

1. Ighodale Asuerinme
2. Peoples Democratic Party

1. Independent National Electoral Commission

3. All Progressive Congress

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

SC/CV/536/2825

**MOHAMMED LAWAL GARBA
TIJJANI ABUBAKAR
JUMMAI HANNATU SANKEY
OBANDE FESTUS OGBUINYA**

Thursday, 10th day of July 2025

Appeal: Compilation of record of appeal - where there's objection to the inclusion of irrelevant and immaterial documents to the record of appeal - whether such inclusion does not affect the validity of the appeal.

Appeal: Issues for determination - where grounds of appeal are abandoned - whether no competent issue arise therefrom - effect of argument on such incompetent issues

Appeal: Cross-appeal - meaning and nature thereof - whether it is an independent appeal by the Respondent - relevant principles thereof

Appeal: Record of appeal - compilation thereof - whether the duty to compile record of appeal in an election tribunal is the duty of the registrar of the tribunal and not that of the Appellant

Election Petition: Validity of an election - grounds for questioning the validity of an election - sec. 134(1) of the Electoral Act, considered.

Election Petition: Non-compliance with the Electoral Act - where a Petitioner please non-compliance in specific polling units - whether it is inconsistent with relief specified in sec. 136(1) of the Electoral Act.

Election Petition: Non-compliance with the Electoral Act - where a Petitioner complains of non-compliance with the Electoral Act in specified polling units contrary to the provisions of SS. 51(1)(2) and 73(2) - whether the Petitioner cannot validly seek for nullification of the entire election which does not include the polling units not affected by

*Election Petition: Section 73(2) of Electoral Act, 2022 - requirement to prior recording in the forms prescribed by the commission - where a Petitioner alleges that Electoral materials were not recorded in the forms in some polling units - onus on him thereto - whether he must prove non-compliance by calling witnesses in all the polling units complained of - the principle in *Baba vs. INEC (2024)14 NWLR (Pt. 1957)155**

Election Petition: Allegation of over voting - proof thereof - whether a Petitioner must tender a voters register, BVAS machines and Form EC8A in every polling units where over voting was alleged to have occurred

Election Petition: Form EC25B - purpose - whether it has only two columns for quality of ballot papers collected before election and the quantity returned after the election

*Election Petition: Non-compliance - proof thereof - where a Petitioner has established non-compliance - whether he has extra burden of showing that the non-compliance substantially affected the results of the election - sec. 135 of Evidence Act considered
Election Petition: Illegality or unlawfulness of votes - how established - whether*

Election Petition: Allegation of non-compliance - where a Petitioner tenders document in proof of non-compliance - whether document must specifically relate to the aspect of non-compliance alleged to avoid the court investigating which document is relevant.

Election Petition: Section 137 of Electoral Act and Paragraph 46(4) of First Schedule to the Electoral Act - onus on petition thereto - whether must establish the nature of non-compliance and whether non-compliance alleged are manifestly apparent at a casual glance

Election Petition: Exclusion of votes - where a Petitioner alleges illegal or invalid votes - onus thereon - whether he has to specifically link all the forms in respect of the polling units to prove non-compliance or illegality of votes

Election Petition: INEC - presumption of regularity in the conduct of election - sec. 68 of the Evidence Act considered - onus on Petitioner to rebut presumption

Election petition: over voting – how proved – whether the essential items are the voters register, the Bvas machines and result sheets in the affected polling units

Election petition: proof of non-compliance with the electoral act – onus on petitioner – whether must satisfy the tribunal that the noncompliance substantially affected the results of the election

Election petition: illegality or unlawfulness of votes – how established – whether petitioner has the onus to tender all relevant documents and call witnesses where the illegal or unlawful votes occurred

Election petition: Allegation of illegal or unlawful votes – where a petitioner establishes illegal or unlawful votes – whether must go further to establish how the illegal or unlawful votes substantially affected the results of the election

Election petition: proof of noncompliance – where documents are tendered from the Bar – whether witnesses should be called to relate the documents to specific areas of noncompliance complained of

Evidence: BVAS machines - admissibility thereof - where BVAS machines were tendered and admitted from the Bar without the consent of all the parties - whether it is in violation of paragraph 41(1)-(5) of the First Schedule to the Electoral Act, 2022

Jurisdiction: Incomplete record of appeal - where there is no record of appeal on issues decided at the lower court - whether the appellate court lacks jurisdiction to determine all issues decided at the lower court

Judicial Precedent: Reliance on decided cases - whether a judicial authority can be relied upon where the facts are similar with facts in the case at hand

Petitioner must go further to establish the effects of illegal votes on the overall results declared

Practice and Procedure: Record of Appeal in an Election Petition Appeal - duty on counsel thereto - whether counsel has duty to ensure that all relevant documents are compiled and transmitted to the appellate court - the principle in Okechukwu vs. Obiano (2020)8 NWLR (pt. 1726)276

Practice and Procedure: Where a party intends to challenge the incompleteness of a record of appeal - whether he has to file an affidavit - contents and purpose of such an affidavit - the principle in Anyakorah vs. PDP (2022)12 NWLR (pt.1843)1@38

Practice and Procedure: Record of appeal - where compiled and transmitted - whether binding on the court and parties until set aside

Statute: Electoral Act, 2022 - sec. 136(1) (2) thereof - relevant considerations

1. Whether the court below was wrong when it dismissed the Appellants' objections to the validity of the record of the Cross Appeal No. CA/AB J/EPT/ED/GOV/4/2025.
2. Whether the court below misconstrued sections 51(2) and 73(2); vis-avis section 136 (1) and (3) of the Electoral Act, 2022 and wrongly applied the provisions to the facts and reliefs in the Appellants Petition in holding that Appellants' ground one on non-compliance limits them to seek only a relief for nullification of the entire election, notwithstanding ground 2 of the Petition
3. Whether the court below was wrong in holding that Exhibits PPDD1-PPDD133- the BVAS machines were wrongly admitted by the Tribunal because consent of all the parties to the petition was not given as required under paragraph 41 (2) of the First Schedule to the Electoral Act, 2022
4. Whether having regard to the nature of the case of the non-compliance complained of in the petition, the evidence adduced by the Appellants, the applicable laws and decisions of this Court, the court below acted perversely in affirming the Tribunal's decision that the Appellants did not prove the facts in support of the ground of non-compliance in the petition and this occasioned a miscarriage of justice
5. Whether having regard to the pleadings, the evidence adduced, the applicable laws and the decisions of this Court, the affirmation by the court below of the Tribunal's decision that the Appellants did not prove the ground 2 of the Petition and the consequential dismissal of the Appellants' appeal was perverse and occasioned a miscarriage of justice.

The 1st Respondent (INEC) conducted election into the office of Governor of Edo State. At the end of the process, the 1st Respondent declared and returned the 2nd Respondent as the winner of the election with 291,667 votes while the 1st Appellant scored 247,274 votes.

The Appellants filed a petition challenging the return of the 2nd Respondent, which was predicated on two grounds that the election was invalid by reason of non-compliance with the provisions of the Electoral Act, 2022. The 2nd Respondent was not duly elected by the majority of the lawful votes cast at the election.

The tribunal dismissed the Appellant's petition against that decision, the Appellant unsuccessfully appealed to the Court of Appeal, hence this further appeal to the Supreme Court.

Held (Unanimously dismissing the appeal)-

1. On where grounds of appeal are abandoned -

I have indicated earlier in this judgment that the decision on the objections by the Respondents was deferred to the final judgment of the trial Tribunal pursuant to the provisions of section 285(8) of the constitution and section 136(4) of the Electoral Act. In the premises, the argument that the cross appeal was against a non existing interlocutory decision which was never delivered by the trial Tribunal separately from the final judgment lacks discernment and is untenable in law. *Jibrin v. FRN* (2020) 4 NWLR (Pt. 1714) 3 15, *Ikpeazu v. Oai* (2016) 8 NWLR (Pt. 1513) 38. The Notice of Cross Appeal filed on the 22/04/25 was filed within the period of twenty-one (21) days stipulated in paragraph 6(1) of the Directions for the filing of a Notice of Appeal against a final judgment/decision of the -trial Tribunal. In addition, as rightly pointed out by the Learned Senior Counsel for the 2nd Respondent/ Cross Appellant. The Appellants have, at paragraph 3.0 of their Appellants' Brief, abandoned grounds 2, 3 and 4 of the Notice of Appeal filed in this court, which appear at pages 3891-3 894 of Vol. 9 of the Record of Appeal. The grounds 3 and 4 specifically asserted that the cross appeal was against an interlocutory decision of the Tribunal and for being freely abandoned, there can be no valid issue argued by the Appellants in the appeal on that point and so all arguments by them are liable to be disregarded by the court. *Nweke v. Unizik, Awka* (2017) 18 NWLR (Pt. 1598) 454, *Isitor v. Fokorede* (2018) 5 NWLR (Pt. 1612) 328, *Lawal v. APC* (2019) 3 NWLR (Pt. 1658) 86.

2. On effect of incomplete record of appeal -

Speaking generally, the law is that an appellate court cannot determine an appeal on an incomplete Record of Appeal from which relevant and material processes or documents filed and used at the hearing before the trial court were omitted for the purpose of the determination of the crucial issues arising from the grounds of the appeal. For the purpose of the proper exercise of its appellate jurisdiction over an appeal, the Record of Appeal transmitted to an appellate court must include and contain all relevant and material processes that were

used, considered and/or relied on by the trial court in arriving at the decision appealed against, otherwise, the Record of Appeal would be incomplete and deprive the appellate court of the requisite appellate jurisdiction over the appeal. See *Owanta v. INEC* (2022) 4 NWLR (Pt. 1713) 46, *Maku v. Sule* (2022) 3 NWLR (Pt. 1817) 23 1, *Opene v. NJC* (2024) 15 NWLR (Pt. 1960) 101, *Tejuoso v. Farornbi* (2022) 9 NWLR(Pt. 1835) 205.

3. On meaning and nature of cross-appeal -

The practice and procedure for an appeal from or against a decision of an Election Tribunal; interlocutory or final, to the court below, is provided *for*, regulated and governed by the Election Judicial Proceedings Practice Directions, 2023. (the Directions) issued by the President of the Court of Appeal.

In the Interpretation part of the Directions, “Appeal” includes “Interlocutory Appeal”. A Cross Appeal is not mentioned specifically, but with the word “includes” in the definition of an “Appeal”, it is manifest that a cross- appeal is not excluded, but envisaged and comes within the purview of an appeal for the purposes of the Directions.

In simple terms, a cross appeal is an appeal filed by a Respondent in an existing appeal (the main appeal) before an appellate court against some part/s or portion/s of the same judgment of a lower court with which he is dissatisfied. It is akin to a counter claim by a Defendant in a civil claim/action before a trial court, usually incorporated in the Statement of Defence to the action, but specifically pleaded and itemized. For the purpose of proof, a cross appeal is therefore governed by the same rules of procedure as the main appeal, as the Cross Appellant is the Appellant in the Cross Appeal mld the Respondent becomes the Cross Respondent in the crossappeal, thereby swapping places from the main appeal. See *C.G.C Nig. Ltd. v. Isa* (2023) 9 NWLR (Pt. 1888) 129, *Ofongo v. A.P.C* (2022) 4 NWLR (Pt. 1821) 543, *GTB v. Obosi Micro Finance Bank Ltd* (2022) 4 NWLR (Pt. 1821) 455. A cross-appeal is considered, in law, as a separate and distinct appeal from the main appeal since each is filed by separate

notices, even though usually, the Notices of both may be incorporated, compiled and transmitted to the appellate court in the same volume/s of the Record of Appeal. See APM v. INEC (2023) 9 NWLR (Pt. 1980) 419, PDP v. INEC (2018) 12 NWLR(Pt. 1-634) 533, Izeze v. INEC (2018) 11 NWLR(Pt. 1629) 110, Kmaye v. Wike (2019) 17NWLR (Pt. 1701) 293.

4. On whether compilation of record of appeal lies with the registrar of the tribunal rather than on the Appellant -

Paragraph 6(1) of the Directions provides for the filing of a Notice of Appeal by an Appellant at the Registry of the trial Tribunal or Court, as the case may be, in the following terms:-

“The Appellant shall file in the Registry of the Tribunal or Court his Notice of Appeal within 14 days where the Appeal is against an interlocutory decision and 21 days where the Appeal is against a final decision.”

Then Paragraphs 7, 8 and 9 provide that:-

- 7 At the filing of the Notice of Appeal, the Appellant shall-
- (a) Pay to the Secretary of the Tribunal or Registrar of the lower Court such fees as may be determined, having regards to the bulk of documents which are to be compiled in the Record of Appeal;
 - (b)Furnish as many copies as there are Respondents and ten (10) extra copies to the Secretary of the Tribunal or Registrar of the lower Court; and
 - (c)Pay a fee for service on all the Respondents
- 8 (a) The Secretary of the Tribunal or Registrar of the lower Court shall upon the receipt of the Notice of Appeal, cause to be served on all the Respondents, copies of the Notice of Appeal.
- (b) The Parties shall, upon receipt of the Notice of Appeal, immediately settle the documents to be included in the Record of Appeal with the Secretary of the Tribunal or Registrar of the lower Court
9. The Secretary of the Tribunal or Registrar of the lower Court shall, upon receipt of the Notice of Appeal, cause to be compiled, served on all the parties and transmit the Record of Appeal to the Court within ten (10) days.”

In brief, these provisions prescribed the time within which a Notice of Appeal against a decision(s) of an Election Tribunal (Tribunal) or trial court to the court below shall be filed and the time within which the record of the appeal shall be compiled and transmitted to the court below for the prosecution and determination of the appeal.

As may easily be observed, unlike in ordinary civil appeals to the court below from the decisions of lower trial courts or other Tribunals, after payment of the requisite fees for the compilation and transmission of the Record of Appeal by an Appellant, the duty to do so was solely imposed on the Registrar of the Lower Tribunal or court and the Appellant was not required to compile and transmit such record of appeal even when or where the Registrar failed or omitted to do so. This court, in *Ibrahim v. Akinrinsola* (2022) 18 NWLR (Pt. 1842) 455 at 487, had stated, inter alia that:-

“This court has noted that responsibility for the preparation and furnishing of a complete and accurate record of appeal lies with the registrars of the court from where the appeal originates. See *GTB Plc v. Innoson (Nig.) Ltd* (2022) LPELR-56657(SC) at 39-40; (2022) 6 NWLR (Pt. 1825) 35; *Ede & Anor. v. Mba and Ors* (2011)LPELR-8234 (SC), (2011) 18 NWLR (Pt. 1278) 236. ”

5. On duty of court to ensure that relevant documents are compiled in Election Petition Appeal -

In respect of the Record of the Cross Appeal under consideration, there is no dispute that the Notice of Cross Appeal filed by the 2nd Respondent/ Cross Appellant on the 22/04/25 as well as the Record of the Cross Appeal transmitted to the court below on the 30/04/25 by the Registrar of the trial Tribunal, were both filed and transmitted in line with the requirements of the Directions. Prima facie, the Record of the Cross Appeal were properly and validly compiled and transmitted in compliance with the requirements of the relevant law applicable to appeals in election matters. The Directions do not enumerate particulars of documents or stipulate specific processes in the proceedings of a trial Tribunal or court that should

mandatorily be compiled to constitute the complete record of an appeal to be transmitted to the court below by the Registrar for the purpose of the prosecution of the appeal. There is also no provision in the Directions directing that every and all processes or documents filed and/or used in the proceedings of trial Tribunal or court must be compiled and transmitted to the court below, for the purpose of an appeal in order for the Record of Appeal to be complete. The Directions appear to leave the settlement of the processes or documents at the discretion of the parties, but the Appellants in particular, who filed the Notice of Appeal and pays for the compilation and transmission of the record of appeal to the court below, to guide the Registrar of the Tribunal or court on the documents or processes which are considered relevant and material for the purpose of a full, effectual and final determination of the appeal by the court below.

In the case of *Okechukwu v. Obiano* (2020) 8 NWLR (Pt. 1726) 276 @ 3 07, this court emphasized the duty on the parties in the compilation of the record of an appeal in election matters When it stated that:

“While it is true that Order 8 rule 1 of the Court of Appeal Rules, 2016, imposes a duty on the registrar of the court below to compile and transmit the record of appeal, there is a corresponding duty on the parties to ensure that all materials relevant to the just determination of the appeal are included in the compiled record. It is the duty of counsel to ensure that the record of appeal is a complete record.”

6. On whether non-inclusion of irrelevant and immaterial of documents in the record of appeal does not affect the validity of such -

In the present appeal, the Appellants/Cross Respondents, did not in the objection to the validity of the Record of the Cross Appeal, as set out above, dispute the fact that the record compiled and transmitted by the Registrar of the trial Tribunal to the court below for the purpose of the 2nd Respondent/ Cross Appellant’s cross- appeal, were settled by the parties or the Cross Appellant who owns the appeal, and therefore knows the documents or

processes that are relevant, material and adequate for the purpose of the full, effectual and final determination of the complaints and live issues embedded in the grounds of the Cross Appeal set out in the Notice of Cross Appeal. None of the documents or processes listed in the ground (b) of the Appellants/Cross Respondents' objection to the record of the Cross Appeal transmitted to the court below is shown by them to be relevant and material to the complaints and issues raised in the grounds of the Cross Appeal such that the appeal could not fully, effectually and finally be determined or decided by the court below. The law is that the omission or failure to include such irrelevant or immaterial documents or processes in the compilation of the record of an appeal does not go to affect the completeness and/or validity of the record of appeal *for* the purpose of the determination of the appeal. See *Tejuoso v. Farombi* (2022) 9 NWLR (pt. 1835) 205, *A.P.P v. Obaseki* (2022) 13 NWLR (Pt. 1846) } @ 25.

7. On how to challenge the incompleteness of a record of appeal -

In addition, as rightly submitted by the learned SAN for the 2nd Respondent/Cross Appellant, at pages 9- 10 of the 2nd Respondent's Brief of Argument, on the authority of, among other cases; *Anyakorah v. PDP* (2022) 12 NWLR (Pt. 1843) 1 @ 38, a decision of this court, a party who intends to challenge the record of an appeal before an appellate court on ground of incompleteness, is required, as a condition precedent, to file an Affidavit to demonstrate not only that the said record is incomplete, but also demonstrate that the omitted processes or documents are in fact relevant and material to the effectual, full and final determination of the live and vital issues in the appeal. This position is traceable to the rebuttable presumption enjoyed by the record of appeal to be complete and properly compiled and transmitted until satisfactorily proved otherwise before the appellate court. See *Kiwo v State* (2020) 7 NWLR (Pt. 1722)164, *Access Bank Plc v, Onwulhi* (2021) 6 NWLR (Pt. 1773) 391.

8. On bindingness of record of appeal until set aside -

The law is also settled that until otherwise properly and successfully challenged, the record of an appeal binds both the parties to the appeal and the court, such that no party can and would be heard to dispute the validity or competence of such record of appeal. That is the position of the law stated in *Nwite v. PDP* (2023) 7 NMR (Pt. 1883) 357 @ 395 by this court, with reference to earlier decisions in *Texaco Panama Incorp. v. Shell Pet. Corp* (2002) 5 NWLR (Pt. 759) 209, *OI'ugbo v. Ona* (2002) 16 NWLR (Pt. 792) 175 and *Sapo v. Sunmonu* (2010) 11 NWLR (Pt. 1205) 374. See also *Anyakorah v. PDP* (supra), *Okechukwu v. Obiano* (supra).

In the above premises, the court below was right to have dismissed the Appellants/Cross Respondents' objection to the validity of the record of the 2^d Respondent/Cross Appellant's Cross Appeal on ground that the said record was not complete.

9. On where the notices of cross-appeal are not transmitted together in one document -

However, I should point out that although on the authority of Paragraph 17 (b) of the Directions considered by the court below in *Idris v. Gada* (2023) LPELR-59349 (CA) and *APC v. Munala & Ors.* (2024) LPELR-62522 (CA), an appeal and a cross appeal/Respondent's Notice arising from the same judgment/decision of a Tribunal or Court shall be argued together, the position does not affect or relate to the compilation and transmission of separate records of appeal *for* separate Notices of an appeal and a cross appeal that were filed on different dates and records transmitted on different dates, as happened in the court below in respect of the Appellants' appeal and the 2^d Respondent's cross appeal. It may be recalled that the Appellants' Notice of Appeal was filed on the 17/04/25 and the record of that appeal transmitted to the court below on the 24/04/25, within the prescribed time.

On his part, the Notice of the 2^d Respondent's cross appeal was filed on the 22/04/25 and the record of the said appeal was transmitted to the court -below on the 30/04/25; also within the prescribed time. Now, the salient point worthy of particular note was the fact that the Notice of Cross Appeal filed two (2) days before the transmission of the record of appeal of the Appellants on the 24/04/25 was not included in and did not form a part of the said

record of appeal (i.e the main appeal). The Notice of Cross Appeal filed by the 2nd Respondent/Cross Appellant was not transmitted to the court below, as supplementary or additional record of appeal to the Appellants' record of the main appeal within the period of ten (10) days for the compilation and transmission of the said record in the main appeal. Rather, the Notice of Appeal was compiled, included and transmitted in the record of the cross appeal received in the court below about six (6) days after the transmission and receipt of the record in the main appeal. Since the records of the main appeal and the cross appeal were transmitted and received on different and separate dates, though in respect of the same judgment, they were independent for the purposes of the determination of the separate appeals which were based on entirely different Notices of Appeal containing distinct grievances, complaints and/or issues for the consideration of the court below. Even though, the two appeals can be and were properly argued together on their separate Briefs of Argument, they had to have separate and distinct appeal numbers, as assigned to them by the Registry of the court below. Ordinarily, where a Notice of a cross appeal was filed in an existing appeal in respect of the same decision by a lower court or Tribunal and both Notices of Appeal were compiled and transmitted in a single record of appeal to the appellate court, it may not be necessary to assign a separate and distinct appeal number to the cross appeal, since such numbers are given on receipt of the record of appeal in the appellate court. Where there was no separate record of appeal in respect of a cross appeal, the need would not arise for a separate appeal number for the cross appeal, since the record in the main appeal would contained the-Notice of the cross appeal and other relevant/material documents or processes for the determination of both the main and cross appeal. That is the situation envisaged and provided for in the provisions of 17(b) of the Directions which only relates to the hearing or argument of both an appeal and a cross appeal/ Respondent's Notice, together; at the same time.

On the whole, this issue is resolved against the Appellants.

10. *On grounds of questioning the validity of an election -*

As a foundation, it is elementary now that section 134 (1) of the Electoral Act, 2022 has set out the only valid and competent grounds upon which an election conducted pursuant to the provisions of the Act, may be judicially questioned . The provisions are concise and precise as follows :-

“134(1). An election may be questioned on any of the following grounds :-

- (a) a person whose election is questioned was, at the time of the election, not qualified to contest the election;
- (b) the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or
- (c) the respondent was not duly elected by majority of lawful votes cast at the election.”

These provisions were dealt with by this court in cases that include *Ndakene v. Adamu* (2023) 9 NWLR (Pt. 1889) 389.

For being precise, concise and in simple language, these provisions are to be ascribed their ordinary and plain grammatical meaning, which would not result in any reasonable ambiguity in line with established canons or principles of statutory interpretation, stated and restated in several decisions. See *Obasanjo v. Yusuf* (2004) 5 SC (Pt. 1) 27, *Cotecna Inter. Ltd. v. Churgate Nig. Ltd* (20 10) 18 NWLR (Pt. 1225) 346, *Famu v. Kassim* (20 12) IIMJSC, 105, *Jegade v. INEC* (2021) 14 NWLR (Pt. 1797) 409, *Universal Prop. Ltd v. Pinnacle Comm. Bank* (2022) 12 NWLR (Pt. 1845) 523, *APC v. INEC* (2023) 8 NWLR (Pt. 1887) 563.

11. *On where a Petitioner seeks nullification for non-compliance with the Electoral Act -*

As seen earlier, the Appellants’ petition was predicated on grounds (1) (b) and (c) of section 134 and so prima facie, on statutorily valid grounds upon which an election may be questioned by them.

The position of the court below is that since the Appellants' Ground 1 of the petition challenges that the election was invalid by reason of noncompliance with the provisions of the Electoral Act in respect of specific polling units in named Wards and Local Government Councils/ Areas in the Governorship election in Edo State, as pleaded in paragraphs 23-513 of their petition which appear at pages 6-104 of Vol. 1 of the Record of Appeal, they have to mandatorily seek the specific relief of nullification of the entire election in all the polling units in Edo State on ground of section 136 (1) of the Electoral Act, otherwise the ground 1 of the petition is incompetent and not maintainable in the absence of such a relief.

12. On interpretation of section 136(1)(2) of Electoral Act -

The provision of section 136(1) of the Act -relied on by the court below for that position prescribes that :

“Subject to subsections (2) and (3), if the Tribunal or the Court as the case may be, determines that a candidate who was returned as elected was not duly elected on any ground, the Tribunal or Court shall nullify the election and order the Commission to conduct a fresh election not later than 90 days after the

- (a) decision if an appeal is not filed against the decision
- (b) nullification of the election by the court having final appellate jurisdiction in respect of the said election.”

To start with, these provisions for being clear and unambiguous in both words and language, present no difficulty and doubt in their purport for the purposes of construction and application to any given set of facts. Having been made “subject to subsections (2) and (3)” of the section, they are subordinated to the subsections and apply only to the extent permitted by the provisions to which they were made subject to. See *NDIC v. Okem Enterprises Ltd.* (2004) 4 SC (Pt. 11) 77, *FRN v. OsaLon* (2006) ALL FWLR (Pt. 3 12) 1975 , *A.G Lagos State v. N.S.L Ltd* (2023) 12 NWLR (Pt. 1899) 399. By their ordinary and plain meaning under the provisions in subsection (1), the finding or determination by the Tribunal is that the person who was returned as elected was not validly elected on any

ground, that results or will result in the consequences of nullification of the election, subject to the provision in subsection (2) and (3). Therefore, even where the Tribunal determined that the person returned as elected was not validly elected on any of the statutorily cognizable grounds, if such a ground was that the person who obtained the highest votes at the election was not qualified to contest the election, the Tribunal cannot order the Commission to conduct a fresh election as provided for in subsection (1), but to declare the person with the second highest number of valid votes cast at the election, who satisfies the requirements of the Constitution and the Act, as duly elected, as prescribed in subsection (2) to which subsection (1) was subordinated. So the invalidity of the election of the person returned as elected is not inconsistent with the declaration of the person with the second highest valid votes cast at the election, as duly elected, but rather supplementary to the declaration in subsection (3) as a result of a specie or species of non-compliance with the provisions of the Electoral Act in the conduct of the election. In other words, a petitioner who challenges the return of a winner of an election on ground of non-compliance, depending on the nature and specie of the non-compliance and the specific facts pleaded in support thereof, can properly seek the relief to be declared elected on the invalidity of the election and return of the person initially declared as elected on the ground that the said person was not duly elected by majority of lawful votes cast at the election. In such a situation- and circumstances, the grounds in section 134(b) and (c) can validly and competently ground the petition and when any one of them was satisfactorily proved, a Tribunal or court is empowered to grant the requisite reliefs sought on the basis of the grounds.

13. *On the propriety of the prayer in appellant's reliefs 1 & 2 -*

The Appellants' paragraphs 23-513 of their petition have set out facts which they asserted, constituted the non-compliance in support of their ground 1 of the petition in respect of specified number and particularized polling units that were affected and at which the various species of noncompliance occurred. In all, the Appellants' ground of non-compliance was in respect of only Four Hundred and Fifty Three (453) out of more than

Four Thousand (4,000) polling units in Edo State at Which the election was conducted on the 21/09/24. .The nature of the species of the non-compliance alleged in Ground 1 of the petition were tied to the specific provisions of sections 51(1), (2) and 73 (2) of the Electoral Act and NOT, as rightly observed by the trial Tribunal, “global” against all the Polling Units and the entire election in the State. Sections 51(1), (2) and 73(2) of the Electoral Act under which the Appellants’ Ground 1 of non-compliance was predicated, provide the nature of the noncompliance. They are as follows:-

“51 (1) No voter shall vote for more than one candidate or record more than one vote in favour of any candidate at any one election.

51(2) Where the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the Presiding officer shall cancel the result of the election in that polling unit

73(2) 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 result sheets, ballot papers and other sensitive electoral materials made available by the Commission for the conduct of the election shall be invalid.”

As can easily be seen, section 5 1(1) and (2) deal with over voting at polling units, as a specie of non-compliance. Section 73 (2) on its part, mandatorily prescribes the prior recording by a Presiding Officer, of the quantity, serial numbers and other particulars of result sheets, ballot papers and other sensitive electoral materials before the conduct of an election at a Polling Unit. Failure, omission or refusal to comply with the prescriptibtr of the provisions by a Presiding officer constitutes not only a specic of non-compliance with the provisions of the Act in the conduct of the election at the particular polling unit, but also an offence by dint of the provisions in subsection (3) of section 73 .

Since both sections 51(1), (2) and 73(2) deal with elections at the polling units level of an election, the Ground 1 of the Appellants’ petition of noncompliance was directly targeted at the validity of the election at the specified polling units challenged and not the entire election at

all the polling units in Edo State. The Appellants' Ground 1 of the petition, on the basis of the facts set out in paragraph 23-5 13, did not question or challenge the validity of the entire election at all the polling units in Edo State, but only the ones specified in their pleadings. Although, there was one Governorship in Edo State, because there is a single office for a Governor of a State which was contested for at the election, the provisions in sections 51(1), (2) and section 73(2) deal with election at the polling unit, which forms the foundation for the Governorship election.

In these premises, since the Appellants' Ground 1 of the petition did not challenge or question the validity of the election at all polling units in Edo State on ground of non-compliance, it would be absurd to say that they ought to have sought the nullification of the entire election conducted on the 21/09/24 in Edo State which include election at Polling Units they did not challenge, question or complain about. For the same reason, the relief sought in respect of Ground 2 of the petition that the person declared and returned as the winner of the election in Edo State; the 2nd Respondent, did not score majority of lawful votes, is not inconsistent with the substance of Ground 1 of the petition on non-compliance.

14. On when to rely on previous authorities -

The facts of the Appellants' petition are different from those in the cases of *Buhari v. Yusuf* (supra), *Agbu v. INEC* (supra) relied on by the court below in the sense that in those cases, the challenge in the petition was in respect of the entire election on grounds of non-compliance, the nature or species of which were different from the ones provided for in sections 51(1), (2) and 73(2) of the Electoral Act, 2022 which are new provisions introduced to make elections in Nigeria more transparent and credible, The general principle stated in the case and similar cases cannot override specific provisions of the Electoral Act since the facts are different and the law is that principles in previous cases are only applicable and apply to a later case where the facts in the two cases are the same or substantially identical. *Kanawa v. INEC* (2022) 1 NWLR (Pt.] 812) 393, *Ndukwe v. Ayu* (2023) 5 NWLR (Pt. 1877) 309, *PDP v. Uche* (2023) 9 NWLR (Pt. 1890) 523 .

In the result, the court below was wrong in law to have disturbed and set aside the decision of the Tribunal that Ground 1 of the Appellants' petition was valid and competent even without a prayer for nullification of the entire election. The issue is resolved in favour of the Appellants.

