

GAVEL.

Election Petition Analysis

REPORT ON THREE
STRATEGIC ELECTION
PETITION TRIBUNALS
PROCEEDINGS
MONITORED BY GAVEL.



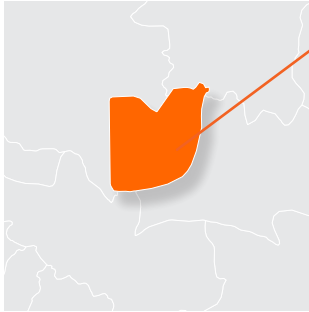
Introduction

Nigeria's 2023 general elections have been described by both Nigerians and international observers as disastrous.¹ According to the Nigeria Civil Society Situation Room, the Presidential election held on February 25, 2023 was marred by very poor organization, severe logistical and operational failure, lack of essential transparency, substantial disruption of voting and several incidents of violence.² Unsurprisingly, the aggrieved candidates who participated in the electoral process but lost wasted no time in approaching the election petition tribunals for a review of the decisions of the electoral umpire, the Independent National Electoral Commission (INEC). In line with her core mandate, Citizens Gavel strategically monitored the Tribunals that sat in the F.C.T Abuja, Lagos and Adamawa States with a view to documenting key events and assess for the fairness and transparency of the tribunal proceedings. This report is intended to serve as a valuable resource for stakeholders, shedding light on the irregularities or biases that may have occurred during the tribunals proceedings and contributing to efforts to improve the integrity of the election petition process in Nigeria.

1. Available at <https://placng.org/Legist/nigerias-2023-general-elections-a-return-to-the-old-ways/> accessed on 3/6/2024

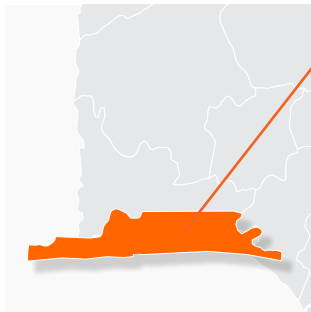
2. *ibid*





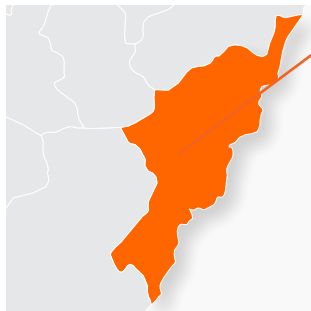
Why We Selected the PEPC holden in Abuja to Monitor

The build up to the 2023 general elections in Nigeria was fraught with many permutations, most of which showed that the Presidential elections will be won by the Labour Party's Candidate, Peter Obi. Going into the election, Labour Party which was hitherto the underdog went head to head with the ruling party (APC) and even led in many states of the federation. It was however disappointing to most Nigerians (the youths especially) when INEC declared and returned the Candidate of the APC as winner of the election. The youths were curious to see how the Court would resolve the issues of double nomination of the 3rd Respondent, the civil forfeiture of the 2nd Respondent to the U.S government, the failure of the 1st Respondent to upload results to the Irev and whether it was mandatory for a presidential candidate to have 25% of the votes cast in Abuja. The answers to these questions were important to the average Nigerian and hence, Gavel's resolve to monitor the proceedings for the Court's view on them.



Why We Selected the Governorship Election Tribunal holden in Lagos to Monitor

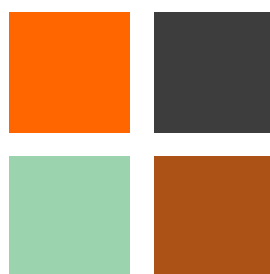
Following the outcome of the Presidential election which showed that Labour Party won in Lagos State by a landslide, rasp attention was paid by Nigerians to the governorship election to see if Labour Party would again, perform the same wonder. It was however disappointing for many, when the governorship election in the state was reportedly marred by irregularities and electoral violence. Following the lodgment of the petition by the Labour party candidate before the Election Petition Tribunal, Nigerians became particularly keen to know how the issue of declaration of allegiance to the U.S.A by the 3rd Respondent would be resolved since it was a fairly novel issue under our electoral jurisprudence; this informed Gavel's decision to monitor the Tribunal's proceedings for its answer on the question.



Why We Selected the Governorship Election Tribunal holden in Adamawa State to Monitor

Historically, results of elections conducted, particularly for governorship, are announced by the designated returning officer for the state. This status quo however was disrupted in Adamawa State when the Resident Electoral Commissioner, one Hudu Yunusa-Ari on the 16th of April, 2023 while elections were ongoing strangely came on live television to declare and announce the 1st Petitioner, Senator Aishatu Dahiru, as the winner of the Election. Most Nigerians including Citizens Gavel were curious to know how the Election Tribunal would resolve the issue especially as another staff of the INEC (Festus Okoye Esq., the National Commissioner for Voters Education and Publicity) had shortly after the announcement by Yunusa-Ari, declared same as null and void.

TRIBUNALS JUDGMENT ANALYSIS





ABUJA

PETITION NO.

CA/PEPC/04/2023

BETWEEN OBI &

ANOR V. INEC &

ORS



**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

Summary of the case

Following the conduct of the general elections by the Independent Electoral Commission (INEC) on 25th February 2023 and the subsequent declaration of Ahmed Bola Tinubu as the duly elected president of the Federal Republic of Nigeria, Mr. peter Gregory Obi along with Labour Party (LP) (as first and second petitioners) jointly filed a petition before the Presidential Election Petition Court (PEPC) challenging the outcome of the presidential election

Grounds of the Petition

The grounds of the petition are threefold namely:

- 1.** That the 2nd respondent³ was, at the time of the election, not qualified to contest the election.
- 2.** That the election of the 2nd respondent was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022; and
- 3.** That the 2nd respondent was not duly elected by majority of the lawful votes cast at the election.

The petitioners sought for several reliefs including:

- a.** That it be determined that at the time of the Presidential Election held on 25th February, 2023, the 2nd and 3rd Respondents⁴ were not qualified to contest the election.
- b.** That it be determined that all the votes recorded for the 2nd Respondent in the election are wasted votes, owing to the non-qualification/disqualification of the 2nd and 3rd Respondents.
- c.** That it be determined that on the basis of the remaining votes (after discountenancing the votes credited to the 2nd Respondent) the 1st petitioner scored a majority of the lawful votes cast at the election and had not less than 25% of the votes cast in each of at least 2/3 of the States of the Federation and the Federal Capital Territory, Abuja, and satisfied the constitutional requirements to be declared the winner of the 25th February, 2023 Presidential election.
- d.** An order canceling the election and compelling the 1st Respondent⁵ to conduct a fresh election at which the 2nd, 3rd and 4th Respondents⁶ shall not participate.

³. Ahmed Bola Tinubu

⁴. The 3rd Respondent is the Vice President: Senator Shettima Kashim

⁵. INEC

⁶. 4th Respondent is the All Progressive Congress





**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

Legal Issues Considered

The PEPC considered the following four issues in disposing of the petitioners' petition namely:

- 1.** Whether having regard to the provisions of section 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 35 of the Electoral Act, 2022 and the evidence before the court, the 2nd and 3rd respondents were qualified to contest the Presidential Election of 25th of February, 2023.
- 2.** Whether having regard to the evidence adduced by the parties the petitioners have established that there was substantial noncompliance with the provisions of the Electoral Act, 2022 and that the noncompliance substantially affected the results of the election.
- 3.** Whether from the totality of the evidence adduced, the petitioners have proven that the presidential election held on 25th February, 2023 was invalid by reason of corrupt practices.
- 4.** Whether from the evidence adduced the petitioners have established that the 2nd Respondent was not duly elected by majority of lawful votes cast at the election.

Decision of the PEPC on the Issues Raised

Resolution of Issue 1

On the issue whether having regard to the provisions of section 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 35 of the Electoral Act, 2022 and the evidence before the court, the 2nd and 3rd respondents were qualified to contest the Presidential Election of 25th of February, 2023, the Court answered in the affirmative and held that both the 2nd and 3rd Respondents were duly qualified to contest the election. In rejecting the petitioners' contention that the 3rd Respondent who was the 2nd Respondent's running mate knowingly allowed himself to be nominated in more than one constituency contrary to section 35 of the Electoral Act, 2022, the Court held that:

“

It is pertinent to observe that upon our careful perusal of Exhibits X2 and RA23, which are the certified true copies of the Supreme Court unanimous judgment in PDP V. INEC & 3 ORS (supra), it is clear to us that the Apex Court had not only determined that the petitioners in that case





**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

had no locus standi to question the nomination of the 3rd Respondent herein, the Court proceeded to determine with finality that there was no double nomination on the part of the 3rd Respondent.⁷

The PEPC quoted the portion where the Supreme Court had said that “no matter how pained or disgruntled a political party is with the way and manner another political party is conducting or has conducted its affairs concerning its nomination of candidates for any position, it must keep mum and remain an onlooker for he lacks locus standi to challenge such nomination in court” and held that:

“

The above legal position as determined by the Apex Court in PDP v. INEC (supra), clearly shows that the petitioners in this case who belong to a different political party from the 2nd and 3rd and the 4th Respondents have no locus to complain about the nomination of the 3rd Respondent. Hence, they cannot use same to challenge the qualification of the 2nd and 3rd Respondents to contest the Presidential election.⁸

