors*[91] on the ground that the Petitioner did not pay the prescribed fee of N100 for issuance of pre-hearing notice within 7 days as allowed by paragraph 18 (1) and sub-paragraph (4) of the First Schedule to the Electoral Act and held in line with a plethora of decided cases, that a Court process is not filed until it is assessed and the necessary fees paid[92]. The Tribunal also held that clear statutory provisions cannot be waived. Here, the Petitioner filed his pre-hearing notice on 23/6/2015 without assessment and payment of fees; but on 3/7/2015, the pre-hearing notice was assessed and paid for which falls outside 7 days provided by the Electoral Act. The Petitioner argued that a pre-hearing notice can be filed without payment. The Tribunal held that the filing of pre-hearing notice cannot be free and since the pre-hearing notice in this case was filed on 3rd July, 2015, it was clearly filed out of the time. It is not the duty of the Tribunal to ignore mandatory provisions of law in an attempt to do substantial justice. The Petition was accordingly dismissed.

In *Joseph Chukwuma Ikunna v Barrister Donatus Onuigwe*[93], the petition was also dismissed due to failure of the parties to apply for the issuance of the pre-hearing notice within 7 days after the close of pleadings as prescribed in paragraph 18 (1) of the 1st Schedule to the Electoral Act.

[90] Petition number: EPT/FCT/HR/01/2015.
[91] Petition number EPT/IM/GOV/3/2015.
[92] *Abia State Transport Corporation v Quorum Construction Ltd* (2009) 4 SCM 1.
[93] Petition number EPP/IM/SHA/10/2015.

In *Dr Collins Chiji v Lady Joy Mbawuike & Anor*[94], the Tribunal upheld the case of the Petitioner who challenged the return of the 1st Respondent for the Isiala Mbano State Constituency of the Imo State House of Assembly on the grounds that the return of the 1st Respondent was invalid by reason of corrupt practices and substantial non-compliance with the provisions of the Electoral Act. And that the 1st Respondent was not duly elected by majority of lawful votes cast at the election. The Tribunal held as follows:

> "…*the petitioner's grounds that the conduct of the election failed to comply with the provisions of the Electoral Act and that the 1st Respondent did not win the election by lawful votes cast are all proved. The entire election is hereby nullified and the Independent National Electoral Commission (INEC), the 2nd Respondent is hereby ordered to conduct a fresh election into the State House of Assembly in Isiala Mbano State Constituency of Imo State within ninety (90) days from this judgment"*[95]

The Tribunal also upheld the petition of *Milicent C. Durun & Anor v Nnena John Nzeruo & 2 Ors*[96], where the Petitioner was contesting the return of the 1st Respondent for Oru East State Constituency in Imo State House of Assembly on the grounds that the election was invalid by reason of corrupt practices and that the return of the 1st Respondent was characterised by corrupt practices, gross irregularities, electoral malpractices, etc. The Tribunal held that the entire result of the election held for the seat of Oru-East Constituency of the Imo State House of Assembly which purportedly produced the 1st Respondent Nnenna John Nzeruo is hereby nullified with a cost of N100, 000 awarded to the Petitioner to be paid by each of the Respondents. The Tribunal also set aside the purported election of 1st Respondent Nnenna John Nzeruo. Delivering the judgment, Hon Justice S. O. Falola stated as follows:

> "*Court as conscience of the nation should stand to be counted in the process of national rebirth and ensure the observation of due process and rule of law. Overzealous political layabouts and town loafers who feel that they can always impose their will on the hapless electorate should learn from this. There was no election properly so called for Oru-East State Constituency on 11th April, 2015 because the outcome/result lacks credibility*[97]*:*

[94] EPT/IM/SHA/14/15.
[95] See page 36 of the CTC of the judgment in petition no: EPT/IM/SHA/14/15, unreported.
[96] Petition number EPT/IM/SHA/2/2015.
[97] See pages 48 to 49 0f Certified True Copy of the Judgment in petition no: EPT/IM/SHA/2/2015, unreported.

The Tribunal upheld the petition *in Nkechinyere Ugwu & Anor v Hon. Ikechukwu Amuka & 3 Ors*[98]. The Petitioners were challenging the return of the 1st Respondent on the ground that the 1st Respondent was not qualified to contest the said election in the first place; that the 1st Respondent did not possess the basic educational qualification for the said office and that the 1st Respondent lied on oath and was not honest and truthful about his academic records and certificate. The case of the Petitioners was that the two certificates presented by the 1st Respondent do not belong to him but to some other persons. That the 1st Respondent has not been educated up to the school certificate level and therefore, not qualified to contest the said election. The Tribunal held that:

> "*Without any waste of time, we are of the considered opinion that having thus come to the conclusion that the 1st Respondent was not and still not qualified to stand as a candidate at the said election, his declaration as the winner of the same cannot stand. His return is, for that reason liable to be and is hereby set aside. It follows that the votes credited to him as aforesaid are and must remain wasted votes and not the majority of the valid votes cast at the election as claimed by the Respondents"*[99].

In *Barrister Chidi Joseph Ihemedu v. Victor Onyewuchi & 3 Ors*[100], a re-run was ordered in 11 polling units and the result generated is to be added to the existing result to determine the true winner of the election into the seat of Owerri West State Constituency. However, the Tribunal dismissed the petition of *Ozodi Matthew Ndubueze v Hon Chude Onyerereri & Anor*[101] for being incompetent because the Petitioner was not a candidate to the election and did not participate in the said election. The Petitioner merely stated his right to bring this petition was predicated on the ground that he has the right to vote and be voted for at the election. The Tribunal following a long line of decided cases held that the Petitioner had no *locus standi* to bring the petition and the Tribunal lacks the requisite jurisdiction to determine the petition on its merit. Consequently, the Tribunal struck out the petition for being incompetent with a cost of N50,000 against the Petitioner.

The Tribunal also struck out the petition in *Barrister Obinna Emuka & Anor v Hon Bede Uchenna Eke & 32 Ors*[102] because it was filed outside 21 days as provided by law. In striking out the petition, the Tribunal held:

[98] Petition number EPT/IM/SHA/1/2015.
[99] At page 96 of the CTC of the judgement.
[100] Petition number EPT/IM/SHA/3/3015
[101] Petition number EPT/IM/HR/12/2015
[102] Petition number EPT/IM/HR/17/2015

> *"In the circumstance, we find that this petition having been filed on the 20th day of April, 2015 when the result of the election was declared on 30th March was clearly filed on the 22nd day after the declaration of result of the election. As such it is incompetent and liable to be struck out."*[103]

In Jigawa State, there was no petition filed before the Governorship Election Tribunal constituted for the state. Like the Presidential Election Tribunal that did not receive any petition, the Governorship Election Tribunal in Jigawa State closed shop and members of the Tribunal were sent to other states that have numerous petitions so as to meet the 180 days rule. However, eight petitions were filed before the National/State House Assembly Election Tribunal. The petitions were two House of Representatives petitions and six State House of Assembly election petitions. At the end of the trial, all the petitions were dismissed for lack of merit with heavy costs awarded against the Petitioners.

In dismissing the petition between *Yasa'Awada Abubakar & Anor v. Ado Idris Andaza & 55 Ors*[104]*,* the Tribunal held that to prove non-accreditation, the Petitioner must be able to show that a voter who is not qualified to vote because his name is not on the voters register, voted. The Petitioner cannot show this by mere arguments of non-accreditation in the address of counsel. It was further held that the Court must be put in the picture of non-accreditation by showing input from the card reader to support the facts. This cannot be achieved by the oral evidence of a witness because that will be evidence of facts, of the contents of a document. Consequently, the entire petition was dismissed with N30,000 cost awarded against the Petitioner.

In Kano State, four petitions were filed before the Election Petition Tribunal sitting in the state. These petitions comprise one senatorial, two House of Representatives (including a petition instituted against INEC) and one State House of Assembly petitions. None of the four cases succeeded before the Tribunal. In *Mega Progressive Peoples Party (MPPP) v INEC & Ors*[105]*,* the Petitioner brought this petition in respect of the National Assembly election on the grounds that the Petitioner and its candidate at the 2015 general election into the Senate for Kano Central Senatorial District was validly nominated but was unlawfully excluded from the election by the 1st Respondent; that the 3rd Respondent was at the time of the election, not qualified to contest the election. In dismissing the petition for want of merit, the Tribunal held that a candidate who did not contest the election or who was unlawfully excluded from contesting the

[103] See page 12 of the CTC of the ruling in petition no: EPT/IM/HR/17/2015, unreported.
[104] Petition number EPT/JS/HA/03/2015.
[105] Petition number EPT/KN/NA/03/2015.

election cannot logically, reasonably and legally complain that the election of which he was excluded was marred by rigging, corrupt practices and non-compliance with provisions of the Act. The Tribunal further held as follows;

> "*The Tribunal is of the humble view that PW2 who was not the authentic National Chairman of the Petitioner at all times material to the sponsorship of candidates for the election could not have validly signed any nomination letter or papers in that regard … the petitioner having failed to prove that it validly nominated a candidate.*
>
> *From the foregoing, we hold that from the circumstances of this petition, the totality of evidence adduced in proof of its case, the petitioner cannot be said to have proved unlawful exclusion from the 28th day of March 2015 Senatorial Election into Kano Central Senatorial District of Kano State"*[106]

In Kaduna State, eight petitions were filed before the Election Petition Tribunals sitting in the state. The petitions comprise of one governorship petition, three House of Representatives and four State House of Assembly election petitions. The Tribunal upheld the petition in *Haliru Gambo Dangana & APC v Mrs. Comfort Amwe & 2 Ors*[107] where the Petitioners challenged the return of the 1st Respondent for Sanga State Constituency on the ground that, at the close of nomination as stipulated in the elections guidelines, Hon. Comfort Amwe's name was not in the list as published by INEC. So, she cannot be declared winner in the polls as she was not sponsored by any political party as required by the law. The Tribunal held that the 1st Respondent was not a lawful candidate in the election since her name was not published in the list of candidates by INEC, which means that she was not among the contestants. The Tribunal further held that as of the time of the election, the 1st and 2nd Respondents were not party to the election. As such, the votes allocated to them by INEC were unlawful and invalid, therefore, making the petitioner, who scored the second highest lawful votes the winner of the election. Consequently, the 3rd Respondent was ordered to issue a certificate of return to the 1st Petitioner who scored the second highest votes in the election.

Katsina State Election Tribunals sitting in the State had four petitions made up of one governorship petition and three House of Assembly election petitions. The governorship petition was withdrawn while the remaining three went into full trial. At the end of the trial, the Tribunal dismissed all the petitions for lack of merit. The Tribunal dismissed the petition in *Habibu Suleiman v INEC & 4 Ors*[108] for lack of merit. The Petitioner was challenging the return of the 2nd Respondent on the

[106] See page 35 of the CTC of the judgment in petition number EPT/KN/NA/03/2015, unreported.
[107] Petition number KD/EPT/SHA/04/2015
[108] Petition number KTN/EPT/SHA/02/2015

grounds that the election was invalid or void by reasons of non-compliance with provisions of the Electoral Act; that the 2nd Respondent failed to disclose that he had been tried in a case involving fraud and dishonesty; that the 2nd Respondent at the time of election was not qualified to contest the election because he is bankrupt since he failed to disclose that he was unable to pay the judgment debt of a High Court against him since 2006. The Tribunal held that a debtor commits an act of bankruptcy where a creditor has obtained a final judgment or final order against him for any amount, and execution thereon not having been stayed, has a bankruptcy notice served on him, and if he files in the court a declaration of his inability to pay his debt or present a bankruptcy petition against himself, or if he suspends or gives notice that he is about to suspend payment of his debts to any of his creditors or if under a credit agreement, the creditor becomes entitled to file a bankruptcy petition. Since no such evidence was presented to the Tribunal by the judgment creditor, therefore having not met these requirements, the 2nd Respondent cannot therefore be adjudged a bankrupt just because the Zamfara High Court granted a judgment against him for a certain sum of N1.2m with interest thereon. The Tribunal further held as follows:

> "…*mere allegation of crime or dishonest conduct without evidence, trial and conviction is not enough to ground the disqualification of a person from contesting a primary election of a political party or other election. See Uzodinma V Izunaso (No.2) (2011)17 NWLR (Pt 1275)30 at 80-81 para.H-B … the feeble attempt by the petitioner's counsel in respect of the bankruptcy claim, the non-compliance with the provision of the Electoral Act 2010 as amended, and the non-qualification of the 2nd respondent to contest the election is not enough to ground or vitiate the election and the return of the 2nd respondent as a member elected to represent Funtua L.G.A…*[109]"

In Kebbi State, six petitions were filed before the Election Petition Tribunals sitting in Birnin-Kebbi. These petitions comprise of one governorship petition, one House of Representatives and four State House Assembly election petitions. The Tribunal dismissed the whole petitions at the conclusion of the trials for lack of merit. In *Bello Abdullahi Mungadi & Anor v Abdulwasiu Yunus Andarai & 2 Ors*[110] the Petitioners challenged the return of the 1st Respondent as winner for Maiyama Constituency of Kebbi State House of Assembly on the grounds that the 1st Respondent was not qualified to contest the election held on the 11th day of April, 2015, and that the 1st Respondent was a dismissed public officer who was dismissed from public service on grounds of gross misconduct. The particulars of

[109] See page 53 of the CTC of the judgment in KTN/EPT/SHA/02/2015, unreported.
[110] Petition number EPT/KB/HA/004/2015

these grounds were that the 1st Respondent was sometime a local government chairman of Maiyama local government council and impeached/dismissed there from. The Tribunal held that it is trite that a proper trial, conviction and sentence by a court of law and not any other institution or authority is the only legal and constitutional means of proving the guilt of the 1st Respondent. It is the only ground for the imposition of the punishment for the said offences of breach of trust, dishonesty, theft and fraud. The Tribunal further held as follows:

> *"According to the petitioners, the investigation committee and the legislative council have found the 1st Respondent guilty of the said offences. The petitioners are by this argument presuming the 1st Respondent guilty of these offences. And therefore wants this Tribunal to declare the 1st Respondent disqualified. We cannot do this because it will amount to the violation of section 36 especially subsection (5) of the Constitution and hence not tenable under our laws. This is because it is elementary principle of law that criminal trial, conviction and imposition of punishment are matters exclusively within the jurisdiction and powers of the court. It is not that of any legislative council or investigation committee set up by it".*[111]

In Kogi State, a total number of 29 petitions were filed at the Election Petition Tribunal sitting in Lokoja. These petitions were made of three senatorial petitions, seven House of Representatives and nineteen State House of Assembly petitions. Out of these petitions, one was struck out at the pre-hearing stage, while the remaining twenty-seven went on full trial. Due to the large number of petitions filed in Kogi State, a second panel was constituted headed by Justice Akiniyi Akinlolu of Oyo State Judiciary. The panel also has Justice O.A. Chijioke and Justice M.C.Okoh as members. The President of the Court of Appeal constituted the second panel after taking into consideration the time required to dispassionately adjudicate the petitions.

In *Usman Abdulkarim & Anor v INEC & 2 Ors,*[112] where the Petitioners were challenging the return of the 2nd Respondent on the ground that the 2nd Respondent, was at the time of the election, not qualified to contest the election and that the said 2nd Respondent was not duly elected by majority of lawful or valid votes cast at the election and prayed the Court to declare the 1st Petitioner winner and return him elected. While delivering the judgment, **J**ustice Akinniyi Akintola held as follows:

> "…*However, that is not the case in the present petition which we have held earlier in the course of this judgment to be incompetent having been brought by the 1st and 2nd petitioners who were not candidates at the election properly so called.*

[111] See page 27 of the CTC of the judgment in petition number EPT/KB/HA/004/2015, unreported.
[112] Petition number EPT/KG/HA/21/2015.

> *The 1st petitioner purportedly emerged as the candidate of the 2nd petitioner in an unlawful or illegal primary that was conducted by the 2nd petitioner on 29th November, 2014 to sponsor a candidate for the election of 11th April, 2015 contrary to a valid and subsisting court order restraining the 2nd petitioner from holding or conducting any such congress. In the final analysis, we hold that the petition is incompetent having been filed by the 1st and 2nd petitioners who lack the locus standi to do so*"[113]

In *Senator Smart Adeyemi & Anor v Hon Dino Melaye & 2 Ors*[114], the Petitioner challenged the return of Hon. Dino Melaye as the winner of Kogi West Senatorial district on the ground that Hon. Dino Melaye was not duly elected by majority of lawful votes cast; that the election was invalid by reason of substantial non-compliance with provisions of Electoral Act 2010 and that Hon Dino Maleye was not qualified to contest the election. In dismissing the petition, the Tribunal held at pages 56-57 of the judgment as follows.

