declared in their favour, they would have emerged as the winners of the election."

Counsel submitted, that their Lordship misconstrued the provisions of the above regulation in spite of finding that there was no report, concluded that the absence of the report meant that the Appellants failed to prove the case when they found that:

> We are not persuaded by the Petitioners in paragraph 86 of their adopted written address that the Respondents especially the 1st Respondent (INEC) has custody of such report and same was not tendered. This is because the Petitioners did not proved(SIC) that the reports envisaged by paragraph 42 was in custody of the Respondents especially the 1st Respondent (INEC)....
>
> Founded on the above we hold that PW1 Tasiu Musa who was not a presiding officer or RA/Ward Collation Officer during the election now in contention is not qualified to testify as a witness regarding this alleged discrepancy pleaded by the Petitioners and stipulated in Paragraph 41 and 42 of INEC Regulations and Guidelines for Conduct of Elections, 2022."

He submitted that where there is a discrepancy on the face of a result sheet which showed that there are more Ballot Papers than the Ballot Papers issued or less Ballot Papers than the Ballot Papers Issued, the Presiding Officer is duty bound to submit a written a report and where the figures cannot be reconciled by the RA/Ward Collation Officer, he/she shall

also make his/her own report to the LGA Collation Officer, attaching the Presiding Officers' Report.

He therefore urged this Court to allow this appeal on this Ground and proceed to find in favour of the Appellants that its pleadings was indeed proven by the contents of Exhibits P4 Code 001, 007, 019, 030, 041, 041, 046 for Turunku Ward, Exhibit P6 Code 011 for Gwaraji Ward, Exhibit P8 Code 009, 019, 030 and 038 for Igabi Ward, Exhibit P9 Code 001, 055, 069 for Rigachikun Ward, Exhibit PI3 Code 014, 019, 026, 029, 030 and 031 for Kwarau Ward, and Exhibit PI4 Code 008 for Gadan Gayan Ward tendered before the Tribunal and the absence of report as required by the 1st respondents Regulation 35, 41, 42, 48 and 72 for the conduct of Elections.

SUBMISSIONS OF COUNSEL FOR THE APPELLANTS ON ISSUE FOUR

Whether their Lordship were right when they found that there was nothing with which they could determine the principle of the Margin of lead?

Section 51 of the Electoral Act, 2022 provides as follows:

(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.

(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.

(3) Where the result of an election is cancelled in accordance with subsection (2), there shall be no return for the election until another poll has taken place in the affected polling unit.

(4) Notwithstanding the provisions of subsections (2) and (3) the Commission may, if satisfied that the result of the election will not substantially be affected by voting in the area where the election is cancelled, direct that a return of the election be made.

Their Lordship did find that:-

Upon the evidence before us and as contained in Exhibit PI (Declaration of Result), the 1st Respondent declared 46,189 votes and 41,331 votes in favour of the 2nd Respondent and the 1st Petitioner respectively. The earlier figures of 719 & 503 and 470 & 157 will be added and subtracted from the above scores of the 46,189 and 41,331 votes as follows:

(a) **(i) 2nd Respondent 46,189+719=46,908 votes**
(ii) 1st Petitioner 41,331+503=41,834 votes
(b) (i) 2nd Respondent 46,908-470=46,438 votes
(ii) 1st Petitioner 41,834-157=41,677 votes

Thus, from the above figures found by this Tribunal, the 2nd Respondent has 46,438 votes while the 1st Petitioner has 41,677 votes respectively. And by this figures the margin of lead between the 2nd Respondent and the 1st Petitioner is a

total of 4,671 votes. And by the evidence already examined in this Judgement there is no number of registered voters who were denied the opportunity/right to vote in any Polling unit where election did not take place or cancelled. Hence there is no number of votes of registered voters who did not vote/or collect their PVCs in any Polling Unit that will upset these 4,761 votes; which **is** now the margin of lead between the **2nd** Respondent and the 1st Petitioner.