15. *On admissibility of BVAS Machine from the Bar -*

Generally, admissibility of any piece of evidence in all judicial proceedings of courts or tribunals established by or pursuant to the constitution or relevant statutes, is governed by the Evidence Act, 2011 by the combined provisions in sections 1, 2,3 and 256 (1) of the Act.

Admissible evidence under the Act is evidence; oral or documentary/real, which is legally relevant and not excluded by the law or rules of practice. See *Agunbiade v. Sasegbon* (1968) NMLR, 223 @226> *Tora v. Ukpabi* (1984) 1 SC, 370, *Fawehinmi v. NBA* (No. 2) (1992) 2 NWLR (Pt. 105) 558 @ 583, *Agbahomovo v. Ediyegbe* (1999) 3 NWLR (Pt. 514) 170 @ 183, *Owakah v. R. S.H & P.D. A* (2022) 12 NWLR (Pt. 1845) 436.

In the case of the BVAS machines used in the Edo State Governorship Election conducted on the 21/09/24, by the 1st Respondent, which were admitted in evidence at the trial of the Appellants' petition as Exhibits PPDD1-PPDD133, there was no dispute that they are relevant to the issues to be determined at the trial and that they are Documents by virtue of section 258 (1) of the Evidence Act, 2011.

The only now narrow point of contention is whether or not, in election proceedings arising from election matters which are sui generis, the BVAS machines are admissible in evidence when tendered, not through a witness, but from the Bar.

Being special and different from ordinary civil proceedings/cases, election matters/proceedings are regulated or governed in addition to the general provisions of the Evidence Act, by the special and specific laws and rules of procedure enacted for them. In this

regard, the provisions of the Electoral Act as well as other relevant regulations or rules provided pursuant thereto, apply to them.

In reversing the admission of the BVAS machines in evidence at the trial, the court below reasoned thus; at pages pages 50-51, 52 and 54 of its judgment at pages 1021-1022, 1023 and 1024 of Vol. 10 (A) of the Record of Appeal:-

“ in my view, the Tribunal was in grave error when it admitted the BVAS Machines in evidence, because the circumstances were not right for it to do so. What should have guided the Tribunal is narrated in paragraph 41(1)- (5) of the 1st Schedule to the Electoral Act, 2022, which creates a condition precedent. A condition precedent is an additional formality super-imposed on the law. A condition precedent is one which delays the vesting of a right until the happening of an event. See F.R.N v. Nganjiwa (2022) 17 NWLR (Pt. 1860) 407. Paragraph 41(1) –(5) of the 1st Schedule to the Electoral Act. 2022 stipulat is that:

41(1) Subject to any statutory provision or any provision of these paragraphs relating, any fact required to be proved at the hearing of a petition shall be proved by written deposition and oral examination of witnesses in open court.

(2) Documents which parties consented to at the pre-hearing session or other exhibits shall be tendered from the Bar or by

the party where he is not represented by a legal practitioner (3) There shall be no oral examination of a witness during his evidence-in-chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in the deposition

(4) Real evidence shall be tendered at the hearing.

(5) The Tribunal or Court may, at or before the hearing of a petition order or direct that evidence of any particular fact be given at the hearing in such manner as may be specified by the order or direction

As it must have been observed, paragraph 41 (2) of the 1st Schedule, specifically stipulates that only documents, which parties consent to, shall be tendered from the Bar. Paragraph 41(3) of the 1st Schedule permits that documents and exhibits which

are disputed should be tendered during the evidence-in-chief of a witness. Paragraph 4i(1) of the Ist Schedule gives the Tribunal or Court power to direct how evidence may be given, but that provision is not applicable in this cross-appeal because the Tribunal did not give any directive that exhibits should be or must be tendered from the Bar. The Tribunal only treated the Appellants/Cross Respondents' counsel's application to tender exhibits PPDDI-PPD133 from the Bar. .. In the circumstances, it is clear that in the absence of the consent of the 2nd Respondent/Cross-Appellant to the tendering of exhibits PPDDI-PPDD133 from the Bar, whether certified or not, as true copies, the order of the Tribunal affirming such approach -was without lawful basis and is reversible on appeal, as in this appeal. The confirmation order made by the Tribunal admitting exhibits PPDI-PPD133 in evidence is, in the circumstance, unsustainable, unsupported and is hereby found to be invalid, having been done contrary to clear provisions of a statute, Which IS extant. The condition precedent *for* the validity of the tendering of the evidence from the Bar, which is the consent of all parties to the petition, was absent before the exhibits were tendered and admitted in evidence.”

As can easily be observed, the above finding by the court below which is predicated on the provisions in paragraph 41(2) and (5) which requires consent of the parties for documents to be tendered from the Bar and the discretion of the Tribunal to order or direct how evidence may be given, which was found to be inapplicable to the cross appeal under consideration. The ultimate finding by the court below on the admissibility of the BVAS machines tendered from the Bar was solely predicated on the lack or want of the consent of the parties under paragraph 41 (2).

For its brevity, I can afford to again, set out the provisions of the paragraph which are thus:-

“41(2) Documents which parties consented to at the pre-hearing sessions and other exhibits shall be tendered from the Bar or by the party where he is not represented by a legal practitioner.”

Due to their simple tenor, clear and straight forward language, the purport and requirement prescribed therein is that “Documents” “or other exhibits” which the parties consented to and about which there is no disagreement or dispute, to be put or tendered in evidence at the hearing, shall be tendered from the Bar.

It was because of the agreement or consent by the parties at the pre-trial

session/s that the identified documents or other exhibits to be put forward in evidence, not through witnesses, as stipulated in section 83(1) (b) of the Evidence Act, 2011 if the maker is called as a witness in the proceedings, but from the Bar. It is therefore beyond plausible argument that the prior consent of the parties at the pre-hearing session is made a condition precedent for the proper tendering from the Bar and valid admission of documents or other exhibits in evidence at the subsequent hearing of an election petition. The Appellants have argued that the consent was not required because the BVAS machines were “other exhibits” and tendered as “real evidence” under sub-paragraph (4). However, that argument is feable since both “Documents” “or other exhibits” mentioned in sub-paragraph (2) are to be tendered from the Bar and not through witnesses while subparagraph (4) did not provide for the tendering of real evidence from the Bar and so it does not apply to the BVAS machines in the Appellants’ case. The argument also constitutes a tacit admission that the requisite prior consent by the parties for the tendering of the BVAS machines at the trial or hearing from the Bar, was not given at the pre-hearing session of the proceeding of the Tribunal. As rightly pointed out by the learned senior counsel for the Respondents in their respective Briefs, each of them indicated their objection to the tendering of BVAS machines from the Bar and in line with established practices reserved, reasons for the objection to their final addresses, as borne out at page 70 1 of Vol. 10 of the Record of Appeal containing proceedings of 30/01/25 at the hearing of the petition. Reasons for the objection by the 2nd and 3^d Respondents respectively, are contained in their (separate) Written Addresses which appear at pages 3396- 3398 of Vol. 4 of the Record of Appeal, for the 2^d Respondent and at pages 3448 of the same Vol.4 of the Record of Appeal, for the -3rd Respondent.

However, in the 1st Respondent’s Final Address which occupies pages 3298- 3337 of Vol. 4, no specific reference was made to reasons *for* the objection to the tendering of the BVAS machines from the Bar. The only arguments on the BVAS machines are that they were durnped on the Tribunal.

The court below is therefore right that the absence of the prior consent of the parties in the tendering of the BVAS machines as provided for in Paragraph 41(2), rendered their admission in evidence from the Bar wrongful in law on ground of failure to fulfil a condition precedent for the admission. *Diverse Assets MP. Ltd. v. Wcma Bank, Plc* (2023) 12 NWLR (Pt. 1897) 121, *Yaki v. Bagudu* (2015) 18 NWLR (Pt. 1491) 288.

For being inadmissible in law on the above ground, the court below was not only entitled to, but had the duty to expunge the BVAS machines wrongly admitted in evidence as Exhibits PPDD 1-PPDD133 even without recourse to the parties. See *Onochie v. Odogwu* (2006) ALL FWLR (Pt. 317) 544, *Oladipo v. M.L.G. A* (2010) 5 NWLR (Pt. 1 186) 1 17, *Suberu v. State* (2010) 8 NWLR (Pt. 1197) 586, *Ekere v. Emmanuel* (2022) 11 NWLR (Pt. 1841) 339, *Kwene v. State* (2022) 13 NWLR (Pt. 1847) 273 .

The issue is resolved against the Appellants.

16. *On failure to conduct election in Edo State in 395 polling units without prior recording of serial numbers and other particulars of result sheets, ballot papers, BVAS machines etc-*

The Appellants have argued that the decision of the court below that they failed to prove the complaint of non-compliance was perverse in that it misconceive(1 the nature of the non-compliance pleaded leading to the finding that oral evidence was required to prove same.

The Appellants' case of non-compliance in Ground 1 of the Petition, as stated earlier, was based on the provisions of sections 5 1(1), (2) and 73(2) of the Electoral Act, for which section 137 of the Act applies on the need to call oral evidence for proof.

The Appellants have alleged that the 1st respondent conducted the Edo State governorship election in 395 polling units without prior recording of the serial numbers and other particulars of result sheets, ballot papers, BVAS machines and other sensitive materials in the form prescribed by the 1st Respondent in form EC25B. Thus, they have the burden to prove their allegation.

In *Baba v. INEC* (2024) 14 NWLR (Pt. 1957) 155, Salauwa J.S.C pronounced on the duty on a petitioner alleging that election conducted was without prior recording in the forms prescribed by NEC thus:

“It is trite that in view of the nature of the case projected by the appellants *vis-a-vis* section 73(2) of the Electoral Act 2022 (supra), the appellants have an onerous duty to most especially plead each and every specific Polling Unit so challenged, and thereby lead credible documentary and oral evidence substantiating the allegation regarding the affected polling unit. It is only after discharging this fundamental evidential burden of proof, that the trial tribunal or court would be obligated to invalidate the election in such a polling unit.” Okoro J.S.C :

"The appellants made a sweeping allegation of improper or non-filing of non-sensitive forms across seven Local Government Areas of Bauchi State comprising of a total of 2,425 polling units by the polling officers. They however failed to call any of their agents in the affected polling units to demonstrate their complaint in open court. The position is well settled that the provision of section 137 of the Electoral Act, 2022 does not absolve a petitioner of the need to lead credible evidence to prove non-compliance with provision of the Act except where the alleged non-compliance is manifest from the originals or Certified True Copies (CTC) already placed before the court. See *Oyetola v. I.N.E.C.* (2023) LPELR- 60392(SC), (2023) 11 NWLR (Pt.1894) 125; *Atiku & Anor. v. I.N.E.C. & Ors.* (2023) LPELR 61556 (SC), (2023) 19NWLR (Pt.1917) 761. In this case, it is glaring that the appellant's failure to call their polling unit agents in any of the disputed polling units to witness to their allegation of improper or non-filing of the forms impacted negatively to their case. The court below rightly discountenanced the evidence of PW2, PW3, PW4, PW5, PW6, PW7, PW9 and PW10) who were not polling unit agents. On the overall analysis, the appeal has no merit and is hereby dismissed by me. The judgment of the court below delivered on 17th November, 2023 is hereby affirmed."

The appellants called 19 witnesses, out of which only 5 were polling unit agents, whose testimonies were related to overvoting. They did not testify on the issue of no prior recording of the serial numbers and other particulars of result sheets, BVAS Machines and other sensitive electoral materials as prescribed by the Electoral Act, 2022. Thirteen witnesses

were Ward and Local Government agents, who did not witness the election at the polling units to have been able to testify and/or demonstrate the documents to the specific complaints of the Appellants.. PW 12 who was the appellants' star witness was the director of Research and Strategy of the 1st appellant's campaign organization and he played no role in the voting at the polling units. In the circumstance, the documents were dumped on the Tribunal.

17. On how to prove over voting -

On the issue of over-voting alleged by the Appellants, the essential documents which must be put in evidence/tendered to prove an allegation of over-voting are:

- (a) the voters register for the affected polling units to show the number of registered voters;
- (b) the BVAS machines used in those polling units to show the number of accredited voters; and
- (c) the result sheets of the disputed polling units in Forms EC8A to show the number of votes(c) cast at the polling units.

The court would then have the opportunity of comparing the number of votes recorded in the Forms EC8A with the number of accredited voters in the BVAS machines to ensure that those figures tally and do not exceed the numbers on the register of voters. Failure to tender the above set of documents would be fatal to any effort to prove over-voting. This was the position of the law as stated in *Augustine v. I.N.E.C.* (2024) 10 NWLR (Pt. 1947) 409, *Oyetola v. INEC* (2023) 11NWLR (Pt. 1894) 125, *Ombugadu v. Alhaji* (2024) (Pt. 1936) 2024. A.P.C, v. P.D.P. (2020) 17 NWLR (Pt. 1754) 425 . In the instant case, the Appellants failed to tender admissible and credible evidence, in the disputed polling units, to show the number of registered and accredited voters. To demonstrate the votes cast at the polling units to the court, the Appellants tendered the BVAS machines, reports and BVAS screenshots/extracts to show that the total number of votes cast in each of the polling units exceeded the total number of accredited voters. This court, Per Kekere-Ekun, JSC (now CJN)

in the case of *Ombugadu v. Alhaji* (2024) 10 NWLR- {Pt. 1947} 409 frowned at the tendering of a-screenshot of the BVAS machine thus:-

“From the above holdings, it is clear that the documents required to prove over-voting are the voters register, the BVAS machines and the Form EC8As. I agree with learned counsel for the 1st respondent that the record of the examination of the B VAS maybe tendered alongside the BVAS machines but not as an alternative thereto. I also agree that there is no provision in the Electoral Act or INEC Regulations & Guidelines for the tendering of a screenshot of the BVAS Inachines, especially where there is no evidence as to when, where and how the screenshots were obtained. ”

Speaking further, his lordship held thus:

“Above all, this court has held that failure to tender any of the required documents to prove over-voting is fatal to the petitioner’s case. The BVAS machines tendered through PW7 having been expunged from the recQrd, the bottom had fallen out of the appellants’ case, as one of the key requirements for proving over voting was absent. Besides, the said BVAS machines were clearly dumped on the Tribunal without being demonstrated in any shape or form. PW7 merely identified them and they were returned to the 2nd respondent immediately after his testimony. On what basis could the trial tribunal have made its findings on the issue of over voting?”

18. On whether form EC25B have only two columns for the recording of ballot papers used and returned after the election -

In the instant case, the BVAS machines were clearly dumped on the coull. They were produced to the Tribunal, by one Anthony Itodo, an ICT of the 1st Respondent, who was surnmoned by a subpoena duces tecurn. He neither demonstrated nor spoke to the BVAS machines before the Tribunal.

The Appellants have, in reliance on the allegation of non-compliance with the provision of section 73 (2) totally built their case on the Forms EC25B, a single form admittQ clin

evidence as Exhibits PCBI-PCB308 and TJEBIPEB70 at the hearing. Form EC25B is one of the Forms; a page or leaflet in a booklet of Forms prescribed by the 1st Respondent for the purposes of the conduct of the elections, including the Edo State Governorship election conducted on the 21/09/24. The contents of Form EC25B which are required to be filled relate to the quantity of ballot papers collected by the 1st Respondent's election officials before the election and quantity reverted (returned) after the election. Indisputably, the Form EC25B does not contain any column for the filling of the serial numbers of ballot papers, BVAS machines and other sensitive election materials as alleged by the Appellants. The court below was right when it held in its judgment, at page 3815 in Vol. 9 of the Record of Appeal that:-

“Upon physical examination of the Forms constituting the booklets, tendered as exhibits PCB I-PCB308 and PEB I -PEB 70, this Court observed that the requisite serial numbers of ballot papers, which constitute the ultimate sensitive materials used for elections were expected to be recorded in Form EC40A and the Polling Officers dutifully carried out their duties by faithfully recording those details in Form EC40A component of exhibits PCB 1-PCB308 and PEB 1-PEB70. There is no such requirement on the face of Forms EC25B touted by the Appellants. In addition, Form EC25B in each of all exhibits PCBI-PCB308 and PEB1-PEB70 tendered at the trial were filled with information required by and fitting the Form, which is simply about quantity of materials received.”

Indeed, the Form EC25B tendered as Exhibits to prove non-recording of serial numbers, of ballot papers, BVAS machines and other sensitive election materials only have two columns, as stated earlier, for the quantity of ballot papers collected before the election and the quantity returned to the 1st Respondent -designated officials after the election.

19. On proof of non-compliance -

Apart from that, even if the Appellants were to prove that the Form EC25B were not filled in respect of all the 395 polling units in non-compliance with the provisions of section 73(2), the law still remains that for the relief they sought, they still had to further demonstrate and

satisfy the Tribunal that the non-compliance was of such magnitude to substantially affect the result of the election.

Section 135 of the Electoral Act stipulates that:-

- “ (1) An election shall not be liable to be invalidated by reason of noncompliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election.
- (2) An election shall not be liable to be questioned by reason of a defect in the title or want of title of the person conducting the election or acting in the office provided such a person has the right or authority of the Commission to conduct the election
- (3) No election shall be questioned or cancelled by reason that there is a mistake, conflict or inconsistency in the date contained in the result of such election signed by a returning officer or any other officer of the Commission.”

The same provisions in the Electoral Act, 2010 (as amended) were interpreted and applied in several decisions by this court including *Ngige v. INEC* (2015) 1 NWLR (Pt. 1440) 281, *Omisore v. Angbesola* (2015) 15 NWLR (Pt. 1482) 205, *Akinlade v. INEC* (2020) 17NWLR (Pt. 1754) 439, *Abubakar v. INEC* (2020) 12 NWLR (Pt. 1737) 37.

It is apparent that the 395 polling units in respect of which the allegations of non-compliance on the basis of sections 51(1), (2) and 73(2) of the Electoral Act, were made, cannot reasonably be said to be substantial in relation to the over Four Thousand Polling Units spread across Edo State at which the election was conducted, so as to substantially affect the results declared by the 1st Respondent. The Appellants did not satisfactorily discharge the onus or burden of provision in that regard.

20. On how to establish illegality or unlawfulness of votes -

On the other allegations of exclusion/inflation of votes, with the BVAS machines being expunged along with paragraph 23-513 of the petition on the ground of being inadmissible in law, the bottom had been knocked off from the sundry allegations that the

2nd Respondent was not duly elected by majority of the lawful votes cast at the election since the Appellants also failed to tender the voters Registers .

The law is firmly established that for a party who challenges the lawfulness or legality of votes cast at an election and the results declared by the 1st Respondent for that election, it bears the burden of not only tendering all the relevant and necessary documents and calling evidence to prove the unlawfulness or illegality of the votes cast at the polling units challenged, but to further show how the illegality or unlawfulness substantially affected the declared results of the election in question. *Takori v, Matawalle* (2020) 17NWLR (Pt. 1752) 165 @ 182- 183, *Uzodinma v. Ihedioha* (supra). Even though these cases were decided on the repealed Electoral Act 2010 (as amended in 2015), the principle stated therein remains applicable under the extant Electoral Act, 2022 inspite of the introduction of the provisions in sections 51(1), (2), 73(2) and 137 thereof, in view of the provisions of section 135(1) of the Act. See *Augustine v. INEC* (supra), *Barde v. INEC* (supra) also reported in (2024) LPELR-61647 (SC), *Murtala v. INEC* (2024) LPELR-79942 (SC), *Ahiwe v. INEC* (supra), also reported in (2024) LPELR- 61674(SC), decided under the 202-2–Act. These are the current decisions of this court on the point.

21. *On dumping of documents on the court -*

The law is also settled that for documents tendered from the Bar to be of any use and help to the person relying on them, they must be identified and related to the specific aspect of the non-compliance alleged by evidence of the witnesses. It would be practically impossible and cloistered justice for a court or tribunal to embark on a search or investigation of the usually tons of documents tendered in bulk from the bar in order to fish out which ones related to a particular specie of the non-compliance alleged and in respect of which they were intended to prove. Investigation is not part of the duty of a court or tribunal. There must be evidence of a link or connection between the documents and the identified non-compliance alleged otherwise the documents would remain dead without a voice and be deemed to be dumped

on the court or tribunal. *Bude v. INEC* (2024) 5 NWLR (Pt. 1932) 561. Thus, the Appellants failed to substantially prove the allegation of overvoting, non-compliance and other sundry allegations of unlawfulness or illegality of votes cast at the polling units against which the assertions of exclusion and inflation of votes were based.

22. On proof of section 137 of Electoral Act and Paragraph 46(4) of First Schedule -

The Appellants have made heavy weather about the application of section 137 of the Electoral Act and Paragraph 46(4) of the First Schedule as well as the statements by the court in, among others, *Lawal v. Matawalle* (supra), *Baba v. INEC* (supra), *Jonathan v. INEC* (supra) to strenuously contend that they did not have to call oral evidence to prove the non-compliance alleged at the polling units specified. However, the Appellants routinely ignored the salient pre-conditions stated in all the pronouncements for the application of the provisions in section 137 and Paragraph 46(4) to avail. The preconditions are:

- (a) The nature of the non-compliance alleged and
- (b) The non-compliance alleged are manifestly apparent, prima facie,
at a “casual” glance, etc, on the face of the documents whether certified copies or original.

Once more, for the provisions to apply and avail, the specie/s of the noncompliance alleged must be identified, introduced and linked to the documents such that they are legibly and manifestly disclosed on the face of the documents to be able to, without more, speak for themselves, credibly; being evidence to be considered and evaluated in the determination of the allegations of non-compliance.

22. On whether there was a missing link in the Respondent's final address -

I have read the Appellants’ Final Addresses which appear at pages 3459-3498 of Vol. 4 of the Record of Appeal in response to the 1st Respondent’s Final Address, at pages 3504-3543 for the 2-^d Respondent’s Final Address and at pages 3565- 3604 in response to the 3;^d Respondent’s Final Address, all in Vol. 4 of the Record of Appeal, The substance of all the three (3) Final

Addresses by the Appellants in response to the Respondents' Final Addresses is to demonstrate that the Appellants succeeded in the proof of the two (2) grounds of the petition by reference to the evidence of the 19 witnesses who testified. Emphasis was placed on the evidence of PW 12 who was said to have identified and related all the Forms tendered in evidence in proof of the grounds. However, a calm review of the evidence of the Appellants' "star witness", i.e PW 12, would readily disclose that he did not specifically link each of the Forms in respect of the polling units at which allegations of non-compliance and unlawfulness of the votes recorded therein in order to prove exclusion of votes, inflation of votes, overvoting on the basis of which the Appellants made calculation and Table of Votes to arrive at their conclusion that the 2^d Respondent did not score a majority of the valid votes cast at the said polling units and in the over-all election. That link is crucial and fundamental if the provisions of section 137 and paragraph 46(4) are to be applied to the Forms containing the election results declared by the 1st Respondent for the polling units and the entire election. That has been the principle and point restated in the cases of Lawal v. Matawalle, Baba v. INEC, Jonathan v. INEC (supra) etc. That link is/was missing in the Final Addresses of the Appellants for the said provision of section 137 and Paragraph 46(4) to apply and avail the Appellants in respect of all the result Forms tendered by the Appellants at the hearing of the petition.

23. On statutory presumption of regularity -

Also, there is a rebuttable presumption of regularity of INEC Forms. By virtue of section 168(1) of the Evidence Act 2011, when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. *Baba v. INEC* (2024) 14 NWLR (Pt. 1957) 155, *Adamu v. K.S.H.A.* (2019) 16NWLR(Pt. 1699) 50. In the instant case, the evidence elicited from some of the Appellants' witnesses under cross examination (precisely PW2, PW3, PW4 and PW8) revealed clear evidence of prior recording of electoral materials they contained serial numbers before the day of the election. In the circumstance, the statutory presumption was not rebuked and so applies that the forms were filled/recorded before the day of the election. This

indubitably contradicts/controverts the Appellants' case/argument that there was no prior recording of the electoral materials before the election as mandated by section 73 (2) of the Electoral Act.

On the whole, the Appellants have failed to prove the two grounds of noncompliance with the provisions of the Electoral Act, 2022 and that the 2nd Respondent was not duly elected by majority of lawful votes cast at the Edo State Governorship Election conducted on the 21/09/24 upon which their petition was predicated.

In consequence, the Appellants did not satisfactorily demonstrate that the concurrent findings and decision by the trial Tribunal and the court below on the merit of the petition are perverse or to have occasioned a real not sentimental, miscarriage of justice in the circumstance of the case to justify interference therewith by this court. See Mohammed v. Warnmako (20 18) 7 NWLR (Pt. 1607) 502, Ojobo v. Moro (2019) 17 NWLR (Pt. 1700)] 66, Nwosu v. A.P.P (2020) 16NWLR (Pt. 1749) 28, Fayemi v. Oni (2020) 8 NWLR (Pt. 1726) 222.

Names of Justices who sat on the appeal: Mohammed Lawal Garba, Tijjani Abubakar, Jumai Hannatu Sankey, Obande Festus Ogbuinya, Habeeb Adewale O. Abiru

Appeal No:

Date of Judgment: Thursday, 10th July, 2025

Names of Counsel: Adetunji Oyeyipo, SAN, Kenneth E. Mozia, SAN, A. J. Owonikoko, SAN, Rotimi Oguneso, SAN, Selekewei Larry, SAN, A. T. Kehinde, SAN, Oluwole Iyamu, SAN, Olusegun Jolaowo SAN, O. M. Atoyebi, SAN, with Oladipo Osinowo Esq., Olajide Salarni Esq., Sonia Ernest-Egbuna, Esq., Godspower Emereonye Esq. and Deborah Idakwoyi for the Appellants.

Chief Kanu Agabi, SAN, A.M. Aliyu, SAN, T.M. Inuwa SAN, Alhassan A. Umar SAN, S.o Ibrahim, SAN, Wendy Kuku SAN, UchennaNjoku, SAN, with Bashir M. Abubakar Esq., MaryFrances Orji, Esq., Emnlanuel Agabi, Esq. and Anthony Onyeri, Esq. for the 1st Respondent.

Dr. Onyechi Ikpeazu, SAN, Chief Offiong E. B. Ofaong, SAN, Festus Kayode Idepefo, SAN, Roy O.U. Nwaeze SAN, with Edward Erhinum Esq. , Lynda Chuba-Ikpeazu, Dr. Obinna Onya Esq., Julius Mba Esq., David Iyonyiman and Maryam Ajafi Lawan for the 2nd Respondent.

E.C. Ukala, SAN, J.O. Asoluka, SAN, Henry A. Bello, SAN with Oyebu J. Ihiako and Dike Udenwa for the 3rd Respondent.

MOHAMMED LAWAL GARBA, JSC (delivering lead judgment) :

On the 21st September, 2024, the 1st Respondent conducted election into the office of Governor of Edo State. The 1st Respondent declared and returned the 2nd Respondent as the winner of the election with 291, 667 votes while the 1st Appellant scored 247, 274 votes.

The Appellants filed a petition challenging the return of the 2nd Respondent, which was predicated on two (2) grounds: that the election was invalid by reason of non-compliance with the provisions of the Electoral Act, 2022; the 2nd Respondent was not duly elected by the majority of the lawful votes cast at the election.

At the pre-hearing sessions of the petition, the Respondents challenged the competence of the petition on the ground that the two (2) grounds are inconsistent and contradictory and so incompetent. Also, that the Appellants did not seek the relief for the nullification of the entire election which the Tribunal was empowered to grant in the event that the election was determined to be invalid and/or that the candidate returned as elected was not validly elected on any ground, as provided for in section 136(1) of the Electoral Act, 2022 (the Act).

In line with the provisions of section 285(8) of the Constitution and section 136(4) of the Act, all objections were determined in the final judgment of the Tribunal delivered on the 02/04/25. The objections were over-ruled and on the merit, the petition was dismissed in the final judgment.

Expectedly, the Appellants, being dissatisfied with the dismissal of their petition, appealed to the Court of Appeal, (sitting at Abuja Division) against same. The 2nd Respondent was also aggrieved by the decision of the Tribunal on the objections and filed a cross appeal in respect thereof before the court below. The Appellants questioned the competence of the cross appeal, on among other grounds, that the Record of the Cross Appeal was incomplete.

In its judgment delivered on the 29/05/25, the court below over-ruled the Appellants' objection to the Record of the cross appeal by the 2nd Respondent and affirmed the dismissal of the Appellants' petition on the merit.

By the Notice of Appeal filed on the 10/06/25, the Appellants brought this final appeal against the judgment of the court below which is predicated on thirty- two (32) grounds.

In the Appellants' Brief of Argument filed on the 23/06/25, and settled by Kenneth E. Mozia SAN, five (5) issues are said to arise from the grounds of appeal as follows:-

1. Whether the court below was wrong when it dismissed the Appellants' objections to the validity of the record of the Cross Appeal No. CA/AB J/EPT/ED/GOV/4/2025.
2. Whether the court below misconstrued sections 51(2) and 73(2); vis-avis section 136 (1) and (3) of the Electoral Act, 2022 and wrongly applied the provisions to the facts and reliefs in the Appellants Petition in holding that Appellants' ground one on non-compliance limits them to seek only a relief for nullification of the entire election, notwithstanding ground 2 of the Petition
3. Whether the court below was wrong in holding that Exhibits PPDDIPPDD133- the BVAS machines were wrongly admitted by the Tribunal because consent of all the parties to the petition was not given as required under paragraph 41 (2) of the First Schedule to the Electoral Act, 2022
4. Whether having regard to the nature of the case of the non-compliance complained of in the petition, the evidence adduced by the Appellants, the applicable laws and decisions of this Court, the court below acted perversely in affirming the Tribunal's decision that the Appellants did not prove the facts in support of the ground of non-compliance in the petition and this occasioned a miscarriage of justice
5. Whether having regard to the pleadings, the evidence adduced, the applicable laws and the decisions of this Court, the affirmation by the court below of the Tribunal's decision that

the Appellants did not prove the ground 2 of the Petition and the consequential dismissal of the Appellants' appeal was perverse and occasioned a miscarriage of justice.

The 1st Respondent's Brief of Argument filed on 27th June, 2025, was settled by Kanu Agabi SAN. Five (5) issues for determination were also formulated thus:-

1. Whether the court below was right in striking out Ground 1 of the Petition because the Appellants, having pleaded that the election was invalid by reason of non-compliance with the provisions of the Electoral Act, 2022, failed to seek the relief for nullification of the election, thereby rendering the said Ground incompetent.
2. Whether the court below rightly affirmed the decision of the Tribunal that the Appellants failed to prove Ground 1 of their Petition, to wit, that the election of the 2nd Respondent was invalid by reason of non' compliance with the provisions of the Electoral Act, 2022.
3. Whether the Court below rightly affirmed the decision of the Tribunal that the Appellants failed to prove Ground 2 of their Petition, to wit, that the 2-^d Respondent was not elected by majority of lawful votes cast at the election
4. Whether their lordships of the Court below were right when they held that the record of appeal in respect to the cross appeal was valid and thereby dismissed the Appellants' objection to the record of appeal.
5. Whether the Court below was right in expunging Exhibits PPDDIPPDD133 being BVAS machines tendered by the Appellants' Counsel from the Bar without the prior consent of all the parties and in violation of paragraph 41 (2) of the First Schedule to the Electoral Act, 2022.