> *"In view of all that has been found and held in this judgment, we hereby find and hold that in the circumstances of this case, the first respondent, Hon. Dino Melaye was validly returned as the candidate who polled the majority of the lawful votes cast at the election conducted into the Senate of the National Assembly in the Kogi West Senatorial district on the 28th day of March 2015. Accordingly, all the 5 reliefs prayed for by the petitioners are hereby refused, likewise the alternative reliefs. The petition is hereby dismissed as lacking in merit. Parties are to bear their own costs."*

There were five petitions filed before Kwara State Election Tribunals sitting in Ilorin. Out of these petitions, one was for governorship, two for senatorial and two for House of Representatives election petitions. In *African Democratic Congress (ADC) & Ors v INEC & 3 Ors*[115], the Petitioner challenged the return of the 2nd Respondent on the ground of unlawful exclusion by INEC. The 1st and 2nd Respondents objected to this petition and asked the Tribunal to strike out the petition for being incompetent, the petitioners lack of *locus standi* and the case lacking in merit on the ground that the 1st Petitioner *inter alia* had no valid nomination to contest for office.

The Tribunal dismissed this petition and held that failure of the Petitioner to apply for issuance of pre-hearing notice within 7days after the service on them of the 1st and 2nd Respondents' response to the petition was fatal to the petition against the

[113] See page 46 of the judgment in petition number EPT/KG/HA/21/2015, unreported.
[114] Petition number: EPT/KG/NAE/SEN/04/2015.
[115] Petition number Gov/EPT/IL/1/2015.

1st and 2nd Respondents. On the 3rd and 4th Respondents, the Tribunal held as follows:

> "*The petitioners having failed to prove that they nominated a Deputy Governorship candidate to run with the 2nd petitioner for the April, 2015 Governorship election in Kwara State have as a result failed to prove that they were unlawfully excluded from the elections. The Tribunal therefore finds and holds that the petitioners were not unlawfully excluded from the April 11th 2015 Governorship election held in Kwara State. Consequently, the petition against the 3rd and 4th (now 1st and 2nd)* respondents has *not been proved and same is hereby dismissed*"[116]

The remaining four petitions were dismissed for lack of merit. In dismissing the petition in *Abdulrahman Abdulrazaq & Anor v Senator Abubakar Bukola Saraki & 2 Ors* [117], the Tribunal held that where a Petitioner has not established a prima-facie case, it is unnecessary to embark on a voyage of considering the Respondent's case. The Tribunal further held that considering the circumstances of this petition, having regard to the state of the relevant facts averred in the petition, the evidence adduced by the Petitioners failed to prove their case to be entitled to the reliefs sought by them. Consequently, the Tribunal affirmed the election, declaration and return of the 1st Respondent, Senator Abubakar Bukola Saraki as the senator duly elected for the Kwara State Central Senatorial District.

Lagos State Election Tribunals sitting in the state had thirty-nine petitions before it. These petitions comprise one governorship petition, two senatorial, fifteen House of Representatives and twenty-one State House of Assembly election petitions. At the end of the trial, the Tribunals dismissed all the petitions with heavy costs for lacking in merit. This is curious as no Petitioner was able to prove his case against thirty nine Respondents. This is a replication of the scenario in the 2011 election petition adjudications in the state.

In *Arubo Ayinde Amidu & Anor v INEC & 4 Ors*[118] challenging the return of the 2nd Respondent as the duly elected winner of Ikeja Constituency 2 to the Lagos State House of Assembly, the Tribunal held that the totality of evidence clearly preponderates in favour of the Respondents; the petition had no chance of success as it lacks merit and accordingly, it was dismissed. In *Ola Animashaun & Anor v Babajimi Adegoke Benson & 2 Ors*[119], the Petitioners sought the nullification of the return of the 1st Respondent as winner for the Ikorodu Federal Constituency on the ground that the 1st Respondent was, at the time of the election, not qualified to contest the election. The particulars of this ground was

[116] See page 27 of the CTC of the judgment in petition number Gov/EPT/IL/1/2015, unreported.
[117] Petition number NAT/LEG/EPT/IL/1/2015.
[118] Petition number NA/LEGH/EPT/L/31/2015.
[119] Petition number NA/LEGH/EPT/L/6/2015.

that the primaries of the 2nd Respondent conducted on 7/12/2014 for House of Representatives which produced the 1st Respondent as its candidate was a nullity as the notice of the party primaries given by the 2nd Respondent to the 3rd Respondent (INEC) by letter dated 18/11/2014 was less than a period of "at least 21 days" required by section 85 (1) of the Electoral Act, 2010 (as amended). The Tribunal while dismissing this petition held as follows:

> "…*it is our respectful view that since the petitioners did not challenge the evidence that INEC officials attended and monitored the said primary election of APC, the primary election will not be declared invalid because the notice was for a period less than 21 days. In our opinion, the purpose of the 21 days notice is to give INEC sufficient time to prepare to attend and monitor party primaries. If INEC officials were able to prepare within a period less than 21 days and performed their duty of monitoring the party primaries, the primaries ought not to be nullified*"[120].

The Tribunal before arriving at the decision above distinguished the facts of instant case, with the facts of the case of *Usman v Dangana* (2013) 6 NWLR (PT.1349) 50 as follows:

> *In that case, the appellants complained that PDP primary election conducted on 28/1/2011 was a nullity. Part of the grounds for the complaint was that it was conducted 13 days after the last date prescribed by INEC for the conduct of party primaries.*
>
> *By letter dated 24/1/2011 written by INEC to the National Chairman of PDP (Exhibit P. 21), INEC reminded PDP "that the time for conduct of party primaries had since elapsed on 15th January, 2011 and has not been extended by INEC". So, by that letter, INEC gave PDP enough notice of the futility of the exercise which it planned to conduct on 28/1/2011.*
>
> *INEC did not attend or monitor the PDP primary election conducted on 28/1/2011. The defence witnesses admitted that the notice of the primary election was given to them at 1pm on 28/1/2011 and they went to Ayingba for the exercise at 4.00pm the same day.*
>
> *Based on these very peculiar facts, the Court of Appeal held that the primary election conducted on 28/1/2011 culminating in the purported nomination of the 1st Respondent as PDP candidate for election as Senator representing Kogi East Senatorial District was illegal as it was done in manifest violation of Section 85 of the Electoral Act".*

[120] See page 30 t0 31 of the CTC of the judgment in petition number NA/LEGH/EPT/L/6/2015 unreported.

But in the instant case, the Tribunal held that even if the 2nd Respondent's letter of 18/11/2014 constituted a fresh notice of its primaries to INEC as argued by learned petitioners' counsel (which is not the case), the 2nd Respondent's primary election for House of Representatives will not be a nullity so long as officials of INEC attended and monitored it. Consequently, the Tribunal dismissed the petition because it failed to establish that at the time of the House of Representatives election held on 28/3/2015, the 1st Respondent was not qualified to contest the election. The gubernatorial petition of *Agbaje & Anor v INEC & 3 Ors*[121] was dismissed on a preliminary objection.

In Nasarawa State, fifteen petitions were filed before the Election Tribunals sitting in Lafia. The petitions include one governorship petition, four senatorial, four House Representatives and six House of Assembly election petitions. The Tribunal dismissed fourteen petitions for lacking in merit. However, the Tribunal upheld the petition in *Hon. Dr Joseph Haruna Kigbu & Anor v Abubakar Sarki Dahiru & 2 Ors*[122]. The Petitioner challenged the return of the 1st Respondent as the winner for the Lafia/Obi Federal Constituency of Nasarawa State; that the 1st Respondent was not duly elected by majority of lawful votes cast at the election and prayed the Tribunal to declare and return him as winner of the election. The Tribunal held that the 1st Respondent was not duly declared and returned as the winner of the House of Representatives election for Lafia/Obi Federal Constituency of Nasarawa State. The Tribunal declared the 1st Petitioner winner and returned him as the winner of the House of Representatives election for the Lafia/Obi Federal Constituency of Nasarawa State and ordered INEC to issue a certificate of return to him.

The Tribunal dismissed the petition in *Labaran Maku & Anor v Alhaji Umaru Tanko Al-Makura & 2 Ors*[123] for lacking merit. In this petition, the Petitioner had prayed the Tribunal to declare him winner of the election or order a re-run on the grounds that the governorship election in Nasarawa State held on 11th day of April, 2015 especially, the results from the local governments, wards, collation centres and polling units complained of in his petition were invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act 2010. The Tribunal held as follows:

> *"…we came to the inevitable conclusion that they have woefully failed to establish that the electoral malpractices and/or non-compliance with the Electoral Act, Guideline and Manual for Election Officials 2015 was substantial and therefore the*

[121] Petition Number GOV/EPT/L/115.
[122] Petition number EPT/NS/HR/15/2015.
[123] Petition number EPT/NS/GOV/1/2015.

burden does not shift. The respondent in fact had no business defending the petition in the first place based on the evidence presented at the trial. It is now settled that where the evidence led by a party is worthless, it is futile to presume that the party has by any standard discharged the burden of proof, more so that the other opposite party presented a rebuttal. See AIBRAMANKA vs OSAKWE (1989)3 NWLR (PT.107)101. In the light of the above, we are thus unable to appreciate, talk less of upholding the highly misplaced contention of the burden of proof in this regards".

Not only have the petitioners failed to prove non-compliance and/or electoral malpractices in the conduct of the election in the local governments complained of, they have failed to prove that the non-compliance has substantially affected the outcome of the Governorship Election of 11th April 2015 in Nasarawa State. Accordingly, Petition number No: EPT/NS/GOV/1/2015 between Mr. Labaran Maku & 1 Or vs. Alh Umaru Tanko Al-Makura & 2ors is hereby dismissed for lacking in merit"[124]

In Niger State, seven petitions were filed before the Election Petition Tribunals sitting in Minna. These petitions comprise three National Assembly and four State House of Assembly election petitions. The Tribunal dismissed seven of the petitions for lacking in merit. However, the Tribunal upheld the petition in *Hon Shu'aibu Mohammed Liman Iya & Anor v Comrade Muritala B. Adamu*[125] where the Petitioner challenged the return of the 1st Respondent as the winner for the Suleja Constituency of the Niger State House of Assembly on the ground that the 1st Respondent who was sponsored by All Progressive Congress, as at the date of the election conducted on 11th April, 2015 was not qualified to contest the election into the State House of Assembly as he was below the age of 30 years. The Tribunal held that there is sufficient evidence to show that the 1st Respondent had not attained the constitutional age of 30 years to qualify him as a candidate to contest the election of 11th April, 2015 into the Niger State House of Assembly. The Tribunal nullified the election and ordered fresh election.[126]

There were fourteen petitions filed before the Election Tribunals sitting in Ogun State. These petitions include two governorship, one senatorial, one House of Representatives and ten State House Assembly elections petitions. The Tribunal dismissed the petition between *Mega Progressive People's Party (MPPP) Vs INEC & Ors*[127] for lack of merit. The petition was brought on the ground that the

[124] See pages 69-70 of the CTC of the judgment in petition number EPT/NS/GOV/1/2015, unreported.
[125] Petition number EPT/NS/HA/04/2015.
[126] See pages 52 to 53 of the CTC of the judgment in petition number EPT/NS/HA/04/2015, unreported.
[127] Petition number EPT/GOV/ABK/002/15.

name and logo of the party as well as the party's candidate for governorship with her running mate were excluded from all INEC result sheets. The Tribunal however upheld seven petitions and dismissed the remaining other petitions for want of evidence. In *Adedapo Abiodun & Anor v Prince Buruji Kashamu,*[128] the Tribunal held that the petition was meritorious and ordered fresh election in some wards in eight local governments and the result of the fresh election when conducted, were to be added to the lawful votes as declared by the Tribunal to determine the winner. The Tribunal also ordered fresh election in 222 polling units in the 3 local governments within 90 days in the petition between *Ismail Biyi & Anor v Adekoya Adsesegun & 3 Ors*[129]*.* Also, in *Bola Akeem Badejo & Anor v Adejuwon Oyenuga & 3 Ors*[130]*,* the Tribunal ordered fresh election in 7 polling units in Ijebu East State House of Assembly constituency of Ogun State.

In Ondo State, seventeen petitions were filed before the Election Petition Tribunals. The petitions comprise of one senatorial, four House of Representatives and twelve State House Assembly election petitions. At the end of the trials, the Tribunal upheld one petition and dismissed others. In *Lucky Ayedatiwa & Anor v Akinjo Victor & 2 Ors,*[131] the petitioner challenged the return of the 1st Respondent as the winner for Ilaje/Ese-Odo Federal Constituency on the grounds *inter alia* that the 1st Respondent was at the time of the election, not qualified to contest the election. The particulars of the grounds were that the 1st Respondent who was a member of the Labour Party, a registered political party in Nigeria, was at the time of the election, the subject matter of this petition, not a member of the PDP under which he was returned elected. The Tribunal found as a fact that even though the 1st Respondent purported to have joined the 2nd Respondent (PDP) on the 20th of October, 2014, he still executed a court process on behalf of the Labour Party, a party he was supposed to have left. This can only mean that he had one foot in each of the parties (namely PDP and Labour Party). This cannot be in contemplation of the constitutional or statutory requirement that, to be qualified for election, the candidate must be a member of a political party and be sponsored by that party. And the contention that 1st Respondent was

[128] Petition number EPT/SEN/ABK/001/2015.
[129] Petition number EPT/NA/ABK/001/2015.
[130] EPT/OGSA/ABK/001/2015; Other petitions upheld were Adebayo *Adekoya & Anor v Olayinka Bowale & 3Ors* - petition number EPT/OGSA/ABK/003/2015: *Falola Ayinde & Anor v Alhaji Oduntan Razaq & 3 Ors* - petition number EPT/OGSA/ABK/010/2015, *Omotala Banjo & Anor v Wale Hassan & 3Ors* - petition number EPT/OGSA/ABK/004/2015, *Sewabde Olatunde & Anor v Adebowale Ojo & 3 Ors* - petition number EPT/OGSA/ABK/002/2015 and EPT/OGSA/ABK/003/2015.
[131] Petition number EPT/AK/HR/4/2015.

granted a waiver to contest election into any office was therefore of no moment since only a duly registered member of the party can enjoy the privilege of a waiver. The Tribunal further held as follows:

> *"In conclusion, we find and hold that the petition succeeds in part. Having found as we have, that the 1st Respondent , Akinjo Kolade Victor, who is said to have had the highest number of votes and accordingly returned as elected in the March 28, 2015, House of Representatives election for Ilaje/Ese-Odo Federal Constituency, was not qualified as at the time of the election to contest the said election, the said election and return is therefore nullified."*[132]

In *Smart Omotadowa & Anor v PDP & 4 Ors*[133], where the Petitioner was challenging the return of the 2nd Respondent as a winner of the House of Assembly seat of Idanre Constituency on the grounds that the election of the 2nd Respondent was invalid by reason of substantial or non-compliance with the provisions of the Electoral Act and prayed the Tribunal to return him winner. The Tribunal held that where a party alleges substantial non-compliance, he must plead and prove: the non–compliance with the Electoral Act; and that it substantially affected the results of the election. The Tribunal also held that where the allegations are in the nature of electoral malpractices, the Petitioner must plead and prove beyond reasonable doubt that:

i. Respondent personally committed the alleged acts or aided, abetted or procured the commission of the said acts.
ii. If the acts are alleged to have been committed by an agent, that the agent was expressly authorized to act in that capacity authority: and
iii. The alleged acts substantially affected the result of the election by demonstrating how it affected it. See *Buhari V INEC* (2008) 19NWLR (Pt.1120) 246.

The Tribunal further held as follows:

> "*We are satisfied on the evidence before us that Petitioners have woefully failed to prove the allegations of hijack of ballot boxes by thugs, disruption of accreditation, discrepancies in the figures of election results, over voting and inflation of results in favour of the 1st and 2nd Respondents. We therefore hold that Petitioners have not proved that this election was not conducted in substantial compliance with the provisions of the Electoral Act 2010 (as amended)…On the whole, we are satisfied that this petition lacks merit and it is accordingly dismissed*"[134]

[132] See page 42 of the CTC of the judgment in Petition Number EPT/AK/HR/4/2015, unreported.
[133] Petition number EPT/AK/HA/14/2015.
[134] See page 21 of the CTC of the judgment in petition number EPT/AK/HA/14/2015, unreported.

The Tribunal also dismissed the petition in *Gbenga Edema & Anor v Coker A. Mlacho & 2 Ors*[135] on the grounds that the relief sought by the Petitioners was incompetent as it runs contrary to the cause of action and the entire petition was narrowed to whether the election ought not to have being declared inconclusive which was in conflict with the case pleaded by the Petitioners.

In Osun State, thirteen petitions were filed before the Election Petition Tribunals sitting in the State. The petitions comprise one senatorial, two House of Representatives and ten State House of Assembly election petitions. At the end of the trial, the Tribunal dismissed all the petitions for lacking in merit with costs against the petitioners. In *Hon. Prince Adetilewa Sijuwade & Anor v Oladejo Makinde & 2 Ors*[136], the petitioners challenged the return of the 1st Respondent as winner of the Ife Central State Constituency on the ground *inter alia* that the 1st Respondent was not duly elected or returned by majority of lawful votes cast at the election. The Tribunal held that the Petitioners failed woefully to prove or discharge the burden placed on them by section 131 and 132 of the Evidence Act. The Tribunal, while relying on the case of *Elias v. Omo-bare* (1982) 5 S.C 13 further held as follows:

> "….*This case clearly cries to the heaven in vain to be fed with relevant and admissible evidence. The appellant woefully failed to realize that judges do not act like the oracle at Ife which is often engaged in a crystal gazing and thereafter would proclaim a new Oba in succession to a deceased Oba. Judges cannot perform miracles in the handling of civil cases, and at least of all manufacturing evidence for the purpose of assisting a plaintiff win a case*"[137].