Once the Appellants shows that this finding that "by the evidence already examined in this Judgement there is no number of registered voters who were denied the opportunity/right to vote in any Polling unit where election did not take place or cancelled. Hence there is no number of votes of registered voters who did not vote/or collect their PVCs in any Polling Unit that will upset these 4,761 votes; which is now the margin of lead between the 2nd Respondent and the 1st Petitioner" **is perverse, this Honourable Court will be entitled to reverse the finding of the Tribunal.**

By Exhibit PI6 is the Form EC40G. In it, the 1st Respondent, the conductor of the General Election agreed that that the total number of voters in Polling Units where Elections did not hold or elections were cancelled is 7820. This number exceed the Margin of Lead as found by the Tribunal. Their Lordship did not rely on Exhibit P16 merely because it found that:

> **... Exhibit P16 being the summary of registered voters of polling units in eight (8) Registration Areas where Election was said not to be held and cancelled does not assist the Petitioners in this**

Proof. In the first place Exhibit P16 is not the Register of voters of any of the Polling Units where Elections was said not to be held, further Exhibit P16 does not disclose the name or identity of any voter who was Said to have been denied the right to vote.

In short in our view, Exhibit P16 is not the Electoral document (Form) Required for Proof of disenfranchisement of voters at Polling unit

To allow the above finding to stand is to say that the Court will not agree that the total number of votes scored by a candidate can be proved by the production of the Declaration of Result Form until is shown the name and voters that voted for the candidate.

The Information in Form EC40G is not provided there for the nothing it has its purpose which was recognised by this Court in the case of **GIDADO & ANOR V. MOHAMMED & ORS (2015) LPELR-40356(CA)** Per Hussaini, J.C.A at **p. 34-38 paras. E)**

On the issue of cancellation of election, Paragraphs 31 of the approved Guidelines and Regulations for the conduct of 2015 General Elections state that:

"For polling units where election is not held or is cancelled, or the poll is declared null and void in accordance with these guidelines, the presiding Officer

shall report same in writing to the RA/Ward collation officer explaining the nature of the problem and the collation Officer shall fill forms EC40G where applicable."

Those guidelines or rules made pursuant to Section 73 of the Electoral Act, it is incumbent on the operators of the system to ensure compliance with the guidelines. Anything short of compliance with the rules or guidelines will translate to the jettisoning of the observance of the principle of the Electoral Act, and such non-compliance has grave consequences, see: **Buhari V. INEC (supra); Agballah V. Chime (2004) 1 NWLR (Pt. 1222) 373.** The purpose for which the report in Form EC40G is further meant in my view to put the relevant authority on Notice and to prepare their mind on the need as for instance for a re-run of election in the Units or centres where election has been cancelled. A report made through Form EC 40G is meant to establish facts that something is not amiss with any particular polling unit but a form of Notice prepared and served on the relevant Section or department of INEC to prepare their mind of what they should do as the need for a re-run of the election in the units or centres where election have been cancelled. The power to cancel elections in any unit rest with Commission but that is not so much the issue in contention. The issue in contention arose from the declaration and return of the 1st respondent as elected notwithstanding the matter of votes between the 1st Appellant and 1st respondent vis a vis the units elections cancelled. Evidence given from Pw. 5 can only mean that elections were inconclusive

as at the time the 3rd respondent was declared and returned by the 1st respondent as duly elected. In the Statement Sworn to by P.W. 5 on 2/5/2015, are facts deposed at Paragraphs 28, 29, 30 and 31 thus:-

"28. **The difference of vote cast between me and the 1st Respondent is 488 whereas the number of votes that will have accrued from Lawanti Kofar Jauro Code 006 in my favour is 683 which have exceeded the difference between the me and the 1st Respondent by 195 votes. 29. The total number of registered voter in the 4 affected units is 1, 365 which have exceeded the difference between them and the 1st Respondent by 877 votes. 30. The refusal to conduct election and or declare result in the Four (4) Units of Lawanti Kofar Jauro - Code 006; Yelo Liman - Code 005; Abba Kalu - Code 012; and Shilo Abore - Code 015 has disenfranchised the peole living in the units 31. I know that if election/re-run elections were held in the affected units of either Lawanti Kofar Jauro - Code 006; YeloLiman - Code 005; Abba Kalu - Code 012; 0and Shilo Abore - Code 015, the overall result for the Constituency would be radically different from the result announced by the 3rd Respondent."**