The 2nd Respondent's Brief of Argument filed on 27th June, 2025, was settled by Dr. Onyechi Ikpeazu, SAN. Five (5) issues for determination were also formulated thus:-

1. Whether the Court of Appeal was right when it dismissed the Appellants' Objection which alleged that Record of Cross-Appeal was incomplete to determine Ground 5 of the Notice of Cross Appeal
2. Whether the Court of Appeal was right when it held that the Reliefs contained in Paragraph 738 of the Petition are incompetent to sustain the first ground in the Petition

3. Whether the Court of Appeal was right when it held that the BVAS Machines for 133 Polling Units tendered by the Appellants' Counsel from the Bar and admitted by the Tribunal as Exhibits PPDD1 -PPDD 133 was wrongly admitted in evidence
4. Whether the Court of Appeal was right when it affirmed the decision of the Election Tribunal to the effect that the Appellants failed to prove that the Election of the 2nd Respondent as the Governor of Edo State was invalid by reason of non-compliance with the Electoral Act, 2022
5. Whether the Court of Appeal was right when it upheld the decision of the Election Tribunal which dismissed the Appellants' allegation that the 2^d Respondent did not score a majority of the lawful votes cast in the election into the office of the Governor of Edo State conducted by the 1st Respondent on 21st September, 2024.

The 3rd Respondent's Brief of Argument filed on 27th June, 2025, was settled by Dike Udenna Esq. Five (5) issues for determination were also formulated thus:

1. Whether the court below was right when it dismissed the Appellants' objection to the validity of the record of the Cross Appeal No. CA/ABJ/EPT/ED/GOV/4/2025 .
2. Whether the Court below was right in holding that the ground 1 of the Appellants' petition, which was predicated on the allegation that the election of the 2nd Respondent was invalid by reason of non-compliance with the provisions of the Electoral Act, was undeterminable without the requisite prayer for nullification of the entire election, in all the circumstances of the case
- 3 . Whether the Court below was right in holding that the BVAS machines tendered as Exhibits PPDD1-PPDD133 were wrongly admitted by the Tribunal and were of no evidential value in all the circumstances of this case
4. Whether having regard to the nature of the case of non-compliance complained of in the petition, the evidence adduced by the Appellants, the applicable laws and the decisions of the Court, the Court below acted properly in affirming the Tribunal's decision that the Appellants did not prove the facts in support of the ground of non-compliance in the petition
5. Whether having regard to the pleadings, the evidence adduced, the applicable laws and the decisions of this Court, the Court below was right when it affirmed the decision of the Tribunal that the Appellants did not prove the ground 2 of the Petition and proceeded on that basis to dismiss the Appellants' appeal.

Submissions of Counsel
Appellants' counsel

In proffering arguments on issue one, the learned senior counsel argued that he challenged the competence of the 2nd Respondent's Cross-Appeal at the court below, through a Notice of Preliminary Objection on several grounds, which includes that the Record of Cross-Appeal was incompetent, thus rendering the Cross-Appeal incompetent. The Appellant's objection was overruled by the court below. The Appellants faulted the decision of the court below in treating the Appellant's appeal CA/EPT/GOVI/25 and the 2nd Respondent's appeal No: CA/EPT/GOV4/25 as bound by the same record of Cross-Appeal.

On the second issue, counsel submitted that the court below was wrong to have reversed the decision of the Tribunal by subjecting sections 51 (2) and 73(2) to section 136(1) of the Act. Reliance was placed on PDP v. Oyetola & Ors. 2023 LPELR-60291 (CA). Counsel further submitted that non-compliance at polling units can affect the immediate return of a winner or a decision whether to conduct re-run or fresh election in the affected polling units but not to result in nullification of the entire election in the state. Baba v. INEC (2024) 14 NWLR (Pt 1957) 155 SC at 167. He also took the view that section 136 accommodates the reliefs sought by the Appellants on the footing of non-compliance. Uzodinma v. Ihed'ioha (2020) 5 NWLR (Pt. 1718) SC 529. Counsel stated that there is no incongruity in seeking to be returned as winner of majority of lawful votes as the principal relief because they prayed the court to cancel polling units results which were wrongly added to the scores of candidates in violation of sections 5 1 (2) and 73 (2) of the Electoral Act.

On the third issue, counsel submitted that the court below raised the issue of consent vis-a-vis the admissibility of Exhibits PPDD1-PPDD 133 from the bar, suo mom, and proceeded to expunge and discountenance the said Exhibits without hearing the parties. Counsel said that this decision violates the rule of fair hearing and occasioned a gross miscarriage of justice to the parties. Counsel opined that the court below, having referred to the said Exhibits as real evidence, which brings them within the context of "other Exhibits" in Paragraph 41(2) of the 1st Schedule to the Electoral Act, they were properly admitted from the Bar.

On the fourth issue, counsel submitted that the decision of the court below, in affirming the decision of the Tribunal, that the Appellants failed to prove the ground of non-compliance with the provisions of the Electoral Act, 2022, is not supported by the pleadings, the evidence adduced by the Appellants and the current decisions of this Court. According to counsel, the court below misconceived the facts of the Appellants' case as a complaint against improper filing of the prescribed forms, whereas, it is a case of complete absence of serial numbers and other particulars of sensitive materials in the prescribed Form EC25B in 395 polling units. Thus, there was no need to adduce oral evidence in accordance with section 137 of the Electoral Act, since the evidence required to prove the aforesaid noncompliance is the prescribed Forms themselves which showed that there is no record of the serial numbers of result sheets, ballot papers, BVAS machines and other sensitive materials in the prescribed Forms EC25B. He relied on *Jonathan v. INEC* (2025) 3 NWLR (Pt. 1978). To him, the cases of *Baba v. INEC* (supra), *Barde v. INEC*, *Nneji v. INEC* are inapplicable to the facts of this Appeal as they do not support the decision of the court below that oral evidence is required even where originals or certified true copies manifestly disclose the non-compliance complained of

Counsel took the view that by section 52 of the Evidence Act, 2011, Exhibits PCB 1- PCB 308 and Exhibits PEB1-PEB70: were admissible in evidence in proof of whatever there was; were now exceptions to the hearsay rule in sections 37 and 38 of the Evidence Act. He stated that the court below ignored all these statutory provisions and judicial authorities when it affirmed the findings of the Tribunal, thereby rendering its decision perverse.

On proof of over voting, counsel argued that the BVAS extracts/screenshots and BVAS reports were tendered together with BVAS machines to prove overvoting. When the BVAS accreditation report and the BVAS screenshots, are compared with Forms EC8A, they manifestly show over voting in 95 out of 1 33 polling units. He submitted that the Appellants having tendered unchallenged certified true copies of the BVAS report, and BVAS extracts/screenshots, it was not their duty to open and demonstrate the BVAS machines .

On the last issue, it was submitted that the court below was wrong in its resolution of Ground 2 of the petition, as the findings of the court are not consistent with established principles regarding proof of the facts in support of the said Ground. According to counsel, the complaints of the Appellants are directed against the events that happened in collation centres. The Appellants in Exhibits PFBI-PFB 125 (Forms EC8 As) which were collated into Forms EC:8B were inconsistent with the scores on Forms EC8As uploaded directly at the polling units to IREV and this manifested a substantial increase in the scores of the 2nd and 3rd Respondents and a substantial decrease in the scores of the Appellants. The court below wrongly preferred the hard copies of the Form EC8A to the Certified True Copies of the IREV Forms EC8A contrary to the decision in *Lawal v. Matawalle*. The summary of the argument on this issue is that the Appellants proved Ground 2 of the Petition.

Submissions of the 1st Respondent's counsel

On the first issue, it was argued that the two grounds relied on by the Appellants in support of their petition are diametrically opposed and inconsistent with each other. The reliefs sought by the Appellant in paragraph 738 of the petition were incompetent to sustain the ground alleging non-compliance with the provisions of the Electoral Act, 2022, The Appellants failed to seek the mandatory relief that attends to the ground of non-compliance. The Appellants ought to have concluded with a prayer for the nullification of the invalid election-in accordance with section 136 of the Electoral Act. *CPC v. INEC (2011) LPELR-18257 (SC)*, *Agbu v. INEC & Ors. (2023)LPELR-61490 (CA)*. The case of *Uzodinma v. Ihedioha (supra)* cited by the Appellants is unhelpful to their case as the facts as compared to the facts of the instant case are dissimilar and asymmetrical.

On the second issue, learned senior counsel submitted that the Appellants failed: to prove that serial numbers of sensitive materials were not recorded; to call witnesses who were present at the polling units. On the issue of overvoting, the Appellants called only five polling unit agents in respect of 133 polling units, and none of them tendered any voter's register from their polling

units, therefore their case on over-voting was designed to fail. The Appellants tendered screenshots/extracts of BVAS accreditation, which is not one of the documents required for proof of overvoting by virtue of section 47(2) of the Electoral Act, 2022. The Appellants by their evidence failed woefully to establish their case of non-compliance with the provisions of section 73 (2) of the Electoral Act, 2022.

The 1st Respondent, on the third issue stated that since the acts challenged in Ground 2 of the Petition are acts that took place in polling units, the Appellants ought to have tendered all the relevant documents and called competent witnesses to adduce oral evidence of what they saw and to link the challenged documents to their allegations. The Appellants failed to call such witnesses. Since, the documentary evidence tendered by the Appellants were not demonstrated by persons involved in the making of those documents, they were dumped on the court and constitutes hearsay evidence, which is inadmissible. *WADA v. INEC* (2022) 11 NWLR (Pt. 1841) 293, *Buhari v. Obasanjo* (2005) 23 NSCQR 442 at 587. Therefore, the Appellants did not prove their allegation that the 2nd Respondent was not elected by majority of lawful votes cast at the election.

On issue four, it was submitted that one Record of Appeal suffices for the main appeal and the cross appeal. He also stated that although a preliminary objection was raised to the completeness of the Record, however, the Appellants' failure to formally challenge the Record of Cross Appeal, by way of an Affidavit setting out the missing parts, makes the entire contentions of the Appellants at the court below baseless. *Adegbuyi v. APC & Ors.* (2014) LPELR-24214 (SC).

On the last issue, the learned SAN argued that the issue of consent was not raised suo motu by the court below. The court below, in resolving the issue of admissibility of Exhibits PPDDI-PPDD133, merely identified the law that should have guided it and this was the basis of the court below stating why the BVAS machines could not be tendered from the bar, in the absence of consent of the parties by virtue of paragraph 41 (2) of the 1st Schedule to the Electoral Act. Therefore, there was no need to call counsel to address the court on the issue.

Submissions of the 2nd Respondent's counsel

The summary of the argument of the learned senior counsel on the first issue is that the court below was right when it dismissed the Appellants' objection and held that the Record of the Cross- Appeal and the Main Appeal were sufficient to determine the Cross-Appeal.

On the second issue, it was argued that the mandatory relief flowing from the ground that alleges that an election is invalid for non-compliance with the Electoral Act is nullification and a hesh election. The Appellants were not entitled to invent reliefs outside the prescription of the Act.

In support of the third issue, learned SAN argued that the court below did not raise the issue of consent suo motu, as there is a difference between a court raising an issue suo motu and a court applying a principle of law not cited by the counsel to the affected party. The reliance by the Court of Appeal on the provision of Paragraph 41(3) of the 1st Schedule to the Electoral Act was to show that the only way, such a procedure should have been allowed by the Tribunal was if the 2nd Respondent had consented. Therefore, no new issue was raised by the court below that required the invitation of the parties.

On the fourth issue, it was submitted that the witnesses called by the Appellants to identify Exhibits PCB1-PCB308 and PEB1-PEB70 testified against the Appellants to the effect that the Forms were duly filled and that the said exhibits are incomplete documents as every one of them has two pages missing and the court could not speculate on what the missing pages contained. On the allegation of overvoting, it was stated that the Appellants did not tender Forms EC8A of the disputed polling units used for the collation of result at the Ward Collation Centres but tendered the IREV copies. Learned senior counsel's position is that where the legality of votes is challenged and a petitioner seeks to show that the IREV copies and not the hard copies of Forms EC8 A, contained the correct result of the election, the petitioner has a duty to produce the two sets of results. *Lawal v. Matawalle (supra)*. Also, Exhibits PDCI- PDC56 and Exhibits PED1-PED72 showed that they were BVAS screenshot which is unknown to the Electoral Act, 2022. *Ombugadu v. Alhaji (2024) 7*

NWLR (Pt. 1936). The BVAS machines were not identified, let alone opened and demonstrated to the court.

On the last issue, counsel it was contended that the Appellants tendered 102 Agents' copies of the BorIng EC8 A and none of the witnesses called by the Appellants signed these documents. The allegations of over stating and understating of votes which are the same as allegations of inflation and deflation of votes can only be proved by the evidence of witnesses who were at the polling units and witnessed the filling and signing of the Form EC8As. In summary, it was argued that the Appellants failed to prove: that the 2nd Respondent was not duly elected by a majority of the lawful votes cast at the election to the office of Governor; that the election of the 2^d Respondent as the Governor of Edo State was invalid by reason of non-compliance with the provisions of the Electoral Act.

Submissions of 3rd Respondent's counsel

According to counsel, there is no law that requires a Cross Appellant must compile a separate Record of Appeal if the record compiled for the main appeal is sufficient for the effective consideration and determination of the issues involved in the cross appeal. Counsel relied on *Futa v Victor* (2019) LPELR- 47321 (CA) and the provisions of Paragraph 17(b) of the Election Judicial Proceedings Practice Directions, 2023 and Order 19 Rule 7(1) of the Court of Appeal Rules, 2021.

On the second issue, counsel stated that the Appellants did not plead facts in the alternative for each ground of the petition, did not seek the requisite relief for the nullification of the election consequent upon the ground one and did not seek any reliefs in the alternative, in respect of the distinct grounds of the petition as required by law. Rather, the Appellants relied on the ground that the election was invalid and at the same time, sought reliefs that they should be declared winners of the same election and this defect had the effect of rendering the petition undeterminable. *Sabiya v. Tukur & Ors* . (1983)LPELR-SC, *CPC v. INEC* (2011) 18 NWLR (Pt. 1279) Nothing limits the alleged invalidity of the election of the 2nd Respondent to specific polling units. Counsel stated that the reliance sought by the Appellants on the

provisions of sections 5 1(1) & (2) and section 73 (2) of the Electoral Act under the guise of specific provisions, which ought to over-ride section 136 of the Electoral Act, 2022 is misconceived.

On issue three, counsel stated that the Respondents disputed the documents of the Appellants including the BVAS machines. The Exhibits PPDD1-PPDD133 were documents within the meaning of section 258 of the Evidence Act, therefore they are not admissible from the bar. *Belgore v. Ahmed* (2013) 8 NWLR (Pt. 1355) 60 at 100, *Turnbido v. INEC & Ors.* (2023) LPELR-6004).

On issue four, it is counsel's argument that non-compliance is required by law to be proved by evidence of direct eye witness from polling unit to polling unit. *Andrew & Anor. INEC & Ors.* (2017) LPELR-48518 (SC), *Baba v. INEC & Ors.* (2024) LPELR-62230 (SC), Section 137 of the Electoral Act does not absolve the Appellants of the burden of proving their case by calling direct eye witness evidence to prove the alleged noncompliance.

On Issue five, it was submitted that PW1-PW14 were not polling unit agents who were present at any of the polling units during the election, therefore, they were not persons competent to give direct eye witness account of what transpired at the polling units as it relates to the voting, counting and collation of the correct scores to determine the issue of majority of lawful votes. *Buhari v. Obasanjo* (2005)13 NWLR (Pt. 941) 1. Also, that the IREV copies of the election results tendered by the Appellants having been adjudged as among the documents dumped on the Tribunal, they were of no probative value. Counsel submitted that the Appellants have not placed anything before this Honourable Court to justify the setting aside the decision of the court below.

The Appellants filed Reply Briefs of Argument to the respective Respondents' Briefs of Argument.

The Appellants in responding to the new issues argued in the 1st Respondent's Brief, stated that it is only where a petitioner's challenge is against the validity of the entire election, that it

cannot be heard to find its petition on the ground of non-compliance as well as claiming to have scored the majority lawful votes cast at the election. *Buhari v. Yusuf* (2003) 14 NWLR (Pt. 841) 446 at 518. Counsel farther stated that the 1st Respondent was not correct when it asserted that the Appellants' witnesses testified on documents that were not in existence as at the time they made their witness deposition. The relevant question should be the facts of what the witnesses asserted as to the contents of the documents and that the 1st Respondent did not challenge of the witnesses in respect of the figures they asserted in their witness depositions as contained in the documents they testified in respect of

With respect to the 2nd Respondent, Appellants' counsel replied/argued that paragraph 17(b) of the Electoral Judicial Proceedings Practice Direction, does not avail him because the said subparagraph does not cure any defect in the main appeal or a cross appeal filed out of time. The cases cited are clearly inapplicable to the bcG-of the appeal. Counsel stated the basis of 2nd Respondent's misconceived arguments is due to his failure to construe the petition as whole, instead of taking ground 1 of the petition together with the facts in support.

In responding to the 3rd Respondent, Appellants' counsel argued that the motion which culminated in the ruling, cross appealed against by the 2nd Respondent, was taken at the pre-hearing, therefore, it can not be said that the cross appeal was against the final judgment of the Tribunal. The cases cited by the 3rd Respondent are inappropriate because the two appeals in the court below were by adverse parties. Also, that the BVAS machines cannot be characterized as documents that cannot be tendered from the bar. The issue of probative value of the BVAS machines does not arise when retrieved content required to prove the Appellants' case has not been disputed or denounced. The witnesses spoke to and linked their depositions to the BVAS machines as documents whose certified copies were put in evidence. The cases cited by the 3rd Respondent on dumping of documents and documentary hearsay are said to be inapplicable to the facts of the case, as they border on complaints that happened at polling units during actual conduct of polls, while the specie of non-compliance alleged

occurs before the polls. On the whole, Appellants' counsel urged this court to allow the appeal.

Resolution of Issues

The Issue 1 of the Appellants, as a reminder, queries whether the court below was wrong when it dismissed the Appellants' objections to the validity of the Record the 2nd Respondent/Cross Appellant's appeal No.CA/ABJ/EPT/ED/GOV/4/2025. The position of the Appellants in their arguments of the issue as seen above, is that the court below was wrong in the dismissal of the objections on the ground, among others, that the said Record of Cross Appeal was incompetent for being incomplete. The objection to the Record of the Cross Appeal, was predicated on the following grounds as set out therein and appear at page 917 of Vol. 10 A of the Record of Appeal before this court:

“ (a) Grounds 1-4 of the notice of cross appeal are incompetent as they complain against an interlocutory decision of the trial tribunal but the notice of appeal was filed 20 days after the said decision

(b) The record of appeal transmitted by the 2^d Respondent/Cross Appellant is incomplete, particularly in respect of the Ground 5. . .

(c) Ground 5 of the notice of cross appeal raises an academic issue, the resolution of which will confer no benefit on the cross appellant the cross appellant not having appealed also, against the admission of the BVAS report and extract/screen shot of the records contained in the BVAS machines in evidence.”

In reaction to the objection, the 2nd Respondent/ Cross Appellant contended in his Reply Brief dated 15/05/25 which appears at pages 949-953 of the same volume 10(A) of the Record of Appeal, that the documents listed in ground (b) of the objection, are not material for consideration of the Grounds 1-4 of the Notice of *Cross Appeal*. Also, that with the Appellant's failure to challenge the Record of the Cross Appeal by way of an Affidavit to verify the facts, the court below could not make a finding to that effect.

Beginning with the ground (a) of the objection that the cross appeal was against an interlocutory decision of the Tribunal, but the Notice of Appeal was filed twenty (20) days later, which was outside and after the expiration of the fourteen (14) days limited for the filing of a Notice of Appeal against an interlocutory decision prescribed and limited by the provision of paragraph 6(1) of the Directions.

All that needs be said on the ground of the objection is to point out the admission by the Appellants that the cross appeal was against the findings/decision on the objections by the Respondents contained in the final judgment delivered by the Tribunal on the 02/04/25. Being, against the final judgment/decision of the trial Tribunal on the objections raised by the Respondents at the hearing, the time prescribed and limited, by the provisions in paragraph 6(1) for the filing of a Notice of Appeal against same is twenty-one (21) days. I have indicated earlier in this judgment that the decision on the objections by the Respondents was deferred to the final judgment of the trial Tribunal pursuant to the provisions of section 285(8) of the constitution and section 136(4) of the Electoral Act. In the premises, the argument that the cross appeal was against a non existing interlocutory decision which was never delivered by the trial Tribunal separately from the final judgment lacks discernment and is untenable in law. *Jibrin v. FRN* (2020) 4 NWLR (Pt. 1714) 3 15, *Ikpeazu v. Oai* (2016) 8 NWLR (Pt. 1513) 38. The Notice of Cross Appeal filed on the 22/04/25 was filed within the period of twenty-one (21) days stipulated in paragraph 6(1) of the Directions for the filing of a Notice of Appeal against a final judgment/decision of the trial Tribunal. In addition, as rightly pointed out by the Learned Senior Counsel for the 2nd Respondent/ Cross Appellant. The Appellants have, at paragraph 3.0 of their Appellants' Brief, abandoned grounds 2, 3 and 4 of the Notice of Appeal filed in this court, which appear at pages 3891-3894 of Vol. 9 of the Record of Appeal. The grounds 3 and 4 specifically asserted that the cross appeal was against an interlocutory decision of the Tribunal and for being freely abandoned, there can be no valid issue argued by the Appellants in the appeal on that point and so all arguments by them are liable to be disregarded by the court. *Nweke v. Unizik, Awka* (2017) 18 NWLR

(Pt. 1598) 454, Isitor v. Fokorede (2018) 5 NWLR (Pt. 1612) 328, Lawal v. APC (2019) 3 NWLR (Pt. 1658) 86.

Speaking generally, the law is that an appellate court cannot determine an appeal on an incomplete Record of Appeal from which relevant and material processes or documents filed and used at the hearing before the trial court were omitted for the purpose of the determination of the crucial issues arising from the grounds of the appeal. For the purpose of the proper exercise of its appellate jurisdiction over an appeal, the Record of Appeal transmitted to an appellate court must include and contain all relevant and material processes that were used, considered and/or relied on by the trial court in arriving at the decision appealed against, otherwise, the Record of Appeal would be incomplete and deprive the appellate court of the requisite appellate jurisdiction over the appeal. See Owanta v. INEC (2022) 4 NWLR (Pt. 1713) 46, Maku v. Sule (2022) 3 NWLR (Pt. 1817) 23 1, Opene v. NJC (2024) 15 NWLR (Pt. 1960) 101, Tejuoso v. Farornbi (2022) 9 NWLR(Pt. 1835) 205.

Now, the practice and procedure for an appeal from or against a decision of an Election Tribunal; interlocutory or final, to the court below, is provided *for*, regulated and governed by the Election Judicial Proceedings Practice Directions, 2023. (the Directions) issued by the President of the Court of Appeal.

In the Interpretation part of the Directions, “Appeal” includes “Interlocutory Appeal”. A Cross Appeal is not mentioned specifically, but with the word “includes” in the definition of an “Appeal”, it is manifest that a cross- appeal is not excluded, but envisaged and comes within the purview of an appeal for the purposes of the Directions.

In simple terms, a cross appeal is an appeal filed by a Respondent in an existing appeal (the main appeal) before an appellate court against some part/s or portion/s of the same judgment of a lower court with which he is dissatisfied. It is akin to a counter claim by a Defendant in a civil claim/action before a trial court, usually incorporated in the Statement of Defence to the action, but specifically pleaded and itemized. For the purpose of proof, a cross appeal is therefore

governed by the same rules of procedure as the main appeal, as the Cross Appellant is the Appellant in the Cross Appeal and the Respondent becomes the Cross Respondent in the crossappeal, thereby swapping places from the main appeal. See *C.G.C Nig. Ltd. v. Isa* (2023) 9 NWLR (Pt. 1888) 129, *Ofongo v. A.P.C* (2022) 4 NWLR (Pt. 1821) 543, *GTB v. Obosi Micro Finance Bank Ltd* (2022) 4 NWLR (Pt. 1821) 455. A cross-appeal is considered, in law, as a separate and distinct appeal from the main appeal since each is filed by separate notices, even though usually, the Notices of both may be incorporated, compiled and transmitted to the appellate court in the same volume/s of the Record of Appeal. See *APM v. INEC* (2023) 9 NWLR (Pt. 1980) 419, *PDP v. INEC* (2018) 12 NWLR(Pt. 1-634) 533, *Izeze v. INEC* (2018) 11 NWLR(Pt. 1629) 110, *Kmaye v. Wike* (2019) 17NWLR (Pt. 1701) 293.

Paragraph 6(1) of the Directions provides for the filing of a Notice of Appeal by an Appellant at the Registry of the trial Tribunal or Court, as the case may be, in the following terms:-

“The Appellant shall file in the Registry of the Tribunal or Court his Notice of Appeal within 14 days where the Appeal is against an interlocutory decision and 21 days where the Appeal is against a final decision.”

Then Paragraphs 7, 8 and 9 provide that:-

7 At the filing of the Notice of Appeal, the Appellant shall-

- (a) Pay to the Secretary of the Tribunal or Registrar of the lower Court such fees as may be determined, having regards to the bulk of documents which are to be compiled in the Record of Appeal;
- (b)Furnish as many copies as there are Respondents and ten (10) extra copies to the Secretary of the Tribunal or Registrar of the lower Court; and
- (c)Pay a fee for service on all the Respondents

8 (a) The Secretary of the Tribunal or Registrar of the lower Court shall upon the receipt of the Notice of Appeal, cause to be served on all the Respondents, copies of the Notice of Appeal.

- (b) The Parties shall, upon receipt of the Notice of Appeal, immediately settle the documents to be included in the Record of Appeal with the Secretary of the Tribunal or Registrar of the lower Court

9. The Secretary of the Tribunal or Registrar of the lower Court shall, upon receipt of the Notice of Appeal, cause to be compiled, served on all the parties and transmit the Record of Appeal to the Court within ten (10) days.”

In brief, these provisions prescribed the time within which a Notice of Appeal against a decision(s) of an Election Tribunal (Tribunal) or trial court to the court below shall be filed and the time within which the record of the

appeal shall be compiled and transmitted to the court below for the prosecution and determination of the appeal.

As may easily be observed, unlike in ordinary civil appeals to the court below from the decisions of lower trial courts or other Tribunals, after payment of the requisite fees for the compilation and transmission of the Record of Appeal by an Appellant, the duty to do so was solely imposed on the Registrar of the Lower Tribunal or court and the Appellant was not required to compile and transmit such record of appeal even when or where the Registrar failed or omitted to do so. This court, in *Ibrahim v. Akinrinsola* (2022) 18 NWLR (Pt. 1842) 455 at 487, had stated, inter alia that:-

“This court has noted that responsibility for the preparation and furnishing of a complete and accurate record of appeal lies with the registrars of the court from where the appeal originates. See *GTB Plc v. Innoson (Nig.) Ltd* (2022) LPELR-56657(SC) at 39- 40; (2022) 6 NWLR (Pt. 1825) 35; *Ede & Anor. v. Mba and Ors* (2011)LPELR-8234 (SC), (2011) 18 NWLR (Pt. 1278) 236. ”

In respect of the Record of the Cross Appeal under consideration, there is no dispute that the Notice of Cross Appeal filed by the 2^d Respondent/ Cross Appellant on the 22/04/25 as well as the Record of the Cross Appeal transmitted to the court below on the 30/04/25 by the Registrar of the trial Tribunal, were both filed and transmitted in line with the requirements of the Directions. Prima facie, the Record of the Cross Appeal were properly and validly compiled and transmitted in compliance with the requirements of the relevant law applicable to appeals in election matters. The Directions do not enumerate particulars of documents or stipulate specific processes in the proceedings of a trial Tribunal or court that should

mandatorily be compiled to constitute the complete record of an appeal to be transmitted to the court below by the Registrar for the purpose of the prosecution of the appeal. There is also no provision in the Directions directing that every and all processes or documents filed and/or used in the proceedings of trial Tribunal or court must be compiled and transmitted to the court below, for the purpose of an appeal in order for the Record of Appeal to be complete. The Directions appear to leave the settlement of the processes or documents at the discretion of the parties, but the Appellants in particular, who filed the Notice of Appeal and pays for the compilation and transmission of the record of appeal to the court below, to guide the Registrar of the Tribunal or court on the documents or processes which are considered relevant and material for the purpose of a full, effectual and final determination of the appeal by the court below.

In the case of *Okechukwu v. Obiano* (2020) 8 NWLR (Pt. 1726) 276 @ 3 07, this court emphasized the duty on the parties in the compilation of the record of an appeal in election matters When it stated that:

“While it is true that Order 8 rule 1 of the Court of Appeal Rules, 2016, imposes a duty on the registrar of the court below to compile and transmit the record of appeal, there is a corresponding duty on the parties to ensure that all materials relevant to the just determination of the appeal are included in the compiled record. It is the duty of counsel to ensure that the record of appeal is a complete record.”

In the present appeal, the Appellants/Cross Respondents, did not in the objection to the validity of the Record of the Cross Appeal, as set out above, dispute the fact that the record compiled and transmitted by the Registrar of the trial Tribunal to the court below for the purpose of the 2^d Respondent/ Cross Appellant’s cross- appeal, were settled by the parties or the Cross Appellant who owns the appeal, and therefore knows the documents or processes that are relevant, material and adequate for the purpose of the full, effectual and final determination of the complaints and live issues embedded in the grounds of the Cross Appeal set out in the Notice of Cross Appeal. None of the documents or processes

listed in the ground (b) of the Appellants/Cross Respondents' objection to the record of the Cross Appeal transmitted to the court below is shown by them to be relevant and material to the complaints and issues raised in the grounds of the Cross Appeal such that the appeal could not fully, effectually and finally be determined or decided by the court below. The law is that the omission or failure to include such irrelevant or immaterial documents or processes in the compilation of the record of an appeal does not go to affect the completeness and/or validity of the record of appeal *for* the purpose of the determination of the appeal. See *Tejuoso v. Farombi* (2022) 9 NWLR (pt. 1835) 205, *A.P.P v. Obaseki* (2022) 13 NWLR (Pt. 1846) } @ 25.

In addition, as rightly submitted by the learned SAN for the 2nd Respondent/Cross Appellant, at pages 9- 10 of the 2nd Respondent's Brief of Argument, on the authority of, among other cases; *Anyakorah v. PDP* (2022) 12 NWLR (Pt. 1843) 1 @ 38, a decision of this court, a party who intends to challenge the record of an appeal before an appellate court on ground of incompleteness, is required, as a condition precedent, to file an Affidavit to demonstrate not only that the said record is incomplete, but also demonstrate that the omitted processes or documents are in fact relevant and material to the effectual, full and final determination of the live and vital issues in the appeal. This position is traceable to the rebuttable presumption enjoyed by the record of appeal to be complete and properly compiled and transmitted until satisfactorily proved otherwise before the appellate court. See *Kiwo v State* (2020) 7 NWLR (Pt. 1722)164, *Access Bank Plc v, Onwulhi* (2021) 6 NWLR (Pt. 1773) 391. The law is also settled that until otherwise properly and successfully challenged, the record of an appeal binds both the parties to the appeal and the court, such that no party can and would be heard to dispute the validity or competence of such record of appeal. That is the position of the law stated in *Nwite v. PDP* (2023) 7 NMR (Pt. 1883) 357 @ 395 by this court, with reference to earlier decisions in *Texaco Panama Incorp. v. Shell Pet. Corp* (2002) 5 NWLR (Pt. 759) 209, *OI'ugbo v. Ona* (2002) 16 NWLR (Pt. 792) 175 and *Sapo v. Sunmonu* (2010) 11 NWLR (Pt. 1205) 374. See also *Anyakorah v. PDP* (supra), *Okechukwu v. Obiano* (supra).