In Oyo State, thirty-seven petitions were filed before the Election Tribunals sitting in the State. These petitions comprise of one governorship petition, two senatorial, ten House of Representatives and twenty-four State House of Assembly election petitions.

In Hon. *Olugbenga Adewusi & Accord Party v. Dapo Lam Adesina & Ors*[138], the Tribunal dismissed the petition challenging the return of the 1st Respondent as the winner for Ibadan North East/South East Federal Constituency for lacking in merit. The Tribunal also dismissed the petition between *Hon. Musibau Adeagbo & Anor v. Olugbemi Olusumbo & Ors*[139] for lacking in merit and affirmed the return of the 1st Respondent as the winner for Oluyole Federal Constituency with cost of N100, 00 in favour of the Respondents.

[135] Petition number EPT/AK/HA/7/2015.
[136] Petition number EPT/HA/OS/14/2015.
[137] See page 26 of the CTC of the judgment in petition number EPT/HA/OS/14/2015, unreported.
[138] Petition number EPT/NA/HR/IB/5/2015.
[139] Petition number EPT/NA/HR/IB/4/2015.

Similarly, the remaining other petitions were dismissed by the Tribunal for lacking in merit including the petition between *Senator Rasheed Ladoja & Anor v. Senator Abiola Ajimobi & Ors*[140]. Delivering the judgment of the Tribunal, Justice Muhammed Mayaki, held that the result of an election in law is presumed to be in order until proved otherwise; it lies on the Petitioner to prove to the Tribunal that the election did not comply with the provisions of the Electoral Act and this must be done either on preponderance of evidence or beyond reasonable doubt. The Tribunal further held that the lead witness of the Petitioner, Bimbo Adepoju, who led the inspection of the electoral materials, was a farmer and not an expert, and that an expert witness was very necessary in an election petition case and the Tribunal could not rely on the evidence of a witness who was not an expert. The Tribunal also held that the inspection of voters' cards, voters' registers, ballot papers and other electoral documents should have been carried out by an expert for the result of such inspection to be relied upon by the Tribunal. The documents tendered before the Court by the Petitioner were not linked to the evidence of the witness and therefore regarded as merely dumped on the Tribunal. And the petitioner failed to prove the allegation of corruption, malpractices, irregularities and manipulation levelled against the Respondent. The Tribunal therefore dismissed the petition and upheld the declaration of Ajimobi as the winner of the April 11 governorship election in Oyo State.

In dismissing the petition number between *Olumuyiwa Busari & Anor v. Sunday Adepoju & Ors*[141], the Tribunal held that the petition lacks merit and the evidence of the three witnesses presented by the Petitioner was inconsistent. It further held that the claim that the polls result was manipulated in favour of the 1st Respondent was unsubstantiated as the election results were properly calculated at every stage of the National Assembly elections. And that the 1st Respondent was the winner of Ibarapa East/Ido Federal Constituency.

Twenty-five petitions were filed before Plateau State Election Tribunals. These petitions include one governorship petition, two senatorial, six House of Representatives and sixteen for the State House of Assembly. The Tribunal dismissed the petition in *Eunice Aisha Sambo & Anor v. Jonah David Jang & 2 Ors*[142] for lacking in merit and awarded the cost of N200,000 against the Petitioner in favour of the 1st and 2nd Respondents. The Tribunal also dismissed *Daiyabu Dauda & Anor v. Yahaya Adamu & 2 Ors*[143], with costs in the sum of N100, 000 in

[140] Petition number EPT/IB/GOV/22/2015.
[141] Petition number EPT/IB/NA/HR/9/2015.
[142] Petition number EPT/PL/NA/01/2015.
[143] Petition number EPT/PL/SHA/17/2015.

favour of the 1st and 2nd Respondents. Cost of N200, 000 was awarded to the Respondents by the Tribunal in *Irene Din & Anor v Engr. Solomon Maren & 2 Ors*[144] after it was dismissed. However, the Tribunal upheld in part, the claims of the Petitioner in *Jackson Ponzhi Danladi & Anor v. Vincent Venman Bulus & 2 Ors*[145]. The Petitioner challenged the return of the 1st Respondent as the winner of Langtang South Constituency of Plateau State House of Assembly on the ground that at the time of the conduct of the State House of Assembly Election, the 1st Respondent was not qualified to contest the said election having been convicted by the Chief Magistrate Court sitting at J.M.D.B, Jos, Plateau State on the 20th August, 2010, for a criminal offence involving dishonesty and fraud. The Petitioner prayed the Tribunal to return him as winner of the said election. The Tribunal held thus:

"*The petition succeeds in part as follows:-*

1. *That 1st Respondent having been convicted of an offence involving fraud and dishonesty by a court was not qualified to contest the election into the Plateau State House of Assembly to represent Langtang South Constituency.*
2. *That the election and return of the 1st Respondent as member Plateau State House of Assembly to represent Langtang South Constituency is a nullity.*
3. *We hereby order the 3rd Respondent to conduct fresh election into the Plateau State House of Assembly for Langtang South Constituency within 90 days from the date of judgment. There shall be N100,000 costs in favour of the petitioners*"[146]

With due respect to the members of the Tribunal, this decision for re-run instead of declaring the Petitioner who scored the 2nd highest number of votes winner as was done in other cases seems to contradict earlier Tribunal judgements. In EPT/YB/REP/02/2015, the Tribunal in Yobe State relied on the case of *Ejiogu v Irona (2009) 4NWLR (PT.1132) 513* to declare the 1st Petitioner and return him as winner of the House of Assembly election into Goya/Ngeji State Constituency of Yobe State held on 11th April, 2015, having scored the majority of the lawful votes cast at the election. The Tribunal in Plateau State should have followed the decision of Yobe State Tribunal to declare the Petitioner winner in this petition. The remaining other petitions were dismissed by the Tribunal for lacking in merit with heavy costs against the Petitioners.

Fifty-five petitions were filed before the Rivers State Election Tribunals. The Tribunals were relocated to Abuja for security reasons. These include five governorship petitions, three senatorial, fourteen House of Representatives and

[144] Petition number EPT/PL/NA/03/2015.
[145] Petition number EPT/PL/SHA/10/2015.
[146] See page 79 of the CTC of the judgment in petition no: EPT/PL/SHA/10/2015, unreported.

thirty-three State House Assembly election petitions. On the 6th July, 2015 the petition between *Mr Kemia Stanley Elenwo v. Nyeson Ezenwo Wike & Ors*[147] was struck out with a cost of N50,000 awarded to each of the Respondents in the matter. This was as a result of its withdrawal by the Petitioner. On the 7th July, 2015, petition number EPT/RV/SA/44/15 was struck out with the cost of N20, 000 each awarded to the 2nd, 3rd and 5th Respondents. This was as a result of the application brought by the Petitioner asking for the withdrawal of the petition**.**

Delivering judgement in the petition between *Mr. Elder Thirde Lulu Braide & Anor v. Hon Dagogo Doctor Farah & 2 Ors*[148], the Tribunal nullified the election to the Degema Constituency of the Rivers State House of Assembly and ordered fresh election. At pages 63-64 of the judgement, the Tribunal held as follows:

> "*The Respondents alleged that there was manual accreditation which was not reflected in Exhibit P7; the burden now shifted on them to produce the Register of Voters used in the manual accreditation to show the number of votes accredited by that means and to have arrived at the number of voters in Exhibit P26. This they did not do which in our humble opinion is fatal to their case. It then follows that number of votes that exceeds that contained in Exhibit P7 amounted to over voting or multiple voting.*
>
> *As stated earlier in this judgment, the Petitioners have made a good case before this Tribunal and the Petition is hereby sustained. In the case of* ***SOWEMIMO VS AWOBAJO (1999) 7NWLR (PT610****) 355 where the Court of Appeal held thus: "Where before the conclusion of election, it was seriously or substantially disturbed by any course, it was the duty of Electoral Commission to cancel the whole election not merely the result of the Wards or Units affected"*
> *In* ***TANKO VS CALEB*** *(1999) 8 NWLR (PT.616) 606 where it was held " if the election Tribunal determines that a candidate was not validly elected on any ground, the Election Tribunal shall nullify the election. In such circumstances, the Election Tribunal has no alternative than to nullify the election even if the Appellant has not requested for such a relief".*

The Tribunal also upheld these petitions, nullified the return of the Respondents and ordered for fresh elections within three months in the following cases. These were petitions in: *Hon Vincent Oguagu & Anor v. Nathaniel Uwaji & 2 Ors*[149]*; Eric Chinedu Apia & Anor v. Martins Manah & 3 Ors*[150]; *Chikere Wanjoku & Anor v. Anselem Oguguo & 2 Ors*[151]*; Wali Belief Azeru & Anor v. Michael Chinda & 3*

[147] Petition number EPT/RV/GOV/05/15.
[148] Petition number EPT/RV/SA/26/2015.
[149] Petition number EPT/RV/SA/28/2015.
[150] Petition number EPT/RV/SA/48/2015.
[151] Petition number EPT/RV/SA/35/2015.

Ors[152]; *Hon Legborsi Nwidadah & Anor v. INEC & 2 Ors*[153]*;* and *Hon Friday Nubarai Nke-ee & Anor v. INEC & 2 Ors*[154]*.* Others petitions where fresh election was ordered include: *Hope Tariah & Anor v. Granville Wellington*[155]*; Hon Gift Emeka Wokocha & Anor v. Hon Christian Ahiako*[156]; *Henry Halliday & Anor v. Abinye Blessing Pepple*[157]; *Engineer Ineye Jack & Anor v. INEC & 2 Ors*[158]; *Hon B. Anabraba & Anor v. INEC & 2 Ors*[159]; and *Dr. Otogwung Dressman & Anor v. INEC & 2 Ors*[160]. The order of the Tribunal was based on widespread and proven irregularities, corrupt practices and non-compliance with the provisions of the Electoral Act in the conduct of the elections.

The Tribunal in upholding the case of the Petitioner in *Godstime Benjamin Horsefall & Anor v. Enemi Alabo George & 2 Ors*[161] stated thus:

> "*We find, and hold, that the results in Exhibits P18-P31 (which are also Exhibits R21-R44) are not results emanating from the polling units. The Exhibits are filled with false results and are therefore not lawful and valid votes. The declaration of the 1st Respondent as the winner of the election on the basis of the results in those Exhibits was based on invalid and unlawful votes that were not collated at any collation centre. The 1st Respondent was therefore not duly elected by the majority of lawful votes cast at the election of 11th April, 2015, into the Asari-Toru II Constituency of Rivers State House of Assembly. We hold that the petitioners have proved on the balance of probability or preponderance of evidence as required in civil cases, that the votes, on the basis of which the 1st Respondent was declared the winner of the election were not lawful and valid votes but false votes/results.*

In the gubernatorial petition between *Dakuku Peterside & Anor v. INEC & 2 Ors*[162]; the Petitioner claimed that the second Respondent was not elected by the lawful and majority votes; that the election was marred by malpractices, violence, rigging, abduction and coercion of opponents, etc; the Tribunal upheld the petition and ordered INEC to conduct fresh election.

[152] Petition number EPT/RV/SA/32/2015.
[153] Petition number EPT/RV/SA/23/2015.
[154] Petition number EPT/RV/SA/24/2015.
[155] Petition number PT/RV/SA/36/2015.
[156] Petition number EPT/RV/SA/30/2015.
[157] Petition number ET/RV/SA/40/2015
[158] Petition number EPT/RV/SA/21/2015.
[159] Petition number EPT/RV/SA/39/2015.
[160] Petition number EPT/RV/SA/37/2015.
[161] Petition number EPT/RV/SA/33/2015.
[162] Petition number EPT/RV/GOV/04/2015.

Five petitions were filed before the Election Petition Tribunals sitting in Sokoto State. These petitions comprise of one governorship petition, one senatorial and three House of Representatives petitions. The Tribunal struck out the petition between *Mega Progressive People's Party & Anor v. INEC & 3 Ors*[163]. The Petitioner was challenging the return of the 2nd Respondent into the office of governor of Sokoto State on the ground that the Petitioner and its governorship candidate at the 2015 general election were validly nominated but were unlawfully excluded from the election by the 1st Respondent. It was struck out after the petition was withdrawn by the Petitioner.

Also stuck out was between *Mega Progressive People's Party & Anor v. INEC & 2 Ors*[164] because the party decided to withdraw the petition. The remaining four petitions went into full trial. At the end of the trial, they were all dismissed by Tribunal for lacking in merit. In dismissing the petition between *Aminu Abubakar & Anor v. Abdussamad Dasuki & 3 Ors*[165], the Tribunal held that:

> "… *any party who wants the Tribunal to make use of his documents must tender the document in Court and explain it by demonstrating in open Court the aspect of his case each of the documents relates to. It is not the place of a judge to retire in the comfort of his chambers to conjecture the aspect of the party's case an exhibit relates to. This will tantamount to a judge descending into the arena…The documents if not demonstrated in open Court amounts to dumping same on the Court as in this case*" [166].

It was further held that it is not the office of counsel (as in this case) to attempt to explain the purpose for which a document was tendered in evidence in his final address. This will also amount to counsel giving evidence in a matter he is conducting and in the view of the Tribunal, this is not advisable.

Also, in *Bello Yahaya Wurno & Anor v. Kabiru Marafa Achida & 4 Ors*[167] where the Petitioner challenged the return of the 1st Respondent as the winner of the House of Representatives for Wurno/Rabah Federal Constituency of Sokoto State on the grounds that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act. Particulars of these grounds were that in some polling units in Rabah Local Government, supporters of the 1st and 2nd Respondents snatched away the ballot boxes that were used in the election and ran away with them; yet the results for these polling units were not cancelled but entered by the 3rd Respondent contrary to the mandatory provisions

[163] Petition number EPT/SO/GOV/1/15.
[164] Petition number EPT/SO/SEN/4/15.
[165] Petition number EPT/SO/HR/2/2015.
[166] See page 40 of the CTC of the judgment in petition number EPT/SO/HR/2/2015, unreported.
[167] Petition number EPT/SO/HR/1/2015.

of the 3rd Respondent's manual for election officials 2015 and the Electoral Act 2010. In dismissing the petition, the Tribunal held that the removal of the result of the election in 2 polling units out of 210 polling units in the Wurno/Rabah Federal Constituency will not substantially affect the outcome of the entire election in the Constituency[168].

In Taraba State, twenty-three petitions were filed before the Election Tribunals sitting in the State. These petitions comprise one governorship petition, five senatorial, four House Representatives and thirteen State House of Assembly election petitions. The Governorship Tribunal was later moved to Abuja for security reasons.

In *Adi Byewi Salihu & APC v. Shiddi Usman Danjuma & Ors*[169]*,* the Petitioners challenged the return of the 1st Respondent as the winner of Wukari/Ibbi Federal constituency. The petition was dismissed by the Tribunal on 29th June, 2015 for being null and void *ab initi*o as it was signed by an unnamed and unidentified person having regard to the express and mandatory provisions of paragraphs 4 (3) (b) of the First Schedule to the Electoral Act. The Tribunal also dismissed the petition between *Waziri Salihu Mamman & Anor v. Sen. Emmanuel Bwacha & 4 Ors*[170] where the Petitioner challenged the return of the 1st Respondent for Taraba South Senatorial zone. The petition was dismissed on 29th June, 2015 on the same grounds as the Salihu case.

The Tribunal upheld the following petitions and ordered INEC to conduct fresh elections in some affected polling units within 90 days to determine the real winner. These include the following petitions: *Sanusi Usman J. & Anor v INEC & 2 Ors*[171]; *Tanimu Moh'd Danlele & Anor v Josiah John Aji & 2 Ors*[172]*; Emmanuel Bongo & Anor v. INEC & 2 Ors*[173]; *Ibrahim T. El-Sudi & Anor v. INEC & 2 Ors*[174]; and *Sani Ali & Anor v. INEC & 2 Ors*[175]*.*

[168] See page 43 of the CTC of the judgment in petition number EPT/SO/HR/1/2015, unreported.
[169] Petition number EPT/TRS/NA/HR/5/2015.
[170] Petition number EPT/TRS/NA/SEN/7/2015.
[171] Petition number EPT/TRS/SHA/14/2015.
[172] Petition number PT/TRS/SHA/22/2015. However, the petition had earlier being struck out for being incompetent but that decision was reversed on appeal to the Court of Appeal and the Tribunal mandated to finish the trial.
[173] Petition number EPT/TRS/TRA/SHA/15/2015.
[174] Petition number EPT/TRS/NA/HR/02/2015.
[175] Petition number EPT/TRS/NA/SEN/1/2015; conduct of elections did not comply with the Electoral Act leading to null and void election in some local governments and as such, the elections were inconclusive.