Those facts were before the Tribunal. By that evidence the margin of votes between the 1st Appellant and the 1st respondent is known to be 488 votes. The total number of registered voters in the 4 units in contention is put at 1,365. This figure is higher than the margin or difference of votes between the 1st Appellant and the 1st respondent. That is the argument and submission being made by the Appellant that by reason of the cancellation of result in those 3 or 4 units and the failure of the 3rd respondent to hold a supplementary election in the 4 (four) units has substantially affected the outcome of the results. It is this point that the onus now shifts to the respondents who would prove that there was substantial compliance with the principle of the Act not withstanding failure on their part (3rd respondent) to fill and act on form EC40G or hold a re-run election in those 4 units in contention. See: **Buhari V. INEC (Supra); Agbella V. Shagari (1983) 2 SCNLR 176."**

In the case of **Mohammed & Anor v. Danladi & Ors (2019) LPELR-49138(CA) at p. 57 paras. B C).** This Court recognized that a certified True copy of the Form EC40G is a "legitimate document" that enjoys the presumption attached to Election Results issued by the 1st Respondent. This Court held that:

> **Exhibits R10 (a) and (b) were the Form EC40G (1) and the report on the cancellation of the Makera 004 Polling Unit for over-voting. There was no cogent and credible evidence adduced by the Appellants to**

dislodge the presumption in favour of the legitimacy of these documents."

Counsel therefore submits that the Learned Justices of the Trial tribunal erred in law in failing to give effect to the principle of margin of lead in the light of the pleadings and evidence before the court. See **PDP v. Okogbuo & Ors (2019) LPELR-48989(CA) p. 72-74 paras. B)**

This is all the more so that at the proceedings of 20th June 2023 after PW1 has identified all the Exhibits tendered including Exhibit PI6, the parties agreed that the documents be deemed read in open court following the provisions of Paragraph 46(4) of the 1st Schedule to the Electoral act. The proceedings is reproduced hereunder for ease of reference

Abdul SAN PW1 Tasiu Musa having identified. Exhibits P1-P20 as the documents mentioned in his adopted statement on oath, I apply that by virtue of Paragraphs 46(4) of the 1st schedule to the Electoral act same deem to be read.

Abdulsalam Esq. We have no objection

Habeeb Esq. We have no objection

Nuhu Esq We have no objection

Tribunal The application by Abdul SAN for Exhibits P1-P20 to be deemed as read having been stated in PW1 adopted written statement on oath having not been objected to by the Respondent is hereby granted

Thus the finding that:

Thus, Exhibit P1-P20 were not explained by any witness of the Petitioners, but in the Petitioners' Counsel's adopted Final Address....

We also hold that these Exhibit P1-P20 tendered by Petitioners' Counsel from the Bar were not activated by oral evidence, but were actually dumped on this Tribunal and remained dormant is an error of law in the light of the above record and pleading before the Tribunal and the provisions of section 137 of the Electoral Act 2022 and Paragraph 46(4) of the 1st Schedule to the Electoral Act 2022.

The Tribunal recognizes that: -

It is very clear that this Petition which is challenging the result of the Election of the 2nd Respondent as the Member Representing Igabi Federal Constituency Kaduna State is principally founded on the margin of lead between the 2nd Respondent and the 1st Petitioner. This is adequately revealed in the Petitioners' pleadings, the evidence of PW1 Tasiu Musa and their adopted Final Written Address. One of the Objectives of the Electoral Act, 2022 is that all registered voters in polling units should be given the opportunity/right to cast their votes. But a number of these registered voters may not vote due to no fault of theirs and thus become disenfranchised.