In the above premises, the court below was right to have dismissed the Appellants/Cross Respondents' objection to the validity of the record of the 2^d Respondent/Cross Appellant's Cross Appeal on ground that the said record was not complete.

However, I should point out that although on the authority of Paragraph 17 (b) of the Directions considered by the court below in *Idris v. Gada* (2023) LPELR-59349 (CA) and *APC v. Munala & Ors.* (2024) LPELR-62522 (CA), an appeal and a cross appeal/Respondent's Notice arising from the same judgment/decision of a Tribunal or Court shall be argued together, the position does not affect or relate to the compilation and transmission of separate records of appeal *for* separate Notices of an appeal and a cross appeal that were filed on different dates and records transmitted on different dates, as happened in the court below in respect of the Appellants' appeal and the 2^d Respondent's cross appeal. It may be recalled that the Appellants' Notice of Appeal was filed on the 17/04/25 and the record of that appeal transmitted to the court below on the 24/04/25, within the prescribed time.

On his part, the Notice of the 2^d Respondent's cross appeal was filed on the 22/04/25 and the record of the said appeal was transmitted to the court -below on the 30/04/25; also within the prescribed time. Now, the salient point worthy of particular note was the fact that the Notice of Cross Appeal filed two (2) days before the transmission of the record of appeal of the Appellants on the 24/04/25 was not included in and did not form a part of the said record of appeal (i.e the main appeal). The Notice of Cross Appeal filed by the 2nd Respondent/Cross Appellant was not transmitted to the court below, as supplementary or additional record of appeal to the Appellants' record of the main appeal within the period of ten (10) days for the compilation and transmission of the said record in the main appeal. Rather, the Notice of Appeal was compiled, included and transmitted in the record of the cross appeal received in the court below about six (6) days after the transmission and receipt of the record in the main appeal. Since the records of the main appeal and the cross appeal were transmitted and received on different and separate dates, though in respect of the same judgment, they were independent for the purposes of the determination of the separate appeals which were based

on entirely different Notices of Appeal containing distinct grievances, complaints and/or issues for the consideration of the court below. Even though, the two appeals can be and were properly argued together on their separate Briefs of Argument, they had to have separate and distinct appeal numbers, as assigned to them by the Registry of the court below. Ordinarily, where a Notice of a cross appeal was filed in an existing appeal in respect of the same decision by a lower court or Tribunal and both Notices of Appeal were compiled and transmitted in a single record of appeal to the appellate court, it may not be necessary to assign a separate and distinct appeal number to the cross appeal, since such numbers are given on receipt of the record of appeal in the appellate court. Where there was no separate record of appeal in respect of a cross appeal, the need would not arise for a separate appeal number for the cross appeal, since the record in the main appeal would contained the-Notice of the cross appeal and other relevant/material documents or processes for the determination of both the main and cross appeal. That is the situation envisaged and provided for in the provisions of 17(b) of the Directions which only relates to the hearing or argument of both an appeal and a cross appeal/ Respondent's Notice, together; at the same time.

On the whole, this issue is resolved against the Appellants.

The complaint in Issue 2 of the Appellants is on the decision by the court below to strike out ground 1 of their Petition for failure to seek the relief for the nullification of the entire election, thereby setting aside the decision by the Tribunal on the issue.

In its judgment/decision on the issue, the Tribunal had found and held, inter alia, at pages 19-20 of vol. 10 of the Record of Appeal, that:-

“Without much ado, the case put forward by the petitioners/respondents in this petition is not a global challenge, in our humble view, to the conduct of the entire Edo State Governorship election held on 21st September, 2024 where it could be situated within the ambit of section 136 of the Electoral Act, 2022. Rather, it is one that falls within the special provisions of section 5 1(1) and (2) and 73 (2) of the Electoral Act, 2022. The facts pleaded in the petition are specially and strictly tied to the issues of prior filing of serial numbers of

sensitive election materials under section 73(2) of the Electoral Act. See *Baba & Anor v. INEC & Ors. (2024) LPELR 62230 (SC)* where it was held that, where a general provision conflicts with a specific provision in the same statute or another on the same subject matter, the specific provision prevails as it is excluded from the general provision. In view of the foregoing, we are inclined to agree with petitioners/respondents' argument on this issue. ”

On its part, the court below in reviewing and reversing the above findings and holding by the Tribunal had reasoned that the decision was perverse due to the following alleged errors or mistakes committed by the Tribunal, viz-

- (a)restating the grounds for the petition in alternative terms whereas the Appellants did not state their grounds as such and
- (b)by conflating sections 51(1), (2) and 73(2) with section 134 of the Electoral Act, 2022 and
- (c)holding that the Appellants/Cross Respondents challenge to the election was not “global” as there is no provision in the Electoral Act which empowers the Tribunal to fractionalize the ground of the Petition into “a global ground” and “a non-global ground” for the petition
- (d)the Appellants/ Cross Respondents having pleaded in their petition that the election held on 21/09/24 was invalid, they are bound by the pleading, vide section 169 of the Evidence Act, 2011.
- (e) that the reliefs sought in paragraph 738 of the Petition are incompetent to sustain the first ground in the petition which cries or wails about non-compliance with the provisions of the Electoral Act, 2022;
- (f) that a court has no jurisdiction to grant a party that which he has not claimed. See pages 1009- 1017 of Vol. 10 (A) of the Record of Appeal.

As a foundation, it is elementary now that section 134 (1) of the Electoral Act, 2022 has set out the only valid and competent grounds upon which an election conducted pursuant to the provisions of the Act, may be judicially questioned . The provisions are concise and precise as follows :-

“134(1). An election may be questioned on any of the following grounds :-

- (a)a person whose election is questioned was, at the time of the election, not qualified to contest the election;

(b)the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or

(c)the respondent was not duly elected by majority of lawful votes cast at the election.”

These provisions were dealt with by this court in cases that include *Ndakene v. Adamu* (2023) 9 NWLR (Pt. 1889) 389.

For being precise, concise and in simple language, these provisions are to be ascribed their ordinary and plain grammatical meaning, which would not result in any reasonable ambiguity in line with established cannons or principles of statutory interpretation, stated and restated in several decisions. See *Obasanjo v. Yusuf* (2004) 5 SC (Pt. 1) 27, *Cotecna Inter. Ltd. v. Churgate Nig. Ltd* (20 10) 18 NWLR (Pt. 1225) 346, *Famu v. Kassim* (20 12) IIMJSC, 105, *Jegade v. INEC* (2021) 14 NWLR (Pt. 1797) 409, *Universal Prop. Ltd v. Pinnacle Comm. Bank* (2022) 12 NWLR (Pt. 1845) 523, *APC v. INEC* (2023) 8 NWLR (Pt. 1887) 563.

As seen earlier, the Appellants’ petition was predicated on grounds (1) (b) and (c) of section 134 and so prima facie, on statutorily valid grounds upon which an election may be questioned by them.

The position of the court below is that since the Appellants’ Ground 1 of the petition challenges that the election was invalid by reason of noncompliance with the provisions of the Electoral Act in respect of specific polling units in named Wards and Local Government Councils/ Areas in the Governorship election in Edo State, as pleaded in paragraphs 23-5 1 3 of their petition which appear at pages 6-104 of Vol. 1 of the Record of Appeal, they have to mandatorily seek the specific relief of nullification of the entire election in all the polling units in Edo State on ground of section 136 (1) of the Electoral Act, otherwise the ground 1 -of-the petition is incompetent and not maintainable in the absence of such a relief. The provision of section 136(1) of the Act -relied on by the court below for that position prescribes that :

“Subject to subsections (2) and (3), if the Tribunal or the Court as the case may be, determines that a candidate who was returned as elected was not duly elected on any ground, the Tribunal or Court shall nullify the election and order the Commission to conduct a fresh election not later than 90 days after the

- (a) decision if an appeal is not filed against the decision
- (b) nullification of the election by the court having final appellate jurisdiction in respect of the said election.”

To start with, these provisions for being clear and unambiguous in both words and language, present no difficulty and doubt in their purport for the purposes of construction and application to any given set of facts. Having been made “subject to subsections (2) and (3)” of the section, they are subordinated to the subsections and apply only to the extent permitted by the provisions to which they were made subject to. See *NDIC v. Okem Enterprises Ltd.* (2004) 4 SC (Pt. 11) 77, *FRN v. OsaLon* (2006) ALL FWLR (Pt. 3 12) 1975, *A.G Lagos State v. N.S.L Ltd* (2023) 12 NWLR (Pt. 1899) 399. By their ordinary and plain meaning under the provisions in subsection (1), the finding or determination by the Tribunal is that the person who was returned as elected was not validly elected on any ground, that results or will result in the consequences of nullification of the election, subject to the provision in subsection (2) and (3). Therefore, even where the Tribunal determined that the person returned as elected was not validly elected on any of the statutorily cognizable grounds, if such a ground was that the person who obtained the highest votes at the election was not qualified to contest the election, the Tribunal cannot order the Commission to conduct a fresh election as provided for in subsection (1), but to declare the person with the second highest number of valid votes cast at the election, who satisfies the requirements of the Constitution and the Act, as duly elected, as prescribed in subsection (2) to which subsection (1) was subordinated. So the invalidity of the election of the person returned as elected is not inconsistent with the declaration of the person with the second highest valid votes cast at the election, as duly elected, but rather supplementary to the declaration in subsection (3) as a result of a specie or species of non-compliance with the provisions of the Electoral Act in the conduct of the election. In other words, a petitioner who challenges the return of a winner of

an election on ground of non-compliance, depending on the nature and specie of the non-compliance and the specific facts pleaded in support thereof, can properly seek the relief to be declared elected on the invalidity of the election and return of the person initially declared as elected on the ground that the said person was not duly elected by majority of lawful votes cast at the election. In such a situation- and circumstances, the grounds in section 134(b) and (c) can validly and competently ground the petition and when any one of them was satisfactorily proved, a Tribunal or court is empowered to grant the requisite reliefs sought on the basis of the grounds.

The Appellants' paragraphs 23-513 of their petition have set out facts which they asserted, constituted the non-compliance in support of their ground 1 of the petition in respect of specified number and particularized polling units that were affected and at which the various species of noncompliance occurred. In all, the Appellants' ground of non-compliance was in respect of only Four Hundred and Fifty Three (453) out of more than Four Thousand (4,000) polling units in Edo State at Which the election was conducted on the 21/09/24. .The nature of the species of the non-compliance alleged in Ground 1 of the petition were tied to the specific provisions of sections 51(1), (2) and 73 (2) of the Electoral Act and NOT, as rightly observed by the trial Tribunal, "global" against all the Polling Units and the entire election in the State. Sections 51(1), (2) and 73(2) of the Electoral Act under which the Appellants' Ground 1 of non-compliance was predicated, provide the nature of the noncompliance. They are as follows:-

"51 (1) No voter shall vote for more than one candidate or record more than one vote in favour of any candidate at any one election.

51(2) Where the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the Presiding officer shall cancel the result of the election in that polling unit

73(2) 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

result sheets, ballot papers and other sensitive electoral materials made available by the Commission for the conduct of the election shall be invalid.”

As can easily be seen, section 51(1) and (2) deal with over voting at polling units, as a specie of non-compliance. Section 73 (2) on its part, mandatorily prescribes the prior recording by a Presiding Officer, of the quantity, serial numbers and other particulars of result sheets, ballot papers and other sensitive electoral materials before the conduct of an election at a Polling Unit. Failure, omission or refusal to comply with the prescriptibtr of the provisions by a Presiding officer constitutes not only a specie of non-compliance with the provisions of the Act in the conduct of the election at the particular polling unit, but also an offence by dint of the provisions in subsection (3) of section 73 .

Since both sections 51(1), (2) and 73(2) deal with elections at the polling units level of an election, the Ground 1 of the Appellants’ petition of noncompliance was directly targeted at the validity of the election at the specified polling units challenged and not the entire election at all the polling units in Edo State. The Appellants’ Ground 1 of the petition, on the basis of the facts set out in paragraph 23-5 13, did not question or challenge the validity of the entire election at all the polling units in Edo State, but only the ones specified in their pleadings. Although, there was one Governorship in Edo State, because there is a single office for a Governor of a State which was contested for at the election, the provisions in sections 51(1), (2) and section 73(2) deal with election at the polling unit, which forms the foundation for the Governorship election.

In these premises, since the Appellants’ Ground 1 of the petition did not challenge or question the validity of the election at all polling units in Edo State on ground of non-compliance, it would be absurd to say that they ought to have sought the nullification of the entire election conducted on the 21/09/24 in Edo State which include election at Polling Units they did not challenge, question or complain about. For the same reason, the relief sought in respect of Ground 2 of the petition that the person declared and returned as the winner of the election in Edo State; the 2^{-d} Respondent, did not score majority of lawful votes, is not inconsistent with the substance of Ground 1 of the petition on non-compliance. The facts of

the Appellants' petition are different from those in the cases of *Buhari v. Yusuf* (supra), *Agbu v. INEC* (supra) relied on by the court below in the sense that in those cases, the challenge in the petition was in respect of the entire election on grounds of non-compliance, the nature or species of which were different from the ones provided for in sections 51(1), (2) and 73(2) of the Electoral Act, 2022 which are new provisions introduced to make elections in Nigeria more transparent and credible, The general principle stated in the case and similar cases cannot override specific provisions of the Electoral Act since the facts are different and the law is that principles in previous cases are only applicable and apply to a later case where the facts in the two cases are the same or substantially identical. *Kanawa v. INEC* (2022) 1 NWLR (Pt.] 812) 393, *Ndukwe v. Ayu* (2023) 5 NWLR (Pt. 1877) 309, *PDP v. Uche* (2023) 9 NWLR (Pt. 1890) 523 .

In the result, the court below was wrong in law to have disturbed and set aside the decision of the Tribunal that Ground 1 of the Appellants' petition was valid and competent even without a prayer for nullification of the entire election. The issue is resolved in favour of the Appellants.

Issue three challenges the decision' by the court below that the BVAS machines tendered at the trial Tribunal from the Bar, were not admissible and wrongly admitted in evidence in Exhibits PPDDI-PPDD133 without the consent of the Respondents, relying on Paragraph 41(1)- (5) of the 1st Schedule to the Electoral Act, 2022. The arguments of the Appellants on the issue are that:-

- (a) the issue of prior consent of the parties for the admissibility of the Exhibits was raised and resolved suo motu by the court below without hearing the parties thereby breaching section 36(1) of the Constitution;
- (b) that the Exhibits were original public documents pleaded and produced by the maker (1st Respondent) and are relevant to be admissible in evidence without the need for consent of the parties.
- (c) That paragraph 41 (2) of the 1st Schedule to the Electoral Act, allows the admission of the Exhibits as real evidence and other Exhibits, from the Bar.

The position of the Respondents is that they all objected to the admission of the BVAS machines when tendered from the Bar by the Appellants and stated the reasons in their final Addresses in line with established practice. That when the objection was overruled in the judgment of the Tribunal, the 2^d Respondent appealed to the court below which allowed the appeal on ground of inter alia, want of consent of the parties. That the BVAS machines were not tendered by a witness who could speak to and answer questions on them

Generally, admissibility of any piece of evidence in all judicial proceedings of courts or tribunals established by or pursuant to the constitution or relevant statutes, is governed by the Evidence Act, 2011 by the combined provisions in sections 1, 2,3 and 256 (1) of the Act.

Admissible evidence under the Act is evidence; oral or documentary/real, which is legally relevant and not excluded by the law or rules of practice. See *Agunbiade v. Sasegbon* (1968) NMLR, 223 @226> *Tora v. Ukpabi* (1984) 1 SC, 370, *Fawehinmi v. NBA* (No. 2) (1992) 2 NWLR (Pt. 105) 558 @ 583, *Agbahomovo v. Ediyegbe* (1999) 3 NWLR (Pt. 514) 170 @ 183, *Owakah v. R. S.H & P.D. A* (2022) 12 NWLR (Pt. 1845) 436.

In the case of the BVAS machines used in the Edo State Governorship Election conducted on the 21/09/24, by the 1st Respondent, which were admitted in evidence at the trial of the Appellants' petition as Exhibits PPDDI-PPDD133, there was no dispute that they are relevant to the issues to be determined at the trial and that they are Documents by virtue of section 258 (1) of the Evidence Act, 2011.

The only now narrow point of contention is whether or not, in election proceedings arising from election matters which are sui generis, the BVAS machines are admissible in evidence when tendered, not through a witness, but from the Bar.

Being special and different from ordinary civil proceedings/cases, election matters/proceedings are regulated or governed in addition to the general provisions of the Evidence Act, by the special and specific laws and rules of procedure enacted for them. In this regard, the provisions of the Electoral Act as well as other relevant regulations or rules provided pursuant thereto, apply to them.

In reversing the admission of the BVAS machines in evidence at the trial, the court below reasoned thus; at pages pages 50-51, 52 and 54 of its judgment at pages 1021-1022, 1023 and 1024 of Vol. 10 (A) of the Record of Appeal:-

“ in my view, the Tribunal was in grave error when it admitted the BVAS Machines in evidence, because the circumstances were not right for it to do so. What should have guided the Tribunal is narrated in paragraph 41(1)- (5) of the Ist Schedule to the Electoral Act, 2022, which creates a condition precedent. A condition precedent is an additional formality super-imposed on the law. A condition precedent is one which delays the vesting of a right until the happening of an event. See F.R.N v. Nganjiwa (2022) 17 NWLR (Pt. 1860) 407. Paragraph 41(1) –(5) of the Ist Schedule to the Electoral Act, 2022 stipulat is that:

41(1) Subject to any statutory provision or any provision of these paragraphs relating, any fact required to be proved at the hearing of a petition shall be proved by written deposition and oral examination of witnesses in open court.

(2) Documents which parties consented to at the pre-hearing session or other exhibits shall be tendered from the Bar or by

the party where he is not represented by a legal practitioner (3) There shall be no oral examination of a witness during his evidence-in-chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in the deposition

(4) Real evidence shall be tendered at the hearing.

(5) The Tribunal or Court may, at or before the hearing of a petition order or direct that evidence of any particular fact be given at the hearing in such manner as may be specified by the order or direction

As it must have been observed, paragraph 41 (2) of the 1st Schedule, specifically stipulates that only documents, which parties consent to, shall be tendered from the Bar. Paragraph 41(3) of the 1st Schedule permits that documents and exhibits which are disputed should be tendered during the evidence-in-chief of a witness. Paragraph 4i(1) of the 1st Schedule gives the Tribunal or Court power to direct how evidence may be given, but that provision is not applicable in this cross-appeal because the Tribunal did not give any directive that exhibits should be or must be tendered from the Bar. The Tribunal only treated the Appellants/Cross Respondents' counsel's application to tender exhibits PPDDI-PPD133 from the Bar. .. In the circumstances, it is clear that in the absence of the consent of the 2nd Respondent/Cross-Appellant to the tendering of exhibits PPDDI-PPDD133 from the Bar, whether certified or not, as true copies, the order of the Tribunal affirming such approach -was without lawful basis and is reversible on appeal, as in this appeal. The confirmation order made by the Tribunal admitting exhibits PPDI-PPD133 in evidence is, in the circumstance, unsustainable, unsupportable and is hereby found to be invalid, having been done contrary to clear provisions of a statute, Which IS extant. The condition precedent *for* the validity of the tendering of the evidence from the Bar, which is the consent of all parties to the petition, was absent before the exhibits were tendered and admitted in evidence.”

As can easily be observed, the above finding by the court below which is predicated on the provisions in paragraph 41(2) and (5) which requires consent of the parties for documents to be tendered from the Bar and the discretion of the Tribunal to order or direct how evidence may be given, which was found to be inapplicable to the cross appeal under consideration. The ultimate finding by the court below on the admissibility of the BVAS machines tendered from the Bar was solely predicated on the lack or want of the consent of the parties under paragraph 41 (2).

For its brevity, I can afford to again, set out the provisions of the paragraph which are thus:-

“41(2) Documents which parties consented to at the pre-hearing sessions and other exhibits shall be tendered from the Bar or by the party where he is not represented by a legal practitioner.”

Due to their simple tenor, clear and straight forward language, the purport and requirement prescribed therein is that “Documents” “or other exhibits” which the parties consented to and about which there is no disagreement or dispute, to be put or tendered in evidence at the hearing, shall be tendered from the Bar.

It was because of the agreement or consent by the parties at the pre-trial session/s that the identified documents or other exhibits to be put forward in evidence, not through witnesses, as stipulated in section 83(1) (b) of the Evidence Act, 2011 if the maker is called as a witness in the proceedings, but from the Bar. It is therefore beyond plausible argument that the prior consent of the parties at the pre-hearing session is made a condition precedent for the proper tendering from the Bar and valid admission of documents or other exhibits in evidence at the subsequent hearing of an election petition. The Appellants have argued that the consent was not required because the BVAS machines were “other exhibits” and tendered as “real evidence” under sub-paragraph (4). However, that argument is feable since both “Documents” “or other exhibits” mentioned in sub-paragraph (2) are to be tendered from the Bar and not through witnesses while subparagraph (4) did not provide for the tendering of real evidence from the Bar and so it does not apply to the BVAS machines in the Appellants’ case. The argument also constitutes a tacit admission that the requisite prior consent by the parties for the tendering of the BVAS machines at the trial or hearing from the Bar, was not given at the pre-hearing session of the proceeding of the Tribunal. As rightly pointed out by the learned senior counsel for the Respondents in their respective Briefs, each of them indicated their objection to the tendering of BVAS machines from the Bar and in line with established practices reserved, reasons for the objection to their final addresses, as borne out at page 70 1 of Vol. 10 of the Record of Appeal containing proceedings of 30/01/25 at the hearing of the petition. Reasons for the objection by the 2nd and 3rd Respondents respectively, are contained in their (separate) Written Addresses which appear at pages 3396- 3398 of Vol. 4 of the Record of Appeal, for the 2nd Respondent and at pages 3448 of the same Vol.4 of the Record of Appeal, for the -3rd Respondent.

However, in the 1st Respondent's Final Address which occupies pages 3298- 3337 of Vol. 4, no specific reference was made to reasons *for* the objection to the tendering of the BVAS machines from the Bar. The only arguments on the BVAS machines are that they were dumped on the Tribunal.

The court below is therefore right that the absence of the prior consent of the parties in the tendering of the BVAS machines as provided for in Paragraph 41(2), rendered their admission in evidence from the Bar wrongful in law on ground of failure to fulfil a condition precedent for the admission. *Diverse Assets MP. Ltd. v. Wema Bank, Plc* (2023) 12 NWLR (Pt. 1897) 121, *Yaki v. Bagudu* (2015) 18 NWLR (Pt. 1491) 288.

For being inadmissible in law on the above ground, the court below was not only entitled to, but had the duty to expunge the BVAS machines wrongly admitted in evidence as Exhibits PPDD 1-PPDD133 even without recourse to the parties. See *Onochie v. Odogwu* (2006) ALL FWLR (Pt. 317) 544, *Oladipo v. M.L.G. A* (2010) 5 NWLR (Pt. 1 186) 1 17, *Suberu v. State* (2010) 8 NWLR (Pt. 1197) 586, *Ekere v. Emmanuel* (2022) 11 NWLR (Pt. 1841) 339, *Kwene v. State* (2022) 13 NWLR (Pt. 1847) 273 .

The issue is resolved against the Appellants.

The Appellants' issues 4 and 5 on non-compliance and unlawfulness of majority of votes cast at the election on grounds of exclusion/inflation of votes and over-voting etc, are intertwingly related and would be dealt with together, for prudence.

Issue 4: Whether the Appellants did not prove the facts in support of the ground 1 on non-compliance, regard being had to the-evidence, the law and decisions of this court. The Appellants have argued that the decision of the court below that they failed to prove the complaint of non-compliance was perverse in that it misconceive(1 the nature of the non-compliance pleaded leading to the finding that oral evidence was required to prove same.

The Appellants' case of non-compliance in Ground 1 of the Petition, as stated earlier, was based on the provisions of sections 5 1(1), (2) and 73(2) of the Electoral Act, for which section 137 of the Act applies on the need to call oral evidence for proof.

The Appellants have alleged that the 1st respondent conducted the Edo State governorship election in 395 polling units without prior recording of the serial numbers and other particulars of result sheets, ballot papers, BVAS machines and other sensitive materials in the form prescribed by the 1st Respondent in form EC25B. Thus, they have the burden to prove their allegation.

In *Baba v. INEC* (2024) 14 NWLR (Pt. 1957) 155, Salauwa J.S.C pronounced on the duty on a petitioner alleging that election conducted was without prior recording in the forms prescribed by NEC thus:

“It is trite that in view of the nature of the case projected by the appellants *vis-a-vis* section 73(2) of the Electoral Act 2022(supra), the appellants have an onerous duty to most especially plead each and every specific Polling Unit so challenged, and thereby lead credible documentary and oral evidence substantiating the allegation regarding the affected polling unit. It is only after discharging this fundamental evidential burden of proof, that the trial tribunal or court would be obligated to invalidate the election in such a polling unit.” Okoro J.S.C :

"The appellants made a sweeping allegation of improper or nonfilling of non-sensitive forms across seven Local Government Areas of Bauchi State comprising of a total of 2,425 polling units by the polling officers. They however failed to call any of their agents in the affected polling units to demonstrate their complaint in open court. The position is well settled that the provision of section 137 of the Electoral Act, 2022 does not absolve a petitioner of the need to lead credible evidence to prove non-compliance with provision of the Act except where the alleged non-compliance is manifest from the originals or Certified True Copies (CTC) already placed before the court. See *Oyetola v. I.N.E.C.* (2023) LPELR- 60392(SC), (2023) 11 NWLR (Pt.1894) 125; *Atiku & Anor. v. I.N.E.C. &Ors.* (2023) LPELR 61556 (SC), (2023) 19NWLR (Pt.1917) 761. In this case, it is glaring that the appellant's failure to call

their polling unit agents in any of the disputed polling units to witness to their allegation of improper or non-filing of the forms impacted negatively to their case. The court below rightly discountenanced the evidence of PW2, PW3, PW4, PW5, PW6, PW7, PW9 and PW10) who were not polling unit agents. On the overall analysis, the appeal has no merit and is hereby dismissed by me. The judgment of the court below delivered on 17th November, 2023 is hereby affirmed.”

The appellants called 19 witnesses, out of which only 5 were polling unit agents, whose testimonies were related to overvoting. They did not testify on the issue of no prior recording of the serial numbers and other particulars of result sheets, BVAS Machines and other sensitive electoral materials as prescribed by the Electoral Act, 2022. Thirteen witnesses were Ward and Local Government agents, who did not witness the election at the polling units to have been able to testify and/or demonstrate the documents to the specific complaints of the Appellants.. PW 12 who was the appellants’ star witness was the director of Research and Strategy of the 1st appellant’s campaign organization and he played no role in the voting at the polling units. In the circumstance, the documents were dumped on the Tribunal.

On the issue of over-voting alleged by the Appellants, the essential documents which must be put in evidence/tendered to prove an allegation of over-voting are:

- (a) the voters register for the affected polling units to show the number of registered voters;
- (b) the BVAS machines used in those polling units to show the number of accredited voters; and
- (c) the result sheets of the disputed polling units in Forms EC8A to show the number of votes cast at the polling units.

The court would then have the opportunity of comparing the number of votes recorded in the Forms EC8A with the number of accredited voters in the BVAS machines to ensure that those figures tally and do not exceed the numbers on the register of voters. Failure to tender the above set of documents would be fatal to any effort to prove over-voting. This was the position of the law as stated in *Augustine v. I.N.E.C.* (2024) 10 NWLR (Pt. 1947) 409, *Oyetola v. INEC* (2023) 11 NWLR (Pt. 1894) 125, *Ombugadu v. Alhaji* (2024) (Pt. 1936) 2024. A.P.C, v. P.D.P. (2020) 17 NWLR (Pt. 1754) 425 . In the instant case, the Appellants

failed to tender admissible and credible evidence, in the disputed polling units, to show the number of registered and accredited voters. To demonstrate the votes cast at the polling units to the court, the Appellants tendered the BVAS machines, reports and BVAS screenshots/extracts to show that the total number of votes cast in each of the polling units exceeded the total number of accredited voters. This court, Per Kekere-Ekun, JSC (now CJN) in the case of *Ombugadu v. Alhaji* (2024) 10 NWLR- {Pt. 1947} 409 frowned at the tendering of a-screenshot of the BVAS machine thus:-

“From the above holdings, it is clear that the documents required to prove over-voting are the voters register, the BVAS machines and the Form EC8As. I agree with learned counsel for the 1st respondent that the record of the examination of the B VAS maybe tendered alongside the BVAS machines but not as an alternative thereto. I also agree that there is no provision in the Electoral Act or INEC Regulations & Guidelines for the tendering of a screenshot of the BVAS machines, especially where there is no evidence as to when, where and how the screenshots were obtained. ”

Speaking further, his lordship held thus:

“Above all, this court has held that failure to tender any of the required documents to prove over-voting is fatal to the petitioner’s case. The BVAS machines tendered through PW7 having been expunged from the recQrd, the bottom had fallen out of the appellants’ case, as one of the key requirements for proving over voting was absent. Besides, the said BVAS machines were clearly dumped on the Tribunal without being demonstrated in any shape or form. PW7 merely identified them and they were returned to the 2nd respondent immediately after his testimony. On what basis could the trial tribunal have made its findings on the issue of over voting?”

In the instant case, the BVAS machines were clearly dumped on the court. They were produced to the Tribunal, by one Anthony Itodo, an ICT of the 1st Respondent, who

was summoned by a subpoena duces tecum. He neither demonstrated nor spoke to the BVAS machines before the Tribunal.

The Appellants have, in reliance on the allegation of non-compliance with the provision of section 73 (2) totally built their case on the Forms EC25B, a single form admitted in evidence as Exhibits PCBI-PCB308 and TJEBIPEB70 at the hearing. Form EC25B is one of the Forms; a page or leaflet in a booklet of Forms prescribed by the 1st Respondent for the purposes of the conduct of the elections, including the Edo State Governorship election conducted on the 21/09/24. The contents of Form EC25B which are required to be filled relate to the quantity of ballot papers collected by the 1st Respondent's election officials before the election and quantity reverted (returned) after the election. Indisputably, the Form EC25B does not contain any column for the filling of the serial numbers of ballot papers, BVAS machines and other sensitive election materials as alleged by the Appellants. The court below was right when it held in its judgment, at page 3815 in Vol. 9 of the Record of Appeal that:-

“Upon physical examination of the Forms constituting the booklets, tendered as exhibits PCB 1-PCB308 and PEB 1 -PEB 70, this Court observed that the requisite serial numbers of ballot papers, which constitute the ultimate sensitive materials used for elections were expected to be recorded in Form EC40A and the Polling Officers dutifully carried out their duties by faithfully recording those details in Form EC40A component of exhibits PCB 1-PCB308 and PEB 1-PEB70. There is no such requirement on the face of Forms EC25B touted by the Appellants. In addition, Form EC25B in each of all exhibits PCBI-PCB308 and PEB1-PEB70 tendered at the trial were filled with information required by and fitting the Form, which is simply about quantity of materials received.”