In *Yusuf Abubakar Yusuf & Anor v. INEC & 2 Ors*[176], the Tribunal upheld the petition and directed INEC to issue a certificate of return to the Petitioner as the person duly elected to represent Taraba Central Senatorial District in the National Assembly. The decision was anchored on the fact that the Petitioner scored the majority of lawful votes at the election contrary to the INEC declaration in favour of the 3rd Respondent. The Tribunal also annulled the election of Darius Ishaku as the governor of Taraba State and declared the candidate of the APC, Senator Jummai Alhassan as the winner of the April 12, 2015 governorship election[177]. The Chairman of the Tribunal, Justice Danladi, relying on the report of INEC ruled that Governor Ishaku was not properly nominated as the candidate of the PDP for the governorship election; that the PDP didn't conduct any primary election for the Taraba State Governorship Election. The Tribunal then returned Senator Alhassan of APC as the duly elected Governor of Taraba State, having secured the second highest number of votes during the election.

Three petitions were filed before the Yobe State Election Tribunals sitting in Abuja. The Tribunal was relocated to Abuja because of the activities of Boko Haram terrorist group in the State. These petitions comprise of one House of Representatives, one State House Assembly and one Governorship election petitions.

In *Alhaji Adamu Maina Waziri (OFR) & Anor. v Alhaji Ibrahim Gaidam & 4 Ors*[178], the Petitioner challenged the return of the Respondent on the ground that it did not comply with the provisions of the Electoral Act, over voting, rigging and non-compliance with the card reader, electoral violence and bribery. In delivering the judgment, the Tribunal held that the breach complained of was so slight and did not fundamentally affect the outcome of the election. The Tribunal further held (adopting the opinion in *PDP & Anor v. INEC & 2 Ors*[179]) that irregularities at an election which are neither the act of the candidate nor linked to him cannot affect his election. Therefore, an elected candidate cannot have his election nullified on the ground of corruption or any other irregularities committed in the process of the election unless it can be proved that the candidate expressly authorised the illegality.[180] It was further held that elections are hardly ever concluded without some minor irregularities. No matter how well the regulatory authority conducts an

[176] Petition number EPT/TRS/NA/SEN/3/2015.
[177] http://www.premiumtimesng.com/news/headlines/192775-tribunal-sacks-another-pdp-governor-declares-mama-taraba-winner.htm.
[178] Petition number EPT/YB/GOV/01/2015.
[179] 2012, LPELR 7871, per Alagoa JCA.
[180] See page 70 para.3 of the CTC of judgment unreported. See also the case *of PDP & Anor v INEC & 2 Ors,* 2012 LPELR 7871 per Alagoa JCA

election, there are bound to be pockets of complaints and that explains the inclusion of section 139 (1) in the Electoral Act.

If the position of the law is that "elected candidate cannot have his election nullified on the ground of corruption or any other irregularities committed in the process of the election unless it can be proved that the candidate expressly authorised the illegality", it amounts to absurdity and a position antithetical to common sense on the ground that all a respondent needs to do is to distort the electoral process and deny any links with the agents he commissioned to distort the process and put the petitioners to the strictest proof of the matter. The test should be whether the distortion in the electoral process was enough to fundamentally affect the outcome of the election and to distort the votes cast by the electorate. Whoever is responsible for the distortion has no bearing on whether the will of the electorate has been reflected.

In *Hon. Ali Yakubu & Anor v. Sabo Garba & 2 Ors*[181], the Petitioners challenged the return of the 1st Respondent as winner for Nengere/Potiskum Federal Constituency on the grounds *inter alia* that the 1st Respondent Sabo Garba, who was sponsored by the 2nd Respondent (PDP) as at the date of election conducted on 28th March 2015 was not qualified to contest the election into the House of Representatives of the Federal Republic of Nigeria. The particulars of these grounds were to the effect that the 1st Respondent did not possess the minimum educational qualification under the 1999 Constitution to contest the election; and that the 1st Respondent presented forged certificates to INEC. The Tribunal while upholding the petition held that when a political party decides to field a candidate who does not possess the legally required qualifications, the political party does so at its own peril. The Tribunal further held as follows:

> "*Consequently, the 1st Respondent is ordered to vacate his seat as the Representative for Nengere/Potiskum Federal Constituency in the House of Representatives of the Federal Republic of Nigeria.. In the light of the above, the 1st Petitioner is hereby ordered declared and returned as winner of the House of Representatives election for Nengere/Potiskum Federal Constituency of Yobe State held on the 28th and 29th March 2015 having scored the next majority of lawful votes cast at the election, the 1st Respondent having been adjudged not qualified to have contested the said election. It is further ordered that the 3rd Respondent issues the 1st Petitioner with a Certificate of Return as duly elected member for the aforesaid Nengere/Potiskum Federal Constituency of Yobe State"*[182].

[181] Petition number EPT/YB/REP/01/2015.
[182] See page 54-55 of CTC of the judgment in petition number EPT/YB/REP/01/2015, unreported.

Similarly, the Tribunal upheld the petition between *Hon. Ishaka Sanni Audu & Anor v. Audu Maisarari Babale & 2 Ors*[183]. The Petitioners had brought this petition on the grounds that 1st Respondent was not duly elected by majority of lawful votes cast; that 1st Respondent's election was invalid due to corrupt practices and non-compliance with Electoral Act 2010. The Tribunal held that the 1st Petitioner proved that he was the winner and duly elected member of the Yobe State House of Assembly Representing Goya/Ngeji State Constituency with the highest number of lawful votes that is 11,303 as against the 1st Respondent who scored 11,158 votes.

A total number of four petitions were filed before the Election Tribunals sitting in Zamfara State. These petitions comprise of two governorship petitions and two State House of Assembly election petitions. At the end of the trials, the Tribunals dismissed all the petitions for lacking in merit.

[183] Petition number EPT/YB/REP/02/2015.

Chapter Five

APPEALS

5.1 THE APPEAL PROCESS

This Chapter deals specifically with appeals from decisions of Tribunals to the Court of Appeal and Supreme Court. Gubernatorial appeals end at the Supreme Court whilst appeals from National and State House of Assembly elections end at the Court of Appeal.

5.2 GUBERNATORIAL APPEALS

In Zamfara State, the Court of Appeal dismissed an appeal filed by the candidate of the PDP challenging the decision of the Governorship Election Tribunal that dismissed his petition[184]. The Court of Appeal dismissed the appeal for lack of merit and affirmed the judgment of the Tribunal[185]. The Appellant, not satisfied with the decision of the Court of Appeal, appealed to the Supreme Court in *Mahmud Aliyu Shinkafi & PDP v. Abdul Azeez Abubakar Yari*[186]. The Supreme Court on the 22nd January, 2016 dismissed the appeal for lacking in merit. The issue that was germane to the entire appeal was "whether it can be said that the 2nd Respondent did not duly sponsor the 1st Respondent in his election as the Governor of Zamfara State".

It was the contention of the Appellant that the 1st and 2nd Respondents failed to comply with the mandatory provisions of section 85, 87 and 141 of the Electoral Act in that the primary election conducted by the 2nd Respondent (APC) on the 4/12/2014 contravened the provisions of section 85 of the said Act since the 2nd Respondent had not given to INEC, at least 21 days notice before their congress in the process of its primary election. That the implication of the default is that the declared winner of the general election has not satisfied the provisions of section 177 (c) of the 1999 Constitution and was therefore not qualified to contest the election as it cannot be said that such a candidate had gone through all the stages of the election under section 141 of the Electoral Act to be declared winner. However, the 1st and 2nd Respondents disagreed with the position of the Appellants contending that nothing in the provisions of sections 85, 87 and 141 of the Electoral Act prescribed qualification for a candidate at general election to be conducted by INEC. That the essence of notice under section 85 of the Electoral Act is to enable INEC exercise its authority to monitor the conduct of political

[184] It was petition number EPT/ZMS/GOV/2/2015 at the Tribunal.
[185] Appeal No. EPT/CA/S/GOV/005/2015.
[186] Appeal No: SC.907/2015.

parties as it relates to congresses, conventions, meetings and conferences convened for the purpose of electing members of its executive committee or nominating candidates for any of the offices specified under the Act. By section 86 of the said Act, the punishment for failure of such notice and the sanction is a levy of fine on the conviction of any offending party and not a disqualification of a particular candidate leading to the nullification of such an election or the declaration of the next as the proper winner.

The concurring judgment delivered by Mary Ukaego Peter-Odili, JSC, held that the matter of primary election of the 2nd Respondent upon which it presented its candidate to the 3rd Respondent is not an action that comes within the purview of whether or not the 1st Respondent is qualified to contest the general election or not as provided for under sections 177 and 182 of the Constitution. It further held as follows:

> "*From the above, it is easy to see that the questioning of whether or not the notice within 21 days to the INEC was done by 2nd Respondent is not a matter to be raised by the appellants as they are strangers who cannot come from outside the political party to question what they had done within their domestic affairs. In that light and fuller and better reasoning in the lead judgment, I see no merit in this appeal which I dismiss*".[187]

In *Alhaji Mohammed Inuwa Yahaya & Anor v Alhaji Ibrahim Hassan Dakwanbo & 2 Ors*[188], the Supreme Court dismissed the appeal of the candidate of the APC in the gubernatorial election of Gombe State. On the question of what a petitioner who alleges over voting must plead and prove, the Court held that:

> *To prove over-voting, a petitioner must plead and tender in evidence the Register of Voters relevant to the election in issue. It is not enough for a petitioner in an election petition to allege over-voting. He has the duty to prove same. To discharge that responsibility, the law requires the petitioner to do the following:*
>
> *(a) Tender the voters' register;*
>
> *(b) Tender the statement of result in the appropriate Forms which show the number of registered accredited voters and number of actual votes;*
>
> *(c) Relate each of the documents to the specific area of his case in respect of which the document are tendered;*
>
> *(d) Show that the figure representing the over-voting if removed would result in victory for the petitioner*

[187] Per Mary Peter-Odili JSC concurrent judgment at page 22 of the CTC of the judgment in appeal No SC.907/2015, unreported.
[188] [2016] 7 N.W.L.R. Part 1511, page 284; S.C.979/2015

Over-voting can only be demonstrated clearly where the number of accredited voters is less than the number of voters or votes cast. It is not enough for the petitioner to allege and prove over-voting. In addition to the above, the petitioner must show that the said over-voting inured to the winner of the election in particular as the over-voting can be for any of the candidates in the election, respondent or any of the other contestants in the election in question. The court must also be satisfied that it was due to the over-voting traceable to the respondent that the respondent won the election. In the instant case, the appellants did not satisfy any of the requirements. In fact the case of the appellants was that there was no accreditation, polling unit by polling unit, and that any data produced by the 3rd respondent to show accreditation was falsified. However there was evidence of accreditation as contained in exhibit "AN".

Once the number of people that voted is less than the number of persons accredited as was the case in the Governorship election in Gombe State, over-voting becomes a non-issue"[189]

The Supreme Court upheld the outcome of the April 11, 2015, governorship election that produced Governor Darius Ishaku of the PDP. A seven-man panel of Justices of the Supreme Court, in a unanimous judgment, in *Aisha Jummai Alahassan & Anor v. Mr. Darius Dickson Ishaku & Ors*[190] dismissed the appeal brought by Senator Aisha Jumai Alhassan of the APC. Justice Bode Rhodes-Vivour who delivered the lead judgment, affirmed the earlier judgment of the Abuja Division of the Court of Appeal which declared Governor Ishaku as the valid winner of the gubernatorial contest and held that:

"*I am of the firm view that there is no merit in this appeal and it is hereby dismissed. The Judgment of the Court of Appeal is affirmed and the election of Governor Darius Ishaku is hereby upheld*"[191]

The Appellant's counsel formulated *inter alia* the following grounds of appeal: Having regard to section 137 of the Electoral Act, 2010 (as amended) whether Appellants did not have the *locus standi* to challenge the non-qualification of the 1st Respondent for sponsorship as required under section 177(c) of the Constitution: Whether the Court of Appeal properly construed section 177 (c) of the Constitution with regards to sponsorship for governorship election in the face of undisputed evidence of PW2 and exhibit A57 to the effect that 2nd Respondent did not conduct any primary election to entitle them to sponsor the 1st Respondent in the April 11, 2015 election to the Office of Governor of Taraba

[189] Supra at pages 288-289.
[190] SC.46/2016 (Consolidated).
[191] http://www.vanguardngr.com/2016/02/breaking-taraba-poll-supreme-court-upholds-gov-ishakus-election

State as required under section 87 (4) of the Electoral Act, 2010. And whether Section 87(9) of the Electoral Act was rightly invoked by the Court of Appeal in determining the petitioners ground of non-qualification of the 1st Respondent to contest the Taraba State Governorship Election of 11th and 25th April, 2015.

Alhassan, who is currently the Minister of Women Affairs, had prayed the Supreme Court to set aside the verdict of the Abuja Division of the Court of Appeal which earlier upheld governor Ishaku's election. It will be recalled that the Court of Appeal had on December 31, 2015, reversed the judgment of the Taraba State Governorship Election Petition Tribunal which nullified Ishaku's election. In voiding the decision of the Tribunal, a five-man panel of Justices of the appellate court, held that Ishaku, validly won the governorship contest. It maintained that the Justice Musa Danladi Abubakar led Tribunal, "grossly misdirected itself", when it not only nullified governor Ishaku's election, but went ahead to declare the APC candidate winner. Justice Abdul Aboki who read the lead judgment, said the Tribunal acted outside its jurisdiction when it invalidated Ishaku's election on the premise that he was not validly nominated by the PDP. The Appeal Court stressed that the issue of nomination of a candidate by a political party "is clearly a pre-election matter which no tribunal has the jurisdiction to entertain". According to the court, neither the APC nor its candidate, Alhassan, had the requisite *locus-standi* to query the outcome of the PDP governorship primary election that produced Ishaku. It emphasised that under section 87(9) of the Electoral Act, only those that participated in the said PDP primary election have the statutory right to challenge its outcome at the Federal High Court or State High Court. The appellate court said the contention whether the PDP rightly or wrongly conducted its governorship primary election, did not fall within matters that could be entertained by an Election Petition Tribunal[192].

In Ebonyi State, the Supreme Court upheld the election of Chief Dave Umahi as the governor of Ebonyi State in *Edward Nkwegu Okereke v. Nweze David Umahi & Ors*[193]. The Court presided over by the Chief Justice of Nigeria, Justice Mahmud Mohammed dismissed the appeal filed by the Labour Party's gubernatorial candidate, Chief Edward Nkwegu and later gave reasons for its judgement on February 5, 2016. It will be recalled that the Court of Appeal sitting in Enugu had earlier upheld the election of Dave Umahi. Chief Edward Nkwegu had challenged

[192] The Supreme Court held that evidence adduced which is at variance with the pleadings ought to have been discountenanced by the Tribunal as parties are bound by their pleadings. Consequently, the evidence adduced by the Appellant that the 1st Respondent was not sponsored by PDP ought to have been rejected by the Tribunal.
[193] SC.1004/2015

the declaration of Dave Umahi as winner of April 11 governorship election by INEC. The Ebonyi State Governorship Election Tribunal had on October 2015 in Abakaliki dismissed the petition filed for lacking in merit and the inability of the Petitioner to prove allegations of corrupt practices and criminalities as contained in the petition. Chief Edward Nkwegu, dissatisfied with the judgment of the Tribunal, proceeded to the Court of Appeal in Enugu to challenge the verdict.

The Supreme Court stated:

> *"Prior to the authorisation of its use by the Guidelines and Manual (supra), the Electoral Act, 2010 (as amended), in Sections 49 (1) and (2), had ordained an analogue procedure for the accreditation process. As a corollary to the procedure outline above, the Act, in Section 53 (2), enshrines the consequences for the breach, negation or violation of the accreditation procedure in Section 49 (supra). With the advantage of hindsight, INEC, pursuant to its powers under the said Electoral Act, authorised the deployment of the said Card Readers.*
>
> *Even with the introduction of the said device, that is, the Card Reader Machine, the National Assembly, in its wisdom, did not deem it necessary to bowdlerise, or even amend, Section 49 (supra) from the Electoral Act so that the Card Reader procedure would be the sole determinant of a valid accreditation process. Contrariwise, from the Corrigendum No 2, made on March 28, 2015, amending paragraph 13 (b) of the Approved Guidelines, it stands to reason that the Card Reader was meant to supplement the Voters Register and was never designed or intended to supplant, displace or supersede it. Indeed, since the Guidelines and Manual (supra), which authorised the use and deployment of the electronic Card Reader Machine, were made in exercise of the powers conferred by the Electoral Act, the said Card Reader cannot, logically, depose or dethrone the Voters' Register whose Juridical roots dare, firmly, embedded or entrenched in the selfsame Electoral Act from which it (the Voters Register), directly, derives its sustenance and currency. Thus, any attempt to invest it (the Card Reader Machine procedure) with such overarching pre-eminence or superiority over the Voters Register is like converting an auxiliary procedure-into the dominant method procedure of proof, that is, proof of accreditation. This is a logical impossibility.*
> Per NWEZE, J.S.C. (Pp. 36-38, Paras. C-A)

The Supreme Court further held:

> "*Documentary evidence relied upon by a party must be specifically linked to the aspect of his case to which it relates. A party cannot dump a bundle of documentary evidence on a Court or Tribunal and expect the Court to conduct an independent enquiry to provide the link in the recess of its chambers. This would no doubt amount to a breach of the principle of fair hearing. See: Ucha v. Elechi (supra): Iniama vs. Akpabio (2012) 17 NWLR (pt.1116) 255 @ 299 D - F: Awuse*

Vs. Odili (2005) 16 NWLR (Pt.952) 416; A.N.P.P. V. INEC (2010) 13 NWLR (Pt.1212) 549". Per NWEZE, J.S.C. (Pp. 54-55, Paras. E-A)

In Akwa Ibom State, the Court of Appeal sitting in Abuja sacked governor Emmanuel Udom. In delivering its judgement on the conduct of the governorship election in Akwa Ibom, the five-member panel upheld the petition of the candidate of the APC, agreeing that the election of Governor Emmanuel Udom of the PDP did not conform to the Electoral Act. The court therefore annulled the election, re-asserting the importance of card readers and affirming that the election was marred by over-voting. The Court ordered a re-run of the election across the state within 90 days.