The Electoral Act, 2022 and the INEC Regulations and Guidelines for the Conduct of Election 2022, have made provisions to ensure that registered voters willing to vote are not disenfranchised. Section 24 of the Electoral Act, 2022 and paragraph 62 of the INEC Regulations and

Guidelines for the Conduct of Election, 2022 are some of the said provisions.

It therefore will be approbating and reprobating to close its eyes to the data contained in Exhibit PI6 and uphold the return made in this election.

I decided to reproduce the submissions of learned counsel for the Appellants in detail because he has exhaustively raised the issues in this appeal for which he seeks the intervention of this Court. I now turn to look at the submissions of counsel for the Respondents. I must however state from the onset that the 1st and 3rd Respondents did not lead any witness in defence of the petition, as such it is only the address of counsel that is to be considered:

SUBMISSION OF COUNSEL FOR THE 1ST RESPONDENT

Learned senior counsel for the 1st Respondent in his submissions on the four issues nominated by the Appellants counsel for the determination of this appeal took the issues one after the other seriatim thus:

On issue one counsel submitted that the Appellants' complaint in issue one of their Brief of Argument is that the court below erred in law when it declined jurisdiction and struck out the Appellant's Petition on the basis that the scores of all the candidates are necessary for the purpose of determining the Margin of Lead complained by the Appellants in the Petition. He submitted that the finding of the Tribunal is in line with the provisions of Paragraph 4(I)(c) of the First Schedule to the Electoral Act, 2022. **In *Kaiu vs. Chukwumereije* (2011) LPELR - 1988 (CA)** this Honourable Court held that the failure to state the scores of all the

Candidates in an Election Petition would not result in the Petition being rendered incompetent where:

i. The Petitioner states the votes scored by the necessary parties to the Petition, i.e., the scores of the Petitioner and the person returned as the winner of the Election and it is clear that the Petition could be determined without the scores/presence of the other candidates that contested the Election.

ii. If the scores of the Candidates are not relevant to the issue for determination in the Petition.

Submits that the Tribunal was right to have held that the Petition as constituted cannot be determined without the scores of the other candidates that contested the Election. The Tribunal rightly held at pages 19 - 20 of its Judgment (Contained on pages **898 to 967** of the Record of Appeal) that:

> **In this Petition a careful perusal of all the seventy-nine (79) Paragraphs will show that the crux of the Petitioners' complaint is centered on the scores of the 2nd Respondent, the 1st Petitioner and of course other Candidates who participated in the Election to the Igabi Federal Constituency on 25/2/2023. This can be deduced from Paragraphs 26 - 30 complaining about miscalculation of votes, Paragraphs 1 - 3 9 complaining about deduction of votes of the 1st Petitioner and addition of extra**

votes for the 2nd Respondent, Paragraphs 40 - 49 grievances about votes wrongly marked as overvoting, paragraphs 50 - 59 complaining of about polling units with over-voting and Paragraphs 60-67 complaining about unsigned statements of result of polling units. And other subsequent complaints are centered on discrepancy between number of ballots and votes recorded, Areas where Elections were not conducted or cancelled and complaint about total number of disenfranchised voters. All the above clearly confirmed that the crux of this Petition is the Petitioners complaint about votes and in essence the scores of the Candidates that participated in the Election.

Counsel added that in view of the grounds of the Petition of the Appellants which relates to alleged deduction and reduction of votes cast and consequent invitation to the Tribunal to recompute the votes declared by the 1st Respondent, it is mandatory for the votes of all candidates to be pleaded and reproduced by the Appellants. The failure to reproduce the votes scored by all the candidates is fatal to the Petition of the Appellants. What the Appellants expected of the Tribunal was that it will simply assume the votes of the other candidates and speculate on the margin of lead between the 1st Appellant, the 2nd Respondent and other candidates.

It is trite that our courts do not speculate on possibilities, they act on actualities. See **Plateau State v. A. G. Federation (2006) SCNJ 1, Ejezie v. Anuwu (2008) 4 SCNJ 113; Odonigi v. Oyeleke (2001) 4 SCM 127.**

He therefore submitted that the failure of the Appellants to properly plead the votes of all the candidates in the election is fatal and the Tribunal was right to have dismissed the Petition for being incompetent.