Another challenge to the qualification of the 2nd Respondent to contest the February 25th presidential election was the allegation of the sum of \$460, 000 (Four Hundred and Sixty Thousand Dollars) which the petitioners alleged was imposed on the 2nd Respondent by the United States District Court, Northern District of Illinois, Eastern Division, in Case No: 93C 4483 for an offence involving dishonesty namely narcotics trafficking. The petitioners contended that this was a gross violation of section 137(1)(d) of the Constitution and that the PEPC should disqualify the 2nd Respondent on this ground. Rejecting the petitioners' contention however, the Court analyzed the relevant provision of the Constitution and held that:

“

“It is discernible from the above that the “fine” referred to in paragraph (d) of section 137(1) quoted above is one which emanates from a sentence for a criminal offence involving dishonesty or fraud. The words “for imprisonment or fine” also pre-supposes that the “fine” envisaged under the section is one which is imposed as an alternative to imprisonment. In other words, the provision of section 137(1)(d) relates to sentence of death

⁷. Per TSAMMANI JCA p.157 of the judgment

⁸. See also the contribution of MISITURA OMODERE BOLAJI-YUSUF JCA at pp.1-2 of his concurring judgment where his Lordship noted that “the controversy about the 3rd Respondent knowingly allowing himself to be nominated in more than one constituency was the subject matter in PDP V. INEC & ORS (2023) LPELR-60457(SC). The supreme court per Okoro, JSC, AUGIE, JSC, OGGUNWUMIJU JSC and AGIM, JSC in their concurring opinions held that the 3rd respondent having withdrawn his nomination and personally delivered the notice of the withdrawal to his party (4th respondent in this petition) on 6th July, 2022, he was no longer a candidate for the Borno Central Constituency Senatorial election and his subsequent nomination as the Vice-presidential candidate for the presidential election was not multiple nomination.”





**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

or sentence of imprisonment or fine imposed as a result of a criminal trial and conviction.”⁹

The Court perused Exhibit PA5 relied upon by the petitioners in support of their contention and held that the case of the \$460, 000 was in the Civil Docket of the US District Court, and that it was a civil forfeiture proceeding against the funds in specific accounts with First Heritage Bank and Citibank N.A. The Court noted further that Exhibit PA5 was an action in rem against the funds with First Heritage Bank and Citibank and not an action in personam against the 2nd Respondent.¹⁰ The court therefore, had no trouble in discountenancing the petitioners’ arguments on this point and ultimately in resolving issue one against them.

Resolution of Issue 2

Issue two bothered on whether having regard to the evidence adduced by the parties the petitioners had established that there was substantial noncompliance with the provisions of the Electoral Act, 2022 and that the noncompliance substantially affected the results of the election. The petitioners’ contention on this ground bothered on the failure of the 1st Respondent to electronically transmit or transfer the results of the polling unit directly to the collation system of the 1st Respondent. Conversely, the Respondents denied the existence of a collation system and in particular, drew the attention of the PEPC to Exhibit X1 (Suit No. FHC/ABJ/CS/1454/2022: LABOUR PARTY V. INEC which decided that INEC is not mandated by law to electronically transmit results) and Appeal No. CA/LAG/CV/332/2023: APC V. LABOUR PARTY & 42 ORS to argue that the petitioners are estopped from relitigating the issue having been decided upon by the Federal High Court in favour of the 1st Respondent. In agreeing with the Respondents, the court held that:

“

“In the judgment in Appeal No. CA/LAG/CV/332/2023: APC V. LABOUR PARTY & 42 ORS, this court had upheld the decision of the Federal High Court in Exhibit X1...and construed same against the petitioners as issue estoppel, in relation to the petitioners’ contention which they are making in this petition, that is that INEC is mandatorily required to electronically transmit results.”¹¹

In his concurring judgment, ABBA BELLO MOHAMMED J.C.A at pp. 4-5 also held that:

⁹. See page 178 of the lead judgment

¹⁰. See also the contribution of MISITURA OMODERE BOLAJI-YUSUF JCA at page 4 of his concurring judgment where his Lordship equally noted that: “A forfeiture order by a foreign court can only be accepted and recognized by a court in Nigeria for the purpose of section 137(1)(d) of the Constitution if it is made after an indictment, trial and conviction and properly proved as required by section 249 of the Evidence Act. In addition, the conviction and sentence must be shown to have been a product of due process of law. Compliance with due process of law has to be determined by the procedure and standard set by section 36(5) and (6) of our Constitution. The forfeiture order being relied on by the petitioners has not been shown to be a result of a process similar to the one set by our Constitution for trial of a defendant for an offence.”

¹¹. Per TSAMMANI JCA pp. 212-213 of the lead judgment





**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

“

“It is clearly evident that the decision of the Federal High Court in Exhibits X1 and X2 tendered in petitions Nos PEPC/03/2023 and PEPC/05/2023 respectively, as well as the decision of this court in Appeal No. CA/LAG/CV/332/2023: APC V. LABOUR PARTY & 42 ORS (supra), have dealt a death knell to the Petitioners’ in the two petitions, having finally decided the issue around which the petitioners have built their claim of non-compliance and corrupt practices in those two petitions, namely- that the 1st respondent is by the provisions of the Electoral Act, 2022 and the Regulations and Guidelines for Conduct of Elections, 2022, mandatorily required to electronically transmit election results to the collation system and the INEC Result Viewing Portal (Irev)”

Notwithstanding the foregoing however, the PEPC proceeded to determine the issue of noncompliance on the merit and in the end, still resolve the issue against the petitioners. The court noted in particular that:

“

“The petitioners have relied on the evidence of PW12 and on Exhibits PCQ1 to PCQ6 also tendered through PW12. The Exhibits are acknowledged copies of letters dated 6th March, 2023, 14th March, 2023, 16th March, 2023 and 20th March, 2023, all written by the petitioners or their solicitors to the chairman of the 1st respondent demanding for inspection of documents and for certified true copies of the electoral forms. The petitioners also relied on subpoena duces tecum served on the 1st respondent to produce the said forms. In his testimony at paragraph 58 to 60 of his adopted witness statement on oath, PW12 merely stated that the petitioners made several applications through its campaign organization and solicitors for certified copies of election documents and data relating to the presidential election, but they were denied by the 1st Respondent and that the 1st Respondent had failed to record in the prescribed forms the quantity, serial numbers and other particulars of result sheets, ballot papers and other sensitive electoral materials.”¹²

The court considered the procedure which was adopted by the petitioners in requesting for the relevant documents from the 1st Respondent and noted that:

¹². pg. 261 of the lead judgment





**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

“

“It is instructive to observe that section 74(1) of the Electoral Act, 2023 mandates the Resident Electoral Commissioner in a state where an election is conducted to within 14 days after an application is made to him by any of the parties to an election petition cause a certified true copy of such documents to be issued to the said party...A look at the letters in Exhibits PCQ1–PCQ6 shows that they were all addressed to the chairman of INEC instead of the Resident Electoral Commissioners in the states as required of the petitioners by section 74(1) of the Electoral Act, 2023. It is therefore clear that the petitioners have failed to follow the clear legal procedures of requesting for those documents.”

On the allegation that INEC failed to record in the prescribed forms the quantity, serial numbers and other particulars of result sheets, ballot papers and other sensitive electoral materials, the court rejected the evidence of PW12 which in the court’s opinion was hearsay. The court remarked that:

“

“From his evidence, PW12 had stated that apart from voting at his polling unit 04 at Dawaki, Abuja, the only role he played in the 25th February, 2023 presidential election was that he was a member of the 2nd petitioner’s situation room, and on cross examination by the respondents he has stated that he was neither a polling agent nor a collation agent. His evidence that the 1st Respondent had failed to record in the prescribed forms the quantity, serial numbers and other details of the electoral materials can only be hearsay evidence which has no probative value.”

The court maintained the view that the mere production of Exhibits PCQ1–PCQ6 cannot establish an allegation of noncompliance with section 73(2) of the Electoral Act, 2022. The court noted that apart from the evidence of PW12 and Exhibits PCQ1-PCQ6 tendered through him, the petitioners had produced no other evidence to substantiate their allegation that 1st Respondent failed to comply with the provisions of section 73(2) of the Electoral Act, 2022.¹³ In resolving issue two in favour of the respondents and against the petitioners, the Court concluded:

“

“Thus, the petitioners not only failed to prove noncompliance with the Electoral Act, they failed to prove that the noncompliance substantially

¹³. Section 73(2) provides: An election conducted at a polling unit without the prior recording in the forms prescribed by the Commission of the quantity, serial numbers and other particulars of results sheets, ballot papers and other sensitive electoral materials made available by the Commission for the conduct of the election shall be invalid.