However, the appellant appealed to the Supreme Court, the Court while allowing the appeal in *Udom Gabriel Emmanuel v. Umana Okon Umana & 5 Ors*[194], held that Card Reader report on accreditation was not the ultimate determinant of the total number of accredited voters. On the value and significance of the card reader, the Supreme Court adopted the reasoning in *Edward Nkwegu Okereke v. Nweze David Umahi & Ors*[195] to arrive at its decisions.

The Court of Appeal had removed Okezie Ikpeazu of the PDP as governor of Abia State and declared Alex Otti of the All Progressives Grand Alliance the winner of the April 11 and April 25 supplementary elections in the state. Delivering judgment in an appeal filed by Mr. Otti, the five-member panel of the Court of Appeal headed by Justice Oyebisi Omoleye, said the APGA candidate scored 164, 444 valid votes to defeat Mr. Ikpeazu who scored 114, 444 votes. The Court said the cancellation of the elections held in three LGAs of Obingwa, Osisioma Ngwa and Isiala Ngwa by the returning officers after the results were uploaded to INEC was wrong. However, an appeal to the Supreme Court by the appellant in *Okezie Victor Ikpeazu v. Alex Otti & 3 Ors*[196], the apex court allowed the appeal and upheld the appellant's election and stated **as** follows:

"*Where a petitioner seeks to prove that there was over voting in the election in which he participated, he would succeed if he is able to show that the number of votes exceeds the number of would be voters in the voter register. If the petitioner decides to rely on Card Reader Report as in this case to show that the number of votes exceeds the number of voters recorded by the card reader but less than would be voters on the voters register, he would fail. That explains the plight of the petitioner in this petition/appeal. The card reader may be the only authentic document if and only if the National Assembly amends the Electoral Act to provide*

[194] See SC.1/2016
[195] SC.1004/2015
[196] (2016) LPELR-40055(SC); Suit no. SC.18/2016. It is also found in 2016 8 NWLR, Part 1513.

for card readers. It is only then that card readers would be relevant for nullifying elections."[197]

The Supreme Court further stated:

"As earlier stated, I may have to revisit Haruna v. Modibo (supra) and the two latest decisions of this Court, particularly in unreported Appeal N0: SC907/2015 - Mahmud Aliyu Shinkafi & Anor v. Abdulazeez Abubakar Yari & 2 Ors; delivered on 8th January, 2016, where at page 24 - 30, this Court held as follows:-"Learned Senior Counsel for the appellant submitted that although it is the law that to prove over-voting, the petitioner must tender voter's register, tender statement of results in the appropriate forms, relate each of the documents to the specific areas of its case, the usage of card reader has taken away the burden placed on the petitioner as stated above. According to him, the cases of Haruna v Modibo (2014) 16 NWLR (Pt. 900) 48 ... which were decided before the introduction of accreditation of voters via Card Reader Machines are no longer good law on how to prove over-voting.....To prove over-voting, the law is trite that the petitioner must do the following:-1. Tender the voter's register.2. Tender the statement of results in the appropriate forms which would show the number of accredited voters and number of actual votes.3. Relate each of the documents to the specific area of his case in respect of which the documents are tendered.4. Show that the figure representing the over-voting, if removed, would result in victory for the petitioner.....However, Learned Silk opines that with the introduction of the Card Reader Machines, it would no longer be necessary to tender voters register and other steps set out earlier.... My view on this is that the principle of law that is well established cannot be abolished simply because an appellant failed to prove his case in accordance with those principles. My understanding of the function of the Card Reader Machine is to authenticate the owner of a voter's card and to prevent multiple voting by a voter. I am not aware that the Card Reader Machine has replaced the voters register or taken the place of statement of results, in appropriate form." I cannot embellish or improve on the foregoing obvious and firm statement of the law as to the function of the Card Reader Machines in the scheme of our electoral process. This Court has spoken. The controversy has now been finally laid to rest." Per Galadima, J.S.C. (Pp. 37-39, Paras. E-D).

Where in an election petition, the petitioner makes an allegation of a 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. " Per Galadima, J.S.C. (Pp. 16-17, Paras. B-A)

[197] See Per Rhodes-Vivour, J.S.C. (Pp. 64-65, Paras. D-A) in Judgment in SC.18/2016 reported in (2016) LPELR-40055(SC)

In Rivers State, the Court of Appeal sitting in Abuja dismissed the appeal filed by Governor Nyeson Wike and ordered fresh election within 90 days. However, further appeal to the Supreme Court was allowed in *Wike Ezenwo Nyesom v. Hon. (Dr.) Dakuku Adol Peterside & Ors*[198]*.* In allowing the appeal, the Supreme Court held that the use of the Card Reader has not done away with manual accreditation provided for in Section 49 of the Act; that the inclusion of (as grounds for the petition) non-compliance with the Manual for Election Officials 2015 as well as INEC'S 2015 General Elections Approved Guidelines in the circumstances of this case upon which the Tribunal relied on in giving its judgment was improper. Consequently, the Supreme Court set aside both the judgments of Tribunal and Court of Appeal.[199] The Court held that:

> *Section 139 (1) of the Electoral Act, 2010 (as amended) provides:"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 the Act and that the non-compliance did not substantially affect the result of the election". Where a petitioner complains of non-compliance with the provisions of the Act, he has an onerous task, for, he must prove it polling unit by polling unit, ward by ward and the standard of proof is on the balance of probabilities. He must show figures that the adverse party was credited with as a result of the non-compliance e.g. Forms EC8A, election materials not signed/stamped by Presiding Officers. It is only then that the respondents are to lead evidence in rebuttal. See: Ucha v. Elechi (2012) 13 NWLR (Pt.1317) 330 @ 359 E - G." Per Kekere-Ekun, J.S.C. (P. 77, Paras. A-E)*
>
> *"As held by this court, the INEC directives, Guidelines and Manual cannot be elevated above the provisions of the Electoral Act so as to eliminate manual accreditation of voters. This will remain so until INEC takes steps to have the necessary amendments made to bring the usage of the Card Reader within the ambit of the substantive Electoral Act." Per Kekere-Ekun, J.S.C. (P. 63, Paras. C-D)*

In part of the reasoning grounding the decision, the Court stated as follows:

> *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*

[198] SC.1002/2015 reported in [2016] 7 NWLR PART 1512 at page 452.
[199] See the judgment in Appeal No: SC.1002/2015 delivered in on Friday, the 12th day of February, 2016.

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:-An act or 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". Per Aka'ahs, J.S.C. (Pp. 106-107, Paras. E-B)

In Ogun State, the Court of Appeal sitting in Ibadan upheld the judgment of the Governorship Election Tribunal delivered on October 23, 2015 in Abeokuta which upheld the victory of Governor Ibikunle Amosun of Ogun State. The five-man panel of the Appeal Court headed by Justice H.M Ogunjimiju unanimously upheld Amosun's victory and dismissed the appeal filed by Mr. Adegboyega Isiaka of PDP. The Court held that Mr Benjamin Ibikunle, the principal witness, PW9, for the appellant was not a credible witness, adding that his testimony could not be relied on by the Court. That the evidence of PW9 was biased and could not be given any probative value because he informed the court that he was a member of PDP and could go to any length to ensure victory for his party. It was further held that the report of the witness was inconsistent and that there was no doubt that he did not take part in the inspection of the electoral materials. The witness indicated to the court that he was not an expert while his testimony indicated the opinion of an expert. The Court also held that there was no place that the number of voters exceeded the number of those accredited and that the election complied with the provisions of the Electoral Act. Consequently, the appeal was dismissed for lack of merit.

The Appellant not satisfied with the decision of the Court, further appealed to the Supreme Court. In dismissing the appeal, the Supreme Court held that the appellant failed to prove his allegations that the conduct of the election won by the candidate of the APC, Ibikunle Amosun, did not comply with the Electoral Act and was marred by malpractices. It further held that that the Tribunal and the Court of Appeal, Ibadan were right to have earlier upheld Amosu's election. Justice Akaahs who read the lead judgment held that the appellant was unable to lead sufficient evidence to substantiate his allegation that elections in Ifo, Abeokuta-North, Abeokuta South, Odeda, Ewekoro, Obafemi-Owode, Ado/Odo/Ota, Sagamu and Remo-North Local government areas were marred by irregularities, malpractices and non-compliance with electoral guidelines. And that the appeal was bound to fail on account of inconsistencies in the report of inspection of electoral materials tendered by the star witness of the appellants and the inadmissibility of the said document.

In Imo State, the Supreme Court upheld the election of Governor Rochas Okorocha. The Court in a unanimous judgment dismissed the appeal filed by Ihedioha, who was the candidate of the PDP in the election held on April 11 2015.

Okorocha was the candidate of the APC. A full Court Panel led by Hon. Justice John Fabiyi J.S.C, affirmed an earlier judgment by the Court of Appeal, Owerri, which held that Ihedioha's failure to properly serve Okorocha and his party robbed the appellate court the jurisdiction to hear the case. The Supreme Court held that the appellant's failure to indicate, in the appeal processes the addresses of other Respondents was fatal to the case. The Court consequently dismissed the appeal for lacking in merit. The Imo State Governorship Election Tribunal had, in a ruling on July 22, 2015 dismissed Appellant's petition against Okorocha's victory on on the ground that it was incompetent. The Court of Appeal, Owerri dismissed the appeal in its judgment delivered on September 3, 2015, prompting the PDP candidate to appeal to the Supreme Court.

Also in Oyo State, the Supreme Court dismissed the appeal filed by governorship candidate of Accord Party in Oyo State. Hon. Justice Clara Bata Ogunbiyi J.S.C who read the lead judgment in the case held that:

> "*I have read all the processes filed in this appeal. I have also considered all the arguments by parties. I dismiss the appeal.*"

In Yobe State, the Supreme Court dismissed the appeal challenging the election of Ibrahim Geidam as Governor of Yobe State. The Apex Court upheld the decisions of both Tribunal and Court of Appeal. The Court of Appeal also upheld the verdict of the Governorship Election Tribunal which affirmed the qualification and election of Samuel Ortom as Governor of Benue State. The governorship candidate of the PDP had asked the Court to reverse the Tribunal's judgement and declare him winner of the April governorship election in the state. He said that the Tribunal erred in its judgment as Mr. Ortom was not qualified to contest in the election. He said Mr. Ortom was not validly nominated by the APC to stand for the election. He sought a declaration for the appellate Court to set aside the Tribunal's judgement which had dismissed his petition for lack of merit. Mr. Tarzoor also prayed the Court to direct INEC to declare him the winner of the April governorship poll.

In its defence, the APC insisted that its candidate was validly nominated in conformity with the requirements of the Electoral Act, 2010, adding that the burden of proof rests on the shoulders of the appellants. All parties in the case – APC, PDP, INEC – filed cross appeals and cross appellant appeals challenging certain aspects of the Tribunal's judgment. However, in a unanimous decision delivered by Hon Justice Mohammed Garba, JCA, the court dismissed the appeal in its entirety for lack of merit holding that the Appellants failed to discharge the burden of proof which rested on them, in line with the legal dictum that; "he who

alleges must prove", adding that the lower court was right in dismissing the petition.

On further appeal to the Supreme Court by the Appellants in *Tarzoor v Ioraer*[200], praying the Court to declare him winner of the election, on the grounds that the APC had no candidate in the election; that the winner of that election was not an APC member as at the time he emerged as the party's governorship candidate. While dismissing the appeal, the Supreme Court held on some major issues raised as follows:

> *"On who is a member of political party -*
>
> *A member of a political party is one who is registered with the party as its member, who is issued with its membership card and who fulfils all requirements of membership. Therefore, it is the political party concerned that can state, conclusively, that a person is its member as can be demonstrated by production of its membership register and other relevant documents, if the issue arises.*
>
> *On who can challenge primary election of political party -*
>
> *Primary elections are in-house matters of a political party. By section 87(9)(a) of the Electoral Act,2010 (as amended), a non-member of the party has no locus to raise the issue and no member of the party who was not an aspirant can raise the issue. Only an aspirant at the primary election is permitted by section 87(9) of the Electoral Act, 2010(as amended) to challenge the selection or nomination of a person for an elective office. Apart from an aspirant who took part in the primary election, no other person is authorised to file an action to challenge the selection or nomination of a candidate by a political party for the election. The proper venue for such challenge is the High Court of a State, the Federal High Court or the High Court of the Federal Capital Territory, Abuja, as the party filling the action may chose. In the instant case, the appellant is a member of the Peoples Democratic Party (PDP), not the All Progressive Congress (APC). Even if he were a member of the APC, he would have no locus to challenge the nomination of the 1st respondent as he was not one of the aspirants who participated in the primary election. The appellant, not being a member of the APC, who could not have participated in the party's primary election, could not challenge the nomination of the 1st respondent either before the election tribunal or the High Court of a State, the Federal High Court or the High Court of the Federal Capital Territory.*
>
> *"It has been held in a plethora of cases that nomination of a candidate of a political party for an election is the internal affairs of the political parties over which the courts have no jurisdiction. Also settled is the principle that the only way the courts can get involved in the matters of nomination of candidates of political parties is as provided under section 87(8) or (9) or (10) depending on which*

[200] [2016] 3 NWLR (Part 1500) 463.

version of the Electoral Act, 2010, as amended , one is using, and that only a candidate who participated in the primary election or contests in the processes leading to the emergence of a candidate of the party for the election, has the locus standi to invoke the jurisdiction so conferred on the courts to challenge the said nomination. It is not every or any other member of the political party concerned that has the locus standi to do so. The position of a person who is not a member of the political party concerned is the same. In fact, he is a busy body. Appellant in this case is not a member of 2nd respondent neither did he participate in the processes that resulted in the emergence of 1st respondent as a consensus candidate of the 2nd respondent for that election. Even if appellant were to have the locus, the proper venue for the challenge is the Federal, State or Federal Capital Territory High Courts, the matter being a pre-election matter, which must be filed before the conduct of the election in issue. It is not the subject for an election tribunal. It is very clear from the above that appellant failed to establish that 1st respondent was not qualified to contest the election of 11th April,2015 under the provisions of section 177 of the Constitution of the Federal Republic of Nigeria, 1999(as amended)."

On when court can entertain issue of conduct of primary election-

Courts have no jurisdiction to dabble into the issue of nomination of candidate for an election by a political party. The political party always has the unfettered prerogative to conduct its primary election without any change, except under the exceptions provided in section 87(4)(b)(ii), (c)(ii) and (9) of the Electoral Act, 2010 (as amended). For instance, courts have jurisdiction to examine if the primary election was conducted in accordance with the party's constitution and guidelines.

On burden of proof of conduct of primary election-

The burden of proving that a conclusive primary election took place is on the party who asserts that a conclusive primary election took place. There is a distinction between legal burden of proof and evidential burden of proof. Whereas legal burden of proof remains throughout on the claimant to establish his case otherwise he loses his claim, the evidential burden of proof in a case fought on the pleadings rest on the party who asserts in the affirmative and shifts depending on the pleadings of the parties at each turn. The burden of proof rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. It is fixed at the beginning of the trial by the state of the pleadings and it is settled as a question of law, remaining unchanged throughout the trial exactly where the pleading place it and never shifting in any circumstances whatever. If when all the evidence, by whomsoever introduced, is in, the party who has the burden has not discharged it, the decision must be against him".