On issue two learned counsel submitted that the Appellants failed to place succinct facts and competent evidence before the Tribunal to entitle them to the grant of the reliefs sought in their Petition. And that for the Appellants to establish that 278 votes were wrongfully added to the votes of the 2nd Respondent they must present and tender the voters' register and the BVAS, tender the Statement of Result in the appropriate forms which would show the number of registered accredited voters and number of actual votes, relate each of the documents to the specific area in respect of which the documents are tendered and show that the figure representing the votes of the 2nd Respondent was inflated. This counsel submitted the Appellants attempted to do through Exhibits P2 and P3 but a proper examination of these exhibits by the Tribunal disclosed that no votes was wrongly added to the votes scored by the 2nd Respondent.

What the Tribunal discovered from its examination of Exhibits P9 and R2 is that the votes were wrongly deducted from the votes scored by the both the 1st Appellant and the 2nd Respondent.

He added that the Tribunal was entitled to look at documents before it and draw inference from such documents where necessary and if the justice of

the matter so demands. The powers the Tribunal has to look at any document in its record was endorsed by the Supreme Court in **PDP & Ors. v. Ezeonwuka & Anor. 2017 LPELR42563 (SC)** where **Kekere-Ekun, JSC** stated that;

> **The law is that in order to do substantial justice between the parties, the court is entitled to look at its file or record and make use of the contents. See Fumudoh vs. Aboro (1991) 9 NWLR (Pt. 1071) 378@ 411-412 H-C, Funduk Engr Ltd vs Mc Arthur (Supra); Womiloju vs Anibre (2010) 10 NWLR (Pt. 1203) 545 @ 561 G. the inclusion of those processes in the record transmitted from the court below presupposes that they form part of the record of proceedings before the court.**

Counsel submitted that from the totality of evidence adduced by the Appellants and 2nd Respondents and the combined effect of Exhibits P9 and R2 the Tribunal was right to have held that:

> **Now from the above, the miscalculation of votes is not that of the alleged 278 votes said to have been added to the 2nd Respondent as per Exhibits P2 and P3. We hold that this allegation has not been proved. This is because we have not found in evidence the said 278 miscalculated votes alleged by the Petitioners.**

But what is clear upon the evidence before this Tribunal is the non-inclusion of the total scores of 133 votes and 611 votes scored by the Petitioners and 2nd and 3rd Respondents respectively in polling units 020, 022 and 049.

He urged this Honourable Court to resolve issue two in favour of the Respondents.

Thirdly, on evaluation of evidence counsel submits that it is trite law that the burden of proving the existence of facts which he asserts is on whosoever that asserts same. See Section 131 (1)(2) of the Evidence Act, 2011; Purification Technique (Nig.) Ltd. v. Jubril (2012) 18 NWLR (Pt. 1331) 109, 146 paras. D-E). The Appellants predicated their case on alleged non-compliance with the Provisions of Electoral Act and more particularly on allegations of deduction of vote, inflation of votes, wrongful cancellation of votes, violence amongst other. He submitted that the Appellants in this case did not discharge the burden of proof required of them by the law at the Tribunal.

In order to succeed, the law places a mandatory burden on the Appellants to call eye witnesses in all the affected Polling unit in order to give evidence on what transpired as regards manipulation, over voting, violence amongst others. In **Andrew & Anor v. INEC & Ors (2017) LPELR-48518 (SC)** the apex Court stressed on the duty of a petitioner in proving allegation of non-compliance with the Electoral Act.