Indeed, the Form EC25B tendered as Exhibits to prove non-recording of serial numbers, of ballot papers, BVAS machines and other sensitive election materials only have two columns, as stated earlier, for the quantity of ballot papers collected before the election and the quantity returned to the 1st Respondent -designated officials after the election.

Apart from that, even if the Appellants were to prove that the Form EC25B were not filled in respect of all the 395 polling units in non-compliance with the provisions of section 73(2), the law still remains that for the relief they sought, they still had to further demonstrate and satisfy the Tribunal that the non-compliance was of such magnitude to substantially affect the result of the election.

Section 135 of the Electoral Act stipulates that:-

- “ (1) An election shall not be liable to be invalidated by reason of noncompliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election.
- (2) An election shall not be liable to be questioned by reason of a defect in the title or want of title of the person conducting the election or acting in the office provided such a person has the right or authority of the Commission to conduct the election
- (3) No election shall be questioned or cancelled by reason that there is a mistake, conflict or inconsistency in the date contained in the result of such election signed by a returning officer or any other officer of the Commission.”

The same provisions in the Electoral Act, 2010 (as amended) were interpreted and applied in several decisions by this court including *Ngige v. INEC* (2015) 1 NWLR (Pt. 1440) 281, *Omisore v. Angbesola* (2015) 15 NWLR (Pt. 1482) 205, *Akinlade v. INEC* (2020) 17NWLR (Pt. 1754) 439, *Abubakar v. INEC* (2020) 12 NWLR (Pt. 1737) 37.

It is apparent that the 395 polling units in respect of which the allegations of non-compliance on the basis of sections 51(1), (2) and 73(2) of the Electoral Act, were made, cannot reasonably be said to be substantial in relation to the over Four Thousand Polling Units spread across Edo State at which the election was conducted, so as to substantially affect the results declared by the 1st Respondent. The Appellants did not satisfactorily discharge the onus or burden of provision in that regard.

On the other allegations of exclusion/inflation of votes, with the BVAS machines being expunged along with paragraph 23-5 13 of the petition on the ground of being

inadmissible in law, the bottom had been knocked off from the sundry allegations that the 2nd Respondent was not duly elected by majority of the lawful votes cast at the election since the Appellants also failed to tender the voters Registers .

The law is firmly established that for a party who challenges the lawfulness or legality of votes cast at an election and the results declared by the 1st Respondent for that election, it bears the burden of not only tendering all the relevant and necessary documents and calling evidence to prove the unlawfulness or illegality of the votes cast at the polling units challenged, but to further show how the illegality or unlawfulness substantially affected the declared results of the election in question. *Takori v, Matawalle* (2020) 17NWLR (Pt. 1752) 165 @ 182- 183, *Uzodinma v. Ihedioha* (supra). Even though these cases were decided on the repealed Electoral Act 2010 (as amended in 2015), the principle stated therein remains applicable under the extant Electoral Act, 2022 in spite of the introduction of the provisions in sections 51(1), (2), 73(2) and 137 thereof, in view of the provisions of section 135(1) of the Act. See *Augustine v. INEC* (supra), *Barde v. INEC* (supra) also reported in (2024) LPELR-61647 (SC), *Murtala v. INEC* (2024) LPELR-79942 (SC), *Ahiwe v. INEC* (supra), also reported in (2024) LPELR- 61674(SC), decided under the 2022 Act. These are the current decisions of this court on the point.

The law is also settled that for documents tendered from the Bar to be of any use and help to the person relying on them, they must be identified and related to the specific aspect of the non-compliance alleged by evidence of the witnesses. It would be practically impossible and cloistered justice for a court or tribunal to embark on a search or investigation of the usual]y tons of documents tendered in bulk from the bar in order to fish out which ones related to a particular specific of the non-compliance alleged and in respect of which they were intended to prove. Investigation is not part of the duty of a court or tribunal. There must be evidence of a link or connection between the documents and the identified non-compliance alleged otherwise the documents would remain dead without a voice and be deemed to be dumped

on the court or tribunal. *Bude v. INEC* (2024) 5 NWLR (Pt. 1932) 561. Thus, the Appellants failed to substantially prove the allegation of overvoting, non-compliance and other sundry allegations of unlawfulness or illegality of votes cast at the polling units against which the assertions of exclusion and inflation of votes were based.

The Appellants have made heavy weather about the application of section 137 of the Electoral Act and Paragraph 46(4) of the First Schedule as well as the statements by the court in, among others, *Lawal v. Matawalle* (supra), *Baba v. INEC* (supra), *Jonathan v. INEC* (supra) to strenuously contend that they did not have to call oral evidence to prove the non-compliance alleged at the polling units specified. However, the Appellants routinely ignored the salient pre-conditions stated in all the pronouncements for the application of the provisions in section 137 and Paragraph 46(4) to avail. The preconditions are:

- (a) The nature of the non-compliance alleged and
- (b) The non-compliance alleged are manifestly apparent, prima facie, at a “casual” glance, etc, on the face of the documents whether certified copies or original.

Once more, for the provisions to apply and avail, the specie/s of the noncompliance alleged must be identified, introduced and linked to the documents such that they are legibly and manifestly disclosed on the face of the documents to be able to, without more, speak for themselves, credibly; being evidence to be considered and evaluated in the determination of the allegations of non-compliance. I have read the Appellants’ Final Addresses which appear at pages 3459-3498 of Vol. 4 of the Record of Appeal in response to the 1st Respondent’s Final Address, at pages 3504-3543 for the 2nd Respondent’s Final Address and at pages 3565- 3604 in response to the 3;^d Respondent’s Final Address, all in Vol. 4 of the Record of Appeal, The substance of all the three (3) Final Addresses by the Appellants in response to the Respondents’ Final Addresses is to demonstrate that the Appellants succeeded in the proof of the two (2) grounds of the petition by reference to the evidence of the 19 witnesses who testified. Emphasis was placed on the evidence of PW 12 who was said to have identified and

related all the Forms tendered in evidence in proof of the grounds. However, a calm review of the evidence of the Appellants' "star witness", i.e PW 12, would readily disclose that he did not specifically link each of the Forms in respect of the polling units at which allegations of non-compliance and unlawfulness of the votes recorded therein in order to prove exclusion of votes, inflation of votes, overvoting on the basis of which the Appellants made calculation and Table of Votes to arrive at their conclusion that the 2^d Respondent did not score a majority of the valid votes cast at the said polling units and in the over-all election. That link is crucial and fundamental if the provisions of section 137 and paragraph 46(4) are to be applied to the Forms containing the election results declared by the 1st Respondent for the polling units and the entire election. That has been the principle and point restated in the cases of *Lawal v. Matawalle*, *Baba v. INEC*, *Jonathan v. INEC* (supra) etc. That link is/was missing in the Final Addresses of the Appellants for the said provision of section 137 and Paragraph 46(4) to apply and avail the Appellants in respect of all the result Forms tendered by the Appellants at the hearing of the petition.

Also, there is a rebuttable presumption of regularity of INEC Forms. By virtue of section 168(1) of the Evidence Act 2011, when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. *Baba v. INEC* (2024) 14 NWLR (Pt. 1957) 155, *Adamu v. K.S.H.A.* (2019) 16NWLR(Pt. 1699) 50. In the instant case, the evidence elicited from some of the Appellants' witnesses under cross examination (precisely PW2, PW3, PW4 and PW8) revealed clear evidence of prior recording of electoral materials they contained serial numbers before the day of the election. In the circumstance, the statutory presumption was not rebuked and so applies that the forms were filled/recorded before the day of the election. This indubitably contradicts/controverts the Appellants' case/argument that there was no prior recording of the electoral materials before the election as mandated by section 73 (2) of the Electoral Act.

On the whole, the Appellants have failed to prove the two grounds of noncompliance with the provisions of the Electoral Act, 2022 and that the 2nd Respondent was not duly elected by

majority of lawful votes cast at the Edo State Governorship Election conducted on the 21/09/24 upon which their petition was predicated.

In consequence, the Appellants did not satisfactorily demonstrate that the concurrent findings and decision by the trial Tribunal and the court below on the merit of the petition are perverse or to have occasioned a real not sentimental, miscarriage of justice in the circumstance of the case to justify interference therewith by this court. See Mohammed v. Warnmako (2018) 7 NWLR (Pt. 1607) 502, Ojobo v. Moro (2019) 17 NWLR (Pt. 1700)] 66, Nwosu v. A.P.P (2020) 16NWLR (Pt. 1749) 28, Fayemi v. Oni (2020) 8 NWLR (Pt. 1726) 222.

In the final result, with the resolution of Appellants' issues 1, 3, 4 and 5 against them, the appeal is left without merit and bound to fail and be dismissed.

The appeal is dismissed and the judgment of the court below delivered on the 29/05/25 in respect of the Appellants' issues 1,3,4 and 5, is hereby affirmed with an order that the parties bear their respective costs of prosecuting it before this court.

HABEEB, JSC:This appeal is against the judgment of the Court of Appeal, Abuja Judicial Division, delivered on the 29th of May, 2025 in Appeals Nos CA/ABJ/EPT/ED/GOV/01/2025 and CA/ABJ/EPT/ED/GOV/04/2025. It is in respect of the outcome of the Edo Governorship election conducted by the first Respondent on the 21st of September, 2024 and in which the first Appellant was the candidate of the second Appellant and the second Respondent was the candidate of the third Respondent. At the conclusion of the election, the first Respondent declared the second Respondent as the candidate with the majority of the lawful votes cast in the election and as the Governor elect. The second Respondent was declared to have scored 291,667 votes as against the first Appellant with 247,274, showing a margin of 44,393 votes.

The Appellants were not happy with the declarations made by the first Respondent and they approached the Governorship Election Petition Tribunal by a Petition filed on the

11th of October, 2024, Petition No EPT/ED/GOV/02/2024. The Edo Governorship Election Petition Tribunal dismissed the Petition as unmeritorious in a judgment delivered on the 2nd of April, 2025. The Court of Appeal affirmed the decision of the Edo Governorship Election Petition Tribunal. Hence, this present appeal by the Appellants. I have had the privilege of reading before now the lead judgment delivered by my Noble and learned brother, Mohammed Lawal Garba, JSC. His Lordship has admirably considered and resolved the all contentions of the parties in the appeal. I agree with and abide the conclusion in the lead judgment that the appeal lacks merit and is very deserving of an order of dismissal. I wish to make a few comments to emphasize the several lacunae in the case presented by Counsel to the Appellants before the Edo Governorship Election Petition Tribunal.

The Petition was predicated on two grounds; namely that:

- I . the election was invalid by reason of non-compliance with the provisions of the Electoral Act 2022 and
- II. that the second Respondent was not duly elected by majority of lawful votes cast at the election.

In adumbrating the facts in support of the first ground of the Petition, the Appellants alleged that in Three Hundred and Twenty (320) Polling Units across the Eighteen (18) Local Government Areas of Edo State, the first Respondent did not record in the prescribed forms the quantity, serial numbers and other particulars of result sheets, ballot papers, BVAS and other sensitive materials and that this failure rendered the election held in the Three Hundred and Twenty (320) Polling Units invalid for failure to comply with the requirement of prior recording under the Electoral Act, 2022. The Appellants pleaded the particulars of each of the Three Hundred and Twenty (320) Polling Units and a tabular representation of the Polling Units, stating the number of votes scored by the Appellants and the second and third Respondents in each Polling Units. The Appellants pleaded the total number of votes scored by the Appellants and the second and third Respondents in all the polling units and what the overall total votes of the Appellants and the second and third Respondents would be if

the alleged invalid votes were deducted from the final figures announced by the first Respondent.

The Appellants further alleged that there was overvoting in Fifty Eight (58) Polling Units spread across the Eighteen (18) Local Government Areas of Edo State in the election as the total number of votes recorded to have been cast exceeded the number of accredited voters on the records of the Bimodal Voter Accreditation System (BVAS) for each of the Polling Units and they averred that the effect of this anomaly is the voiding of the results emanating from the Polling Units. The Appellants pleaded the particulars *of* each of the Fifty Eight (58) Polling Units and a tabular representation of the Polling Units, stating the number of votes scored by the Appellants and the second and third Respondents in each Polling Unit. The Appellants pleaded the total number of votes scored by the Appellants and the second and third Respondents in all the polling units and what the overall total votes of the Appellants and the second and third Respondents would be if the alleged invalid votes were further deducted from the figures arrived at after the earlier deduction of the invalid votes from the Three Hundred and Twenty (320) Polling Units from the final figures announced by the first Respondent.

The Appellants alleged that additionally in Seventy Five (75) Polling Units in the Governorship election, there was no prior recording of particulars *of* sensitive election materials and the number of the total votes cast in the Polling Units were more than the number of the accredited voters. The Appellants pleaded the particulars of each of the Seventy Five (75) Polling Units and a tabular representation of the Polling Units, stating the number *of* votes scored by the Appellants and the second and third Respondents in each Polling Units. The Appellants pleaded the total number of votes scored by the Appellants and the second and third Respondents in all the polling units complained about and what the overall total votes of the Appellants and the second and third Respondents would be if the alleged invalid votes were also further deducted from the figures arrived at after the earlier deduction of the invalid votes from the Three Hundred and Twenty (320) Polling Units and the invalid votes from the Fifty Eight (58) Polling Units from the final figures announced by the first

Respondent. They pleaded that upon the deductions of all the invalid results from all these Polling Units the actual score of the second and third Respondents would be 227,094 votes and that of the Appellants would be 231,051 votes, showing a margin of 3,957 votes in favour of the Appellants.

In support of the second ground of the Petition, the Appellants pleaded that the first Respondent and its officers were obligated to conduct the Governorship election in each of Polling Units in all the Local Government Areas of Edo State in accordance with the processes and procedure stipulated and outlined in the Electoral Act 2022 and in its Regulations, Manual and Guidelines. The Appellants pleaded the processes and procedures and noted that there were twenty four (24) steps set out *for* the collation of Governorship election results at the Ward level and fourteen (14) steps for the collation of Governorship election results at the Local Government Area level and they itemized each of these steps.

The Appellants pleaded that in collating the results from One Hundred and Twenty Five (125) Polling Units in the election, the first Respondent relied on inaccurate entry of scores, results and data leading to incorrect addition of votes *for* the second and third-Respondents and the omission *of* valid votes attributable to the Appellants. The Appellants pleaded that the inaccuracy of the scores announced and declared by the first Respondent in the Polling Units were obvious upon examination and recalculation of the valid votes at the Polling Unit level as contained on the face of the copies of the result sheets given to the parties' agents and uploaded copies of the result sheets duly certified by the first Respondent. The Appellants pleaded the particulars of each of the One Hundred and Twenty Five (125) Polling Units and a tabular representation of the Polling Units, stating the number of votes scored by the Appellants and the second and third Respondents in each Polling Units. The Appellants pleaded the total number of votes scored by the Appellants and the second and third Respondents in all the polling units.

The Appellants averred that for Ten (10) Polling Units at the Governorship Elections incorrect scores were entered into the result sheets at the Ward level different from the actual scores of the candidates in authentic Polling Units result sheets. The

Appellants pleaded the particulars of each of the Ten (10) Polling Units and a tabular representation of the Polling Units, stating the number of incorrect votes recorded for each candidate in the Ward level result sheets, and the total number of incorrect votes so recorded. The Appellants pleaded the total number of actual votes scored by the candidates in the authentic result sheets of the Ten (10) Polling Units

It was the further case of the Appellants that there was incorrect collation *of* scores at the Ward level leading to the votes of the second and third Respondents being overstated and those of the Appellants being understated in the Ward results sheets *for* a total of One Hundred and One (101) Polling Units. The Appellants pleaded the particulars of each of the One Hundred and One (101) Polling Units and a tabular representation of the Polling Units, showing the erroneous additions and subtractions made in the Ward results sheets for the Polling Units and stating the total number of extra votes added to the scores of the second and third Respondent and the number of votes deducted from the votes of the Appellants. The Appellants pleaded the actual total number of votes scored by the Appellants and the second and third Respondents in the Polling Units.

The Appellants pleaded that the results of the votes cast in the Seventy Six (76) Polling Units in Ward 2, Ikpoba Okha Local Government Area which were transmitted to and collated at the Ward level were not collated in the final results sheets at the Local Government level. The Appellants pleaded the particulars of each of the Seventy Six (76) Polling Units and a tabular representation of the Polling Units, stating the number of votes scored by the Appellants and the second and third Respondents in each Polling Units. The Appellants pleaded the total number of votes scored by the Appellants and the second and third Respondents in all the polling units and which were unlawfully excluded in results sheets collated at the Local Government level.

The Appellants averred that if all the invalid votes in the Polling Units complained about under the first ground of the Petition are deducted from the final figures of the votes announced by the first Respondent and the correct scores in the Polling Units complained about under the second ground of the Petition are properly collated and

added to the scores of the candidates, in place of the erroneous and the overstated and understated votes of the candidates, the actual final figures of the lawful votes in election that ought to have been announced by the first Respondent was 240,234 votes for the Appellants and 201,032 votes *for* the second and third Respondents. The Appellants pleaded a summary of the analysis of the results and a tabular representation of what the actual scores ought to have been from each of the Eighteen (18) Local Government Areas of Edo State. The Appellants pleaded that they scored the majority of the lawful votes in the Governorship Elections *for* Edo State held on the 21st of September, 2024 and ought to have been declared the winners of the election.

Consequent on the above assertions, the Appellants claimed in the Petition thus:

1. That it may be determined and thus declared that the absence of prior recording of the serial numbers and other particulars of result sheets, BVAS Machines and other sensitive electoral materials as prescribed by the Electoral Act, 2022, rendered the election invalid in 320 polling units as pleaded in paragraphs 23- 353 of the petition (or so much thereof as this Honourable Tribunal may adjudge established).
- II. That it may be determined and thus declared that at the election to the office of Governor of Edo State which took place on 21st of September, 2024, the total number of votes cast exceeded the number of accredited voters in 58 polling units as pleaded in paragraphs 354-432 of the petition (or so much thereof as this Honourable Tribunal may adjudge established), leaving the election in these polling units liable to be cancelled.
- III. That it may be determined and thus declared that the election in 75 polling units pleaded in paragraphs 433 to 513 of the petition (or so much thereof as this Honourable Tribunal may adjudge established) are invalid *for* lack of prior recording of the serial numbers and other particulars of result sheets, BVAS Machines and other sensitive electoral materials as prescribed by the

Electoral Act 2022 or are liable to be cancelled because the total number of votes cast in these polling units exceeded the number of accredited voters.

IV. That it may be determined and thus declared that the sum total of the votes collated at the election to the office of Governor of Edo State which took place on 21 st September 2024, by the 1 st respondent was incorrect.

V That it may be determined and thus declared that the 1st respondent recorded incorrect scores *for* the petitioners and the 2nd and 3rd respondent at the election to the office of Governor of Edo State which held on 21 st September 2023, in 125 polling units as pleaded in paragraphs 514-676 of the petition (or so much thereof as this Honourable Tribunal may adjudge established), resulting in the overstatement of the 2nd and 3rd respondent's votes; and the understatement of the petitioners votes.

VI. That it may be determined and thus declared that in the election to the office of Governor of Edo State which held on 21st September 2024, the 1 st respondent collated results in 2 polling units in Ward 9 of Akoko Edo Local Government Area; 7 polling units in Ward 2 in C)redo Local Government Area; and 1 ward in Owan West Local Government Area; which were not directly transmitted from the 10 polling units pleaded in 4 paragraphs 677-690 of the petition (or so much thereof as this Honourable Tribunal may adjudge established), resulting in the overstatement of the respondent's votes; and the understatement of the petitioners' votes.

VII. That it may be determined and thus declared that at the election into the office of Governor of Edo State which held on 21st September 2024, the 1 st respondent wrongfully excluded and did not collate the results of the election in 76 polling units in Ward 2, Ikpoba Okha Local Government Area.

VIII That it may be determined and thus declared that the 2nd Respondent was not duly elected by majority of lawful votes cast at the election into the office of Governor of Edo State held on 21 st September 2024 and, therefore, the

declaration and return of the 2nd September 2024, and therefore, the declaration and return of the 2nd Respondent by the 1st Respondent as the winner of the Governorship election is unlawful, undue, null, void and of no effect whatsoever.

- IX. That it may be determined and thus declared that the Certificate of Return issued to the 2nd Respondent by the 1st respondent is invalid, null and void.
- X. That it may be determined and thus declared that on the basis of the lawful votes cast at the election to the office of Governor of Edo State which held on 21 st September 2024, the 1st petitioner scored a majority of lawful votes and has satisfied the constitutional requirement *for* a valid return at the election into the office of Governor of Edo State which took place on 21st September 2024 and ought to be returned as the winner of the election.
- xi. An Order of this Honourable Court declaring null and void the Certificate of Return wrongly issued to the 2nd Respondent by the 1 st Respondent.
- xii. An Order directing the 1 st Respondent to issue a Certificate of Return to the 1 st Petitioner as the duly elected candidate at the election into the office of Governor of Edo State which took place on 21 st September 2024

Each of the three Respondents filed Replies to the Petition and wherein they denied the entire allegations made by the Appellants and averred that the Governorship election was conducted in full compliance with the provisions of the Electoral Act and in fidelity to the Regulations contained in the Manual *for* the Elections. They contended that the results declared were a true reflection of the votes scored by the candidates in the Polling Units in which the elections took place, *free* of any tampering or manipulation, and they put the Appellants to the strictest proof of their allegations.

It is elementary that the onus of proof in an election petition, like in ordinary civil cases, is on the person questioning the results of an election. This is in fidelity to the established principle that he who alleges must prove. In an election petition, it is the petitioner who will fail if no evidence is given by him to support his petition. The burden of *proof* lies on the petitioner to prove the averments and allegations in his petition in

areas where issues have been joined. Even where the respondent in an election petition did not lead evidence to dislodge the petition of the petitioner and choose to remain mute, the petitioner has the bounden duty and obligation to prove his petition against the respondents *Omoboriowo Vs Ajasin* (1984) 1 SCNLR 108, *Oyetola Vs Independent National Electoral Commission* (2023) 11 NWLR (Pt 1894) 125, *Aminu Vs Independent National Electoral Commission* (2024) 9 NWLR (Pt 1944) 589.

In discharging the onus of proof, the Appellants called nineteen witnesses and tendered several documents consisting of certified true copies of electoral documents, counterpart copies of election results issued to party agents, original copies of INEC receipts, certificates of compliance and One Hundred and Thirty Three Bimodal Voter Accreditation System (BVAS) machines used *for* the conduct of the election in One Hundred and Thirty Three Polling Units, amongst others. The first Respondent did not call any witness and it relied on the evidence elicited under cross examination of the Appellants' witnesses and it tendered some documents. The second Respondent also relied on the evidence extracted under cross examination of the Appellants' witnesses and it called one witness while the third Respondent called four witnesses.

The Governorship elections took place in Four Thousand Five Hundred and Nineteen (4,519) Polling Units across Eighteen Local Government Areas of Edo State. The summary of the allegations of the Appellants were that

- I. the first Respondent breached the provisions of Section 73 (2) of the Electoral Act, 2022 in Three Hundred and Ninety Five (395) Polling Units by failing to prerecord the serial numbers and other particulars of result sheets, ballot papers, BVAS machine and other sensitive materials on Form EC25B.
- II. the first Respondent breached the provisions of Section 51 (2) of the Electoral Act in that the total votes cast as recorded in Form EC8A in a total of One Hundred and Thirty Three (133) Polling Units exceeded the total number of accredited voters based on the BVAS record of accreditation. It was in respect of these Polling Units that One Hundred and Thirty Three Bimodal Voter Accreditation System (BVAS) machines were tendered.

III. there were discrepancies between the entries in the Polling Units results uploaded by the Presiding Officers to the IREV, the certified true copies of hard copies of Form EC8A (Polling Units Result sheets) and the agent copies of the result sheets in respect of One Hundred and Twenty Five (125) Polling Units.

iv. the scores entered for Ten (10) Polling Units in Form EC8B (Ward Result Sheets) were not supported by Polling Unit Result Sheets, Form EC8A.

V. at the Ward Collation Centers, the results for One Hundred and One (101) Polling Units were incorrectly collated.

VI. the result of Seventy Six (76) Polling Units in Ikpoba/Okha Local Government Area were excluded from the collated results of the election.

Section 73 of the Electoral Act, 2022, upon which the Appellants predicated their first allegation, reads:

“(1) The forms to be used for the conduct of elections under this Act shall be determined by the Commission.

(2) 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.

(3) A Presiding officer who intentionally announces or signs any election result in violation of subsection (2) commits an offence and is liable on conviction to a fine of N10,000,000 or imprisonment for a term of at least one year or both.”

In proving that 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 were not prerecorded as provided for in Section 73 (2) of the Electoral Act, the Appellants tendered the Polling Units booklets of the forms used in the election in Polling Units complained about as

Exhibits PCB1 to PCB308 and PEB1 to PEB70. Counsel to the Appellants contended that the information required to be prerecorded ought to be contained in Form EC25B in the booklet, and nowhere else and since they were not so contained on the Form EC25B in the booklets tendered, there was non-compliance. The second Respondent countered that the booklet of forms included Form EC25 B, an election material checklist designed to record the quantity of election materials distributed to a polling unit, Form EC40A designed for ballot papers account, Form EC40B for rendering a statement of rejected and spoilt ballot papers, Form EC40C designed to record used and unused ballot papers and Form EC25D designed for recording of the serial number for BVAS machine and result sheet. The second Respondent maintained that the information required by Section 73(2) of the Electoral Act, 2022 was prerecorded in the relevant prescribed forms, and not only in Form EC25B.

In debunking the case of the Appellants on the facts, the Court of Appeal stated in the judgment thus:

“Apart from the above, we had cause to probe the core of the submissions made by the Appellants who directed us to exhibit PJF (Manual for Election Officials) as the source of confirmation of the fact that the Form referred to in section 73(2) of the Electoral Act, 2022 is Form EC25B. First, it must have been realised by now that section 73(2) of the Electoral Act, 2022 did not refer to or mention “Form”, but Forms. So, the Appellants were mistaken to have concentrated their attention on one Form, instead of “Forms”.

We paid a visit to pages 19-20 of exhibit PJF, being the address supplied by the Appellants. Upon examining of the two pages, it became apparent that the Appellants have only been disturbing the peace of the Tribunal and this Court over nothing. There is nowhere in exhibit PJF that Form EC25B was prescribed by the 1st Respondent to be the Form or the only Form in which details or particulars of sensitive materials are to be mandatorily filled.

In paragraph 2.3.6, on pages 19-20 of exhibit PJF, it is recorded:

'2.3.6 Polling Unit Booklet

This is a compendium of election forms. The Presiding Officer is expected to fill the Forms in the Booklet and submit same to the Supervisory Presiding Officer at the end of each election. The booklet contains the following:

(a) Readiness Check;

(b) Form EC 25 B: Electoral Material Receipt/Reverse Logistics (the filling of EC 25 B after inspection of materials before the commencement of elections and is mandatory *for* all Pas as contained in Section 73(2) of the Electoral Act 2022 and Clause 17(c) of the Regulations and Guidelines for Elections, 2022).

(c) Form EC 40 A: Ballot Paper Account and Verification Statement; ...”

Regulation 17(c) of Regulations and Guidelines for the Conduct of Elections, 2022, on its own part, stipulates as follows:

“(c) The Presiding Officer shall record the quantity, serial numbers, and the other particulars of the inspected sensitive materials in the prescribed forms for the conduct of the election.”

The literal rule of interpretation states that where the words are plain and unambiguous, they must be given their natural and ordinary meaning, unless to do so would lead to absurdity. That is, the plain words used by the legislature provide the best guide to their intention...

In this appeal, the Appellants were fixated on the fact that it is one Form, Form EC25B, which must be filled with ALL particulars of inspected sensitive materials, prior to the commencement of polls. It must have been observed, from the two provisions, quoted above, that the assertion of the Appellants is not well founded. In actual fact, the booklet referred to, as exhibit PJF, contains four (4) Forms, while the appellants were insistent on projecting only Form EC25B. Any of the four Forms prescribed by the 1st Respondent in the Polling Unit Booklet, into which the requisite information is filled will meet the demands of section 73(2) of the Electoral Act, 2022, as they are supposed to contain different information, which

will collectively satisfy the requirement of the 1st Respondent having to provide those Forms, in line with section 73(2) of the Electoral Act, 2022. What is even more, the Tribunal found as fact that two pages were missing from exhibits PCB1 - PCB308 tendered at the trial. They were tendered in seven (7) pages, whereas, they are, in their complete form, nine (9) pages. The evidential value of the exhibits became devalued greatly by the finding of the Tribunal. What was contained in those missing pages, especially, when the dispute was in regard of what was filled in the booklet and what was not filled in it?

It is imperative to state at this point that there is nowhere it is stated that details of BVAS machines should be recorded in Forms in the Polling Unit booklet (exhibit PeR and PEB series) prior to the commencement of polls, contrary to the muscularly aggressive contention of the Appellants. That part was simply made up, for effect, unfortunately. And contrary to the testimony of PW 31 under cross-examination, that line item 54 in Form EC25B is not about BVAS, line item 54 referred clearly to Card Reader, which is a completely different equipment from BVAS. So, PW 3 lied and was discredited under cross-examination.

Upon physical examination of the Forms constituting the booklets, tendered as exhibits PCBI-PCB308 and PEBI-PEB70, this Court observed that the requisite serial numbers of ballot papers, which constitute the ultimate sensitive materials used for elections were expected to be recorded in Form EC40A and the Polling Officers dutifully carried out their duties by faithfully recording those details in Form EC 40A component of exhibits PCBI-PCB308 and PEBIPEB70. There is no such requirement on the face of Forms EC25B touted by the Appellants. In addition, Form EC25B in each of all exhibits PCBI-PCB308 and PEBI-PEB70 tendered at the trial were filled with information required by and fitting the Form, which is simply about quantity of materials received.”

The Court of Appeal noted that the fact that the prerecorded information that the Appellants complained were absent on Form EC25B were contained on other forms in the booklets of forms tendered by Appellant was confirmed and admitted by the second, third, fourth, seventh, eighth and twelfth witnesses of

the Appellants under cross examination at the trial, as found by Governorship Election Petition Tribunal. The Court of Appeal concluded on this point thus:

'The impression we had from a revision of the discredited testimonies of witnesses called by the Appellants, as partly narrated above, is that the Tribunal was right when it held that the Appellants did not prove their case that there was non-compliance with the provisions of section 73(2) of the Electoral Act, 2022. The 1st Respondent complied through Form EC40A, which is embedded in exhibits PCBI-PCB308 and __PEBI-PEB70. The Appellants' case was built on, avoidably, false premises, to the effect that the Form to be filled is only Form EC25B, whereas, in the same booklet they tendered there is glaring evidence of compliance in exhibit EC40A and in other Forms.

In the circumstances, the decision of the Tribunal where it held that Appellants failed to prove non-compliance with section 73(2) of the Electoral Act, 2022 cannot be faulted. It is sound."