**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

“

affected the result of the election declared by the 1st respondent. It is settled that even if noncompliance with the Electoral Act is established, if there is evidence that despite the noncompliance, the result of the election was not affected substantially, the petition must as a matter of law be dismissed.”¹⁴

Resolution of issue 3

The third issue on which the court determined the petitioners' petition bothered on whether from the totality of the evidence adduced, the petitioners proved that the presidential election held on 25th February, 2023 was invalid by reason of corrupt practices. The contention of the Respondents on this issue was that the Petitioners did not lead any evidence through a witness conversant with the entries in all the electoral forms tendered in evidence by them. On the petitioners' allegation of inflation and deflation of votes, the Respondents argued that the petitioners failed to give particulars of the inflated figures or showed that if the inflated figures are removed from the votes credited to their opponent, the results would have changed in their favour. On the allegation of suppression of votes by uploading 18, 088 blurred results on the iRev, the Respondents submitted that even if the results uploaded on the iRev were blurred as alleged by the petitioners there are duplicate copies in the possession of the petitioners' polling agents and they failed to present any of those results in order to show any discrepancy to establish their allegation of suppression. They lastly submitted that the petitioners failed to demonstrate through their pleadings and by credible evidence how the allegation of corrupt practices has affected the overall results against their interest as none of the petitioners' witnesses stated that corrupt practices occurred during the election. In agreeing with the Respondents, MISITURA OMODERE BOLAJI-YUSUF JCA at page 7 of his concurring judgment noted that:

“

“PW4, the professor of Mathematics presented to this court as an expert witness confirmed under cross examination that Irev is not a collation system. He also confirmed that whether or not transmission to Irev failed or the image of result on the Irev is blurred will not change the result entered on the form EC8A at the polling unit level. Under cross examination, PW12 stated that the petitioners had 133, 000 agents. He

^{13.} Per MISITURA OMODERE BOLAJI-YUSUF JCA





**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

“

was not a party agent at any of the INEC's designation polling units or collation centres. None of the 133, 000 party agents was called to testify that there was a dispute regarding any collated result at the polling units, Registration/ward, Local Government, State or National Collation Centres so as to enable the collation officers at the various levels of collation to activate the process prescribed under section 64(6) of the Act.”

Also agreeing with the Respondents is BOLOUKUROMO MOSES, J.C.A who at pages 8- 9 of his concurring judgment, wondered on the issue of corrupt practices as follows:

“

“At any rate, why did any of the two sets of petitioners not tender even a single polling unit result issued by INEC to their polling unit agents to support their claim of manipulation of election results by INEC, even as they all agreed that they had agents in the polling units? I had thought that is the best and most effective way of proving the manipulation of election results alleged by them. After all, the polling unit is the only place where voting takes place and so also constitutes the building block of election results.”

Based on all the foregoing, the PEPC concluded that the Petitioners failed to establish their allegation of corrupt practices and over-voting and in consequence therefore, resolved issue 3 against the petitioners and in favour of the Respondents.

Resolution of Issue 4

The last issue bothered on whether from the evidence adduced before the court, the petitioners had established that the 2nd Respondent was not duly elected by majority of lawful votes cast at the election. The Respondents argued that the contention of the petitioners that for a candidate to be declared a winner of Presidential election he must score not less than one-quarter of the votes cast in the Federal Capital Territory (FCT) was misconceived. They cited and relied on section 299 of the Constitution to argue that if read together with section 134(2)(b) of the same Constitution it will become clear that the intendment of section 134(2)(b) in specifying “all the states in the federation and the Federal Capital Territory, Abuja” is not for the Federal Capital Territory, Abuja to be considered separately as requiring that a candidate must score not less than one quarter in the Federal Capital Territory, Abuja before he is declared winner in a



**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

presidential election.

Arguing per contra, the petitioners referred the Court to their pleadings where they pleaded that in addition to not scoring a majority of lawful votes cast at the election, the 2nd Respondent did not obtain at least one quarter of the votes cast in the Federal Capital Territory, Abuja and ought not to have been declared and returned elected. They submitted that the word “and” as used in section 134(2)(b) of the Constitution is conjunctive and that the language of the Constitution was clearly to the effect that for a candidate to be declared the winner of the presidential election, that candidate must secure at least one quarter of the votes cast in two thirds of the entire 36 states of the Federation, which is 24 states, and that candidate must also secure not less than one quarter of the votes cast in the Federal Capital Territory, Abuja.

In resolving the issue against the petitioners however, the PEPC firstly observed as follows:

“

“In finding appropriate answer to this issue, I wish to observe, first, that with all due respect to Counsel to the petitioners, their interpretation of section 134(2)(b) of the 1999 Constitution founded principally on a fixation with the word “and’ appearing between the phrases “he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation,” and “the Federal Capital Territory, Abuja,” is completely fallacious, if not outrightly ludicrous.”

The Court agreed with the Respondents that by the express provision of section 299 of the Constitution, the provisions of the entire Constitution shall apply to the Federal Capital Territory as if it were one of the States of the Federation. In the opinion of the Court, this means that section 134(2)(b) of the Constitution, requiring a presidential candidate to poll at least one-quarter of the votes cast in two-thirds of the States of the Federation in order to be returned elected, means nothing more than that the Federal Capital Territory shall be taken into account in calculating the said two-third of the States of the Federation. In other words, the FCT is no more than one of the States of the Federation for the purpose of that calculation. Nothing more than that can be implied or inferred from section 134(2)(b) of the Constitution, the Court said. The Court also reasoned that:

“

“it is also my considered view that if the framers had wanted to make scoring one-quarter of votes cast in the Federal Capital Territory, Abuja, a specific requirement for the return of a presidential candidate, they would have made that intention plain by using words that clearly



**PETITION NO.
CA/PEPC/04/2023
BETWEEN OBI &
ANOR V. INEC &
ORS**

separate the scoring of one-quarter of votes in the Federal Capital Territory as a distinct requirement.”

The Court therefore concluded that in a presidential election, polling one-quarter or 25% of total votes cast in the Federal Capital Territory of Abuja is not a separate precondition for a candidate to be deemed as duly elected under section 134 of the Constitution. In its final analysis, the Court noted that there is a rebuttable presumption of regularity with respect to election results and it is for a petitioner who challenges that result to rebut such presumption with credible evidence. The Court was of the view that the petitioners have failed to prove any of the three grounds contained in paragraph 20 of their petition. The Court opined that the petitioners have also not been able to lead any cogent, credible and acceptable evidence to rebut the legal presumption of correctness of the results of the presidential election held on 25th February, 2023 as declared by the 1st Respondent. Issue 4 like the first three issues was therefore, resolved against the petitioners and in favour of the Respondents and the petitioners’ petition consequently dismissed.



LAGOS

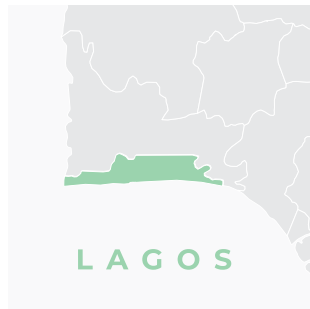
PETITION NO:

EPT/LAG/GOV/04/20

23 BETWEEN

RHODESVIVOUR V.

INEC & ORS



**PETITION NO:
EPT/LAG/GOV/04/20
23 BETWEEN
RHODESVIVOUR V.
INEC & ORS**

Introduction

Following the outcome of the Presidential election which showed that Labour Party won in Lagos State, the stronghold of the ruling party (APC) by a landslide, rasp attention was paid by Nigerians to the governorship election to see if Labour Party would again, sweep the state. It was disappointing for many however, when the governorship election in the state was reportedly marred by ballot snatching, voter suppression, voter apathy etc. Nigerians were particularly keen to know how especially the issue of declaration of allegiance to the U.S.A by the 3rd Respondent would be resolved since it was a fairly novel issue under our electoral jurisprudence.

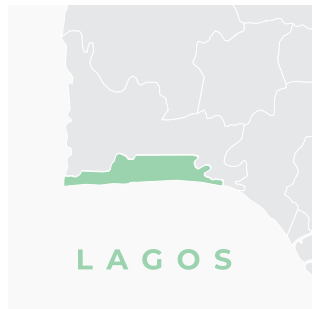
Summary of the Case

On Saturday the 18th day of March, 2023, the Independent National Electoral Commission (1st Respondent) conducted election for the Governorship office of Lagos State. In the election, Gbadebo Patrick Rhodes-Vivour (the Petitioner) contested under the umbrella of Labour Party while Babajide Olusola Sanwo Olu and Dr. Kadiri Obafemi Hamzat (2nd and 3rd Respondents herein) were Governorship and Deputy Governorship candidates respectively under the All Progressives Congress (4th Respondent). At the conclusion of the election, the Electoral umpire, on 20th March 2023 announced the results whereby it declared and returned the 2nd Respondent as winner of the election having scored 762, 134 votes to beat his closest rival, the Petitioner, who polled 312, 329 votes. Not satisfied with the result and declaration made, the petitioner filed a petition on the 9th day of April, 2023.

Grounds of the Petition

The grounds on which the petitioner's petition was predicated are threefold and they were:

- a. That the 2nd Respondent was, at the time of the Election, not qualified to contest the election.
- b. The election of the 2nd Respondent was invalid by reasons of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022 and the Constitution of the Federal Republic of Nigeria, 1999.
- c. The 2nd Respondent was not duly elected by majority of the lawful votes cast at the election.