The case of *All Progressive Grand Alliance v Alhaji Umaru Tanko Al-Makura & 3 Ors*[201] arose from the Nasarawa State gubernatorial election. In unanimously dismissing the appeal, the Supreme Court held *inter alia* as follows:

> *"On duty of party to relate documents he tendered to specific areas of his case-*
>
> *The prescription that parties have a duty to link their documents with their averments in their pleadings rests on the adversarial nature of Nigeria jurisprudence which was inherited from the common law. Therefore, it is the impregnable juridical postulate of Nigerian adversarial jurisprudence that prohibits a judge from embarking on an inquisitorial examination of documents outside the courtroom. A fortiori, it is anathema for a Judge to be allowed to act on what he discovered from such a document in relation to an issue when that was not supported by evidence or was not brought to the notice of the parties to be agitated in the usual adversarial procedure. It is against this background that viva voce depositions and entries in documents and assertions relating to entries in such documents in electoral materials are invariably tested under cross-examination. This is more so in cases which involve mathematical calculations of deductions and additions. It would amount to failure of justice for a court to base its judgment on ex curiae arithmetical deductions and additions which were not subject to cross-examination. It is not the duty of the Judge to sit down ex curiae and attempt to sort out the case of any party. On the contrary, it is the duty of the party to elicit such evidence in court through its witnesses especially where various documents are involved. That done, he would sit back for such evidence to be either tested in cross-examination or for his adversary to debunk such testimony by fresh contrary evidence. This must be so for no court would spend precious judicial time linking documents to specific areas of a party's case. In other words, it is the duty of the party to relate each document to the specific area of his case for which the document was tendered (Ivienagbor v Bazuaye (1999) 9NWLR (Pt.620) 552; Owe v Oshinbanjo (1965) 1All NLR 72; Bornu Holding Co.Ltd v Bogoco (1971) 1All NLR 325, Onibado V Akibu (1982) 7 SC 60, Nwaga v Registered Trustees Recreation Club (2004)FWLR (Pt. 190) 1360; Jalingo v Nyame (1992)3NWLR (Pt.231) 538; Ugochukwu v Co-operative Commercial Bank Co. Ltd (1996)6NWLR (Pt456) 524; …. (Pp.343-344. Para. D-B; 345 paras D-H)*
>
> *Per Rhodes-Vivour, J.S.C. at pages. 352-352-353 paras. E-C:*
>
> *"Documents were tendered from the bar. It is the duty of the party tendering the said documents to relate each documents tendered to the part of the case he intends to prove. Both courts below were correctly of the view that the appellant failed to relate documents tendered to the part of the case he intends to prove. This could be very fatal, and usually is.*
>
> *Indeed in Ucha v. Elechi (2012) 13 NWLR (Pt.1317) p. 330. On dumping of documents I said that:*
>
> *When a party decides to rely on documents to prove his case, there must be a link between the documents and the specific areas of the petition. He must relate*

[201] [2016] 5 N.W.L.R. Part 1505 at page 316

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 ANPP v. I.N.E.C (2010)13NWLR (Pt. 1212)P.549. A Judge is to descend from his heavenly abode, no lower than the tree tops, resolve earthly disputes and return to the Supreme Lord. His duty entails examining the case as presented by the parties in accordance with standards well laid down. Where a Judge abandons that duty and starts looking for irregularities in electoral documents, and investigating documents not properly before him, he would mostly likely be submerged in the dust of the conflict and render a perverse judgment in the process.

Several documents after being admitted in evidence as exhibits were of no evidentiary value as there was no oral evidence to explain why they were tendered. It is the duty of appellant's counsel to link documents tendered to specific areas of the appellant's case, a procedure he failed to follow with obvious consequences."

5.3 LEGISLATIVE APPEALS

Appeals in legislative elections end at the Court of Appeal. In *Olumuyiwa Timothy Olabitan v INEC & Anor*[202], the Court of Appeal was faced *inter alia* with the following issues: issuance of pre-hearing notice - procedure thereof and the effect of the failure of the petitioner to apply within the statutory timeframe. The court held that:

Issuance of pre-hearing notice is a condition precedent to the hearing of any matter relating to election petition pending before any tribunal or court and any non-compliance will automatically strip the tribunal or court of the jurisdiction to hear and determine the petition. This court in the case of Hon. Chief Alexander Sunday Irek v Friday Gabriel Okpechi & Ors CA/C/NAEA/151/2015 in a judgement delivered on 3rd September 2015 (unreported) per Abubakar, JCA thus:

> *Once the time lines defined under the provisions of paragraph 18(1) of the 1st Schedule to the Electoral Act, 2010 as amended expire, application for pre-hearing can no longer be made, the petition will be deemed abandoned and consequently be dismissed.*

The appeal in *Sherifat Hassan & Anor v Agunsoye Ojo & 2 Ors*[203]arose from a petition in which the Appellant sought an order of the legislative Tribunal that the 1st Respondent was not qualified to contest the election on the ground that the notice of the party primaries which produced the 1st Respondent as candidate of the APC, given by the 2nd Respondent to INEC fell short of the mandatory 21 days

[202] [2015] 39 W.R.N.; Volume 39 at page 85.
[203] [2015] 47 W.R.N. 153

vide section 85 (1) of the Electoral Act 2010 as amended. The Petitioner contended that having scored the highest number of lawful votes cast in the election for the Kosofe Federal Constituency of the House of Representatives in Lagos State, amongst all the candidates eligible to contest in the said election, that he be declared the winner. These prayers of the Petitioner were in the context of political party primary that was rescheduled and the notice given to INEC for the rescheduling did not amount to 21 days. Dismissing the appeal, the Court of Appeal held inter alia:

> *It has been settled that in the consideration of a relationship where series of correspondence have been written, it is the duty of the court to consider all the correspondences in order to decipher the relationship, see the case of Udeaga v Benue Cement Co. Plc (2006) NWLR (Pt 965) 600. In the same vein, where more than one document governs a relationship, no single document should be considered in isolation or be the sole determinant. Therefore, any interpretation here must rest on both exhibits, more so the 3rd respondent submitted receipt of both documents.*
>
> *There is no statutory provision barring a political party from rescheduling its primaries so long as the required 21 days notice had been given and is also within timelines set by INEC. The important issue is that 21 days must lapse before any primaries.*

In *Ekweoba Solomon Nwawue v. Vivian Okadigbo & 2 Ors*[204], the petition at the Tribunal was dismissed for failure to comply with paragraph 4 (1) of the 1st Schedule to the Electoral Act which requires that an election petition shall state the holding of the election, the scores of the candidates and the person returned as winner of the election. On appeal to the Court of Appeal, the Court unanimously dismissing the appeal affirmed the position of the Tribunal to the effect that the petition was rightly dismissed for the failure to comply with the mandatory legal provision stated in the said 1st Schedule to the Electoral Act. Since the Appellant prayed to be declared the winner contending that he scored the highest number of lawful votes in the election, he has put the scores in issue and ought to have pleaded them.

In *Mary Ezimdilim Oranye & Anor v Hon Peter Onwusanya & 2 Ors*[205], the Court of Appeal emphasised the need for adherence to the timing stated in the rules of court and held as follows in relation to the timeframe for filing of pre-hearing notice under the 1st Schedule to the Electoral Act 2010:

[204] P2015] 45 W.R.N. at page 69.
[205] 2015 45 W.R.N. at page 169.

> *Once the time stipulated therein expires, no other process distinct from what has been specifically allowed can have any consequence. This is because election petitions have certain peculiar features which make them sui generis. They stand on their own and bound by rules under the law prescribed thereto. Defects or irregularities which in other proceedings are not sufficient to effect the validity of a claim are not so in election petitions. A slight defect in compliance with a procedural step would result in fatal consequences for the petition*[206]*.*

The Court of Appeal sacked 23 House of Assembly members of Rivers State, 3 senators and 7 House of Representatives members and ordered fresh elections within 90 days. In *Wihioka Frank & Anor v Boniface Emerengwa & 3 Ors*[207] while allowing the appeal arising from the House of Representatives election to the Ikwere/Emohua Federal Constituency of Rivers State held inter alia:

On the concept of elections:

> *The concept of elections according to the vintage and evergreen decision in INEC v RAY (2004) 14 NWLR (Pt.892) 92 denotes a process which includes accreditation, voting, collation of votes, recording of details of results and electoral materials on all the relevant INEC forms and the declaration of the results. The collation of all the results of the polling units (FORMS EC8A) making up the wards, local governments and constituencies or district and the declaration of the total results of the election are constituent elements of an election as prescribed and protected by law.*

On the statutory position of INEC:

> *According to the decision in INEC V OSHIOMOLE (2009) 4 NWLR (Pt.1132) 607 at 662, INEC V RAY (Supra) and OKAFOR V INEC (2010) 3 NWLR (Pt. 1180) 1 at 49, it is INEC (3rd Respondent herein) that is in the best position to state if and how an election was conducted in any officially designated unit, ward, local government, district or constituency, etc. Apart from being the only statutory body saddled with the responsibility of conducting the election, it is also the only one that can say how it carried out the said function in any election. In my humble view, whatever INEC says about how it conducted an election in the absence of superior evidence carries more weight than any other account from any other person or party.*
>
> ……..

On onus and standard of proof in civil matters:

[206] Supra, at page 176 of the report.
[207] Suit No. CA/A/EPT/629/2015

I wish to point out that the onus of proof in civil matters including election petitions is not static. It shifts from one side of the matter to the other from time to time as a case goes on and eventually rests on the party who would fail if no further evidence was given on either side. See AWUSE V ODILI 2004 8 NWLR (pt.876) 481.

…..

Where allegations are limited to acts of omission or commission or complaints that are generally civil in nature, the standard is proof on preponderance of evidence or on balance of probabilities. The extent of preponderance has been held to be light and liberal on the petitioner[208]*.*

On the failure of INEC to allow the inspection of election materials:

The failure of INEC to allow for the timeous inspection of the sensitive election materials and its subsequent flagrant and deliberate refusal to produce them upon a sub poena duces tecum duly ordered by the Tribunal and served on it was fatal. The failure of the Tribunal to shift the burden of proof to INEC to prove that it conducted credible elections in the circumstances was even more fatal.

The same lines of reasoning adopted above led to the same conclusions by the Court of Appeal in *Ogbonna Nwuke & Anor v Chief Jerome Amadi Eke & 3 Ors*[209]*. Hon Nname Robinson Ewor & Anor v Hon Betty Apiafi & 6 Ors*[210] was one of the Rivers State legislative petitions upturned on appeal; some interesting points were raised decided by the Court of Appeal inter alia: On the non-joinder of specific security agents alleged to have perpetrated electoral offences:

As to the non-joinder of the specific names of the security agents that were alleged to perpetrate commission of electoral offences as contained in the petition even though their agencies was made party to the petition. The general principle of law which has its roots in the earliest years of the common law is that a master is liable for any wrong even if it is a criminal offence or a tortuous act committed by his servant while acting in the course of his employment. TUBERVIL V. STAMP (1697) 1 Ld. RAYM 264; DYER V. MUNDAY (1895)1QB 742. This is what is known as the doctrine of vicarious liability which is based on the principle of law enunciated by Sir John Holt CJ in HERN V. NICHOLS (c. 1700), 1 Salt 289. See also the case of IFEANYI CHUKWU (Osondu) LTD, V. SALEH BONEH LTD. (2000) 5 NWLR (Pt.656) 322.

On burden of proof:

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[208] *"It is trite that the burden of proof lies on whoever asserts the positive but not negative, where issues are joined by parties, alleging the existence of the fact"; See Reynolds Construction Co. Ltd v Okwejiminor* (2011) 15 NWLR (Pt.715) 87 at 98.
[209] Appeal No: CA/A/EPT/638/2015.
[210] Appeal No: CA/A/EPT/655/2015.

"Burden of proof is twofold. The first is the ability of a Plaintiff to establish and prove the entire or reasonable portion of his case before a Court of Law can give judgment in his favour. This is always constantly on the Plaintiff. The other type is related to particular facts or issues which a party claims exists. It is this burden of proof that oscillates from one party to the other. While the first type of burden of proof is called legal burden or the burden of establishing a case, the second is called the evidential burden[211]."

In the case of UNITED BANK FOR AFRICA PLC. & ANR. V. ALH. BABANGIDA JARGABA (2002) 2 NWLR (Pt. 75) 200, it was held by this Court that the law is that the onus lies on him who affirms and not on him who denies, since by the nature of things, he who denies a fact cannot produce any proof, the maxim being "ei incumbit probatio, qui dicit, non qui negat, cum per rerun naturam factum negantis probation nulla sit."

In line with the above decisions, parties' pleadings and evidence adduced before the lower Tribunal, I am of the strong view that the burden of proving that the election was conducted in accordance with the provisions of the Electoral Act, 2010 (as amended) and the 1st Respondent scored the majority of lawful votes cast in the said election is on the Respondents who asserted the affirmative that the election was duly conducted. The Respondents failed to discharge such burden and their case must fail, having considering the fact that the petitioners alleged the negative and led evidence to that effect.

In Kogi State, the Court of Appeal sitting in Abuja upheld the election of Senator Dino Melaye - *Senator Smart Adeyemi & Anor v Hon Dino Melaye & Ors*[212]. The court in its ruling struck out the appeal filed by Senator, Smart Adeyemi on the ground that it lacked merit. In Kano State, the Court of Appeal sitting in Kaduna upheld the election of former Kano State Governor, Dr. Rabiu Musa Kwankwaso, as the duly elected senator representing Kano Central senatorial district. The Court dismissed the appeals brought before it by Kwankwaso's opponents, Senator Basheer Lado Garba and the Peoples Democratic Party (PDP) for lack of merit.

In Taraba State, the Court of Appeal sitting in Yola upheld the Tribunal's decision that sacked Bashir Marafa of PDP as senator representing Taraba Central Senatorial District. Delivering judgment, the three judges, Jummai Sankey, JCA, Duobele Abraham JCA and Ridwan Maiwada JCA, unanimously agreed the appeal lacked merit and was therefore dismissed. The Court of Appeal also upheld the election of Senator Godswil Akpabio. In Abia State, the Court of Appeal sitting in Owerri upheld the appeal filed by Orji Uzo Kalu against the

[211] Citing with approval Peter Odili JSC in the case of *Nnaemeka Okoye & 6 Ors v Ogugua Nwankwo* (2014) 15 NWLR (Pt. 1429) 93.
[212] Appeal No: CA/A/EPT/610/2015.

judgment of Tribunal that upheld the election of Senator Mao Ohuabunwa and ordered INEC to conduct fresh election within 90 days.

In Delta State, the Court of Appeal sitting in Benin City, Edo State nullified the election of the senator representing Delta Central senatorial district in the Senate, Senator Ighoyota Amori of the PDP. The appellate court declared the senatorial candidate of Labour Party in the March 28 2015 election, Obaisi Ovie Omo-Agege as winner of the election. Delivering the judgment, Justice H. A. Barka in the lead decision, set aside the verdict of the lower Tribunal which upheld the declaration of Senator Amori as winner of the election by INEC. The Court further held that they found Omo-Agege's appeal meritorious[213].

In Anambra State, the Court of Appeal sitting in Enugu nullified the election of Uche Ekwunife as senator representing Anambra Central Senatorial District. The court ordered INEC to conduct fresh election within 90 days to elect a new senator for the senatorial district. Mrs. Ekwunife of the PDP had contested against the Minister of Labour and Productivity, Chris Ngige of the APC and a former National Chairman of the APGA, Victor Umeh, in the March 28 National Assembly election. It will be recalled that the National and State Houses of Assembly Election Tribunal presided over by Justice Nayai Aganaba, had earlier upheld the election of Mrs. Ekwunife. Delivering the lead judgment on the appeal brought by Umeh challenging the judgment of the lower tribunal which earlier upheld Mrs. Ekwunife's election, the Court held that the perverse judgment of the lower tribunal cannot stand and the appeal succeeds.

In Benue State, the Court of Appeal sitting in Makurdi annulled the election of the immediate past Senate President, Senator David Mark. The Court ordered INEC to conduct fresh elections in the Benue South senatorial district within 90 days. Mark's victory at the March 28, National Assembly elections was challenged by Daniel Onjeh of the APC, whose petition prayed for the cancellation of the election and an order detailing INEC to conduct fresh election in the district. The Justice Mosunmola Dipeolu-led trial panel had on October 7, dismissed Onjeh's petition on the ground that evidences tendered before the Tribunal were documentary hearsay evidences. In a unanimous judgment delivered by Hon. Justice Peter Ige JCA, the appellate court dismissed the judgment of the Tribunal and upheld the Appellant's submission that Mark's election failed substantially to meet with the provisions of paragraphs 39 and 40 of the INEC approved electoral guidelines and sections 73 and 74 of the Electoral Act 2010 as amended. The Appeal Court also

[213] http://www.vanguardngr.com/2015/12/delta-central-a-court-sacks-amori-declares-omo-agege-winner/

questioned the failure of the trial court to admit evidences tendered by the appellant to canvass his case and in another instance, referred to the same evidence to arrive at its decision. The Court further held that:

> "*The lower tribunal cannot be seen to blow hot and cold at the same time. The appellant has established his case on the balance of probability. It is our considered view that the appellant's appeal is meritorious and that the appellant showed by oral evidence that collation of results was still ongoing a day after the declaration of results of the election in seven local government areas of the district. INEC is by this judgment to conduct fresh senatorial election in the Benue South district within 90 days."*

In Plateau State, the Court of Appeal sitting in Jos upheld the ruling of the lower Tribunal in the election of Senator J. T. Useni to represent Plateau South Senatorial District in the National Assembly. The Appeal Court in upholding the election of Useni dismissed the application of Senator J. N. Shagaya seeking for extension of time to appeal the judgement of the lower Tribunal. The Court held that the appeal did not meet Rule 7 Order 10 of the appeal Tribunal's direction order; thus the application did not give good reason why it was out of time, neither did it enunciate the reasons for such delay in filing the application.