Reading through the entire contents of the brief of arguments of the Appellants in this appeal, apart from restating their fixation with Form EC25B as the only form that must contain the prerecorded information stipulated in Section 73 (2) of the Electoral Act, Counsel to the Appellants did not contend against the finding of the lower Court that the required prerecorded information was contained in the other forms in the booklet of forms tendered *for* each of the Polling Units complained about. Counsel to the Appellants did not also contend against the finding that each of the forms in the booklet of forms stipulated on its face the specific information to be recorded thereon in compliance with Section 73 (2) of the Electoral Act, 2022 and that the required information was prerecorded on each of the forms, as admitted by some of their witnesses under cross examination. Counsel did not contend that the booklet of forms they tendered for each of the Polling Units complained about had only seven pages instead of nine pages, suggesting that two pages of the prescribed forms were unaccounted for.

It is correct that Paragraph 2.3.6. (b) of the Manual for Election Officials, reproduced in the above excerpt of the judgment of the Court of Appeal,

suggested a connection between Section 73 (2) of the Electoral Act, 2022, Regulation 17 (c) of Regulations and Guidelines *for* the Conduct of Elections, 2022 and Form EC25B in the booklet of forms. However, a wholistic reading of the contents of Paragraph 2.3.6 of the Manual for Election Officials and of Regulation 17 (c) of Regulations and Guidelines for the Conduct of Elections, 1622, both of which speak of compendium of election forms and prescribed forms, vis-a-vis the information spaces provided on each of the prescribed forms, shows clearly that each form was designed *for* the recording of the different aspects of the information required to be prerecorded before the election and to be post recorded after the election by the Electoral Officers.

The attempt by Counsel to the Appellants to read the contents of Paragraph 2.3.6. (b) of the Manual *for* Election Officials in isolation from other provisions and be fixated on Form EC25B as the only one of the prescribed forms that could show compliance with Section 73(2) of the Electoral Act was, with respect, rather myopic and has no basis in law. It is settled law that in interpreting a document be it a statute, regulation or manual, the document must be read as a whole, and not parts in isolation, and that the different parts of the document must be interpreted in the light of the whole document and an effort must be made to achieve harmony amongst its different parts and to get the true intentions of the makers of the document – *Unilife Development Co Ltd Vs Adeshigbin* (2001) 2 SCNJ 1 16, **Mbani Vs Bosi** (2006) 11 NWLR (Pt 991) 400, **Adetoun Oladeji Nig. Ltd Vs Nigerian Breweries Plc** (2007) 1 SCNJ 375, **Agbareh Vs Mimra** (2008) 2 NWLR (Pt 1071) 378, **Nigerian Army Vs Aminu-Kano** (2010) 5 NWLFI (Pt 1188) 429, **National Union of Road Transport Workers Vs Road Transport Employers Association of Nigeria** (2012) 10 NWLR (Pt 1307) 170. **Attorney General, Federation Vs Attorney General, Lagos State** (2013) 16 NWLFI (Pt 1380) 249.

Further, there is a presumption against the legislature intending what is unreasonable and inconvenient in the interpretation of statute. Thus, it is trite that commonsense must be applied in construing statutes and the construction agreeable to justice and reason must be adopted. Where words used in an enactment or

regulation are open to two interpretations and one construction will lead to an absurdity while the other would give effect to what commonsense shows was obviously intended, the construction that accord; with commonsense must be applied – **Ibrbam Vs Sheriff** (2004) 14 NWLR (Pt 892) 43, **Elabanjo Vs Dawodu** (2006) 15 NWLR (Pt 1001) 76, **Sobarnowo Vs Elemuren** (2008) 11 NWLR (Pt 1097) 12. In view of the fact that the information spaces provided on each of the prescribed forms in the booklet of forms given to Electoral Officers for conduct of an election shows clearly that each form was designed *for* the recording of the different aspects of the information required by Section 73 (2) of the Electoral Act to be prerecorded by the Electoral Officers, to insist that all the information must only be recorded on Form EC25B, when there is no space provided on that form *for* all the information, is totally absurd and contrary to reason and common sense.

Counsel to the Appellants failed woefully in giving this Court any reason to tamper with the concurrent findings of the lower Court that, on the facts, the officers of the first Respondent complied with the provisions of Section 73(2) of the Electoral Act, 2022 in the conduct of the elections in the Three Hundred and Ninety Five (395) Polling Units complained about.

The second allegation of the Appellants was on overvoting in One Hundred and Thirty Three (133) Polling Units in the election in breach of the provisions of Section 51 (2) of the Electoral Act, 2022. This provision reads that where the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the Presiding officer shall cancel the result of the election in that polling unit. This Court has stated and restated the quality of evidence that a party alleging overvoting must lead in order to succeed – see the cases of **Oyetola Vs Independent National Electoral Commission** (2023) LPELR 60392(SC), **Barde Vs Independent National Electoral Commission** (2024) LPELR 61647(SC), **Lawal Vs Matawale** (2024) LPELR 61856(SC), of **Murtala Vs Independent National Electoral Commission** (2024) LPELR 79942(SC). In the case of **Ombugadu Vs Alhaji** (2024) 7 NWLR (Pt. 1936) 73 at 1 12-114, this Court reiterated:

“From the above holdings, it is clear that the documents-required to *prove* over-voting are the voters register, the BVAS machines and the Form EC8As. I agree with learned counsel for the 1st respondent that the record of the examination of the BVAS may be tendered alongside the BVAS machines but not as an alternative thereto. I also agree that there is no provision in the Electoral Act or INEC Regulations & Guidelines for the tendering of a screenshot of the BVAS machines, especially where there is no evidence as to when, where and how the screenshots were obtained. Above all, this court has held that failure to tender any of the required documents to prove over-voting is fatal to the petitioner’s case. The BVAS machines tendered through PW7 having been expunged from the record, the bottom had fallen out of the appellants’ case, as one of the key requirements for proving over voting was absent.

Besides, the said BVAS machines were clearly dumped on the Tribunal without being demonstrated in any shape or form. PW 7 merely identified them and they were returned to the 2nd respondent immediately after his testimony. On what basis could the trial tribunal have made its findings on the issue of over voting?”

In the instant case, based on a subpoena issued at the behest of Counsel to the Appellants, a *staff* from the IT Department of the first Respondent produced in Court the BVAS machine used to conduct the election in the One Hundred and Thirty Three (133) Polling Units complained about. Strangely, however, Counsel to the Appellants did not tender the BVAS machines through the staff and neither did they ask the staff to demonstrate the workings of the BVAS machines in open Court and/or match the contents of each of the BVAS machines to the screen shots said to have been obtained from them and tendered in evidence. Counsel to the Appellants rather chose to tender the BVAS machines and the said screen shots said to have been obtained from them from the Bar. Counsel to the second and third Respondents vehemently opposed the tendering of the BVAS machines and the screen shots *from* the Bar. The Governorship Election Petitions Tribunal admitted the BVAS machine provisionally as Exhibits PPDD1 to PPDD133 and deferred the consideration of the objections of the Respondents to their admissibility to the stage of final judgment. In the

final judgment, the Governorship Election Petitions Tribunal overruled the objections of the second and third Respondents and fully admitted the BVAS machines in evidence.

The second Respondent appealed against the decision admitting the BVAS machine in evidence and, in allowing the appeal, the Court of Appeal deliberated thus:

“In my view, the Tribunal was in grave error when it admitted the BVAS machines in evidence, because the circumstances were not right for it to do so. What should have guided the Tribunal is narrated in paragraph 41(1)-(5) of the 1st Schedule to the Electoral Act, 2022, which creates a condition precedent. A condition precedent is an additional formality super-imposed on the law. A condition precedent is one which delays the vesting of a right until the happening of an event...

Paragraph 41(1)-(5) of the 1st Schedule to the Electoral Act, 2022 stipulates:

“41.(1) Subject to any statutory provision or any provision of these paragraphs relating to evidence, any fact required to be proved at the hearing of a petition shall be proved by written deposition and oral examination of witnesses in open court.

(2) Documents which parties consented to at the prehearing session or other exhibits shall be tendered from the Bar or by the party where he is not represented by a legal practitioner.

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

(4) Real evidence shall be tendered at the hearing.

(5) The Tribunal or Court may, at or before the hearing of a petition order or direct that evidence of any particular fact be given at the hearing in such manner as may be specified by the order or direction. ...’

... There is no ready source to confirm where and when the practice of tendering documents or exhibits from the Bar originated. However, what is known in legal

practice is that documents and exhibits to be tendered from the Bar are usually those in respect of which parties consent or are not disputing being tendered from the Bar.

As it must have been observed, paragraph 41(2) of the 1st Schedule, specifically stipulates that only documents, which parties consent to, shall be tendered from the Bar. Paragraph 41(3) of the 1st Schedule permits that documents and exhibits which are disputed should be tendered during the evidence-in-chief of a witness. Paragraph 41(1) of the 1st Schedule, demands that all other evidence shall be by written deposition and oral examination of witnesses in open court. Paragraph 41(5) of the 1st Schedule gives the Tribunal or Court power to direct how evidence may be given, but that provision is not applicable in this cross-appeal because the Tribunal did not give any directive that exhibits should be or must be tendered from the Bar. The Tribunal only treated the Appellants/Cross-Respondents' counsel's application to tender exhibits PPDDI-PPDD133 from the Bar.

Where a statute lays down a certain procedure that ought to be followed before an action can be taken, or for setting a legal process in motion, it is incumbent and mandatory that such proceedings be complied with in order to authenticate the act or the legal process set in motion. ... The law is settled that where a statute provides a particular procedure for doing a thing, there should be no other method of doing it. Thus, once there is a condition precedent to the exercise of the jurisdiction of the Court and there is noncompliance to that condition precedent as set out in the statute, the Court is divested of jurisdiction.

In the circumstances, it is clear that in the absence of the consent of the 2nd Respondent/Cross-Appellant to the tendering of exhibits PPDDI- PPDD133 from the Bar, whether certified or not, as true copies, the order of the Tribunal affirming such approach was without lawful basis and is reversible on appeal, as in this appeal. The confirmation order made by the Tribunal admitting exhibits PPDDI-PPDD133 in evidence is, in the circumstance, unsustainable, unsupportable and is hereby found to be invalid, having been done contrary to clear provisions of a statute, which is extant. The condition precedent *for* the validity of the tendering of evidence from the Bar, which is the consent of all parties to the petition, was absent before the exhibits were tendered and admitted in evidence.

... Exhibits PPDD1-PPDD133 (133 BVAS machines) are hereby expunged from the record of the Tribunal.”

As rightly held in the lead judgment, this position of the Court of Appeal cannot be faulted. The First Schedule to the Electoral Act, 2022 is a subsidiary legislation made pursuant to the Electoral Act, 2022 and it possesses the *force* of law. Paragraph 41 thereof, the provisions of which were reproduced in 'the above excerpt of the judgment of the Court of Appeal, regulates how evidence is to be tendered before an Election Petitions Tribunal. A read through the provisions shows that it distinguishes between how documentary evidence and real evidence are to be tendered. It is elementary that documentary evidence refers to things like papers, reports and other print materials, *for example*, books, blue prints, photographs, medical records, computer print outs, or other written documents. Real evidence, on the other hand, refers to a tangible physical object, not just a descriptive one, that can be presented in court to prove or disprove a fact in a case such as a weapon used in a crime, clothing worn by a suspect, or even a car involved in an accident. It is without doubt that the BVAS machines produced before the Governorship Election Petitions Tribunal qualified as real evidence. By the provision of Paragraph 41 (4) of the First Schedule to the Electoral Act, 2022, the BVAS machine could only be tendered at the hearing, and not from the Bar, more particularly as their tendering from the Bar was opposed by Respondents. They were thus wrongly presented and admitted in evidence.

Going further and assuming that the BVAS machine qualified as documents, as contended by Counsel to the Appellants, the practice of tendering documents from the Bar is an aberration in view of the provision of Section 83 of the Evidence Act, but it is one which the Courts have come to allow in respect of certified true copies of public documents and in respect of which there is no objection from the other party, ie with the consent of the parties to the procedure – **Anatogu Vs Iweka II** (1995) 8 NWLFI (Pt 415) 547, **Abdullahi Vs Federal Republic of Nigeria** (2016) 10 NWLFR (Pt 1521) 475, **Federal Republic of Nigeria Vs Michael** (2018) 6 NWLFI (Pt

1616) 438. In **Andrew Vs Independent National Electoral Commission** (2018) 9 NWLR (Pt 1625) 507, this Court made this point thus:

“Credence cannot be given to a document tendered by a witness who cannot be rightly cross-examined as to its contents. A person who did not make a document is not in a position to give evidence on it because the veracity and credibility of the document cannot be tested through a person who has no nexus with the document. Only a maker of a document can tender and be cross-examined on same. Any exhibit tendered from the Bar without calling maker thereof will not attract any probative value.

Where the documents are disputed and objected to by the other party, they cannot and should not be tendered from the Bar, but at the hearing through a witness. The principle that disputed documents can and should only be admitted when tendered through a witness in the course of trial, and not from the Bar, is an extension of the doctrine of fair trial. It is to give the party objecting to the document an opportunity to interrogate same in open Court. It is an established principle of fair hearing that a party must be given an opportunity to present his case at every material stage of the proceedings – **Elcumo Vs Silver Eagle Shipping Agencies PH Ltd** (1987) 4 NWLR (Pt 65) 472 at 486, **Agbahomovo Vs Eduyegbe** (1999) 3 NWLR (Pt 594) 170, and **Agbiti Vs Nigerian Navy** (2011) 4 NWLR (Pt 1236) 175.

It was this position of the law that was codified in Paragraph 41 of the First Schedule to the Electoral Act, 2022 and with a further power to the Election Petition Tribunal under Paragraph 41 (5) to order or direct that evidence of any particular fact be given at the hearing in such manner as may be specified by an order or direction. There is nothing in the records suggesting that the Governorship Election Petition Tribunal ordered or directed that evidence of the BVAS machine should be given by tendering it from the Bar. The Governorship Election Petition Tribunal was wrong to have admitted the BVAS machine from Bar in the circumstances and the Court of Appeal was right to have held that the BVAS machines were wrongly admitted in evidence.

Additionally, even if this Court was to find that the BVAS machines were properly admitted, it still would not help the case of the Appellants as the BVAS machines were not activated in open Court and/or demonstrated to be functional and neither were they tied or matched to or tallied with the information on the screen shots said to have been obtained from them and tendered as Exhibits PDC1 – PDC56 and PED1 – PED76 and no evidence was given as to how and when the screen shots were so obtained. These failures would have robbed them of any probative value. It must also be put on record that Counsel to the Appellants admitted in their final written address before the Governorship Election Petition Tribunal that they led no credible evidence to prove overvoting in about fifty (50) of the Polling Units complained about.

With the expunction of the Exhibits PPDDI – PPDD133 (133 BVAS machines) from the record of the Governorship Election Petition Tribunal, the case of the Appellants on overvoting must die a natural death as a core part of the evidence necessary to prove same was missing. The concurrent findings of the two lower Court on the failure of the Appellants to lead credible evidence in proof of their allegation of overvoting in the One Hundred and Thirty Three Polling Units cannot be faulted by this Court.

This Court agrees with the two lower Courts that the Appellants failed to lead credible evidence in *proof* of their allegations of non-compliance with the provisions of the Electoral Act by the first Respondent under the first ground of the Petition.

The third, fourth, fifth and six allegations of the Appellants were on improper collation of the election results of One Hundred and Twenty Five (125) Polling Units, Ten (10) Polling Units and One Hundred and One (1 01) Polling Units at the Ward level and the exclusion of the votes of Seventy Six Polling Units in the collation made at the Local Government level. In dismissing these allegations, the Governorship Election Petition Tribunal made the following findings:

1. That Appellants did not tender all the polling unit result sheets and electoral forms used for the conduct of the election in issue to enable the Tribunal to determine the issue of majority of lawful votes as required by law.

1. That the provision of section 137 only applies to the issue of noncompliance with provisions of the Act, but does not apply to question of lack of majority of lawful votes.
 111. That majority of the documents tendered by the Appellants as exhibits PMB1- PMB41, PU1- PU16 and PS1-PS45 are not legible and do not bear the stamp of INEC, which made it difficult for the Tribunal to ascribe any probative value to them.
 - IV. That the Appellants did not call any significant number of witnesses-to prove the allegation of failure to poll majority of lawful votes against the Respondents and that the majority of the nineteen witnesses called by the Appellants were not eyewitnesses present at the polling units and their testimony is mere hearsay evidence.
 - V. The evidence of five witnesses who were polling unit agents called by the Appellants was grossly insufficient to prove the Appellants' case regarding activities in *over* 4000 polling units in Edo State
 - VI. That the Appellant's complaint in ground 2 of the petition is based on hypothesis that ground 1 would succeed and result in deduction of votes, but, with the failure of ground 1, ground 2 is academic now, as there is no vote proved to be invalid and liable to be deducted from those of the candidates.
 - VII. That the Appellants failed to prove their case as required by law.
- In affirming these findings, the Court of Appeal deliberated thus:

'The law still remains that a petitioner who contests the legality or lawfulness of votes cast in an election and the subsequent result must tender in evidence all the necessary documents by way of forms and other documents used at the election, which must be legible. He should not stop there. He must call witnesses to testify to the illegality or unlawfulness of the votes cast and prove that the illegality or unlawfulness substantially affected the result of the election. The documents are amongst those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of the

election; not those who picked the evidence from an eyewitness. No. They must be eye witnesses too. Both Forms and witnesses are vital *for* contesting the legality or lawfulness of the votes cast and the subsequent result of the election. One cannot be a substitute for the other. It is not enough for the petitioner to tender only the documents. It is incumbent on him to lead evidence in respect of the wrongdoings or irregularities which occurred in the conduct of the election and the recording of the votes; wrongdoings and irregularities which affected substantially the result of the election.

We confirm the reasons given by the Tribunal as sound and derived from the exhibits, oral evidence and materials before it. The case of the Appellants was inadequately presented through 19 witnesses who did not witness what they testified about and in the absence of hard copies of Form EC8A, which is the primary document in the process of verification of results, the complaints about wrongful collation of scores cannot be properly treated. Documents downloaded from IReV are strictly meant to verify or confirm what is contained in the physical result (hard copies) in Form EC8A, obtained from the polling units, not as primary source of results. Section 137 of the Electoral Act, 2022, by its own words, limits itself to incidents of non-compliance and will, therefore not be applicable to cases where the complaint is absence of majority of lawful votes cast at the election being assailed, which is a complaint of irregularity.

Appellants brought witnesses who testified about what they knew nothing about, as a matter of primary knowledge, especially PW 1- PW 14 and dumped documents, as exhibits, on the Tribunal, which justifiably resisted the action of the Appellants. Their evidence was not evidence of those who were present at ward collation centres where collation of scores was carried out. PW 12, especially, was not enabled by his limited circumstance to testify about what happened in polling stations (in over 4000 locations) and ward collation centres strewn all over Edo State, according to the parties themselves....

The Appellants failed, abysmally, to prove their claim of having won majority of lawful votes cast at the election in issue and that the 2nd Respondent did not. In fact, it would be noticed that the Appellants were not sure or certain about figures the parties scored at the election and did not prove same at the trial. The same Appellants who have come to this Court did not demonstrate how any figure

was arrived at, as the scores of the parties which contested the election, through any witness.

The Appellants inserted a Chart or Table in both the final written address and now, in their Appellants' brief of argument, seeking to persuade the Tribunal and this Court to rely on them. However, these should have been primarily presented to the Tribunal in the nature of evidence, which may have been subjected to proper cross-examination, by the parties, for confirmation of its mathematical accuracy....

The Tribunal could also not be justly condemned *for* not selfcollating the results proposed by the Appellants because it found, as a fact, that the documents (exhibits PMBI-PMB41, PUI-PU16 and PSI-PS45) presented to it by the Appellants were not legible, understandably so, because they were downloads from IReV portal operated by the 1st Respondent. Appellants appeared not to have successfully challenged the finding of the lower court in that regard."

The records show that in proving wrongful collation of the results from One Hundred and Twenty Five (125) Polling Units, the Appellants tendered the certified true copies of the results sheets *from* the Polling Units uploaded to the IReV as Exhibits PFA1 to PFA125, the copies of the result sheets for the Polling Units given to their party agents as Exhibits PMBI to PMB41, PSA2 to PSA45 and PUI to PU16 as well as the certified true copies of the results sheets, Form EC8A, *for* Polling Units issued by the first Respondent as Exhibits PFBI to PFB125 and the certified true copies of the results sheets of the Wards covering the Polling Units, Form EC8B, as Exhibits PBA4, PBA9, PBB2, PGB9, PBL2 and PBL3. The Appellants admitted that the number of votes contained in the Polling Units results sheets, Form EC8A, tallied with those entered and collated in the Ward Result sheets, Form EC8B. Their complaint was that the number of votes contained in the Polling Units results sheets, Form EC8A, did not tally with those on the Polling Units results sheets they downloaded from the IReV and which results sheets were consistent with the results sheets given to the agents of the parties.

With regards to the Ten (10) Polling Units, the Appellants tendered the certified true copies of the results sheets from the Polling Units uploaded to the IReV as Exhibits PGA1 to PGA10, the certified true copies of the results sheets, Form EC8A, for Polling Units issued by the first Respondent as Exhibits PGB1 to PGB10 and the certified true copies of the results sheets of the Wards covering the Polling Units, Form EC8B, as Exhibits PBA9, PBL2 and PBQ6. The Appellants admitted that the number of votes contained in the Polling Units results sheets, Form EC8A, tallied with those entered and collated in the Ward Result sheets, Form EC8B. Their complaint was that the number of votes contained in the Polling Units results sheets, Form EC8A, did not tally with those on the Polling Units results sheets they downloaded from the IReV.

Counsel to the Appellants contended that the Governorship Election Petition Tribunal and the Court of Appeal ought to have upheld the certified true copies of the results sheets from the Polling Units uploaded to the IReV as reflecting the correct number of votes scored by the candidates, as against those contained on the certified true copies of the results sheets, Form EC8A, for Polling Units issued by the first Respondent, and to find that since the number of votes entered onto Ward Result sheets, Form EC8B, did not tally with those contained in certified true copies of the results sheets of the Polling Units uploaded to the IReV, there was improper collation.

The records show that the Appellants did not contend before this Court against the findings of the two lower Courts that the copies of the result sheets for the Polling Units given to their party agents and tendered as Exhibits PMB1 to PMB41, PSA2 to PSA45 and PUI to PU16 were not legible and did not carry the stamp of the first Respondent. It is trite law that a document that is not legible cannot be ascribed any probative value **Jwan Vs Ecobank (Nigeria) Plc** (2021)10 NWLR (P I 1 785) 449, **Idi Vs Asaph** (2022) LPELR 57188(CA), **Gwani Vs Kuzalio** (2023) LPELR 61187(CA). The documents were thus not helpful to the case of the Appellants.

Further, the settled position of the law is that the primary evidence of results of an election is the original or certified copies of the polling unit results, Form EC8A, and

not the results uploaded to the IReV and that the results uploaded to the IReV only come into play where the hard copies of the polling units results sheets, Form EC8A, are not available – **Oyetola Vs Independent National Electoral Commission** (2023) LPELR 60392(SC), **Atiku Vs Independent National Electoral Commission** (2023) LPELR 61556(SC), **Ndubuisi Vs Duru** (2023) LPELR 61621 (CA). The Courts have held that the hard copies of the Form EC8A is the primary source and foundation of the results in any election – **Uzodinma Vs Ihedioha** (2020) 5 NWLR (Pt 1718) 529, **Lawal Vs Matawale** (2024) LPELR 61856(SC).

Therefore, to surpass the contents of the certified true copies of the hard copies of the polling units' results sheets, Form EC8A, of the Polling Units complained about, and tendered as Exhibits PFBI to PFB125 and Exhibits PGBI to PGB10, on the actual numbers of votes scored by the candidates in the election, the Appellants needed to do more than merely tendering the results sheets for those Polling Units downloaded from the IReV containing a different set of number of votes. There was a need for additional evidence confirming that the entries on the results sheets downloaded from the IReV were the correct number of votes scored in the Polling Units, in the stead of those contained in the hard copies of the polling units' results sheets, Form EC8A. As stated above, the party agents' copies of the polling units' result sheets were illegible and thus of no probative value.

Outside merely referring to -the results sheets for those Polling Units -,'downloaded from the IReV, none of the witnesses called by the Appellants was in a position to assure that the number of votes recorded for the parties on the certified true copies of the hard copies of the polling units results sheets, Form EC8A, for the Polling Units did not reflect the correct numbers of votes scored by the parties at the election. They were not present at the polling units at the time of the recording of the votes or the Form EC8A. The Appellants did not subpoena an appropriate staff in the IT Department of the first Respondent to testify on the procedure for uploading of results sheets unto the IReV and the exact time the certified true copy of the results sheets downloaded from the IReV and tendered in evidence were uploaded. They did not tender the counterpart copies of the results sheets for the Polling Units handed to the Police at

the conclusion of the election to see if their contents tallied with those on the uploaded results sheets or with the those on the hardcopies of Form EC8A. The Appellants led no extra evidence in support of their case that the numbers of votes recorded on the results sheets downloaded from the IReV were the authentic outcome of the election, and not those entered on the hardcopies of the Form EC8A,

In other words, what the Counsel to the Appellants contends in this appeal before this Court is that the two lower Courts ought to have upheld the certified true copies of the results sheets from the Polling Units uploaded to the IReV as reflecting the correct number of votes scored by the candidates, as against those contained on the certified true copies of the results sheets, Form EC8A, *for* Polling Units issued by the first Respondent on their mere say so, and not on the basis of any preponderating evidence led in support of the assertion. It is settled law that in civil suits, cases are won upon a preponderance of evidence. It follows therefore that a claimant in such a case has the burden of establishing his claim upon relevant and credible evidence that is conclusive and that commands such probability that is in keeping with the surrounding circumstances of the case in hand – **Onwuka Vs Ediala** (1989) 1 NWLR (Pt 96) 182, **Dibiamaka Vs Osakwe** (1989) 3 NWLR (Pt 107) 101 at 1 1 3, **Jiaza Vs Bamgbose-** (4999) 7 NWLFR (Pt 610) 182, **Mbani Vs Bosi** (2006) 11 NWLR (Pt 991) 400, **Egwa Vs Egwa** (2007) 1 NWLFR (Pt 1014) 71.

A case is decided on the totality of evidence adduced. Therefore, if on any given issue, the evidence of the claimant be as good as that of the defendant so that there is an equilibrium, it is the party on whom rests the burden of *proof* that fails. This is because the evidence does not preponderate in such party's favour – **Igwe Vs Alozieuwa** (1 990) 3 NWLR (Pt 141) 735 at page 751, **Ezukwu Vs Ukachukwu** (2000) 1 NWLF: (Pt 642) 657, **Ukaegbu Vs Nwololo** (2009) 3 NWLR (Pt 1127) 194. In **Odiete Vs Okotie** (1972) LPELR 2218(SC), Coker, JSC made point thus at page 8:

"It is not enough for a party to a case who has the onus of establishing a particular fact to say that his own evidence is just as good as that of his opponent; *for* what the law says that he must do in order to discharge the onus of proof on him is to prove by evidence, which convinces the Court

or tribunal of the probability of his case rather than that of his opponent, the point in issue. It is not an argument that the scales are evenly weighed for evidently in that case he does not discharge the onus."

The two lower Courts were correct when they found that the Appellants did not make out a credible case in support of their allegations of improper collation of the election results of the One Hundred and Twenty Five (125) Polling Units and the Ten (10) Polling Units complained about.

Before rounding up this judgment, I consider it pertinent to make a comment on the provision of Section 137 of the Evidence Act, 2022. Counsel to the Appellants raised so much hue and cry on the applicability of the provision to their case on non-compliance with the provisions of the Electoral Act. The section reads:

"It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged."

Counsel to the Appellants argued copiously in their brief of arguments that the provision was applicable to the case they presented on non-compliance with the Electoral Act and that the two lower Courts were in error in not countenancing the effect of the provision in their favour and in holding that they did not call sufficient evidence to sustain their allegations. It must be stated that the provision is only applicable where a petitioner makes out a credible case showing that the alleged non-compliance is manifestly disclosed on the *face* of the originals or certified true copies of documents tendered. Where a petitioner fails to make out such a credible case, the provision cannot enure to his benefit. In the instant case, the two lower Courts found, and this Court has endorsed the findings, that the Appellants neither made out a credible case on their allegation of non-compliance with the provision of 73(2) of the Electoral Act, 2022 nor on their allegation of non-compliance with the provision of Section 51 (3) of the Electoral Act. The provision of Section 137 of the Electoral Act, 2022 was thus not applicable to their case.

This said however, the provision of Section 137 of the Electoral Act, 2022 was a new addition to the Electoral Act 2022 and it was not part of the earlier Electoral Acts. The provision of Section 137 of the Electoral Act, 2022 is complemented by the Paragraph 46 (4) of the First Schedule to the Electoral Act, 2022 which says:

“Documentary evidence shall be put in and may be read or taken as read by consent, such documentary evidence shall be deemed demonstrated in open court and the parties in the petition shall be entitled to address and urge argument on the content of the document, and the Tribunal or Court shall scrutinize or investigate the content of the documents as part of the process of ascribing probative value to the documents or otherwise.”

It is obvious that these provisions were added to ameliorate the burden on a petitioner in proving his petition and they have not been dealt with by this Court with unanimity. There is an urgent need for this Court to resolve with clarity and give directions on the question of the import and effect of these two provisions on the burden of proof on a petitioner in an election petition and the quality or quantity of evidence that such petitioner must produce to succeed, when an opportunity to do so arises. This case does not present such opportunity because, as stated above, the provision of Section 137 of the Electoral Act is not applicable to the case presented by the Appellants on non-compliance with the Electoral Act.

The Appellants erected their case on a lot of assumptions; facts which had no foundation in the quality of evidence led in support of the petition. Counsel to the Appellants thereafter presented brilliant and beautiful arguments on the strength of the assumed facts. The duty of a trial Court is to determine cases based on the facts established at trial – **Peacocks Educational Consult Vs Etonyeaku** (2018) LPELR 46113(CA). Such facts constitute the fountain head of law and decisions or determination of cases are related to the facts and each case is considered in its factual milieu – **Attorney General, Bendel State Vs Attorney General, Federation** (1983) 1 SCNLR 239, **Attorney General, Abia State Vs Attorney General, Federation** (2006) 16 NWLR (Pt 1005) 262 at 361, **Asogwa Vs Peoples Democratic Party** (2012) LPELR 8575(CA). The facts cannot be supplanted by legal arguments, no

matter how brilliant. Thus, the Courts have stated over and over that address of Counsel cannot be substituted *for* pleadings and/or evidence – **Buraimoh Vs Barnghose** (1989) 3 NWLR (Pt 109) 352, **Auto Import Export Vs Adebayo** (2005) LPELR 642(SC), **Agugua Vs State** (2017) IO NWLR (Pt 1 573) 254, **Oforishe Vs Nigeria Gas Co Ltd** (2018) 2 NWLFI (Pt 1602) 35. The case of the Appellants failed on the basis of lack of sufficient facts to discharge their burden of proof.

In conclusion, I too find no merit in this appeal and I hereby dismiss same. I affirm the judgment of the Court of Appeal, Abuja Judicial Division, delivered on the 29th of May, 2025 in Appeals Nos CA/ABJ/EPT/ED/GOV/01/2025 and CA/ABJ/EPT/ED/GOV/04/2025. I abide the order on costs in the lead judgment.