**PETITION NO:
EPT/LAG/GOV/04/20
23 BETWEEN
RHODESVIVOUR V.
INEC & ORS**

Reliefs Sought by the Petitioner:

In line with the foregoing, the petitioner sought for the following reliefs from the Tribunal:

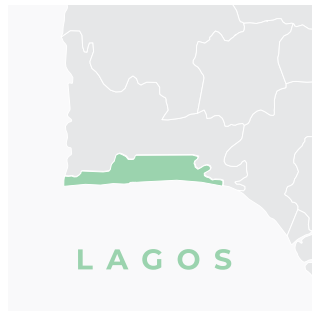
i. That it may be determined and thus determined that as at the time the election into office of Governor of Lagos State was held on Saturday 18th March, 2023 both the 2nd and 3rd Respondents were constitutionally unqualified to contest the said election and by reason of the non-qualification were not entitled to be declared as Governor elect on Monday, 20th March, 2023.

ii. That it may be determined and thus determined that all votes declared and returned for the 2nd and 3rd Respondents in the election into the Office of Governor of Lagos State held on Saturday 18th March, 2023 as entered in INEC Form EC8E of 20th March, 2023 totaling 762, 134 (Seven Hundred and Sixty-two Thousand one hundred and thirty-four) votes or any such votes as the electoral tribunal may find as having been cast in favor of the 2nd and 3rd Respondents at the said elections be voided and nullified as well as declared wasted by reason of the nonqualification of the said 2nd and 3rd Respondents to contest the said election.

iii. That it may be determined and thus determined that the purported election and return of the 1st Respondent, Babajide Sanwo-olu as Governor (sic) and the 2nd Respondent (sic) Dr. Kadiri Obafemi Hamzat as Deputy Governor respectively of Lagos State following the Saturday, 18th March, 2023 Governorship Election be nullified and voided and in their stead declaring as duly elected and returned your petitioner, Gbadebo Rhodes Vivour as the Governor of Lagos State, at the Election to the Office of Governor of Lagos State, held on Saturday 18th, March, 2023 having scored the majority of the total number of lawful votes cast as well as at least 25% of the said total number of lawful votes cast in at least 14 of the 18 Local Government Areas of Lagos State at the said Election of 18th March 2023.

Alternative reliefs:

iv. That it may be determined and thus determined that the 2nd Respondent was not duly elected by a majority of the lawful votes cast at the Election for the office of Governor or Lagos State held on Saturday, 18th March, 2023 and therefore, ought not be declared and returned elected at the said Election, as well as nullifying the purported Election of the 2nd and 3rd Respondents as Governor and Deputy Governor of Lagos State following the 18th March 2023 Election; such



**PETITION NO:
EPT/LAG/GOV/04/20
23 BETWEEN
RHODESVIVOUR V.
INEC & ORS**

Reliefs Sought by the Petitioner:

Election and return being null, void, unconstitutional, illegal, unlawful and of no effect whatsoever.

v. That it may be determined and thus determined that the Election into Office of Governor of Lagos State held on Saturday 18th March 2023 was not conducted substantially in accordance with the Electoral Act, 2022 and the Constitution of the Federal Republic of Nigeria, 1999, and therefore, null, void and of no effect, and therefore be nullified with an Order mandating the 1st Respondent to conduct a fresh Election for the Office of Governor of Lagos State at which the 2nd, 3rd and 4th Respondents would be excluded from contesting at a fresh Election so ordered.

Legal Issues Considered

The petitioner's petition was decided on a single issue namely:

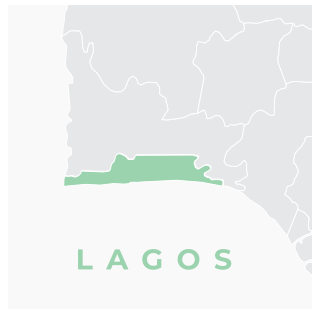
“

“Whether the 2nd and 3rd Respondents are not jointly disqualified under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2022 having regard to the 3rd Respondent's declaration of allegiance to the United States of America.”

The lone issue was adopted by the Tribunal for the resolution of the petitioner's petition following its rulings on various applications by the Respondents challenging the competence of the petition and the Tribunal's jurisdiction to entertain same. The Tribunal found and held that the petition of the petitioner was competent on ground (i) only having struck out grounds (ii) and (iii) of the petition for respectively being unknown to section 134 of the Electoral Act, 2022 and for total lack of pleadings in support of it.

Legal Arguments & Tribunal's Decision

Submitting on the lone issue adopted for the determination of the petition, Counsel for the Petitioner argued that the case of the petitioner is not that the 3rd Respondent ceased to be a citizen of Nigeria because he made a declaration of allegiance to the USA. He argued that by making the declaration of allegiance, the 3rd Respondent never lost his citizenship. Rather, he was simply disqualified from being eligible by the fact of his making the forbidden declaration of



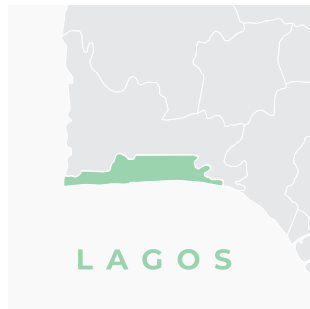
**PETITION NO:
EPT/LAG/GOV/04/20
23 BETWEEN
RHODESVIVOUR V.
INEC & ORS**

allegiance to the foreign country. Counsel submitted that the 3rd Respondent was disqualified in the same manner in which an adjudged bankrupt, or ex-convict or lunatic is by section 182 of the Constitution disqualified from contesting as a Deputy Governor. The Petitioner therefore, urged the Tribunal to limit its consideration of the issue to the latter part of section 182(1)(a) of the Constitution. Conversely, the Respondents in their submissions maintained that at no point had the 3rd Respondent denied or hidden the fact that he subscribed to the Oath of Allegiance to the United States of America. They contended that the effect of the 3rd Respondent's subscribing to an Oath of Allegiance is not inimical to his right to contest elections given the community reading of the provisions of section 177 and 182(1)(a) of the 1999 Constitution and taking into consideration the evidence and exhibits tendered by the RW1 and RW2. The Respondents therefore, urged the Tribunal to adopt a holistic approach to its interpretation of the relevant statutes.

In resolving the issue, the Tribunal began by noting that the burden of proof of the specific Oath of Allegiance subscribed to by the 3rd Respondent as well as the evidence of his renounced citizenship rest squarely on the petitioner vide **INEC V. LP & ORS (2023) LPELR-60019(CA)**. The Tribunal found that Exhibit PE393 to PE404 which is the affidavit in support of personal particulars (INEC FORM EC9) of the 3rd Respondent, though tendered from the bar and deemed demonstrated in open court by virtue of paragraph 46(4) of the 1st Schedule to the Electoral Act 2022 does not fall within the purview of section 137 of the Electoral Act, 2022 and therefore, lacked the power of self manifestation of its content. The Tribunal placed reliance on the Supreme Court's case of **A.P.G. v. ALMAKURA & ORS (2016) LPELR-47053 (SC)**.

The Tribunal also found that Exhibit PE985-PE990 and PE991-PE1033 which was tendered by the petitioner in proof of his case was a document downloaded from www.scis.com and therefore a computer generated evidence which ought to comply with the provision of section 84 of the Evidence Act, 2011. The Tribunal noted that no foundation was laid for the Exhibit in compliance with section 84 of the Act and that the Exhibit was accordingly inadmissible.

The Tribunal similarly found and held that the PW8 who was the sole witness of the petitioner that gave evidence in support of ground (i) of the petition was not shown to be an expert witness. The Tribunal noted that "she never tendered anything about herself to proof that she is what she presented herself to be." The Tribunal therefore, agreed with the Respondents that any other person from anywhere could have played the role of the PW8. The Tribunal concluded that



**PETITION NO:
EPT/LAG/GOV/04/20
23 BETWEEN
RHODESVIVOUR V.
INEC & ORS**

having in its ruling declared PW8 as an incompetent witness,¹⁵ nothing was left of the petitioner in proof of his pleadings. The Tribunal held that even if the PW8 and her documents had not been rendered incompetent, they would still not have been of any evidential value to the case of the petitioner.

The foregoing opinion of the Tribunal notwithstanding, the Tribunal considered the lone issue for determination on the merit and in finding for the Respondents, relied on the Electoral Act, 2022,¹⁶ the Constitution¹⁷ as well as the Court of Appeal decisions in **LABOUR PARTY & ORS V. MR. LUKMAN OLAKUNLE ISHOLA & ORS (2014) LPELR-24386 (CA)**¹⁸ and the unreported case of **IKENGBOJU DELE GBOLUGA V. HON. ALBERT AKINTOYE & 3 ORS, CA/AK/EPT/NAS/286/2019**. The court held in part that:

“

“Declaration or Oath of allegiance to the United States is not different from taking United States citizenship; rather, it is a precursor to it. As a matter of fact, the United States Oath of Allegiance is a sworn declaration that all United States applicants for citizenship by naturalization must solemnly swear to during a formal naturalization ceremony in order to formally complete the naturalization process. That is to say, declaration of allegiance is a condition precedent to acquiring the United States citizenship. An applicant for US citizenship must subscribe to the oath of allegiance before he is conferred with the citizenship. The petitioner seems to assume that making a declaration or swearing to an oath of allegiance is distinct and carries a higher obligation and more binding than acquiring United States’ citizenship. He assumes that by swearing to an oath of allegiance to the United States, the 3rd Respondent has forfeited, mortgaged, compromised and renounced his allegiance to the Federal Republic of Nigeria. That is far from the law.”

Having so found and held, the Tribunal concluded that “this petition with No: EPT/LAG/GOV/04/2023 is clearly devoid of merit and consequently dismissed.” The Tribunal accordingly affirmed the declaration and return of the 2nd Respondent by the 1st Respondent as the duly elected Governor of Lagos State of Nigeria.