In Kwara State, the Court of Appeal sitting in Ilorin upheld the election of the senator representing Kwara Central senatorial district in the National Assembly, Senator Bukola Saraki. Justice John Ikwegh who delivered the lead judgment, dismissed the appeal filled by PDP candidate in the election, Alhaji Abdulrahman Abdulrazaq, challenging the electoral victory of Saraki of the APC. The Appellant filed a petition at the legislative Tribunal, challenging the election of Saraki. The Tribunal in its judgment dismissed the petition on the grounds that it was filed out of time as stipulated by the Electoral Act. Dissatisfied with the judgement of the Tribunal, the PDP candidate filed an 11-ground appeal before Court of Appeal. Delivering the judgment, Hon. Justice Ikwegh JCA held that the Petitioner and PDP candidate failed to prove the grounds they sought to rely on. The Court affirmed the Tribunal's judgment.

Chapter Six

THE QUALITY OF JUSTICE

6.1 DEFINING THE ULTIMATE GOAL OF ELECTORAL ADJUDICATION

This Chapter will seek to review key issues and challenges relating to the quality of justice delivered by the Election Petition Tribunals and the appellate Courts. By dispassionately analysing the judgements and the core issues arising therefrom, we seek an inquiry into the objective ultimate end(s) of electoral adjudication and whether the Courts through their decisions met this ultimate end. Like the categorical syllogism constructed from the premises, up the middle term and the conclusion, the poser is raised; what should the courts seek to do in electoral adjudication? By establishing what the courts should do, an objective crucible to determine whether the judgements met the mark would have been erected.

It is posited that electoral adjudication is part of a chain of events that starts with the registration of voters, voting, announcement of results and the challenge to the results based on a claim of substantial non-compliance, corruption, etc, being part of the last value point in the chain. A chain is as strong as its weakest point. It is further posited that the goal of entire electoral value chain is to make the vote count so that the wish of the electorate is reflected in the occupancy of elective positions. Thus, the process from the registration of voters up to the legal challenge before the Tribunals is geared to make the votes count. All the laws, policies, rules, guides and forms that regulate electioneering and the work of the Tribunals and Courts are all procedures and processes meant to facilitate the achievement of the ultimate end. This seems to be the mind of the Supreme Court when it held in *Ikpeazu v Otti* that:

> *Courts are enjoined to do substantial justice and to refrain from undue technicality. Nowhere else is the need to do substantial justice greater than in election petition, for the Court is not only concerned with the rights of the parties interse but the wider interest and rights of the constituents who have exercised their franchise at the polls*[214].

But the same judgement above quickly qualified the statement with a sentence that an election petition is statutory and is unlike any other civil claim, where there is much latitude. Thus, the Supreme Court states that the elbow room for manoeuvre to do substantial justice is limited. Quaere, how can anyone resolve the issue of substantial justice with the need to reflect the wish of the electorate with the statement below:

[214] [2016] 8 NWLR 39 at page 55.

> *Once the time stipulated therein expires, no other process distinct from what has been specifically allowed can have any consequence. This is because election petitions have certain peculiar features which make them sui generis. They stand on their own and bound by rules under the law prescribed thereto. Defects or irregularities which in other proceedings are not sufficient to effect the validity of a claim are not so in election petitions. A slight defect in compliance with a procedural step would result in fatal consequences for the petition*[215].

Essentially, the central challenge for electoral adjudication is the jurisprudence and mindset of the Courts which fixates on the *sui generis* concept as the reason to support the proposition that defects and irregularities which in other proceedings are not sufficient to affect the validity of a claim will prove fatal in an election petition. There is nothing in the Electoral Act or Constitution in support of this undue fatality view. A retracing of this evidently misplaced position starting from the jurisprudence of the highest Court in the land is the way to redirect the Courts back to the ultimate end of electoral adjudication.

6.2 BURDEN AND STANDARD OF PROOF

The general legal principle is that he who asserts should prove. The burden is on the Petitioner to bring evidence to prove his case. Indeed, the presumption of regularity of official actions is also brought in for the Courts to presume that elections were conducted in accordance with laid down procedure and thereby call on the Petitioner to bring evidence to rebut the presumption of regularity. The Supreme Court states in *Nyesom v Peterside*[216] that:

> *Election results declared by the Independent National Electoral Commission (INEC) enjoy a presumption of regularity. In other words, they are prima facie correct, and the onus is on the petitioner to prove the contrary.*

If a crime is alleged in a petition, the standard of proof is elevated to proof beyond reasonable doubt. The challenge is that the Petitioner in most instances is an ordinary citizen who does not have the powers and investigative appurtenances of the law enforcement agencies. The materials he may need to prove his case may also be in the hands of the adverse party who will do all in his powers to frustrate the case. This standard of proof is not stated in the Electoral Act or any other law governing elections but it is a carry-over from criminal law jurisprudence and the Evidence Act[217]. This carry-over is surprising considering the much acclaimed *sui*

[215] In *Mary Ezimdilim Oranye & Anor v Hon Peter Onwusanya & 2 Ors;* [2015] 45 W.R.N. at page 176 of the report. Underlining supplied for emphasis.
[216] [2016] 7 NWLR at page 475 following a long line of decided cases including *Buhari v Obasanjo* 2005 13 NWLR (pr.941) 1; *Awolowo v Shagari* (1979) 6-9 SC 51; *Akinfosile v Ajose* (1960) SCNLR 447.
[217] Section 135 of the Evidence Act.

generis nature of election dispute resolution. Even the Supreme Court per Rhodes-Vivour J.S.C. in *Ikpeazu v Otti*[218] stated the need for a new jurisprudence via the amendment of the Electoral Act in respect of proof of allegations of crime in election petition.

> *"Finally, an examination of the Electoral Act and a study of decided authorities on electoral matters reveal that a petitioner has a difficult task proving his petition in accordance with the Electoral Act. It is very difficult to prove criminal allegations beyond reasonable doubt. This explains why I am firmly of the view that the Electoral act should be amended to shift the burden of proof to the Independent National Electoral Commission. It should be their burden to prove that they conducted an election properly".*

The recommendation of the Uwais Electoral Reform Committee to shift the burden of proof from the Petitioners to INEC to show, on the balance of probabilities, that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate can help to ameliorate the injustice in the system. The demand for proof beyond reasonable doubt once the facts allege a crime seems to be founded on false premises. It raises several posers; is the Respondent on trial for an offence? Will the Respondent face criminal liability and sanctions if the ground relating to the offence is proved? Will the proof of the ground amount to a conviction of the Respondent for a criminal offence as to make him an ex-convict? To be able to make the Respondent face liability for the offence proved in the ground of the petition, would there be no need for an arraignment and trial? The answers to these posers point in only one direction; that no one is on trial and no one is facing criminal sanctions and the fact of proof in the election petition cannot be the sole determinant of whether the Respondent when arraigned will face criminal sanctions. So, why is this high hurdle and standard unnecessarily placed in the front of Petitioners?

Section 138 (1) of the Electoral Act states as follows:

> *(1) An election may be questioned on any of the following grounds, that is to say –*
>
> *a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;*
>
> *b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;*
>
> *c) that the respondent was not duly elected by majority of lawful votes cast at the election; or*

[218] [2016] 8 N.W.L.R at page 49.

d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election

On the other hand, section 139 (1) of the Electoral Act, 2010:

> *"An election shall not be liable to be invalidated by reason of non-compliance with this Act if it appears to the Electoral 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"*

The interpretation of the above section has been the bane of so many promising election petitions where ordinarily, the Courts should have either ordered a re-run or declared the Petitioner the winner of the election. The Courts have consistently held that the Petitioner needs to prove that the corrupt practices or non-compliance took place and that the corrupt practice or non-compliance substantially affected the result of the election[219].

Requesting a petitioner to prove that non-compliance took place and that the non-compliance substantially affected the result of the election is such a high hurdle that cannot be scaled, especially at the presidential and gubernatorial election levels. Apparently, this may have been the reason why no presidential election has been annulled by the Courts in Nigeria's electoral history. Even if we do not accept the whole Uwais Committee recommendation to entirely shift the burden of proof; at least, where a petitioner is able to show instances of non-compliance with the Act, the burden of proving that the non-compliance did not substantially affect the outcome of the election should be placed on the election management body.

There is an apparent contradiction when the Courts hold that non-compliance with simple procedural rules in the 1st Schedule to the Electoral Act amounts to fatality that results in a dismissal of the case, for instance in lateness to filing for pre-hearing notice, whilst at the same time demanding proof from the petitioner that clear violations of a substantive section of the Electoral Act by INEC or a Respondent substantially affected the result of the election. This jurisprudence is tilted unduly in favour of Respondents and against Petitioners.

The Supreme Court took the demand for proof almost to an impossible status when in *Nyesom v Peterside*[220] it stated that:

[219] *Maku v Al-Makura* [2016] 5 NWLR at page 206 following a long list of decided cases.
[220] Supra at page 473.

> *"Where a petitioner complains of non-compliance with the provisions of the Electoral Act, he has an onerous task because he has to prove his assertion polling unit by polling unit, ward by ward, and the standard of proof is on a balance of probabilities"*

Proving non-compliance in tens of thousands of polling units and wards across the federation or proving non-compliance in a state is almost an impossible task. However, there is some solace in the creativity of lawyers framing the petition of their clients. The aphorism that it is trite, that the burden of proof lies on whoever asserts the positive but not negative where issues are joined by parties, alleging the existence of a particular fact[221] can be a useful tool for petitioners. This burden of proof played a key role in the success of the 23 petitions arising from the conduct of legislative elections in Rivers State where the petitioners mainly alleged that no elections took place. The Courts rightly shifted the burden of proving that elections were held in accordance with the law to the Respondents, especially INEC. If the Petitioners had alleged electoral misconduct or allegations of crimes, they would have had an uphill to climb.

The position of the Court of Appeal in *PDP & Anor v. INEC & 2 Ors*[222] that irregularities at an election which are neither the act of the candidate nor linked to him cannot affect his election further complicates the requirements of proof. Therefore, an elected candidate cannot have his election nullified on the ground of corruption or any other irregularities committed in the process of the election unless it can be proved that the candidate expressly authorised the illegality.[223] If this is the correct position of the law that "elected candidate cannot have his election nullified on the ground of corruption or any other irregularities committed in the process of the election, unless it can be proved that the candidate expressly authorised the illegality"; it amounts to absurdity and a position antithetical to common sense on the ground that all a Respondent needs to do is to distort the electoral process and deny any links with the agents he commissioned to distort the process and put the Petitioners to the strictest proof of the matter. The test should be whether the distortion in the electoral process was enough to fundamentally affect the outcome of the election and to distort the votes cast by the electorate. Whoever is responsible for the distortion has no bearing on whether the will of the electorate has been reflected.

[221] S*ee Reynolds Construction Co. Ltd v Okwejiminor* (2011) 15 NWLR (Pt.715) 87 at 98.
[222] 2012, LPELR 7871, per Alagoa JCA.
[223] See page 70 para.3 of the CTC of judgment, unreported. See also the case of *PDP &ANOR VS INEC &2 ORS*, 2012 LPELR 7871 per Alagoa JCA

6.3 CONFLICTING TRIBUNAL JUDGEMENTS

In *Jackson Ponzhi Danladi & Anor v Vincent Venman Bulus & 2 Ors*[224], the Petitioner challenged the return of the 1st Respondent as the winner of Langtang South Constituency of Plateau State House of Assembly on the ground that, at the time of the conduct of the State House of Assembly election, the 1st Respondent was not qualified to contest the said election having been convicted by the Chief Magistrate Court sitting at J.M.D.B, Jos, Plateau State on the 20th August, 2010, for a criminal offence involving dishonesty and fraud. The Petitioner prayed the Tribunal to return him as winner of the said election. The Tribunal held thus:

"*The petition succeeds in part as follows:-*

> *That 1st Respondent having been convicted of an offence involving fraud and dishonesty by a Court was not qualified to contest the election into the Plateau State House of Assembly to represent Langtang South Constituency. That the election and return of the 1st Respondent as member Plateau State House of Assembly to represent Langtang South Constituency is a nullity. We hereby order the 3rd Respondent to conduct fresh election into the Plateau State House of Assembly for Langtang South Constituency within 90 days from the date of judgment.*

However in *Hon. Ali Yakubu & Anor v. Sabo Garba & 2 Ors*[225]*,* the petitioners challenged the return of the 1st Respondent as winner for Nengere/Potiskum Federal Constituency on the grounds *inter alia* that the 1st Respondent Sabo Garba, was not qualified to contest the election into the House of Representatives of the Federal Republic of Nigeria. The particulars of these grounds were to the effect that the 1st Respondent did not possess the minimum educational qualification under the 1999 Constitution to contest the election; and that the 1st Respondent presented forged certificates to INEC. The Tribunal while upholding the petition held that when a political party decides to field a candidate who does not possess the legally required qualifications, the political party does so at its own peril. The Tribunal further held as follows:

> "*Consequently, the 1st Respondent is ordered to vacate his seat as the representative for Nengere/Potiskum Federal Constituency in the House of Representatives of the Federal Republic of Nigeria. In the light of the above, the 1st Petitioner is hereby ordered declared and returned as winner of the House of Representatives election for Nengere/Potiskum Federal Constituency of Yobe State held on the 28th and 29th March 2015 having scored the next majority of*

[224] Petition number: EPT/PL/SHA/10/2015.
[225] Petition number EPT/YB/REP/01/2015.

lawful votes cast at the election, the 1st Respondent having been adjudged not qualified to have contested the said election. It is further ordered that the 3rd Respondent issues the 1st Petitioner with a Certificate of Return as duly elected member for the aforesaid Nengere/Potiskum Federal Constituency of Yobe State"

Again, in *Hon Shu'aibu Mohammed Liman Iya & Anor v Comrade Muritala B. Adamu*[226], where the Petitioner challenged the return of the 1st Respondent as the winner for the Suleja Constituency of the Niger State House of Assembly on the ground that the 1st Respondent who was sponsored by APC, as at the date of the election conducted on 11th April, 2015 was not qualified to contest the election into the State House of Assembly as he was below the age of 30 years. The Tribunal held that there is sufficient evidence to show that the 1st Respondent had not attained the constitutional age of 30 years to qualify him as a candidate to contest the election of 11th April, 2015 into the Niger State House of Assembly. The Tribunal nullified the election and ordered fresh election. But in *Nkechinyere Ugwu & Anor v Hon. Ikechukwu Amuka & 3 Ors*[227], the Petitioners challenged the return of the 1st Respondent on the ground that the 1st Respondent was not qualified to contest the said election in the first place; that the 1st Respondent did not possess the basic educational qualification for the said office and that the 1st Respondent lied on oath and was not honest and truthful about his academic records and certificate. The case of the Petitioners was that the two certificates presented by the 1st Respondent do not belong to him but to some other persons. That the 1st Respondent has not been educated up to the school certificate level and therefore, not qualified to contest the said election. The Tribunal held that:

"*Without any waste of time, we are of the considered opinion that having thus come to the conclusion that the 1st Respondent was not and still not qualified to stand as a candidate at the said election, his declaration as the winner of the same cannot stand. His return is, for that reason liable to be and is hereby set aside. It follows that the votes credited to him as aforesaid are and must remain wasted votes and not the majority of the valid votes cast at the election as claimed by the Respondents".*

The Supreme Court and Court of Appeal have consistently held that nomination of candidates are the internal affairs of parties and only aspirants in the primaries have the locus to challenge the outcome of the primaries in a pre-election case at the Federal High Court, State High Court or the High Court of the Federal Capital Territory[228]. Any other person questioning the validity of the primaries is busy

[226] Petition number EPT/NS/HA/04/2015.
[227] Petition number EPT/IM/SHA/1/2015.
[228] *Tarzoor v Ioraer* [2016] 3 NWLR (Part 1500) 463; *Aisha Jummai Alahassan & Anor v. Mr. Darius Dickson Ishaku & Ors* - SC.46/2016 (Consolidated),etc .

body who has no *locus standi* and therefore cannot invoke the jurisdiction of the court. However, the Tribunal decision in *Lucky Ayedatiwa & Anor v Akinjo Victor & 2 Ors*[229] ignored the decisions of the appellate courts and allowed a petitioner from outside a party to question the presentation of a candidate by a political party of which he is not a member on the basis that the candidate is not a member of the political party.

6.4 TIME FRAME FOR DETERMINATION OF PETITIONS

The 180 day rule for determination of petitions by Tribunals and 60 days for appeals did not feature prominently in appeals across the adjudication process. Evidently, the Courts, parties and counsel had learnt lessons from the 2015 exercise and adjusted their presentations and actions within the trial to meet the stipulated timeframe. But there were still complaints from legal practitioners of the indecent haste in the adjudication of the petitions, with limited time allotted to parties to finish their presentation of evidence and cross-examination in a bid to meet the deadline.