I have had the advantage of reading in draft the lead judgment just delivered by my learned brother, **Moha almed Lawal Garba JSC**, and I am in complete agreement with the reasoning and conclusions reached.

The Appellants' appeal is against the decision of the Court of Appeal Abuja Judicial Division contained in the judgment delivered on the 29th day of May, 2025 in **CA/ABJ/EPT/ED/GOV/01/2025 and CA/ABJ/EPT/ED/GOV/04/2025**, wherein the Court below dismissed the Appellants' appeal and upheld the decision of the Edo State Governorship Election Tribunal of 2nd April, 2025 affirming the election and return of the 2nd Respondent to the office of Governor of Edo State.

A brief synopsis of the facts culminating in this appeal is as follows: The 1st Respondent (INEC) scheduled and conducted election into the office of Governor of Edo State on the 21st day of September, 2024 wherein the 1st Appellant contested as the candidate of the 2nd Appellant against the 2nd Respondent who contested as the candidate of the 3rd Respondent, among other candidates for the same election. At the conclusion of the election, on the 22nd

day of September, 2024, the 1st Respondent announced and declared the 2nd Respondent winner of the election and returned him elected with a majority of 291, 667 votes as against the 247, 274 votes polled by the 1st Appellant.

The Appellants being dissatisfied with the outcome of the election proceeded to challenge same by way of an election petition filed on the 11/10/2024 on two grounds namely, that the election of the 2nd Respondent was invalid by reason of noncompliance with the provisions of the Electoral Act, 2022 and that the 2^d Respondent was not duly elected by majority of lawful votes cast at the election.

The Appellants called a total of 19 witnesses, consisting of 5 polling unit agents, 3 Ward Collation Agents, 10 Local Government Collation Agents and one Osayeni Anenih (PW12), the Director of Research and Strategy of the 1st Appellant's Campaign Organization. The Appellants also subpoenaed one Anthony, Itodo, a Senior Technical Officer in the ICT Department of the 1ST Respondent who brought BVAS machines to the Tribunal, he however did not tender the BVAS machines as they were subsequently tendered by the Appellants' Counsel from the Bar

The Tribunal delivered its judgment on the 2ND day of April, 2025 wherein it came to the conclusion that the entire petition was lacking in merit. They thus dismissed the petition.

The Appellants were dissatisfied with this judgment of the Tribunal and in consequence, they lodged an appeal before the Court of Appeal vide a Notice of Appeal filed on the 17th day of April, 2025 containing 30 grounds of appeal. As aforementioned, the court below on the 29th day of May, 2025 affirmed the decision of the Tribunal and re-affirmed the election and return of the 2^d

Respondent as Governor of Edo State and dismissed the appeal in its totality as lacking in merit.

It is against this judgment of the court below and concurrent findings that the Appellants have now appealed to this Honourable Court vide their Notice of Appeal filed on the 10th day of June, 2025 predicated on 32 grounds of appeal.

ISSUES FOR DETERMINATION:

- 1. Whether the court below was wrong when it dismissed the Appellants' objections to the validity of the record of the Cross Appeal No.CA/ABJ/EPT/ED/GOV/4/2025.**
- 2. Whether the court below misconstrued sections 51 (2) and 73(2); *vis-a-vis* section 136(1) and (3) of the Electoral Act, 2022, and wrongly applied the provisions to the facts and the reliefs in the Appellants Petition in holding that the Appellants' ground one (1) on non-compliance limits them to seek only a relief for nullification of the entire election notwithstanding ground 2 of the petition.**
- 3. Whether the court below was wrong in holding that Exhibits PPDDI - PPDD133 - the BVAS machines were wrongly admitted by the Tribunal because consent of all the parties to the petition was not given as required under Paragraph 41 (2) of the First Schedule to the Electoral Act, 2022.**
- 4. Whether the Court below acted perversely in affirming the Tribunal's decision that the Appellants did not prove the facts in support of the ground of non-compliance in the petition and this occasioned a miscarriage of justice.**
- 5. Whether the affirmation by the court below of the Tribunal's decision that the Appellants did not prove the ground 2 of the Petition was perverse and occasioned a miscarriage of justice.**

The pith of the Appellants' issue one questions the competence of the Cross Appeal on the ground that an incomplete record of appeal was transmitted by the Cross Appellants. Their contention being that the record of appeal transmitted in support

of the cross-appeal omitted several enumerated documents. That the court below was in grave error when it relied on the record of appeal in the main appeal in the resolution of the cross-appeal. It was contended that this is more so as the cross-appeal was christened with an entirely different appeal number from the main appeal; also where the cross-appellant had failed to seek the leave of the court to consolidate the main appeal and the crossappeal.

There is no arguing the fact that the main appeal in question, as well as the cross-appeal, emanate from the same judgment of the Edo State Gubernatorial Election Petition Tribunal, regardless of the fact that they bear different appeal numbers. It is also not in doubt that there is a Record of Cross-Appeal transmitted by the Secretary of the Tribunal, and this was done within the time prescribed by the rules; thus, activating the provision of section 168(1) of the Evidence Act, 201 1 .

Thus, the real main grouse of the Appellant against the said record transmitted in support of the cross-appeal is that it is incomplete as it omits several documents. In the first place, I do not think that it lies in the mouth of the Appellants to state that the record of the cross-appeal is incomplete. It is for the party filing an appeal or a cross-appeal to ensure that the record contains all the documents necessary to argue their appeal in such a manner that it is sufficient to effectively and effectually decide the appeal placed before the Court. In a situation where the opposing party is of the opinion that they require additional information that would aid its response to the cross-appeal, that is not contained in the record of the cross-appeal, it now behooves on such a party to file a supplementary\additional record.

I have studiously and carefully read and given an in-depth examination of the record of the Cross-appeal. **It** has become quite evident that the said documents omitted from the record as complained about by the Appellants, were quite needless and immaterial to the cross-appeal as they do not affect the determination of the grounds 1 , 2, 3, and 4 of the Notice of Cross Appeal, which grounds constituted the live issues in the Cross Appeal. The omission only affected Ground 5.

Since the documents were immaterial to the resolution of the main grouse of the cross-appeal, the question that arises and should be answered is: should the Cross Appeal be negatively affected by their likely deliberate omission during the settling of records? I think not.

Rather, I am of the considered view that the transmitted record of appeal in the main appeal, in addition to the record of appeal transmitted for the Cross-Appeal sufficed to determine all the issues arising in both the Appeal and the Cross-appeal. As rightly submitted by Respondents' Counsel, a cross-appeal arises from the same judgment as the main appeal; and so the Court below is **well within its right to consider both the main record in the appeal** and the record in the cross-appeal in also resolving the crossappeal. As aforesaid, it is evident that the cross-appellant deliberately included in his record only the documents he needed to establish his cross appeal. This was within his rights, and he would sink or swim with his decision. The Appellants was imbued with the right and liberty to compile and transmit an additional or supplementary record if they were of the view that they were needed and/or necessary to respond to the cross-appeal. In the circumstance therefore, issue one is resolved against the Appellants.

On the second issue, it is the Appellants' submission that they based their petition on two primary grounds: (1) non-compliance with the provisions of the Electoral Act, 2022, and (2) that the 2^d Respondent was not duly elected by a majority of lawful votes cast. They argued that this can be validly done as can be seen in cases such as **PDP v. Oyetola (2023) LPELR-60291 CA; Uzodinma v. Ihedioha (2020) 5 NWLR (PT 1718) SC 529**. They further contend that their claim of non-compliance was not in respect to the entire election but challenged specific polling units in line with the provisions in sections 51(1), 51 (2), and 73(2) of the Electoral Act which mandates that votes from polling units marred by non-compliance must be invalidated, but which has no requirement to challenge the entire election statewide. They thus faulted the decision of the court below striking out ground I of their petition.

The Respondents, on the other hand, argued that the Appellants put forward two contradictory claims in their petition; on the one hand, they claimed that the election was invalid due to noncompliance with the Electoral Act, 2022 and on the other hand, they argued that they won the election with the majority of lawful votes cast and should be declared the winners.

The Respondents emphasized that the Appellants did not claim these contradictory grounds as alternative reliefs, which is legally required when making conflicting claims. Instead, the Appellants treated both as main claims, which the Respondents argued amounted to approbating and reprobating at the same time, which the law frowns on.

A thorough and meticulous perusal of the Appellants' petition will reveal that the issue of non-compliance alleged by them under Ground 1 of their petition were pigeonholed in the conduct of the election in a total of 765 polling units out of the

total 4,519 polling units in the 18 Local Government Areas of Edo State. Also, the reliefs sought were limited to cancellation of the results in those polling units, and not a state-wide nullification as miscomprehended and mis-understood by the Appellants. The Appellants in their allegation of non-compliance in these polling units had sought refuge under the provisions of **Section 51 (2)** and **Section 73(2) of the Electoral Act, 2022**, which provides as follows:

51 (2): where the number of votes cast at an election in any polling unit exceed the number of accredited voters in that polling unit, the presiding officer shall cancel the result of the election in that polling unit. . .

73(2): 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 the results-sheets, ballot papers and other sensitive electoral materials made available by the Commission for the conduct of the election shall be invalid.

It is clear that the above provisions are intended to apply to specific and particular polling units and did not extend to seeking a nullification of the entire election, as they are being vociferously canvassed by the Respondents and accepted wholesale by the Court below. I am of the firm view that the intent of these provisions extends to addressing the issue of over-voting and to enhance transparency and to reduce the incidence of electoral fraud. This is by ensuring that results are transmitted in real-time and so are less susceptible to manipulation, thereby ensuring the integrity of the electoral process. See **Augustine & Anor V INEC & ORS (2024) LPELR-61 876(SC)**.

What is more, the number of polling units being challenged in the appeal constitutes a negligible fragment of the total number of polling units in the State. It did not therefore warrant a State-wide nullification of the election in the State. It

is therefore my opinion that the Court below was wrong when it held that the Appellants ought to have sought for a relief nullifying the entire election. By virtue of the facts of the case vis-a-vis Section 51 (1) and 73 of the Electoral Act, 2022, they did not. In this regard, issue two is resolved in favour of the Appellants.

On the third issue, the Appellants challenged the decision of the **court below expunging of Exhibits PPDDI - PPDD133, the BVAS** machines, for lack of consent as required under Paragraph 41 (2) of the First Schedule to the Electoral Act, 2022 as being flawed. Their contention is that the exhibits were pleaded and they are public documents emanating from the 1st Respondent, whose authenticity was unchallenged. Consent is therefore unnecessary in such circumstances, they opined.

Paragraph 41 (2) of the First Schedule to the Electoral Act 2022 gives room for a party to tender documents from the bar. However, this can only be done if there was prior agreement and parties consented to same at the pre-hearing session.

It is on discernible and clearly visible from the record of appeal that the Respondents unanimously objected to the tendering of these Exhibits at the time they were produced before the Tribunal by a witness subpoenaed at the behest of the Appellants. In addition, the Respondents in arguing their also challenged the tendering of the Exhibits in their cross-appeal before the Court below articulated their objections. I am thus in accord with the Court below in its position that in the absence of the consent of the Respondents to the tendering of exhibits PPDDI-PPDD133 from the Bar, the confirmation order made by the Tribunal admitting ext8bits PPDDI-PPDD133 in evidence is, circumstance, unsustainable, unsupportable and invalid, having been done contrary to clear provisions of an extant statute. The condition precedent for the validity of the

tendering of evidence from the Bar, which is the consent of all parties to the petition, was conspicuously absent, even before the exhibits were tendered and admitted in evidence. The Court below was thus on the right path of justice in remedying the wrong by expunging Exhibits PPDDI - PPDD133, the BVAS Machines from the record. Consequently, issue three is resolved against the Appellants.

On the fourth issue, the Appellants argued that the court below erred when it held that the Appellants failed to prove their claim of non-compliance. They submitted that the absence of serial numbers and sensitive materials in Form EC25B across 395 polling units violates the provisions of Section 73(2) of the

Electoral Act which mandates prior recording of sensitive electoral materials.

It is also their contention that the Respondents who claimed compliance with the provisions of the Electoral Act ought to have proved same. They further submitted that contrary to the contention of the Respondents, oral evidence was not required to establish their claim of non-compliance as the certified true copies visibly demonstrate the non-compliance on the face of it and thus require no oral evidence, as held in the case of **Oyetola V. INEC (2023) 11 NWLR (PT. 1894) 1 25; Jonathan v INEC (2025) 3 NWLR (Pt. 1978) pages 104-105; Section 137 of the Electoral Act.**

The Appellants further argued that the court below erred when it held that the Appellants dumped their evidence and failed to call relevant witnesses because their evidence are admissible under Section 52 of the Evidence Act, 2011, which admits official records without testimony. They thus requested this Court to

recognize the manifest non-compliance demonstrated through their documentary evidence and right the errors of the lower Courts.

I will start by addressing the argument of the Appellants that the Respondents who claimed compliance with the provisions of the Electoral Act ought to have proved same. It is rudimentary knowledge that by virtue of Sections 131 (1), 132, and 133 of the Evidence Act 2022, he who asserts must prove the fact asserted. This is because the burden of proof in every suit or proceeding lies on the party who will fail if no evidence at all were given on either side. Therefore, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. That party in this case are the Appellants who brought the petition. By the provision of Section 133, the burden of first proving the existence or non-existence of a fact lies on them. It is only where they have adduced sufficient evidence, that the burden shifts to the opposing side. See **Dasuki v. FRN (2018) 10 NWLR (Pt. 1627) 320; Oyetola v. INEC (2023) 11 NWLR (Pt. 1894) 1 25.**

In the very recent case of **Nneji v INEC (2025) 4 NWLR (pt 1981) 1 at 3940; 61**, this Court, **per Idris Jsa**, held thus:

“The appellants as petitioners had the burden to adduce evidence that would *prima facie* support their case before the burden could shift to the 1st respondent. There is a presumption of regularity in favour of the National Electoral Commission by virtue of the provision of section 1 33 of the Evidence Act, 2022. The presumption is however rebuttable upon the appellants first adducing cogent and credible evidence establishing breach of section 73 of the Electoral Act, 2022 by the appellants. Having failed to discharge this burden of proving the alleged irregularity, the court must

agree that the appellants had nothing useful to urge the court, the claim by the appellants was therefore vexatious and deserved to be discountenanced.”

I respectfully align myself with this truism. It is only if the Appellants have shown sufficient proof of their allegations that the burden of proof will shift to the Respondents.

In considering the issue of whether or not the Appellants had discharged the onerous burden of proving the ground 1 in their petition, the tribunal had embarked on a detailed analysis of the evidence brought forth by the Appellant with view of discovering if they had discharged the burden of proof placed on them at pages 3965 - 3973 of Vol. 4 of the Record of Appeal. I shall be reproducing snippets of this decision in navigating the resolution of this issue.

In arguing the issue of non-compliance, the Appellants had challenged the election results in enumerated polling units as void because the serial numbers of result sheets, **BVAS** machines and other sensitive election materials were not recorded by the 1st Respondent prior to the conduct of the election as required by section 73(2) of the Electoral Act, 2022 and that the 1st Respondent also failed to cancel the results in polling units that disclosed overvoting contrary to section 51 (2) of the Electoral Act, 2022. In proof of this weighty allegations, the Appellants had tendered several exhibits including: Exhibits **PCAI-PCA320**, certified true copies of form EC8As for 320 polling units; Exhibits **PCBI-PCB308**, polling unit booklets; while Exhibits **PEAI-PEA75** are CTC of IREV copies for the polling units where over-voting were alleged to have occurred and Exhibit **PWI-PW25** are agents copies of the form EC8A.

I must pause at this point to note that all of these documents were not tendered through the proper witnesses that could speak to them or demonstrate them.

They were tendered from the Bar and the Appellants' witnesses were called only to identify them. Most of the witnesses in question were not Polling Unit Agents who witnessed the election process at the Polling Units, nor were they even present at the Polling Units to qualify them to serve as eyewitnesses to whatever transpired there. Therefore, they could not competently demonstrate or link the documents to the allegation made by the petitioners. What this simply means is that the entire documents so affected ended up amounting to documentary hearsay.

Speaking on the evidential value to be accorded to the documents tendered by the Appellants in proof of the alleged non-compliance, the Tribunal opined at pages 3964 – 3965 of the Record of Appeal, thus:

“These documents, Exhibits PCAI - PCA320, PCBI PCB308, PEAI - PEA75, PEBI - PEB70 were tendered from the bar and were only identified by the PWI-PW12. These witnesses are total strangers to the documents who are incapable of giving evidence to link them to the petitioners' case.

Again, we note that the polling unit booklets of the forms tendered (Exhibits PCBI -PCB308) were not complete. Instead of 9 pages, each of the polling unit booklet of forms tendered by the petitioners had only 7 pages. That is, two pages were missing from each booklet that was tendered and there was no explanation for this.

In such circumstances, it is only a presiding officer, polling unit agent, registered voter or any such other person that was present at the polling unit and witnessed the election at the polling unit that can give eye witness account of what happened to the polling unit booklet of forms and how it was filled. See Lawal v Matawalle (2024) 12 NWLR (pt. 1951) 33.

Since there is no witness who can give an account of why the polling unit booklet of forms that were tendered as Exhibit PCBI-PCB308 were only 7 pages instead of 9 and thus incomplete and inchoate, the said Exhibits POBI - PCB308 are thus documents of doubtful provenance that

cannot be relied upon by the petitioners to non-compliance with the provisions of the Electoral Act, 2022.

Now what are the contents of the missing pages of the polling unit booklet of forms? This appears to be a rhetorical question and it casts doubts on the quality of these documents tendered by the petitioners that command little or no probative evidential value. Since the contents of the missing pages are not known, the Tribunal cannot speculate on this. Therefore, it cannot be said that non-prior recording, which is a specie of non-compliance, is manifest on the face of these documents. There are doubts that need to be cleared by oral testimony.”

The Tribunal concluded at page 3968 as follows:

“In view of the foregoing, we are constrained to refrain from looking into the Exhibits PCBI - PCB308, PEBI PEB70 among other plentitude of documents placed before us but which we consider as dumped since no competent witnesses were called to activate or speak to them.”

In the instant case, from the total number of 19 witnesses presented by the petitioners to testify in proof of the allegations in their petition, ten of them were Local Government Collation Agents, three were Ward Collation Agents, while PW'1 2 was the Director of Research and Strategy of the Appellants' Campaign Organization. It is significant that PW12 played no role in the entire election and/or voting at the Polling Units. Of the 19 witnesses for the petitioner, only five of the witnesses were Polling Unit Agents, who, even though were appropriate as eyewitnesses who witnesseses the happenings at their Polling Units, failed to throw more light on the issue of non-prior recording of the serial numbers of election results, BVAS Machines and other sensitive election materials.

The Appellants had argued that the documents tendered by them showed the non-compliance on the face of it and as such obviates the necessity of oral evidence in demonstrating the noncompliance by virtue of Section 137 of the Electoral Act, 2022.

This is however not borne out by the evidence on the record. In as much as the provision of section 137 of the Electoral Act has mitigated proof of non-compliance where the non-compliance is manifestly on the face of the document, it has not completely done away with or relieved the burden of proof of allegations of non-compliance with the Electoral Act. This was most recently **put in perspective by Garba, JSC in the case of Jonathan v. INEC. (2025) 3 NWLR (pt 1978) 1 at 105, para. C-E** where he is lordship reasoned thus:

“The provisions of section 137 of the Electoral Act has not mitigated, done away with or relieved the burden of proof of allegations of non-compliance with the Electoral Act in the conduct an election in election petition proceedings. The decision in *Oyetola v. INEC* (supra) has settled that position. In the appellants’ case, there was no demonstration of the alleged noncompliance from the documentary evidence tendered by the discredited witnesses called by the appellants in proof thereof. One therefore would wonder how the trial tribunal was expected to embark, *suo motu*, on an investigation of the non-compliance in order to find the proof for the appellants from the documents tendered. It is not part of the function and duty of the tribunal to embark on a private investigation in order to find evidence and determine the non-compliance alleged.”

Again, in the case of **Baba & Anor V INEC & 2 ORS (2824) 14 NWLR (Pt. 1957)455 at 194, para G-H, Saulawa, JSC** equally emphasized the need to

call oral evidence, in addition to documentary evidence⁹ when he posited as follows:

"In my considered view, notwithstanding the provisions of section 137 of the Electoral Act (supra) and paragraph 46(4) of the 1st schedule to the Electoral Act (supra), the petitioner is obligated to demonstrate vide some cogent and unassailable oral evidence clearly demonstrating the alleged non-compliance. The petitioner must not sit on his oars merely predicting reliance upon the provisions of section 137 of the Electoral Act, 2022 (supra)."

It would also be remiss of me if I fail to make reference to pages 3968-3969 of Vol. 3 of the Record of appeal where the Tribunal reproduced evidence elicited from the Appellants' witnesses during cross-examination. Therein, they clearly negated and contradicted their case as they admitted to evidence of prior recording of relevant electoral materials in line with Section 72 of the Electoral Act, 2022.

On the issue of the allegation of overvoting contrary to section 51 (2) of the Electoral Act 2022, the Appellants alleged overvoting in a total number of 1 33 Polling Units across Edo State.

Quite recently, in the case of **Ombugadu & Anor V Sule Alhaji & 2 ORS (2024) 7 NWLR (Pt. 1936) 73 at 113; (2024) LPELR-61642 (SC)**, Kekere-Ekun, JSC (now CJN), while citing the decision of **Okoro¹ JSC in Oyetola v IN EC (2023) 11 (Pt. 1 894) 125 at 1 87-1 88, paras H-A1** set out the criteria for proving an allegation of overvoting in an election petition, as follows:

"Whenever it is alleged that there was overvoting in an election, it is my view that the documents needed to prove

over-voting are the voters register to show the number of registered voters, the BVAS machine to show the number of accredited voters and the forms EC8As to show the number of votes cast at the polling unit. These three documents will show exactly what transpired at the polling units. Failure to tender these documents would be fatal to any effort to prove overvoting for how would you prove over-voting when you do not know the number of registered voters in the unit even where the BVAS machine has shown the number accredited."

See also **Augustine & Anor V INEC & 2 ORS (2024) 10 NWLR (Pt. 947) 409 at 436.**

The Appellants herein did tender the hard copies of the form EC8As, as well as the BVAS machines which were tendered from the Bar as Exhibits PPDDI - PPDD133. However, by virtue of the decision of this Court under issue three above, the BVAS Machines were rightly expunged from the record. Even in the event that the BVAS machines were not expunged, the Appellants stiii failed to demonstrate the contents of the BVAS Machines, Exhibits PPDDI-PPDDI 33. The Machines wec¬ even switched on in open Court at the Tribunal, and therefore their contents were demonstrated and linked to the allegations of the Appellant. Instead, they were tendered from the Bar even after the Appellants had subpoenaed PW15 who diligently produced the Machines in Court. If this is not a clear case of durnping of evidence on the Court, I don't know what else is. Furthermore, there was no reference to the third requirement of proving overvoting, to wit, the voters' register. The unfortunate reality now being that the Appellants failed to prove the alleged over-voting as cases are won on cold hard facts and not on sentiments or feelings.

At the risk of this judgment being overladen I have taken the pains to also reproduce the position of the Court below on the issue of the Appellants' proof of ground 1 of their petition, to wit: non-compliance with the provisions of the Electoral Act.

“The Appellants were fixated on the fact that it is one Form, EC25B, which must be filled with ALL particulars of inspected sensitive materials, prior to the commencement of polls. This assertion of the Appellants is not well-founded. In actual fact. the booklet referred to, as exhibit PJF, contains four (4) Forms, while the appellants were insistent on projecting only Form EC25B. Any of the four Forms prescribed by the 1st Respondent in the Polling Unit Booklet, into which the requisite Information is filled will meet the demands of section 73(2) of the Electoral Act, 2022, as they are supposed to contain different information, which will collectively satisfy the requirement of the 1st Respondent having to provide those Forms, in line with section 73(2) of the Electoral Act, 2022. What is even more, the Tribunal found as fact that two pages were missing from exhibits PCB 1- PCB308 tendered at the trial. They were tendered in seven (7) pages, whereas, they are, in their complete form. nine (9) pages. The evidential value of the exhibits became devalued greatly by the finding of the Tribunal. What was contained in those missing pages, especially, when the dispute was in regard of what was filled in the booklet and what was not filled in it?

It is imperative to state at this point that there is nowhere it is stated that details of BVAS machines should be recorded in Forms in the Polling Unit booklet (exhibit PCB and PEB series) prior to the commencement of polls, contrary to the muscularly aggressive contention of the Appellanb. That part was simply made up, for effect, unfortunately. And contrary to the testimony of PW 3, under cross-examination, that line item 54 in Form EC25B is about BVAS, line item 54 referred clearly to Card Reader, which is a completely different equipment from BVAS. So, PW 3 lied and was discredited under cross-examination.

Upon physical examination of the Forms constituting the booklets tendered as exhibits PCBI-pCB308 and PEBI-PEB 70, this Court observed that the requisite serial numbers of ballot papers, which constitute the ultimate sensitive materials used for elections were expected to be recorded in Form EC40A and the Polling Officers dutifully carried out their duties by faithfully recording those details in Form EC 40A component of exhibits PCBI-PCB308 and PEBI-PEB70. There is no such requirement on the face of Forms EC25B touted by the Appellants. In addition, Form EC25B in each of all exhibits PCBI-PCB308 and PEBI-PEB70 tendered at the trial were filled with information required by and fitting the Form, which is simply about quantity of materials received.

These facts were brought out when the witnesses called by the Appellants were cross-examined at the trial: PW 2. at page 3755 of the record of appeal; PW 3 at page 3758 of the record of appeal; PW 4 at page 3764 of the record; PW 5 at pages 3767, 3768 of the record of appeal; PW 6 at pages 3772, 3773 of the record; PW 8 at pages 3783, 3784 of the record of appeal; PW 10 at page 3789, 3790 of the record; and, PW 12 - Oseyili Anenih at pages 3799-3800, 3807.3808, 381 5, of the record; PW 14 at page 3819 of the record; etc.

The Impression we had from a revision of the discredited testimonies of witnesses called by the Appellants, as partly narrated above, is that the Tribunal was right when it held that the Appellants did not prove their case that there was non-compliance with the provisions of section 73(2) of the Electoral Act, 2022. The 1st Respondent complied through Form EC40A, which is embedded in exhibits PCBI-PCB308 and PEBI-PEB70.

The Appellants' case was built on, avoidably, false premises, to the effect that the Form to be filled is only Form EC25B, whereas, in the same booklet they tendered there is glaring evidence of compliance in exhibit EC40A and in other Forms.

In the circumstances, the decision of the Tribunal where it held that Appellants failed to prove noncompliance with

section 73(2) of the Electoral Act, 2022 cannot be faulted. It is sound.”

Having closely examined both the reasoning of the Tribunal and that of the Court below on this issue with a fine toothcomb, I find both to be quite perceptive, incisive, discerning and apposite. On the whole, none of the Appellants' witnesses related the exhibits to the specific complaints in their depositions and evidence in the open court. There is a world of difference between the mere identification of a document and the demonstration of same by linking such hard evidence to a party's case. None of the Appellants' witnesses specifically related the exhibits to the specific complaints in their depositions. The blanket identification by the Appellants' witnesses does not meet the demands of the law on this issue. See the case of **Andrew v. INEC. (2018) 9 NWLR (Pt. 1625) 507 at 577-578, para. H-C, per Akaahs JSC.**

Thus, it was the Appellants' failure to provide reliable evidence to demonstrate their allegations of substantial non-compliance with the provisions of the Electoral Act, 2022 in the conduct of the election being challenged by them that led the two lower Courts to dismiss their claims on non-compliance. I see no reason to disturb these sound concurrent findings. This issue is thus resolved against the Appellants in favour of the Respondents.

On the fifth and final issue of whether or not the Appellants had proved ground 2 of their petition that the 2nd Respondent had not won the election with a majority of the votes cast, the law is trite that he who asserts must prove. The burden of pleadings and evidential proof that was upon the Appellants to establish their ground 2 required them to:

1. Plead and establish the votes cast at the various Polling Units;

2. Plead and establish the unlawful votes which ought to have been deducted from the votes credited to the 2^d and 3^d Respondents;
3. Call evidence directly from the officers or other witnesses who were at the election ground where votes were cast, counted and/or collated; and
4. Tender in evidence all the forms used for the elections and call witnesses to testify as to the misapplication of the votes scored by them as against the 2nd and 3rd Respondents.

See Yar'Adua V Barda (1992) 2 NWLR (Pt. 231) 638.

In the instant case, the Appellants only tendered the results in a few Polling Units and most of the documents tendered were illegible. They also failed to call any significant number of Polling Unit Agents or registered voters to give evidence as to what transpired at the Polling Units during the election to prove the allegation of invalidity of votes or misapplication of votes in any particular Polling Unit.

They only called 19 witnesses who testified as PWI-PW19. This number of witnesses is miniscule considering that State Constituency was made up of over 4,000 Polling Units. To make matters worse, out of these 19 witnesses, only five were the Polling Unit Agents (i.e. PW15-PW'19) who testified as to what actually transpired at the Polling Units.

Finally, this Court has stated times without number that it will not interfere with concurrent findings of facts unless on the grounds of perversion. The burden of proving perversion is on the Appellants. The Appellants in this case woefully failed to lead the requisite evidence to the standard required by law. Thus¹ 1 decline of which will lead to the decline to interfere with the findings of the concurrent findings of the two Courts below. See **Umeadi & Ors V Chibueze & Anor (2020) LPELR.49566(sc); Rabiu V Adebajo (201 2)**

LPELR-9709(SC); Alakija & Ors v Abdulai (1998) LPELR404(SC).

Consequently, issue five is also resolved against the Appellants in favour of the Respondents.

For the above reasons, and the more detailed reasons in the lead

judgment! I concur that this appeal is devoid of any merit. I too dismiss it. I abide by any consequential order as to costs made therein.

Appeal dismissed

I had, in advance, a thorough preview of the leading judgment delivered by my learned brother: **Mohammed Lawal Garba, JSC.**

I concur fully with the judicial reasoning and conclusion therein.

The appellants' issue four cries for further emphasis

consolidation. This is because, it is, *inter alia*, the appellants' trump card in the petition and lower court's decision which midwifed the appeal. The marrow of the issue is disobedient to clarity. It chastises the lower court's confirmatory declaration that the appellants failed to prove the allegation of non-compliance projected in their petition. Indisputably, the appellants erected their petition on two grounds which trace their paternity to the provision of section 134 (1) (b) and (c) of the Electoral Act, 2022. The first ground, upon which this issue is predicated, is pegged on noncompliance with the provisions of the Electoral Act, 2022. In **Ojukwu v. Yar'adua** (2009) 12 NWLF: (Pt. 1154) 50 at 14, 1, T. Muhammad, JSC (as he then was) defined compliance as:

An act of complying or acting in accordance with wishes, requests, commands, requirements, conditions or orders. It is an act of yielding or conformity with the requirements or order.... Thus, where there is non-compliance, it postulates reversal of all such definitions.