The settled position of the law is that where a petitioner alleges noncompliance, he has the onus of presenting evidence from eye witnesses

at the various polling units who can testify directly in proof of the alleged non-compliance, particularly where the allegations relate to non-accreditation/improper accreditation, inflation or reduction of scores, alteration of results, over voting, etc. See: **Buhari v. Obasanjo (2005) 13 NWLR (Pt.941)1 @ 315-316 B-C; Buhari v. I.N.E.C. (2008) 19 NWLR (Pt. 1120) 246 @ 391-392 H-A;**

The weighty burden on the Appellants he submitted cannot be discharged through the hearsay testimonies of PW1 (sole witness of the Petitioners) as can be gleaned from his oral evidence during cross examination by the 1st Respondent. And that the Tribunal was right to have disregarded in its entirety the hearsay evidence of the PW1. See In **Doma v. INEC (2013) All FWLR 574.** Counsel therefore submits that the entire Exhibits tendered through PW1 amounted to documentary hearsay and therefore the Tribunal was right to have expunged same. See **Dadi v. APC & Ors (2023) LPELR 59959(CA)** the Court of appeal held on what amounts to documentary hearsay. He added that there is no fact in dispute that PW1 did not author nor sign Exhibits 1 to 20 tendered through him and therefore not competent to give evidence in respect of the documents. We therefore urge your Lordships to upheld the findings of the Tribunal in this regard.

And finally on **issue four** on margin of lead counsel submitted that the Appellants failed to place succinct facts and competent evidence before the Tribunal to enable the Tribunal to determine the margin of lead between the 1st Appellant and the 2nd Respondent. Contrary to the contention of the Appellants that the Tribunal found that there was nothing with which

they could determine the principle of the margin of lead, what the Tribunal found was that the Appellants had not discharged the burden of proof expected to show that there were eligible voters that were disenfranchised which will then make the Tribunal to order a rerun in the affected polling units. The Tribunal examined the evidence presented by the Appellants vis-à-vis the laid down principle that the Court/Tribunal will be satisfied on the proof of disenfranchisement of voters when such voters give clear evidence that they were duly registered voters of specified polling unit for the election but were not given the opportunity to cast their votes. The Tribunal reied on **PDP & 1 Or. Vs. INEC & 2 Ors. (2022) 18 NWLR (Pt. 1863) 653 at 665 Ratio 11.**

Counsel submitted further assuming without conceding that the Tribunal was wrong to have relied on the above decision of the Apex Court, we further submit that the margin between the 1st Appellant and the 2nd Respondent in the result declared is 4858 votes. For the Tribunal to be able to declare a rerun of the election based on the Margin of Lead as prayed by the Appellants, they must demonstrate that the total number of eligible voters affected by the case presented by the Petitioners is more than the total difference between the 1st Appellant and 2nd Respondents. Put differently, the Petitioners must show that the total number of votes affected is more than 4858.

SUBMISSION OF COUNSEL FOR THE 2ND RESPONDENT

Learned counsel for the 2nd Respondent submitted on his two issues viz:

On issue one, counsel submitted that the failure of the Appellants to plead or state the scores of all the 11 candidates that participated in the

election in the petition has undoubtedly rendered the petition incompetent and liable to be struck out as was indeed done by the Honourable tribunal as the stating of the scores of all the candidates that participated in the election, in this case, 11 of them as against the 4 pleaded by the Appellants is a breach of compliance with condition precedent to the filing of a competent petition.

He referred to the case of ADAMS VS UMAR (2009) 5 NWLR (PT.1133) 41 at 129 C-H, - 130 A, thus:

The lower tribunal therefore cannot be faulted in its statement of the law in this regard as follows:

> **"We are of the view that by virtue of the provision of paragraph 4(1)(c) of the 1st schedule, which require the petitioner to state the scores of the candidates, it becomes incumbent on the petitioner to categorically state the number of candidates at the election and their scores..... We hasten here to state that while there is no obligation on the petitioner to join other candidates who were losers at the election in an election petition, he is however bound to state names or political parties of the said candidates who participated in the elections in his petition and their scores.**
>
> **It is indeed unreservedly mandatory for a petitioner to state in his petition the holding of the election, the scores of the candidates including those of the**