¹⁵ The Tribunal had, in its earlier ruling in respect of the Respondents’ challenge to the competency of the petitioners’ witnesses, found and held that the PW8 was a witness that was available to the petitioner at the time of filing of the petition and her witness statement on oath as well as the documents she sought to rely on ought to accompany the petition. The Tribunal held in particular, that PW8 did not fall under the type of witnesses to be subpoenaed and that she was therefore, incompetent to have given evidence.

¹⁶ Section 134(1) and (3)

¹⁷ sections 177 and 182(1)(a)

¹⁸ In this case the Court of Appeal concluded that: “Therefore, I am left in no doubt that the Court below goofed and misconceived the provision of section 182(1)(a) and 28(1) of the Constitution of the Federal Republic of Nigeria when it concluded that the 3rd Defendant (3rd Appellant) who is an American citizen and a Nigerian by birth cannot in that circumstance contest an election to the post of a governor in any state in Nigeria. I therefore answer this issue in the negative. That is to say that the 3rd appellant is not disqualified from contesting an election in Nigeria.”



ADAMAWA

PETITION NO:

EPT/AD/GOV/1/2023: BETWEEN

DAHIRU & ANOR V. INEC & ORS



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

Introduction

Following the outcome of the Presidential election which showed that Labour Party won in Lagos State, the stronghold of the ruling party (APC) by a landslide, rasp attention was paid by Nigerians to the governorship election to see if Labour Party would again, sweep the state. It was disappointing for many however, when the governorship election in the state was reportedly marred by ballot snatching, voter suppression, voter apathy etc. Nigerians were particularly keen to know how especially the issue of declaration of allegiance to the U.S.A by the 3rd Respondent would be resolved since it was a fairly novel issue under our electoral jurisprudence.

Summary of the Case

On Saturday the 18th day of March, 2023, the Independent National Electoral Commission (1st Respondent) conducted election for the Governorship office of Lagos State. In the election, Gbadebo Patrick Rhodes-Vivour (the Petitioner) contested under the umbrella of Labour Party while Babajide Olusola Sanwo Olu and Dr. Kadiri Obafemi Hamzat (2nd and 3rd Respondents herein) were Governorship and Deputy Governorship candidates respectively under the All Progressives Congress (4th Respondent). At the conclusion of the election, the Electoral umpire, on 20th March 2023 announced the results whereby it declared and returned the 2nd Respondent as winner of the election having scored 762, 134 votes to beat his closest rival, the Petitioner, who polled 312, 329 votes. Not satisfied with the result and declaration made, the petitioner filed a petition on the 9th day of April, 2023.

Reliefs Sought by the Petitioners:

In paragraph 60 of the petition, the petitioners sought the following reliefs against the Respondents:

- i. That it may be determined that having regard to section 149 of the Electoral Act, 2022, any defect or error arising from any action taken by an official of the Commission in relation to any notice, form or document made or given or other things done by the official in pursuance of the provisions of the Constitution or the Electoral Act, or any rules made thereunder remains valid unless otherwise challenged and declared invalid by a competent court of law or tribunal.
- ii. That it may be determined that not being a court or Tribunal, the purported nullification by the National Commissioner for Voters Education and Publicity of



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

iii. The 1st Respondent (Festus Okoye Esq.) and/or by the 1st Respondent, of the declaration made on 16th April, 2023 by the Resident Electoral Commissioner for Adamawa State declaring the 1st petitioner as the winner of Adamawa State governorship election is null and void and of no effect whatsoever.

That it may be determined that having regard to section 149 of the Electoral Act 2022 the declaration made by the Resident Electoral Commissioner of Adamawa State on 16th April 2023 that the 1st petitioner is the winner of the governorship election of Adamawa State conducted on 18th March 2023 and 15th to 18th April 2023 is valid.

iv. That it may be determined that in so far as the declaration of the 1st petitioner by the Resident Electoral Commissioner for Adamawa State as the winner of the said governorship election has not been challenged and declared invalid by any competent court or tribunal, the 1st petitioner is the duly elected Governor of Adamawa State.

v. Without Prejudice to the foregoing reliefs, that it may be determined that the votes recorded and/returned in polling units complained of in this petition did not represent lawful votes cast in the said polling units in the said Local Government Areas in the Adamawa State Governorship Election held on 18th March 2023 and 15th to 18th April, 2023 and as having been obtained in vitiating circumstances of substantial non-compliance with mandatory provisions of the Electoral Act, 2022.

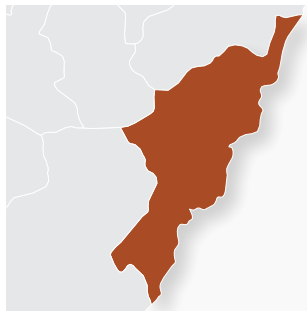
vi. That it may be determined that the 2nd Respondent was not duly elected by a majority of lawful votes cast in the said Adamawa State Governorship Election held on 18th March 2023 and 15th April, 2023 and therefore, the declaration and return of the 2nd Respondent by the 1st Respondent as the Governor of Adamawa State is unlawful, undue, null, void and of no effect.

vii. That it may be determined that the 1st petitioner was duly and validly elected and ought to be returned as the Governor of Adamawa State having polled the highest number of lawful votes cast at the election to the Office of the Governor of Adamawa State, held on 18th March, 2023 and 15th to 18th April 2023 and having satisfied the constitutional requirements for the said election by obtaining the required spread, that is by obtaining 25% of the votes in at least two-thirds (2/3) of all the local government areas of Adamawa State.

viii. That the 1st petitioner is declared validly elected or returned in the said election.

ix. An order directing the 1st Respondent to issue a Certificate of Return to the 1st petitioner as the duly elected Governor of Adamawa State.

x. An order declaring null and void the Certificate of Return wrongly issued to the 2nd Respondent by the 1st Respondent.



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

xi. An order awarding costs against the Respondents in favour of the petitioners.
xii. In the Alternative, that the governorship election of Adamawa State conducted on 18th March and 15th to 18th April 2023 was vitiated by substantial non-compliance with, and breaches of the mandatory statutory requirements of the Electoral Act and regulations made thereunder, which substantially affected the validity of the election that none of the candidates in the said election can be validly returned as having won the said election, is void.

xiii. An order directing the 1st Respondent to conduct fresh governorship election for Adamawa State.

Grounds of the Petition:

The grounds upon which the Petitioners filed their petition are as follows:

- a.** The election of the 2nd Respondent was invalid by reason of non-compliance with the provisions of the Electoral Act, 2022.
- b.** That the 2nd Respondent was not duly elected by majority of lawful votes cast at the election.

Legal issues considered

The petitioners' petition was determined on the following three issues:

- 1.** Whether the nullification by the 1st Respondent's National Commissioner for Voters Education Publicity, Festus Okoye, of the declaration by the Adamawa state Resident Electoral Commissioner declaring the 1st Petitioner winner of the Governorship election in dispute in this Petition, is not null and void.
- 2.** Whether the election of the 2nd Respondent as the Governor of Adamawa State on 15th and 18th April, 2023 is invalid by reason of non-compliance with the provisions of the Electoral Act, 2022.
- 3.** Whether the 2nd Respondent was not duly elected as the Governor of Adamawa State on the 15th and 18th of April, 2023 by the majority of lawful votes cast at the election.

Legal Arguments & Tribunal's decisions:

Issue one

The petitioners submitted on issue one that for the 1st Respondent to prove that it nullified the declaration by the Resident Electoral Commissioner, that the 1st Respondent would need to present before the Tribunal the minutes of the meeting of the Commission in which the Chairman and the twelve National



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

Electoral Commissioners and Resident Electoral Commissioner were present and took a decision. The petitioners also argued that what the 1st Respondent ought to have done was to challenge the declaration of the 1st petitioner made by the Resident Electoral Commissioner within 21 days as provided in section 285(5) of the 1999 Constitution.

Conversely, the Respondents argued that the petitioners failed to plead, lead or show evidence whether the Resident Electoral Commissioner was delegated to make 'declaration and return' and that in the absence of any evidence of delegation that the Resident Electoral Commissioner acted ultra vires and ought to be set aside. Agreeing with the Respondents, the Tribunal observed that:

“

“The wordings of paragraphs 2.1.2.1 and 2.1.2.1.3 of Exhibit PLL1 page 1 to 171(the Manuel for Election Officials, 2023), Section 25(2)(f), 64(4), 152 of the Electoral Act, 2022 are clear and unambiguous. It is the law that where the words in a statute or an enactment are clear and unambiguous, it should be given its literal and ordinary meaning. The maxim expression unius exclusion alterius, express mention of one thing is the exclusion of the other not mentioned comes into play. The drafters of the Electoral Act, 2022, the Manual for Election Officials, 2023 and the Guidelines for Conduct of Election, 2022 having not expressly provided that the Resident Electoral Commissioner has the power to announce and declare the result of a Governorship Election, the Tribunal cannot impute or read into the Electoral Act, 2022, the Manual for Election Officials, 2023 and the Guidelines for Conduct of Election, 2022, what was never expressly provided by the legislature.”