See, also, **Akeredol u v. Mimiko** (2014) 1 NWLFR (Pt. 1388) 40. The law is now settled, beyond any peradventure of doubt, that a party who alleges non-compliance with the provisions of the Electoral Act in the conduct of an election owns the burden to prove it. Indeed, the law heap on him the onerous burden to establish that the BaCs of the non-compliance took place and that same substantially affected the result of the election. The party must actualise the twin conditions with credible, cogent and compelling evidence, see section 135(1) of the Electoral Act, 2022, **Buhari v Obasanjo** (2004) 13 NWLF (Pt. 941) 1; **Omisore v. Aregbesola** (supra); **Nyesom v. Petersi de** (2016) 7 NWLFR (Pt. 1512) 452; **Ladoja v. Ajimobi** (2016) 10 NWLFR (Pt. 1519) 87; **Okereke v. Umahi** (2016) NWLFR (Pt. 1524) 438; **Udom v. Umanah** (No. 1) (2016) 12 NWLR (Pt. 1526) 179; **Andrew v. I.N.E.C.** (2022) 18 NWLR (Pt. 1863) 653.

The issue ramifies into two distinct limbs. The appellant's chief grievance, under the first limb, appertains to the allegation of infraction of the provision of section 73 (2) of the Electoral Act, 2022. It seeks to indict and invalidate any election conducted at a polling unit without prior

recording/filling of the enumerated particulars of sensitive electoral material in the forms prescribed by the INEC, the fourth respondent. In a spirited bid to establish the non-compliance with the provision, the appellants tendered Forms EC25B which were admitted as exhibits PCB 1 – PCB 308 and PEB 1 – PEB 70. It is gleanable from the record, the spinal cord of the appeal, that the tribunal found that the appellants, through their witnesses, testified, during cross-examination, that the forms were filled with the requisite particulars of sensitive electoral materials.

The lower court confirmed the critical finding at page 3815, volume 9, of the mountainous record.

In our adversarial system of adjudication, the mission of cross-examination is to test the credibility of an opponent's case. It is meant to deflate and discredit the evidence-in-chief of a witness. It has the potential to perforate an opponent's case and enhance that of the cross-examiner. It is used to test the veracity of a witness. It is the barometer with which to measure the truth in evidence in chief of a witness. It affords a *judex* a sufficient opportunity to watch and assess the credibility and reliability of a witness by watching his demeanour in the witness box, see ***Omisore v, Aregbesola*** (2015) 15 NWLFR (Pt. 1482) 205; ***Udom v. Umana*** (No. 1) (2016) 12 NWLFR (Pt. 1526) 179; ***Alfa v. Attai*** (2018) 5 NWLR (Pt. 1611) 59; ***MTN (Nig.) Comm. Ltd. v. Corporate Comm. Inv. Ltd.*** (201 9) 9 NWLFR (Pt. 1678) 427; ***Adama v. K.S.H.A.*** (2019) 16 NWLR (Pt. 1699) 501; ***Tyon ex (Nig.) Ltd . v. Pfizer Ltd.*** (2020) 1 NWLR (Pt

1704) 125; **Adeleke** v. *Oyetola* (2020) 6 NWLR (Pt. 1721) 440. This court, Per Achike, JSC, in **Oforlete v. State** (200) 3 NSLQR 243 at 268, described cross-examination as a “noble art” which “constitutes a lethal weapon in the hands of the adversary to enable him effect the demolition of the case of the opposing party.” in the presence of all these essential hallmarks, any evidence elicited from a witness during the cross-fire of cross-examination are, in the eyes of law, potent evidence which run pari passu with the ones that germinate from evidence-in-chief, see **Gaji v. Paye** (2003) NWLFR (Pt. 823) 583; *Akomolafe v. Guardian Press Ltd.* (2010) 3 NWLR (Pt. 1181) 338. They belong to the cross-examiner, see *Omisore v. Aregbesola* (2015) 15 NWLFR (Pt. 1482) 205. As a matter of fact, the law views evidence procured from the heat of cross-examination as more' reliable and compelling than the ones proffered in examination-in-chief, see **Adeosun v. Gov., Ekiti State** (2012) 9 NWLR (Pt. 1291) 581 ; *Okuleye v. Adesanya* (2014) 12 NWLFR (Pt. 1422) 321. In essence, cross-examination occupies an Olympian position in our *corpus juris* especially in the firmament of adjectival law.

It admits of no argument that the pieces of concrete evidence on the filling of Forms EC25B, which were tapped from the appellants' witnesses, PW2, PW3, PW4, PW5, PW6, PW8, PW10, PW12 and

PW14, under the furnace of cross-examination emasculated the appellants' case. The reason is this. They were clear and ample demonstrations that those forms were dully recorded, prior to the holding of

election, in due fidelity to the injunction of provision of section 73 (2) of the Electoral Act, 2022. The tangible testimonies were a classic exemplification of an admission. In **Adusei v. Adebayo** (2012) 3 NWLR (Pt. 1288) 534 _- at 558, this court described admission-as:

a concession or voluntary acknowledgement made by a party of the existence of certain facts; a statement made by a party of the existence of a fact which is relevant to the cause of his adversary; a voluntary acknowledgement made by a party of the existence of the truth of certain facts which are inconsistent with his claims in an action” ,

See, also, **UBA v. Jaraaba** (2007) 31 NSCQR 144; **N.B.C.I. v. Integrated Gas (Nig.) Ltd.** (2005) 4 NWLR (Pt. 916) 617; **Omiso re y. Aregbesola** (2015) 15 NWLFR (Pt. 1482) 205; **N.A.S. Ltd . v. UBA Plc.** (2005) 14 NWLR (Pt. 945) 421 , in the colony of evidence, admission has been crowned with deserved insignia of the best evidence against the party making it, see **Daniel v. INEC;** (2015) 9 NWLR (Pt. 1463) 133. In point of fact, the undiluted admission, that those forms were filled prior to the conduct of the elections, made by the appellants’ witnesses was a *pessimi exempli* of an admission against interest – a party’s acknowledgment of a fact that is harmful to his position. In the mind of the law, a party who makes an admission, formal or informal, surrenders himself to the facts and the law and becomes a prey in the waiting hands of his adversary. In effect, the admission, collated from the appellants’ witnesses

in the crucible of cross-examination, a verbal weapon which the law has bequeathed to a party to enable him neutralise and deflate an opponent's case, constituted a serious *coup de grace* to the appellants' agitation against the non-compliance with the provision of section 73 (2) of the Electoral Act, 2022 during the gubernatorial election in Edo State which is the *casus belli inter partes*. On that score, the confirmatory finding of the lower court, on the non-proof of the erosion of the provision, was in total alignment with the tenets of electoral jurisprudence. In consequence, all the diatribes, which the appellants rained on the immaculate finding, peter into insignificance. I accord an unfiltered endorsement to it

The second limb of that ground orbits around the allegation of over voting as ordained and proscribed by the provision of section 51(2) of the Electoral Act, 2022. The appellants castigated the lower court's finding on their non-proof of over voting. The lower court's finding, which is on the altar of crucifixion, is domiciled quietly at the *terminus ad quem* of page 3817, volume 9, of the elephantine record. Since it is the nucleus of the stubborn second limb, it is imperative to pluck it out, *ipsissima verba* , from its residence in the record -the touchstone of the appeal. It reads:

At the trial of the Appellants' petition, Appellants failed to demonstrate the content of BVAS machines which they tendered as exhibits PPDDI – PPDD'133 The machines were not even switched on in the open court . They were, curiously tendered from the Bar. That was no proof of over-voting. The Appellants also had a duty to call eyewitness evidence from each polling unit they complained about and also failed to

tender voters' registers *for* the polling units. That standard is not the making of this Court. It is a case of the Tribunal and this court following judicial precedence. The Tribunal was therefore correct when it held that the Appellants did not prove their allegation of over-voting and that the testimonies of 19 witnesses was insufficient to prove the allegation.

It is apropos to observe, perforce, that the comprehensionfriendly provision of section 51(2) of the Electoral Act, under interrogation, is not self-executory. It is a provision that lies fallow along the furrow and vineyard of electoral hemisphere. It does not enure automatically to the benefit of a party, usually a petitioner, who employs it, as a sword, to castrate an election which enjoys the beneficent presumption of regularity. To be entitled to harvest the legal fruits of the provision, a party, who invokes it, must fertilise it with admissible, cogent and credible evidence.

Now, the case law has since sanctioned, with a stamp of authority, in a galaxy of oracular and *ex cathedra* authorities, that there are trinity documents required to prove over voting as decreed in section 15(2) of the Electoral Act, 2022. They are, *videlect* : Registers of Voters, Bimodal Voter Accreditation System (BVAS) machines and Result Sheets of polling units in FormsEC8A) see **Oyetol a v. INEC** (2023) 11 NWLR (Pt. 1894) 125; **Ombugadu v. Alhaji** (2004) 7 NWLF: (Pt. 1936) 73; **Augustine v. INEL** (2024) 10 NWLR (Pt. 1947) 409. A register of voters calibrates the names and identities of the citizens who are granted the licence to exercise their franchise in an election. BVAS

machine, which is at its nursery stage of operation in our electoral landscape, warehouses the accreditation of voters. Accreditation is an indispensable tool in an election. It sits on a kingly throne in the process of conduct of any election. It has been categorised as the hub, soul, epicentre, heartbeat and fulcrum of any election. It constitutes a valid passport that guarantees a voter's right to exercise his suffrage in an election. It is carried out in a polling unit whereat a presiding officer, employed by INEC, polices and superintends its methodical steps as chronicled by the provision of section 47 of the Electoral Act, 2022. Thus, it has a statutory backing as well as the imprimatur of the case law, see ***Emerhor v. Okowa*** (2016) 11 NWLR (Pt. 1522) 1. Polling unit result form is a graphic demonstration of the votes cast at the polling unit throughout the gestation period of an election. The case law has characterised it (unit result) as the primary evidence of votes cast in any election and it is resident at the foundation of the pyramid upon which election process is built, see ***Nwobodo v. Onoh*** (1984) 1 SCNR 1 ; ***Iwt/se v. Odili*** (2005) 16 NWLF: (Pt. 952) 416; ***Agagu v. Mimiko*** (No.2) (2014) 1 NWLFR (Pt. 1388) 332.

Incidentally, the BVAS machines, admitted by the tribunal and marked as exhibits PPDD I – PPDD 133, were ostracised from the petition by the lower court, rightly too, because their admission was a flagrant defilement of the mandatory provision of paragraph 41 (2) of the First Schedule to the Electoral Act, 2022 in that they were tendered from the bar without the

consensus of the respondents. The import of the foregoing is obvious. The BVAS machines were not part of the corpus of the tripartite documents. In essence, the appellants, in their infinite wisdom, starved the court of the necessary documents whose presence is a *conditio sine qua non* for proof of the provision of section 51 (2) of the Electoral Act, 2022. The net and dismal legal implication is not far-fetched. The appellants failed to discharge the *onus probandi*, foisted on them by law, which would qualify them as credible candidates to harness from the sanctuary of the beneficent provision of section 51 (2) of the Electoral Act, 2022. In law, proof is a process by which the existence of facts is established to the satisfaction of the court, see section 121 of the Evidence Act, 2011 ; **Olufosoye v. Fakorede** (1993) 1 NWLR (Pt. 272) 747; **Awuse v. Odili** (2005) 16 NWLR (Pt. 952) 416; **APC v. Karfi** (2018) 6 NWLR (Pt. 1616) 479; **Ojobo v Moro** (2019) 17 NWLR: (Pt, 1700) 166.

Incontestably, the appellants' dismal failure to establish the violation of the provisions of sections 73 (2) and 51 (2) of the Electoral Act, 2022, a huge faux pas par excellence, infests and inflicts corrosive effects on their first ground of the petition which was staked on non-compliance. Indubitably, the provision of section 137 of the Electoral Act, 2022, which the appellants, with due respect, brandished, paraded and dangled, like the sword of Damocles over the election, to oxygenate their nursed grudge, is weak-kneed as its application is rendered prostrate in the glaring absence of necessary documentary electoral materials. In other words, where there

is a drought of electoral admissible documents that house/host manifest incidents of non-compliance, the provision of section 137 supra will become disabled from operation. In such a situation, as in the instant case that birthed this appeal, a party who deploys it for assistance will be greeted with a barren victory as it will be impotent to impregnate his case with any atom of success. In effect, the lower court's impeccable finding, non-proof of the provision of section 51 (2) by appellants, did not, in the least, fracture the law, substantive or procedural, as to magnet any morsel of reprobation from this court. An appellate court does not form the habit of tinkering with a finding that has not disclosed any ounce of hostility to the letters and spirit of the law. *Per contra* , I endorse the finding in toto.

It is for these brief addenda, coupled with the elaborate legal dissections, assembled in the leading judgment, that I, too, visit a deserved order of dismissal on the appeal.

Appeal dismissed.

This appeal is against the Judgment of the Court of Appeal delivered on the 29TH day of May 2025 in appeal No. **CA/ABJ/EPT/ED/GOV/01/2025** and **CA/ABJ/EPT/ED/GOV/04/2025**.

The appeal does not extend to the resolution of issue two in favor of the Appellant in appeal No. **CA/ABJ/EPT/ED/GOV/04/2025**. The decision of the lower Court affirmed the decision of the Election Tribunal dismissing Appellant's petition .

The facts giving rise to this appeal are therefore that, the 1st Appellant contested in the Governorship elections conducted by the 1st Respondent on the 21st day of September 2024, the results of the elections were announced on the 22nd day of September, 2024 wherein the 1st Respondent returned the 2^d Respondent as duly elected and therefore declared him the winner of the election. The Appellant scored 247, 274 votes while the 2nd respondent scored 291, 667 votes.

The Appellants became aggrieved by the declaration and return of the 2nd Respondent and headed for the Election Tribunal challenging the results of the election. In the petition filed by the Appellants, they rested their petition on (1) non-compliance with the provisions of the Electoral Act, 2022 in 453 polling units and (2) That the 2nd Respondent did not score a majority of lawful votes cast at the election.

The complain of the Appellants was mainly on incorrect collation of election results and exclusion of lawful votes in 312 polling units. Appellants insisted that the complain they lodged at the Tribunal bore no allegations of criminal imputations or misconduct. Appellants challenged results in 765 polling units and made specific allegations on certain scores and gave particulars with tabulated details, supported by electoral documents disclosing the allegations as envisaged by section 137 of the Electoral Act, 2022 .

Appellants tendered several exhibits consisting unfilled forms EC25B on prior recording of serial numbers of ballot papers or other sensitive materials in line with the requirements in section 73 (2) of the Electoral Act, and forms EC8A uploaded to IREV. Voters registers and BVAS Machines and certified copies of accreditation data stored in 133 polling units evidencing over voting were all tendered and admitted.

The Appellants called 19 witnesses, and the Tribunal was urged to invalidate proven invalid results of the elections in the 378 polling units for non-compliance and proceed to collate the lawful results of the two candidates in the 312 polling units to address the irregularities arising from the allegations of collation of incorrect election results.

The Tribunal delivered judgment on the 2^d day of April, 2025 dismissing the Appellants petition. Appellants became aggrieved by the decision of the Tribunal and filed Notice of Appeal at the lower Court on the 17th day of April, 2025. Appellants' appeal was heard and dismissed; the Judgment of the Lower Court delivered on the 29th day of May, 2025 affirmed the Judgment of the Election Tribunal. Appellant became dissatisfied and further appealed to this Court.

Learned Senior Counsel MOZIA, SAN filed the Appellants brief of argument and nominated five issues for determination. The issues are reproduced as follows:

7. “ Whether the Court below was wrong when it dismissed the Appellants objections to the validity of the record of the cross-appeal No. CA/ABJ /E PT/ED/GOV/4/2025. **8,9,10, 13, & 14).**
(Grounds

2. Whether the Court below misconstrued sections 51(2) vis-a-vis section 136 (1) and (3) of the Electoral Act, 2022 and wrongly applied the provisions to the facts and the **reLiefs in the Appellants Petition in holding** that Appellants grounds one(1) on noncompliance limits them to seek ONLY a **relief for nullification of the entire election** , **notwithstanding ground 2 of the petition. (Grounds 8, 9, 10, 13, & 14).**

3. Whether the Court below was wrong in **holding that Exhibit PPDDI-PPDD133- the BVAS machines were wrongly admitted by the Tribunal** because consent of all parties to the petition was not given as required under paragraph 41 (2) of the First Schedule to the Electoral Act, 2022 **(Grounds 11 and 12).**

4. Whether having regard to the nature of the case of non-compliance complained of in the petition, the evidence adduced by the Appellants, the applicable laws and the decisions of this Court, the Court below acted perversely in affirming the Tribunals decision that the Appellants did not prove the facts in support of the grounds of noncompliance in the petition and this occasioned a miscarriage of Justice (15, 16, 17, 18, 19, 20, 21, 22, and 23).

5. Whether having regard to the pleadings, the evidence adduced, the applicable laws and the decisions of this Court, the **affirmation by the Court below of the Tribunals decision that the Appellants did not prove the ground 2 of the petition and the consequential dismissal of the Appellants appeal was perverse and occasioned a miscarriage of justice. (Grounds 24, 25, 26, 27, 28, 29, 30, 31., and 32).**”

Learned Senior Counsel argued the five issues for determination in the

Appellants brief of argument and urged that the appeal be allowed. I need not repeat

the argument on the issues nominated by learned Senior Counsel since they have been sufficiently captured in the leading Judgment which I enjoyed the unique privilege of reading before now.

The brief of the 1st Respondent was filed on the 27th day of June, 2025 by learned Senior Counsel KANU AGABI, SAN, Learned Senior Counsel narrated the facts as presented by the Appellants except that the 1st Respondent said The Appellants subpoenaed one— Anthony Itodo a Senior Technical Officer in the ICT Department of the 1st Respondent who brought **BVAS** machines to the Tribunal but did not tender any of them. The **BVAS** machines were subsequently tendered by the Appellants' Counsel from the Bar, and that none of the machines was opened and no witness was called to give evidence of their contents.

Learned Senior Counsel for the 1st Respondent apparently adopted the Appellants' issues for determination crafted by the Appellants because the issues are substantially similar with the issues of the Appellants except that the 1st Respondent rearranged and reconfigured the issues for determination, I must say so doing in no way diluted the character of the issues as those of the Appellants. I will however reproduce the issues as set out by the learned Senior Counsel for the 1st Respondent as follows:

1. *“Whether the Court below was right in striking out Ground 1 of the petition because the Appellants, having pleaded that the Election was invalid by reason of non-compliance with **the provisions of the Electoral Act, 2022, failed to seek the relief for nullification of the election, thereby rendering the Ground incompetent (Arising from Grounds 8, 9, 10, 13. and 14 of appeal).***

2. *Whether the Court below rightly affirmed the decision of the Tribunal that the Appellants **failed to prove Ground 1 of the petition, to wit , that the election of the 2^d Respondent was invalid** by reason of no-compliance with the **provisions of the Electoral Act, 2022 (Arising from Grounds 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the Grounds of Appeal).***

3. *Whether the Court below rightly affirmed the **decision of the Tribunal that the Appellants failed to prove Ground 2 of their petition, to wit, that the 2nd Respondent was not elected by majority of lawful votes sat at the election. (Arising from Grounds 24,25,26,27,28,29,30,31 of the Grounds of Appeal).***

4. ***Whether their lordships of the Court below were right when they held that the records of appeal in respect to the cross appeal was valid and thereby dismissed the Appellants objection to the record of appeal. (Arising from Grounds 1,5,6, and 7 of the Grounds of Appeal).***

5. *Whether the Court below was right in expunging Exhibits PPDD1-PPDD133 being **BVAS machines tendered by the Appellants Counsel from the Bar without the prior consent of all the parties and in violation of paragraph 4192) of the First Schedule to the Electoral Act, 2022 (Arising from Grounds 11 and 12 of the Grounds of Appeal).**”*

Learned Senior Counsel argued all the five issues as set out. I will not recount the submissions again since they have been efficiently captured in the leading Judgment.

Learned Senior Counsel urged this Court to resolve all the issues in favor of the

Respondents and dismiss the Appellants' appeal.

The brief of the 2nd Respondent was filed by learned Senior Counsel Ikpeazu SAN on the 27th day of June, 2025. Also, in the 2nd Respondents' brief Learned Counsel crafted five issues for determination contending that the issues of the Appellant have altered the provisions of the Electoral Act, 2022. The 2nd Respondent literally repeated what the 1st Respondent said with regards to tendering the BVAS machines, that the machine was tendered from the Bar and the machine contained information on 133 polling units. The 2nd Respondent objected to the admissibility of the BVAS machine, the Tribunal overruled the objection, the 2nd Respondent cross appealed on the dismissal of the objection and the Lower Court allowed the appeal on the objection in part, these are the different features of the 2nd Respondents from those of the 1st Respondent. Learned Senior Counsel said the 2nd Respondent would not adopt the issues of the Appellants but would reconstruct the Appellants' issues and distill its own five issues for

determination, after the reconstruction, the 2nd Respondent came

up with the following five reconstructed issues for determination:

1. ***Whether the Court of Appeal was right when it dismissed the Appellants objection which alleged that the record of cross-Appeal was incomplete to determine Ground 5 of the Notice of Appeal (Distilled from Grounds 1,5,6, and 7, of the Appellants Notice of Appeal).***
2. ***Whether the Court of Appeal was right when it held that the Relief contained in paragraph 738 of the Petition are incompetent to sustain the first ground in the petition (Distilled from Grounds 8,9,10,13, and 14 of the Appellants Notice of Appeal).***
3. ***Whether the Court of Appeal was right when it held that the BVAS Machines for 133 Potting Units tendered by the Appellants Counsel from the Bar and admitted by the Tribunal as Exhibits PPDD1-PPDD 133 was wrongly admitted in***

evidence. (Distilled from Grounds 11 and 12 of the Appellants Notice of Appeal).

4. **Whether the Court of Appeal was right when it affirmed the decision of the Election Tribunal to the effect that the Appellants failed to prove that the Election of the 2^d Respondent as the Governor of Edo State was invalid by reason of non-compliance with the Electoral Act, 2022 (Distilled from Grounds 15, 16, 17, 18, 19, 20, 21, 22, and 23 of the Grounds of appeal).**

5. **Whether the Court of Appeal was right when it upheld the decision of the Election Tribunal which dismissed the Appellants allegation that the 2nd Respondent did not score a majority of the lawful votes cast in the election into the office of the Governor of Edo State conducted by the 1st Respondent on 21st September 2024. (Distilled from Grounds 24, 25, 26, 27, 28, 29, 30 31 and 32 of the Notice of Appeal)."**

Learned Senior Counsel Ikpeazu SAN, reconstructed and argued the five issues for determination and urged that the appeal be dismissed. Here again, I would like to refer to the leading Judgment where the submissions of learned Senior Counsel were captured and discussed, I need not repeat the submissions again. Learned Senior Counsel UKALA SAN, filed the 3rd

Respondents' brief of argument on the 27th day of June, 2025, the 3^d Respondent adopted and argued the appellants' issues for determination, with some slight modifications too, I must admit that the issues reconstructed by the 3rd Respondent still substantially retain the coloration of the issues nominated by the Appellants. I will not reproduce the issues

again. The 3rd Respondent raised some fundamental issues in the brief of argument, that the **BVAS** machine was tendered from the Bar and was not opened, and that the allegations of non-compliance spanned through 765 polling units but the Appellants called only 19 witnesses, and among the 19 witnesses only 5 were polling unit agents, and Learned Senior Counsel said the law requires the Appellants to establish the alleged noncompliance polling unit by polling unit. Learned Senior Counsel for the 3rd Respondent said, the Appellants dumped documents on the Tribunal by tendering them from the Bar without calling their makers or any person legally linked to the documents to testify and demonstrate them in evidence, Learned Senior Counsel also referred to the Birnodal Voters Accreditation System BVAS exhibits PPDDI-PPDD133 which were tendered from the Bar and were not activated, opened or demonstrated before the Tribunal this alone defeated the claim of the Petitioner Appellant, Counsel therefore urged this Court to dismiss the appeal.

The Appellants filed reply to briefs to the 1st, 2nd and 3rd Respondents' briefs. The reply to the 1st Respondents' brief was filed on the 27th day of June 2025, while to the 2nd

and 3rd Respondents were filed on the 29th day of June, 2025 .

I read the Judgment of the Tribunal and that of the lower Court, I also considered the submissions of the Appellants and the Respondents in their respective briefs of argument file by their respective Learned Senior Counsel. I also read the lucid and wellarticulated leading Judgment prepared and rendered in this appeal by my law lord and learned brother GARBA, JSC. The Judgment has fully and thoroughly covered the field presented for discourse in this appeal, I may choose the option to

just adopt and say I agree, put at the risk of repeating my lord let nBJust add a few words aimed at re-enforcing the already constructed and composed

projectiles in this Judgments.

From the materials in this appeal, the **BVAS** machines containing details of the **133** polling units was tendered from the Bar and was not opened, at the trial, this became an issue before the lower Court.

At page 1021 of the records of appeal volume -1 0A , the lower Court held as follows and I quote:

“The Tribunal was in grave error when it admitted the BVAS machines in evidence, because the circumstances were not right for it to do so. What shouLd have guide the Tribunal is narrated in paragraph 41 (1)-5 of the First Schedule to the Electoral Act, 2022, which creates a condition precedent. A condition precedent is an additional formality super imposed on the law, A condition precedent is one which delays the vesting of a right until the happening of an event, See: FRN V. NGANJIWA (2022) 17 NWLR (Pt. 1860) 407.

Paragraph 41 (1)-(3) of the First Schedule to the Electoral act, 2022.

(1)

(2)Documents which parties€onsented to at the prehearing session or other exhibits shall be tendered from the Bar or by the party where he is not represented by a legal practitioner.

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

It is clear from the materials before this Court that all the Respondents in this appeal objected to the admissibility of the BVAS machine from the Bar by Learned Counsel for the Appellants. Paragraph 4'1 (2) of the First Schedule to the Electoral Act, 2022 is explicit that only documents which are consented to by the contending parties can be tendered and admitted from the Bar. Paragraph 41 (3) of the same schedule provides that documents and exhibits that are in dispute shall be tendered during the trial of the Petition. The Tribunal therefore acted in conflict with the law when it admitted the BVAS machines from the Bar through the Counsel for the Appellants, the law is therefore settled that where documents are disputed they cannot be tendered from the Bar, the Court must direct that such documents be taken to the plenary where the witness will be subject to the rigors of examination in chief and cross examination. I therefore totally agree with the Lower Court that the admission of the BVAS machine from the Bar despite the objection by the Respondents was made in breach of the provisions of the law.

The Appellants relied on the provisions of section 73 (2) on an election conducted at the polling unit without the prior recording of numbers and other

particulars of result sheets ballot papers and other sensitive electoral materials and section 137 of the Electoral Act, 2022 on what a party alleging non-compliance shall do, that it is not necessary for the party to call oral evidence if all original or certified true copies manifestly disclose the noncompliance alleged. Appellants also relied on paragraph 46 (4) of the First Schedule to the Electoral Act, 2022.

The total number of areas where non-compliance was alleged covered about a total of 765 polling units, even though section 137 of the Electoral Act, 2022 and paragraph 46(4) of the First Schedule to the Electoral Act, 2022 give the Appellants the right to tender document, obviating the necessity to call witnesses from each polling unit, there is still duty on the Appellant to establish and particularize the alleged irregularities. The law is well settled that the provision of Section 137 of the Electoral Act, 2022 does not extricate a petitioner from the need to lead credible evidence to prove non-compliance with the provisions of the Act except where the alleged non-compliance is manifest from the originals or Certified True Copies already tendered in evidence before the Court. See **OYETOLA VS. INEC (2023) LPELR-60392 (SC)**. In the instant appeal the evidence does not meet the standards required by section 137 of the Electoral Act.

This Court held in **BABA & ANOR V. INEC & ORS (2024) LPELR- 62230 (SC)** as

follows:

"..... notwithstanding the provisions of Section 137 of the Electoral Act, 2022 (supra) and Paragraph 46(4) of the First Schedule to the Electoral Act, 2022 (supra), the petitioner is obligated to demonstrate vide some cogent and unassailable oral evidence clearly demonstrating the alleged non-compliance.

The petitioner must not sit on his oars merely predicating reliance upon the provisions of Section 137 of the Electoral Acts, 2022 (supra). Not long ago, this Court had the privilege of postulating on the point: ATIKU AB UBALOLR VS. INEC (2023) SC/CV/935/2023, wherein this Court aptly held: Section 137 of the Electoral Act, 2022 relied upon by the Appellants for their failure to prove non-compliance in the manner we are used to provides: "The" 137 it shall not be necessary for a party who alleges noncompliance with the conduct of election to call for oral evidence if originals or certified true copies manifestly disclose the noncompliance. The above provision has not absolved a petitioner of the need to lead credible evidence to prove non-compliance. It states clearly that oral evidence may not be necessary. If and only if original or certified true copies manifestly disclose case, the Appellants have not or certified true copies of the non-compliance. In this demonstrated the originals documents they want the Court to rely on. Given where such documents are tendered in evidence, it has to be shown that they manifestly disclose the non compliance. In my considered view, the foregoing proposition of the law regarding Section 137 of the Electoral Act, 2022 (supra) unassaitably represents the position of the apex Court on the point. It's not controversial at all, that the provision of Section 137 of the Electoral Act, 2022 was

drafted in clear, simple and unambiguous words. Thus, it behoves the Court to accord a Liberally literal interpretation thereto; by giving the words their natural, ordinary and literal meanings, devoid of any embellishment. See FBN PLC VS. MAJWADA (2013) 6 NWLR (Pt. 1348) 444; KASSIM VS. ADESEMOWO (2021) 18 NWLR (Pt. 1807) 67; AGUMA VS. APC (2021) 14 NWLR (pt. 1796) 351. However, it ought to be reiterated for the avoidance of any lingering doubt, that the provision of Section 137 of the Electoral Act, 2022 (supra) is only applicable where the alleged non-compliance with the law is manifest from the originals or certified true copies of the documents relied upon. See OYETOLA VS. INEC (2023) LPELFI - 60392 (SC), wherein this Court aptly held: it is indubitable that Section 137 of the Electoral Act, 2022 only applied where the non-compliance is manifest, from the originals or certified true copies of documents relied on. In the instant case, neither Exhibit BVR nor any other document relied on by the Appellants remotely disclosed non-compliance with the Provisions of the Electoral Act. Hence, the Section cannot be of any assistance to them. In the circumstance, they still had a duty to call witnesses who witnessed the alleged acts of non-compliance to testify. See also ATIKU VS. INEC (2023)."

From all I said therefore, notwithstanding the explicit provisions of Section 137 of the Electoral Act, 2022 (supra) and Paragraph 46 (4) of the First Schedule to the Electoral Act, 2022.

The petitioner in an election petition is bound to demonstrate vide some concrete, cogent and incontrovertible evidence establishing the alleged non-compliance. It will not be sufficient for the petitioner to premise his allegations of non-compliance

leveraging on the provisions of Section 137 of the Electoral Acts, 2022 and paragraph 46 (4) of the First Schedule to the Electoral Act, 2022.

For the above reasons and the detailed and illuminating reasons marshalled in the leading Judgment prepared and rendered in this appeal by my Learned brother **GARBA, JSC**, I join fully in holding that the Appellants' appeal is devoid of merit and therefore deserves to be dismissed, it is hereby dismissed.

I join in affirming the Judgment of the lower Court delivered on the 29th day of May 2025.

Appeal dismissed.