candidates who lost the election and the person returned as the winner of the election. While there is no obligation on the petitioner to join any candidates who lost an election as a party, the petitioner has a duty to comply with the provisions of paragraph 4(1)(c) of the First Schedule to the Electoral Act, 2006, by stating among other particulars, the names and scores of all the candidates that participated in the election. See Engineer Khalil Vs Alhaji Yar'Adua (supra). Even the appellant has acknowledged this much in his submissions. The raison d'etre for this is that, where in an election petition a petitioner fails to plead the scores of all the candidates at the election, it will be impossible to grant any prayer that the petitioner was the duly elected candidate or that the 1st respondent was not the duly elected candidate. See Magaji Vs Balat (2004) 8 NWLR (Pt.876) 449. For the avoidance of doubt, the provisions of paragraph 4(1)(c) of the First Schedule is indubitably a condition precedent to the filing of an election petition. Any petition which fails to comply with same is incompetent and is liable to be struck out pursuant to paragraph 4(6) of the same Schedule"

Only recently, the Supreme Court had cause to interpret the provision of Paragraph 4(1)(c) of the First Schedule to the Electoral Act., in the case of

OKECHUKWU VS OBIANO (2020) 8 NWLR (PT.1726) 276 at 304 G-H-305 A-B.

The Appellants have argued in their Appellants' Brief of Argument that the necessity for stating the scores of all the candidates would only arise if and only if the petition cannot be determined without recourse to the scores/votes of all the candidates and that the instant petition could be determined and was indeed determined without the recourse to the scores or votes of all the candidates.

It is submitted with respect that while it is conceded that there are exception to the requirement of the mandatory pleading of the scores of all the candidates that participated in the election in the petition, for instance where the petition questions the qualification of the winner of the election simpliciter, the said exception does not apply to the instant petition particularly as the instant petition raised the issues of deduction of votes, addition of extra votes, over voting, discrepancy between number of ballots and votes recorded, non-conduct of election such that the issue of the appropriate and accurate votes are central to the complaints of the Appellants as manifested in the several paragraphs of the petition.

This point was graphically addressed and captured in the illuminating Ruling of the Honourable Tribunal located at pages 916 – 917 of the printed record thus:

> **"In this petition a careful perusal of all the seventy-nine (79) paragraphs will show that the crux of the petitioners' complaint is centred on the scores of the 2nd respondent, the 1st petitioner and of course other**

candidates who participated in the Election to the Igabi Federal Constituency on 25/2/2023. This can be deduced from paragraphs 26 - 30 complaining about deduction of votes of the 1st petition and addition of extra votes for the 2nd respondent, paragraphs 40-49 grievances about votes wrongly marked as over voting, paragraphs 50 - 59 complaining about polling units with over voting and paragraphs 60-67 complaining about unsigned statements of result of polling units. And other subsequent complaints are centred on discrepancy between number of ballots and votes recorded, Areas where Elections were not conducted or cancelled and complaint about total number of disenfranchised voters. All the above clearly confirmed that the crux of this petition is the petitioners complaint about votes and in essence the scores of the candidates that participated in the Election"

Contrary to the submission of the Appellants, the Honourable Tribunal did follow the formular set by this Honourable Court in the case of **KALU VS CHUKWUMEREJE (2012) 12 NWLR (PT.1315) 425** by demonstrating in the portion of its Ruling reproduced in the preceding paragraph of this Brief of argument that the issues of votes and scores of candidates were copiously raised and pleaded in the petition filed by the Appellants making it mandatory for the Appellants to comply with the mandatory provision of Paragraph 4(1)(c) of the First Schedule to the Electoral Act, 2022 requiring

the pleading of the scores of all the candidates that participated in the election.

In the light of the above state of affairs, it is submitted that the ratio in the cases of **BUHARI VS YUSUF (Supra), FALGORE VS ZAREWA (Supra)** and **PDP VS TAIWO (Supra)** cited and relied upon by the Appellants in their Appellants' brief of Argument are inapplicable to the facts of the instant petition.