The Tribunal continued:

“

“The provisions of section 25(1)(2)(f) of the Electoral Act, 2022, are mandatory and must be strictly complied with. If the legislature had intended that a Resident Electoral Commissioner should announce and declare results of an election, they would have expressly so stated in the Electoral Act, 2022...In the absence of any provision in the Electoral Act, 2022, empowering the Resident Electoral Commissioner to announce and declare result of Governorship Election and in the absence of any power delegated to the Resident Electoral Commissioner, the declaration made by Mr. Hudu Yunusa-Ari on the 16th day of April, 2023 wherein he



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

“

declared and returned the 1st petitioner, Senator Aishatu Dahiru as the winner of the Election was ultra vires the powers of the Resident Electoral Commissioner and null and void.”

The tribunal accordingly resolved issue one in favour of the Respondents and against the petitioners.

Issue two

The petitioners submitted that there was non-accreditation, over-voting, no polling unit Registers, the presiding officials in several polling units failed to write their names or sign the forms, and that there were polling units where there were under voting, alterations and/or mutilations across polling units and wards in the Local Government Areas. The petitioners contended that the various acts of non-compliances alleged by the petitioners were manifest on the certified true copies of the documents tendered by the petitioners such that with or without PW3, that the Tribunal would be bound by various documents including Exhibits PA1A to PU 13, PG 11, PAA1 to PRRI, PG1 to PG18. The petitioners concluded that assuming without conceding that the declaration of the 1st petitioner as the winner of the Governorship election was validly voided that the petitioners on proper consideration of all the materials placed before the Tribunal still won the election having regard to series of acts of non-compliances by the 1st Respondent with the Electoral Act, 2022, and the regulations and guidelines made thereunder.

On their part, the Respondents urged the Tribunal to expunge Exhibits PCCI, PEEI, PFFI, PGGI, PGI-PG6, PP32, PG2A-C, PL35 pg 1-11, POOI, PQQ1-6, PRR1 pg 1-18 tendered across the bar. They submitted that the mere fact that the Exhibits were certified public documents did not dispense the authors of the documents with the need to be called as witnesses. The Respondents further contended that Exhibit PSSI-pg 1 to 171 and the evidence of PW3 were caught by the principle of hearsay and urged the Tribunal to discountenance same as Exhibit PSSI pg 1 to 171 in particular, was full of errors, discrepancies and inconsistencies. The Respondents concluded that the petitioners failed to adduced evidence to establish that the alleged non-compliance substantially affected the result of the election. They urged the Tribunal therefore to resolve this issue in their favour. Agreeing with the Respondents, the Tribunal firstly observed that:



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

“

“The three (3) witnesses called by the petitioners knew next to nothing as to what transpired at the different polling units where the petitioners alleged that there were alterations, non-compliance, over-voting, various forms of infraction by the Respondents...

The evidence of PW1 and PW2 as to what transpired in the different polling units (apart from the polling units that each of them voted) and the evidence of PW3 were hearsay evidence of what transpired in the polling units where the alleged non-compliances occurred. The best evidence of what transpired in a polling unit or ward is the evidence of the person who was present at the polling unit. The evidence of a polling unit agent is the best evidence of what transpired at the polling unit.”

The Tribunal also interpreted the provision of section 137 of the Electoral Act and observed that:

“

“By the provisions of section 137 of the Electoral Act, 2022, a petitioner can dispense with the calling of oral evidence where it is shown that the CTC of the documents tendered sufficiently disclosed the non-compliance alleged by the party. Where however from the certified true copies of the documents tendered, the non-compliances alleged or complained of did not manifestly disclose the alleged noncompliance, the party is still required to call oral evidence to speak to the documents and link the documents to the specific areas of the polling units, wards in the Local Governments that the non-compliance occurred...

PW2 testified that the petitioners had agents in all the polling units, wards and Local Government Areas of the State. The petitioners however failed to call agents from each of the polling units where the petitioners alleged that there were non-compliances by the Respondents. Failure of the petitioners to call polling units agents in each of the polling units where the petitioners alleged that non-compliance occurred is fatal to the case of the petitioners.”

On the specific issue of over-voting, the Tribunal examined the provision of section 51(2) of the Electoral Act and noted thus:

“

“By the provisions of section 51(2) of the Electoral Act, 2022, over voting will occur where the total number of votes cast in any polling unit exceeds



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

the number of the accredited voters. To prove over voting in an election petition, the party alleging over voting must establish that the alleged over voting was in favour of the Respondent and that the Respondent (the candidate that won) won as a result of the said over voting...

To prove over voting under the Electoral Act, 2022, a party alleging over voting in an election which is being challenged or contested by him must produce three essential electoral documents before the Tribunal or Court which are as follows:

- a. Voters Register
- b. Bvas Machine and
- c. Form EC8A

The purpose or the use of voters Registers is to show the number of Registered Voters. The Bvas Machine (Bimodal Voters Accreditation System) is used for accreditation of voters. Forms EC8A is the statutory forms to show that election was conducted at a particular or specific ward... Apart from the three essential documents that a petitioner must tender in proving over voting under the Electoral Act, 2022, the petitioner must relate the three essential documents tendered to the specific areas that demonstrate to the Court or Tribunal that if the alleged over voted figures are removed, that the petitioner will become the winner of the election."

The Tribunal concluded that the petitioners, against settled authorities, failed to tender the Bvas Machine but merely tendered the CTC of the Bvas Report which was Exhibit PDD1 pg 1 to 125. The Tribunal noted that this was fatal to the petitioners' petition and accordingly resolved the issue against the petitioners and in favour of the Respondents.

Issue three

On the last issue submitted for the Tribunal's resolution, the petitioners referred the Tribunal to the Exhibits in respect of the various polling units and wards in the Local Government Areas where some valid votes, rejected votes, spoiled votes and unusual ballot papers were not equal to the ballot papers used. The petitioners submitted that based on the non-compliances that the votes recorded for the petitioners and 2nd and 3rd Respondents must be canceled and that the final valid vote for the petitioners will be 339, 060 whilst that of the 2nd and 3rd Respondents as computed at page 170 to 171 of Exhibits PSS 1 pg 1 to 171, would be 319, 400. The petitioners submitted that the Respondents did not cross examine on the correctness of the final valid votes stated on Exhibit PSS I pg



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

Issue three

1 to 171 and that based on the final scores the petitioners must be declared as the winners of the election. The petitioners concluded that based on the series of acts of noncompliances it goes beyond argument that the 2nd Respondent was not duly elected by majority of lawful votes.

On the other hand, the Respondents submitted that the result declared by INEC enjoyed a presumption of regularity by virtue of section 168 of the Evidence Act and that the burden of proof is on the party who challenges the regularity of any result declared by INEC to adduce cogent and credible evidence in justification of its position. They contended that the type of evidence required to prove a petition challenging the votes polled by a candidate at an election must be evidence that must come from the officials who were on the field when the votes were casted and recorded. They submitted that the state collation agents, Local Government agents and ward collation agents who received the figures from their party polling unit agents are not competent to give evidence of what occurred or took place at the polling units. The Respondents urged the Tribunal to hold that based on the evidence before the Tribunal, the petitioners have failed to discharge the burden placed on them.

The Tribunal in resolving this issue, agreed with the Respondents and noted firstly that the petitioners predicated ground II of their petition on section 134(c) of the Electoral Act, 2022. The Tribunal noted that to succeed on this ground, the petitioners must prove the following:

- a. The polling units that were affected
- b. The figures deducted
- c. The votes illegally accredited to the Respondent
- d. The persons that perpetrated the deduction
- e. That if the votes are deducted it will result in the petitioners favour and the petitioners will be declared the winner.

The Tribunal held that a petitioner who alleges that a Respondent was not elected by majority of lawful votes cast must therefore call witnesses from the polling units, wards in the Local Government that were affected. The Tribunal reiterated that there must be evidence of witnesses from polling unit by polling unit to establish that the Respondent was not elected by majority of lawful votes cast. In respect of the three witnesses called by the petitioners in proof of their petition, the Tribunal found and held as follows:



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

“

“PW1 and PW2 each gave evidence that the elections in their respective polling units were free and fair. The evidence of PW1 and PW2 as to what happened in the various polling units, wards in the Local Government Areas of Adamawa State and the evidence of PW3 were all hearsay. Exhibits PA1(a) to (c) (Forms EC8As), Exhibits PU13 pg 1(a) to PU13 pg11, (EC8Bs), Exhibit PBB1 pg1 to 21 (Forms EC8Cs), and Exhibits PAA1(a) to (c) (Forms EC8Ds) tendered across the bar but identified by PW2 and PW3 were documentary hearsays, PW2 and PW3 were not the makers of the Electoral documents and had no knowledge what was contained in the Electoral document or the afore-stated Exhibits. Exhibit PSS1 pg1 to 171, the report of the Document examiner was based on documentary hearsay. The electoral documents handed over to PW3 were documents of which PW3 was not the maker.”

The Tribunal noted that the makers or authors of the documents were not called to testify before the Tribunal to demonstrate the aforesaid Exhibits. The Tribunal was of the view that the petitioners ought to have called the makers of the Exhibits who are the polling agents from the various polling units, the various wards in the Local Government Areas to rebut the presumption of regularity enjoyed by the results in Exhibit PA1(a) to (c) (Forms EC8As), Exhibits PU13 pg 1(a) to PU13 pg11, (EC8Bs), Exhibit PBB1 pg1 to 21 (Forms EC8Cs), and Exhibits PAA1(a) to (c) (Forms EC8Ds). The Tribunal concluded that failure of the petitioners to call witnesses to speak to the Exhibits is fatal to the petitioners’ case. In conclusion, the Tribunal held that

“

In the light of the foregoing, the petition fails and it is hereby dismissed. Accordingly, the declaration made by the 1st Respondent on the 18th day of April, 2023, wherein it returned the 2nd Respondent, Ahmadu Umaru Fintiri as duly elected Governor of Adamawa State is hereby affirmed by the Tribunal. The petitioners and the Respondents are to each bear their respective cost of this petition.”