6.5 TIME FRAME FOR PRE-ELECTION CASES

On the conclusion of all election petition appeals at the Court of Appeal and Supreme Court, there were still pending pre-election matters at the various High Courts. It is left to the imagination the length of time it will take after the High Court judgement for the matters to crawl to the Supreme Court where the appeals end. Whilst election petitions are bound to be completed within timeframes stipulated by the Electoral Act, pre-election matters do not come before the Tribunals and are heard in the High Courts without a stipulated completion time frame. It is therefore pertinent for the law to set a time frame for the resolution of all pre-election cases to bring certainty into governance and electoral jurisprudence. Pre-election disputes should be resolved through a fast track procedure before swearing in of winners.

6.6 THE LATE AMENDMENT OF THE ELECTORAL ACT

The National Assembly amended the Electoral Act 2010 at a late hour. The Electoral Act (Amendment) Act of 2015 is made as an Act to provide for the tenure of office of the Secretary, power to issue duplicate voters card, determine voting procedure and for related matters. It was passed by the House of Representatives on the 5th of March 2015 whilst the Senate did same on 10th March 2015. The President assented to the Bill on the 26th of March 2016, two days to the holding of the presidential election.

[229] Petition number EPT/AK/HR/4/2015.

Section 9 of the Amendment Act stated as follows:

> *Section 52 of the Principal Act is amended by substituting for subsection (2), a new subsection (2):*
>
> > *Voting at an election under this Act shall be in accordance with the procedure determined by the Independent National Electoral Commission.*

Thus, the amendment repealed section 52 of the 2010 principal Act which states that the use of electronic voting machine for the time being is prohibited. However, because the amendment came late and apparently, it was not available to legal practitioners and judges that dealt with election petitions, no single reference was made to the Amendment Act in the determination of the challenges faced from the card reader machine in the conduct of elections. The late amendment questions the rationality of legislative proceedings and the lack of effective mechanism to gazette and publish new laws in Nigeria. The unanswered poser is: why amend a law to govern elections very close to the elections and at a time the election management body could not have taken cognisance of the amendment in its preparations for the elections?

A learned commentator stated as follows on the Electoral (Amendment) Act 2015[230]:

> *"If the attention of the Justices of the Supreme Court had been drawn to the 2015 amendment of the Electoral Act, they could not have held that accreditation by the card reader machine was supplementary to manual accreditation. In other words, the judgements of the Supreme Court would have legitimised the use of card reader for voter accreditation.."*

6.7 THE CARD READER QUAGMIRE

The innovation of card reading machine was a good development to sanitise the accreditation process and reduce, if not eradicate incidents of over voting and or multiple voting. The INEC 2015 General Election Guidelines contained the requirement for the use of the smart card reader. But during the elections, there were incidences of failure of the smart card reader leading in many instances to a fall back on the manual accreditation process hitherto in place. It seemed there was deliberate refusal to use the card reader is some states and in particular elections. This led to the requirement for the use of the card reader and the status of the card reader becoming a critical issue in some election petitions. Some

[230] *The Legality of the Card Reader* by Femi Falana (SAN) published 2016/04/05 in Thisday newspaper.

learned commentators[231] questioned the decision of the Supreme Court in *Nyesom v Peterside*[232] which followed a long list of cases decided by the Court on the supremacy of the voters register when pitched against the card reader.

However, it is pertinent to note that the Electoral Act (as amended) in section 138(2) provides as follows:

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

Thus, as rightly stated by the Supreme Court in the extant case, the inclusion of non-compliance with the INEC Guidelines among the grounds of the petition was improper against the background of section 138 (2) of the Electoral Act. Thus, it is pertinent that INEC should conduct more tests on the efficacy of the card readers, improve them to near 100 percent reliability and thereafter, the legislature should be explicit in the Electoral Act on the exclusive use of the smart card reader for accreditation and the consequences of the failure to use the card reader clearly stated.

6.8 THE SECURITY CHALLENGE

A situation where many Tribunals sat outside the states where elections were held may not be the best for the effective administration of electoral justice. It increases the cost of justice at the Tribunals because witnesses and election management body officials have to move very far distances to be able to testify or produce documents at the hearings. For the states of Adamawa, Borno, Taraba and Yobe where the Boko Haram insurgents held sway, this seems understandable. But moving the adjudication of cases in Tribunals which should have sat in a state like Rivers and Akwa Ibom State to Abuja because of the breakdown of law and order suggests a failing state that is not able to fulfill its basis functions.

On Tuesday, 23rd of June, 2015, around 10am, the panel of judges for the National and State Houses of Assembly Election Petition Tribunals sitting in Nasarawa State presided over by Hon. Justice H.S Mohammed, Hon. Justice Ayola and Hon. Justice Mark Dabit as members were seated in chambers of the Election Petition Tribunal venue sitting in Nasarawa State High Court 4, along Shendam Road, Lafia Nasarawa State. On the cause list for the day before the

[231] Professor Itse Sagay in *Farewell to Election Petitions; Wike v Peterside - Supreme Court decision constituted a devastating blow on democracy* published in Vanguard Newspaper of May 25 2016.
[232] Supra; starting from *Okereke v Umahi*, supra.

panel of judges were PT/NS/HA/10/2015: *Hon. Anthony Aboye Obande & Ors v. Hon. Dangana Akoza James & 2 Ors* EPT/NS/HA/14/2015: *Amos Kidere Agya, APC & 2 Ors v Hon. Luka Iliya Zhekaba PDP & 2 Ors*

Both Petitioners and Respondents were in Court with their counsel. The security agents assigned to protect the venue of the Court were at the venue. As the Tribunal was proceeding for hearing, trouble started outside the Court hall, when the supporters of Hon. Dangana Akoza James of APC, the Respondent in one of the petitions selected for hearing engaged the supporters of the Petitioner in a free for all fight using cutlasses, iron rods, sticks and other instruments. In the process many persons were wounded, including passersby. The security men could not help the situation because they were helpless and overwhelmed.

As a result, the Tribunal was forced to cut short its proceeding for the day. Sitting beside the venue was the Governorship Election Tribunal. It was also forced to cut short its proceedings for the day. Both Tribunals later adjourned to 29th June, 2015 for pre-hearing with a call to the Commissioner of Police, Nasarawa State to take appropriate measures to ensure that adequate security is provided at the venue to forestall future occurrences.

6.9 TRIBUNAL JUDGES AND THEIR PRIMARY ASSIGNMENTS

Judges posted to work at Tribunals have primary assignments in that they were presiding over Courts in their states before they were assigned to adjudicate on Election Tribunal case, most time outside their state of primary assignment. The implication is that their primary assignments suffer and the cases are unduly delayed for the period they are away. Courts in most states of the federation have unmanageable case portfolios and cases pending for so many years. it is therefore imperative to engage more hands in the judiciary and automate the adjudication process so at to improve timeous access to justice.

6.10 OPENNESS OF TRIBUNALS

The Governorship and National/State House of Assembly Election Tribunals sitting in Gombe State changed their venue due to security reasons and lack of space. The Tribunals were initially sitting at State High Court 2, Tudun Wada Complex, Gombe State. Both Tribunals were sharing one court room to the extent that when one finished sitting, the other will start sitting. Based on foregoing, the Governorship Election Tribunal relocated to old Federal High Court, while the National Assembly/ State Houses of Assembly Election Tribunal moved to new Federal High Court complex. In many of the Tribunals across the federation, they resorted to the use of existing Court premises which most of the time could only

accommodate legal practitioners, litigants and a few members of the public who desired to watch the proceedings.

Chapter Seven

CONCLUSIONS AND RECOMMENDATIONS

7.1 CONCLUSIONS

Electoral disputes are not just civil claims in which individuals ventilate their private grievances or pursue personal aggrandisement. The claims have wider significance for the integrity of our constitutional democracy and the political stability of Nigeria. A total of 658 cases were filed before Election Tribunals across the Federation of Nigerian following the 2015 general elections. This is about 10.2% less than the 732 petitions filed in the Election Tribunals after the 2011 general elections. For the first time since the return to civil rule in 1999, there was no election petition challenging the return in the presidential election.

The Electoral Act was amended very late, two days to the presidential election and this led to a situation where the Tribunals, Appellate Courts and legal practitioners appearing before them made no reference to the amendments in the adjudication of electoral disputes. Controversies raged about the legal status of the smart card reader and this was in issue in many petitions. The dates for the general elections were shifted to enable more voters collect their permanent voters' cards. The conduct of party primaries showed that political parties were yet to learn from the lessons of the past and entrench internal democracy in their practices.

With the exception of the amendment of the Electoral Act permitting INEC to determine the procedure for voting, the law remained unchanged from the position in 2011. The jurisprudence of election petitions which brands petitions as *sui generis* thereby providing the foundation for the deployment of undue technicalities in the election adjudication process still predominated. So many petitions were lost on the technical interpretation of the law which obviously relegated substantial justice. The dry letters of the law defeated the preferred approach, which seeks to uphold the wish of the electorate through a process that ensures that the votes count. The ultimate goal of electoral adjudication was therefore wrongly defined.

The burden and standard of proof remained clear obstacles to making the vote count. Petitioners were to prove any allegation bordering on crime beyond reasonable doubt when Respondents will not be subjected to criminal sanctions after the court accepts that the facts have been proved. Such malpractice also needs to be shown to have emanated from the Respondent and his agents. Petitioners are also required not just to prove non-compliance with the Electoral

Act but that the non-compliance substantially affected the result of the election. The Supreme Court elevated proof in petitions (especially where large areas are covered, such as the presidential and gubernatorial elections) to almost an impossibility when it demands that the Petitioner is required to prove malpractice and irregularity, polling unit by polling unit, ward by ward, etc. Also, inconsistencies were recorded in the application of the electoral laws. In some instances, Tribunals of first instance tried to unduly differentiate and distinguish facts in cases before them as a basis to arrive at different decisions that run against the fundamental principle of *stare decisis*.

It seems that legal practitioners, parties and the courts have come to terms with the 180 and 60 days rule for the adjudication of cases in the first instance and for appeals. However, there were reports of cases being rushed so as to meet the deadline provided by law. On the other hand, pre-election matters have no statutory completion timeframes leading to many of the cases being outstanding after the Tribunals and Appellate Courts have concluded election proceedings. Tribunals were held in the open with ease of access to the public. But the small size of some of the court rooms did not allow all who wanted to observe proceedings to do so.

The security challenge in the country arising from the Boko Haram insurgency ensured that Tribunals in some states were transferred to sit in the Federal Capital Territory hundreds of miles away from the states where the elections took place. This increased the cost of justice and the burden on the parties to the case. Some states not under the insurgency invented disorder and break down of the rule of law leading to their Tribunals being relocated to the FCT.

7.2 RECOMMENDATIONS

A. Rethinking the Electoral Jurisprudence

It is imperative that the ultimate goal of electoral adjudication be determined. The ultimate goal should be to ensure that the votes count which tallies with the idea of substantial justice. The *sui generis* nature of election petitions should not be an excuse for depriving the electorate of their choice whilst hiding under undue technicalities that serve no useful purpose. It is therefore the duty of the Supreme Court to review decisions that unduly emphasise a technical approach to adjudication and shift the jurisprudence to substantial justice. Such little matters like failing to file pre-hearing notice within a specified number of days or non payment of token fees which can be rectified should not be the basis for the dismissal of a petition with no opportunity to represent the matter for adjudication.

B. Resolving the Card Reader Quagmire

The Electoral Act should be amended to state categorically the status of the card reader vis-a-vis the voters register and the consequence of refusing to use the card reader in accreditation. The March 2015 amendment did not go far enough to state the foregoing. The recommendation is that the card reader should be the sole method of accreditation and non-compliance with its use should invalidate the results in the polling unit, ward, local government, etc.

C. Timeframe for Amending the Electoral Act and Constitution

The National Assembly should adopt a policy that limits the timeframe for the amendment of the Constitution, Electoral Act or any law with direct relevance to the elections to such a time as would permit the election management body to take cognisance of its provisions in planning for elections. Otherwise, it creates confusion when a law is made on the eve of an election and is expected to govern the said election. It is recommended that except in serious and unforeseen circumstances, the amendment of election related laws should be concluded not later than six months to the election.

D. Intensive Training for Tribunal Members

Before commencing proceedings, judicial personnel appointed to preside over Tribunals should undergo intensive training and refresher courses where the relevant laws and principles will be analysed to ensure some level of uniformity and certainty in the decisions of the Tribunals. It should not be open to different Tribunals to arrive at different decisions when the facts of the cases are virtually the same in an area where the Supreme Court had settled the law.

E. Timeframe for Determination of Petitions

Even though the timeframe for determination of petitions and appeals did not re-echo strongly in 2015, the reports of rushed hearings and abridged cross-examination to meet the deadline came out from interviews with lawyers appearing before the Tribunals. Our 2011 recommendation is still relevant. The timeframe in section 285 (5) – (7) of the Constitution for filing and determining petitions and appeals should be amended:

- To exclude weekends, public holidays, court vacations and strikes.
- The time frame for appeal should only start running after the compilation and transmission of the records of appeal.

- ❖ For cases remitted for re-trial to the Tribunal or Court of Appeal, the time for determination of such a petition should run de-novo from the commencement of the new trial.

It stands to reason that the petitioner has no control over weekends, public holidays, strikes and court vacations and a petition should not lapse merely because these days were included in the calculation of time. In making this recommendation, we are not unmindful of paragraph 26 (2) of the First Schedule to the Electoral Act which states that the hearing of an election petition may continue on a Saturday or Public holiday if the circumstances dictate. It is also imperative to acknowledge the decision by Onu JSC *in Anie V Uzorka,* that[233]:

> *"Any Judge has the Jurisdiction … to sit on Saturday or even Sunday provided he did not compel the litigants who are members of the public and their counsel to attend…"*

The Supreme Court should also take an early opportunity to reconcile section 285 (5) - (7) of the Constitution with the fundamental right to fair hearing considering that the process adopted by the National Assembly in enacting section 285 (5) - (7) could not have amended the right to fair hearing or any provision of the fundamental rights chapter of the Constitution. While two thirds majority of each chamber of the National Assembly is required to kick-start the amendment of other sections of the Constitution, the fundamental rights chapter demands four-fifths majority of each chamber of the National Assembly for its amendment.

F. Burden of Proof

In reviewing the Electoral Act 2010, it is imperative to consider the recommendation of the Electoral Reform Committee to shift the burden of proof from the petitioner to INEC to show, on a balance of probability that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate. If this recommendation is difficult to accept, it is recommended that in deciding matters brought under section 139 (1) of the Electoral Act for non-compliance, once the petitioner proves non-compliance, the burden of proof should be shifted to INEC to show that the non-compliance did not substantially affect the result of the election. This would involve a presumption that once non-compliance is proved, a rebuttable presumption that the results were affected by non-compliance arises. It is only through evidence that INEC can now rebut this presumption and discharge the burden of proof on a balance of

[233] Per Onu JSC; (1993) 8 NWLR (Pt. 309) 1 at page 20 paras F-G:

probabilities to the effect that notwithstanding the non-compliance, the result declared reflected the wishes of voters.

The proposed amendment is in tandem with section 36 (5) of the Constitution which after stating the presumption of innocence in criminal trials indicated in a proviso that nothing in the section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts. The fact about how the elections were organised and the inherent challenges are facts peculiarly within the knowledge of the election management body and not the petitioner. Thus, if the burden of proof could be shifted in specific circumstances in criminal trials, then election petitions which are purportedly *sui generis* can afford such a shift after certain conditions are met. This will also involve the amendment of the relevant sections 131 (1) and 132 of the Evidence Act on burden of proof. Section 168 (1) of the Evidence Act on presumptions of regularity should also be amended because once non compliance is proved, the act complained of cannot in good faith be said to have been done in a manner substantially regular so as to presume its validity.

G. Standard of Proof

Considering the decision of the Courts that election petitions are *sui generis;* insisting on the principle that where allegations of crime are made in an election petition, that the proof must be beyond reasonable doubt is to place an onerous burden on the petitioner. The standard should be on a balance of probabilities considering that no penal sanctions will be meted to the respondent(s) on the basis of the petitioner proving his case. The amendment of section 135 of the Evidence Act will be imperative.

H. Timeframe for Determination of Pre-election Cases

The Electoral Act should be amended to fix a timeframe for the determination of pre-election cases. This has become necessary to avoid a situation where pre-election cases would be in court years after the conclusion of the Tribunal cases and their appeals. A similar timeframe as stated in the Constitution is recommended with the necessary modifications stated above.

I. Automating the Tribunal and Courts

The Tribunals and Courts handling election petitions should be provided with electronic registry that will allow for the filing of petitions and other processes electronically. There should be electronic recording devices for the Tribunals' use with well trained operators and transcribers.

J. Sitting Venues

Sitting venues should be improved and they should be spacious enough to accommodate litigants, counsel and a reasonable number of members of the public who want to witness the trials. Venues should have public power supply, stand-by power generating sets, air-conditioning, convenience facilities, etc.

K. Security

The security around judicial personnel adjudicating electoral disputes should be improved.

APPENDIX

ELECTION TRIBUNAL MONITORS 2015

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