Reliefs Sought by the Petitioner:



Similarities and Differences in Legal Issues Across the Judgments

Issue one of the Obi's petition is similar to issue one of the GRV's petition in that both complained about the non-qualification/disqualification of the candidates





**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

of the All Progressives Congress (APC) who were declared winners of their respective elections by the INEC. But while the complaint in the Obi's petition was on the alleged double nomination of the vice presidential candidate of the APC and the forfeiture of \$460, 000 by the presidential candidate of the APC, the complaint in the GRV's petition bothered on the oath of allegiance of the United States of America taken by the deputy governorship candidate of the APC for Lagos state. In the Dahiru's petition conversely, no complaint or issue was raised on non-qualification/disqualification of the Candidate of the PDP to contest the Adamawa State Governorship election of March 18th, 2023.

Similarly, issue two of the Obi's petition is similar to issue two of the Dahiru's petition in that both complained about non-compliance with the provisions of the Electoral Act, 2022 by the INEC. The Obi's petition essentially complained about the failure of INEC to upload results of the presidential election to the IREV in line with INEC's guidelines made pursuant to the Electoral Act 2022. On the other hand, the Dahiru's petition complained inter alia about the failure of INEC officials to sign certain INEC Forms in contravention of the provisions of the Electoral Act, 2022. Although the GRV's petition equally complained about noncompliance with the provision of the Electoral Act, the complaint did not however see the light of day as it was struck out by the Tribunal for violating the provision of section 134 of the Electoral Act, 2022.¹⁹

Issue three of the Obi's petition complained about corrupt practices by INEC. The petitioners in particular, complained of inflated and deflated votes and also alleged suppression of votes by INEC by uploading ¹⁸, ⁰⁸⁸ blurred results on the iRev. On the other hand, the GRV's petition lumped its complaint on corrupt practices with the compliant on non-compliance which by settled principles, renders the ground incompetent.²⁰ The Tribunal did not therefore, hesitate to strike out GRV's complaint on noncompliance on this ground. The Dahiru's petition conversely, did not raise any issue on corrupt practice by INEC. As such, none was treated by the Tribunal.

The last issue treated in the Obi's petition bothered on election based on majority votes and in particular, queried whether the ²nd Respondent was duly elected by majority of lawful votes cast at the election. The contention of the petitioners essentially was that the ²nd Respondent did not obtain at least one quarter of the votes cast in the Federal Capital Territory, Abuja and ought therefore, not to have been declared and returned elected. Conversely and although the petitioner in the GRV's petition also grounded his petition on the issue of scoring majority of votes, the Tribunal however, found that the petitioner failed to plead facts in

¹⁹. The Tribunal reasoned that ground two of the petitioner which complained that "the election of the 2nd Respondent was invalid by reason of corrupt practices or non-compliance with the provision of the Electoral Act 2022 and Constitution of the Federal Republic of Nigeria, 1999" was incompetent and liable to be struck out as it expanded the provision of section 134(1)(b) of the Electoral Act by adding the words "and Constitution of the Federal Republic of Nigeria, 1999"

²⁰. *ibid*





**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

support of the said ground in the petition. The Tribunal therefore, treated the ground as abandoned and accordingly struck same out. Issue three of the Dahiru's petition was similar to issue four of the Obi's petition in that it also raised the question of scoring majority of lawful votes. The petitioners therein relied on the facts pleaded by them in support of the issue of non-compliance to argue that if the affected votes were subtracted from both parties, the petitioners will have majority of lawful votes cast at the election and therefore, ought to be declared as winner of the election. The petitioners also raised a novel issue which was neither treated in the Obi nor GRV's petitions. In issue one of their petition which the Respondents therein argued was not cognizable under the Electoral Act, the petitioners in the Dahiru's petition queried whether the nullification by the 1st Respondent's National Commissioner for Voters Education Publicity, Festus Okoye, of the declaration by the Adamawa state Resident Electoral Commissioner declaring the 1st Petitioner winner of the Governorship election in dispute is not null and void. Although the Tribunal omitted to pointedly answer whether the issue was cognizable under the Electoral Act or not as queried by the Respondents, it however clarified that a Resident Electoral Commissioner does not have the power to announce and declare results of an election as done in the Dahiru's petition.

Comparative Analysis of the Tribunals' Decisions

We have hereinabove set out the grounds on which the respective petitions of the petitioners were predicated. We have also set out the reliefs sought by the petitioners in line with the grounds of their petitions and have analyzed the issues distilled for the resolution of the respective petitions. Needless to add therefore, that the decisions of both the PEPC in the Obi's petition and the Tribunals in the GRV and Dahiru's petitions were equally tailored to the issues adopted for the resolution of the respective petitions. In both the Obi and GRV's petitions for instance, the issue of disqualification of the 3rd Respondent in the respective petitions were treated and resolved. In the Obi's petition, the question was whether the 3rd Respondent who was the 2nd Respondent's running mate knowingly allowed himself to be nominated in more than one constituency contrary to section 35 of the Electoral Act, 2022. The PEPC unfortunately, could not render its opinion on the issue as it was constrained to defer to the Supreme Court's decision on the same issue which the latter delivered in respect of another matter.²¹ The Supreme Court's position was that having withdrawn his nomination and personally delivered the notice of the withdrawal to his party on 6th July, 2022, the 3rd Respondent was no longer a candidate for the Borno

21. PDP V. INEC & ORS (2023) LPELR-60457(SC)



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

Central Constituency Senatorial election and his subsequent nomination as the Vice-presidential candidate for the presidential election was not multiple nomination. The PEPC therefore, and rightly in our view, decided to abide by the Supreme Court's decision on the issue.²²

But the PEPC gave its opinion on the novel issue of the 2nd Respondent who was fined the sum of \$460, 000 (Four Hundred and Sixty Thousand Dollars) for an offence involving dishonesty, namely narcotics trafficking imposed by the United States District Court in Case No: 93C 4483. The PEPC opined that the provision of section 137(1)(d) of the Constitution relates to sentence of death or sentence of imprisonment or fine imposed as a result of a criminal trial and conviction and does not extend to a civil forfeiture proceeding against funds in specific accounts. The Court also noted that Exhibit PA5 (certify copy of the civil forfeiture proceeding against the 2nd Respondent in the United States) was an action in rem against the funds with First Heritage Bank and Citibank and that it was not an action in personam against the 2nd Respondent. The implication of the PEPC's decision which was eventually affirmed by the Supreme Court is that for a candidate to be disqualified under section 137(1)(d) of the Constitution, he must have been arrested, tried and convicted of an offence involving dishonesty and not merely fined in a civil suit in connection with a subject matter which touches on dishonesty. The Tribunal in the GRV's petition equally gave its opinion on the issue of disqualification of the 3rd Respondent who was the running mate of the 2nd Respondent. The bone of contention in the GRV's petition was whether the 3rd Respondent who admittedly made a declaration of allegiance to the United States of America was not disqualified in the same manner in which an adjudged bankrupt, or ex-convict or lunatic is disqualified under section 182 of the Constitution. Giving its answer in the negative, the Tribunal clarified that:



“Declaration or Oath of allegiance to the United States is not different from taking United States citizenship; rather, it is a precursor to it... The petitioner seems to assume that making a declaration or swearing to an oath of allegiance is distinct and carries a higher obligation and more binding than acquiring United States' citizenship. He assumes that by swearing to an oath of allegiance to the United States, the 3rd Respondent has forfeited, mortgaged, compromised and renounced his allegiance to the Federal Republic of Nigeria. That is far from the law.”

²² We however think that the case of PDP V. INEC & ORS (supra) being a pre-election matter and the apex court having found and held therein that the Appellant (PDP) lacked the locus standi to challenge the nomination of the vice presidential candidate of the APC, ought to have simply strike out the appeal and leave the substantive question of double nomination for the PEPC to determine since same was raised in a post-election matter in the Obi's petition long before the apex court delivered its judgment in PDP V. INEC & ORS (supra). Presented with a fiat accompli, the PEPC only noted on the issue of double nomination thus: "It is pertinent to observe that upon our careful perusal of Exhibits X2 and RA23, which are the certified true copies of the Supreme Court unanimous judgment in PDP V. INEC & 3 ORS (supra), it is clear to us that the Apex Court had not only determined that the petitioners in that case had no locus standi to question the nomination of the 3rd Respondent herein, the Court proceeded to determine with finality that there was no double nomination on the part of the 3rd Respondent."



**PETITION NO:
EPT/AD/GOV/1/2023:
BETWEEN DAHIRU
& ANOR V. INEC &
ORS**

This decision of the Tribunal which interestingly was affirmed by the Court of Appeal and subsequently by the Supreme Court, implies that a candidate who declares allegiance to another country (other than Nigeria his country of birth) can nonetheless validly vie for the office of governor of any state in Nigeria without let or hindrance.²³

The Court and Tribunals also rendered decisions on the issue of non-compliance with the Electoral Act, 2022 by the electoral umpire – the INEC. In the Obi's petition, the issue was on the failure of the 1st Respondent to electronically transmit or transfer the results of the polling unit directly to its collation system. In resolving the issue against the petitioners however, the PEPC firstly noted that the petitioners did not establish that there exists a collation system to which the 1st Respondent ought to have transmitted/transferred results. Secondly, the Court drew parties' attention to its judgment in Appeal No. CA/LAG/CV/332/2023: APC V. LABOUR PARTY & 42 ORS wherein it upheld the decision of the Federal High Court to wit that INEC is not mandatorily required to electronically transmit results. The Court accordingly noted that this constituted issue estoppel and that the petitioners were bound by it.²⁴

In the same vain, The Tribunal in the Dahiru's petition equally renders its decision on whether the election of the 2nd Respondent as the Governor of Adamawa State on 15th and 18th April, 2023 was not invalid by reason of non-compliance with the provisions of the Electoral Act, 2022. The court observed that by the provisions of section 137 of the Electoral Act, 2022, a petitioner can dispense with the calling of oral evidence where it is shown that the CTC of the documents tendered sufficiently disclosed the non-compliance alleged by the party. Where however from the certified true copies of the documents tendered, the non-compliances alleged or complained of did not manifestly disclose the alleged non-compliance, the party is still required to call oral evidence to speak to the documents and link the documents to the specific areas of the polling units, wards in the Local Governments that the non-compliance occurred. The Tribunal noted that the three (3) witnesses called by the petitioners knew next to nothing as to what transpired at the different polling units where the petitioners alleged that there were alterations, noncompliance, over-voting, and various forms of infraction by the Respondents. The testimonies of the three witnesses along with the certify true copies of documents relied on by the petitioners on the issue of non-compliance were therefore, rejected by the Tribunal

²³. As argued by the petitioner in the GRV's case, we believe the Tribunal ought to have limited its consideration on the issue of declaration of allegiance to the second leg of section 182(1)(a) of the Constitution rather than lump the two legs of the section together as if they relate to the same circumstances. We believe the framers of section 182(1)(a) of the Constitution were conscious when they couched the two-leg provision and separated same with the adjunct "or"; while making only the first leg of the provision subject to section 28 of the Constitution. It is submitted that had the framers of the Constitution wanted the latter part of section 182(1)(a) of the Constitution to also be subject to section 28 of the Constitution, they would have either used the conjunction "and" between the two-leg provision or simply stated so in the provision.

²⁴. The implication of this decision which we find uncomfortable is that INEC is not bound to transmit election results to IREV or any other collation system.



Our Findings:

Our Findings:

a. Although the general rule is that substantial justice will not be sacrificed on the altar of technicality, in election petitions in Nigeria however, the reverse is the case. The following instances will suffice.

i. The extant practice of our election petition tribunals is that regardless of the novelty of a petitioner's case, he must look for a way to tailor his complaints to fit into the statutory grounds provided in the Electoral Act. In other words, if a petitioner's complaint is one that does not fit into the statutory grounds provided in the Electoral Act, the complaint cannot be entertained by the Tribunal. In the Adamawa's case for instance, issue one was found and held not to have been brought under any of the grounds recognized by the Electoral Act. It was therefore struck out on application of the Respondent even though the Tribunal eventually considered it on the merit in the interest of justice.

ii. A party who is aggrieved with the outcome of an election petition must file his petition within 21 days of the declaration of results by INEC. Failure to file the election petition within the statutory 21 days is fatal.

iii. A petitioner is required by law to file all written depositions of witnesses along with his petition including the depositions of subpoenaed witnesses. Failure to so do is fatal. In the Abuja case, the witness depositions of ten out of thirteen witnesses were thrown out because they were filed outside the 21 days allowed by the Act.

iv. Pleadings which prima facie appears vague are not considered on the merit but struck out for being incompetent. Most paragraphs of the pleadings of the petitioners in the Abuja, Lagos and Adamawa cases were struck out on this ground.

v. If two or more statutory grounds are lumped together or facts relating thereto are lumped, the Tribunal will strike out both grounds and facts as incompetent. In the Lagos petition, the petitioner lumped two grounds together. The Tribunal did not hesitate to strike out both the grounds and facts in support for being incompetent.

vi. Notwithstanding the limited time (6 months) assigned by the constitution for the determination of election petitions, a party must invite makers of documents to breathe life into each document by speaking to them in open court. In the three cases analyzed above, most of the complaint of the petitioners were thrown out the window partly because the documents tendered in support were not spoken to by witnesses





Our Findings

- b.** The current state of the law compels persons who ought ordinarily not to be joined to an election petition to participate throughout the proceedings thereby wasting time and resources.
- c.** The term “fine’ as used in section 137(1)(d) of the Constitution relates to a criminal sanction which necessarily follows the trial and conviction of the accused. It does not apply to civil forfeiture proceeding.
- d.** Issue of noncompliance must be proved by direct evidence. Also, the noncompliance if proved, must be substantial as to affect the election failing which a petitioner’s petition on that ground must be dismissed.
- e.** By the decision of the Tribunal on issue one in the Adamawa case, only a returning officer can validly declare and return a winner of an election.
- f.** Holding dual citizen does not disqualify one from contesting for the office of governor of a state per the decision of the Tribunal in the Lagos case.
- g.** Premature application for pre-hearing session is fatal to a petitioner’s case. The petition of the petitioner in the Adamawa’s case was struck out on this ground because the petitioner applied for pre-hearing session before the close of pleadings.
- h.** Challenge to jurisdiction is determine at judgment rather than at pre-hearing stage. This has the effect of shutting the door against a petitioner who would otherwise corrected a wrong step taken by him in order to have his petition heard on the merit.
- i.** Allegation of corrupt practice against persons who are not joined in the petitioner’s petition is fatal to the petitioner’s complaint.
- j.** INEC is a statutory defendant and therefore, a necessary party to every election petition. This, in effect, makes it difficult for petitioners to obtain relevant documents from the election umpire which are germane to the petitioners’ cases.
- k.** Care must be taken in couching the grounds of an election petition. In fact, a petitioner must state the grounds as contained in the Electoral Act 2022. Any addition, enlargement or expansion to the grounds is fatal and will render a petitioner’s complaint incompetent. In the Lagos case, paragraphs 37 to 81 of the petition were struck out because the petitioner added the words: “1999 constitution” to one of the grounds.



Recommendation

Recommendations:

- a.** Election Petition Tribunals should enthrone substantial justice over technicality in considering petitions filed before them.
- b.** The statutory grounds of election petition should be expanded to allow novel issues capable of enriching our electoral jurisprudence to be entertained by the Tribunals. Section 134 of the Electoral Act should be amended to reflect this suggestion.
- c.** Rather than outrightly striking out pleadings for being vague, the Tribunals, in the interest of justice, should invoke their power to order amendment of the pleadings instead.
- d.** The Tribunals should endeavor to hear petitioners' petitions on the merit and order amendment instead of striking out grounds of the petitions or facts in support thereof merely because the grounds or facts are lumped together. It is suggested that the court or tribunal should examine the facts of the case in such circumstance to determine if they sustain any or both grounds and flow with it accordingly. This will be in the interest of substantial justice.
- e.** Paragraph 46(4) of the 1st Schedule to the Electoral Act, 2022 constitute an exception to the rule of dumping documents on courts. The tribunal in the Lagos case failed to seized the opportunity to breathe life into this provision. although not totally novel, paragraph 46(4) of the Act is an improved version of its counterpart in the 2010 Act and sought in particular, to do away with the hitherto requirement of a witness to tie his documents to aspect of a party's case.
- f.** A petition should not fail merely for premature application for pre-hearing session. Petitions should be heard on the merit by Election Tribunals in the interest of justice.
- g.** In the light of the mischief/negative consequence created by section 285(8) of the Constitution in our election petition process, it is hereby recommended that the section should be amended to provide that issues touching on the Tribunal or Court's jurisdiction should be determine at the pre-hearing stage of the petition; and that any right of appeal arising therefrom shall be exercisable only at the conclusion of the election petition.
- h.** Section 133 of the Electoral Act, 2022 which makes INEC a necessary Respondent in every election petition should be amended to make INEC only a compellable witness in election petitions. This will, among others, guarantee the commission's neutrality and integrity.
- i.** Counsel to petitioners in election petitions are enjoined to take advantage of the rich provisions of paragraphs 5 and 17 of the 1st schedule to the Electoral Act, 2022 by citing same to the court in appropriate cases. Similarly, election



Recommendation

Recommendations:

tribunals are urged to uphold provisions of the Electoral Act which are consistent with substantial justice over those that entrenched technical justice.

j. The provision of paragraph 14(2) of the 1st Schedule to the Electoral Act, 2022 which forbids amendment of petition after the expiration of 21 days from the date of declaration of winner by INEC should be amended by extending the time to the prehearing stage of the petition. No amendment however, should be entertained once the main petition is set down for hearing. This is to ensure that all facts and evidence are put forward before the court for the effective and effectual determination of the petition.

k. Additionally, or in the alternative to the foregoing, paragraph 14(2) of the 1st Schedule to the Electoral Act should be interpreted to apply only to ordinary witnesses. Subpoenaed witnesses should be construed as an exception to the rule that witness statements on oath of a petitioner must accompany the petitioner's petition.