Secondly, the Appellants raised and submitted to the Honourable Tribunal the issue of alleged wrongful addition of 278 votes for the 2nd Respondent in the process of computation, collation and recording of votes on the summary of results from polling units in a Registration Area Form EC8B(II) of the 12 Registration Areas. See paragraph 26 of the petition located at pages 9-10 of the printed record. The implication of the above allegation is that the Appellants have by their pleading raised the issue of wrongful addition of votes to the 2nd Respondent by the 1st Respondent and have proceeded to tender the relevant electoral documents by way of polling units results in Forms EC8A(II), ward summary of results in Form EC8B(II) and Registration Area summary of results in Form EC8C(II) which were duly admitted in evidence with a view to proving the allegation of wrongful addition of votes to the 2nd Respondent.

It is therefore submitted that having placed all the relevant electoral documents before the tribunal to facilitate the resolution of the allegation of the wrongful addition of votes/scores to the 2nd Respondent, the Honourable Tribunal was within its right to examine the said election

results before it in the determination of the allegation of wrongful addition of votes to the 2nd Respondent.

The Honourable Tribunal will not close its eyes to apparent evidence of deduction or addition of votes manifest in the election results tendered and admitted in evidence simply because the Appellants did not refer or rely on them.

The issue raised by the Appellants is such that the Honourable tribunal is entitled to examine the election results tendered and admitted in evidence with a view to resolving the allegation and that is exactly what the tribunal did.

It is submitted that the conduct of the tribunal in examining the results of the election and identifying the particulars of deduction of votes or addition of votes as manifest on the polling units results tendered by the Appellants does not in law amount to the tribunal going outside the pleading of the parties and or granting reliefs not sought for particularly as the Appellants have properly raised the issue of wrongful addition of votes in their pleadings and have tendered the necessary election result to support the allegation.

The law is settled that an Election Tribunal in possession of election results wherein the issue of wrong computation of votes is raised is duty bound to examine the scores in the results and carry out proper collation as was done by the tribunal.

We are fortified in the above submission by the decision in the case of **UDUMA VS ARUNSI (2012) 7 NWLR (PT.1298) 55 at 117 F-H, 118**

A-H-119 A- B, wherein this Honourable Court made elaborate finding on this issue thus:

> **"In my view, the tribunal in possession of the results of the election had a duty to collate the results where there is proof of wrong computation. See Ngige Vs Obi (2006) 14 NWLR (Pt.999) Pg.1; Sam vs Ekpelu (2000) 1 NWLR (Pt.642) Pg. 582 at 596; Adun Vs Osunde (2003) 16 NWLR (Pt.847) Pg.643 at Pg.666-667. In this case, the relevant results were produced in evidence, freely referred to by the parties in their addresses and the tribunal was duly bound to consider them in determining the issue in contention. Learned senior counsel for the 1st appellant complained that the tribunal on its own as it were arrived at the final figures and argued that we should conclude that the tribunal did cloistered justice. He cited Onibudo Vs Akibu (1982) 7 SC 60 at 62; Ikenye Vs Ofune (1985) 2 NWLR (Pt.5) Pg.1 at 13. I cannot find any justification for the opinion of the learned 1st appellant's counsel that the tribunal did cloistered justice. The addresses of counsel before the tribunal showed that the members were referred to these exhibits which the tribunal considered."**

It is submitted with respect that the starting point in the resolution of the above issue is a recourse to the provisions of Paragraph 4(1)(c) & 4(7) of

the First Schedule to the Electoral Act, 2022. The finding of the Tribunal that the issue of miscalculation of votes goes beyond the figure of 278 alleged by the Appellants and extends beyond the content of Exhibits P2 and P3 as canvassed by the Appellants is not perverse as same is supported by the evidence led by the Appellants and is consistent with and predicated on the issue of wrongful addition of votes raised by the Appellants. There is therefore no basis for this Honourable court to disturb or reverse the findings made by the Honourable Tribunal.

The reliance by the Tribunal on the polling units results in Forms EC8A (II) being the primary evidence of votes cast in the computation of the alleged wrongful addition and subtraction of votes is justified as explained by the Tribunal in a portion of its judgment located at pages 941 - 942 of the printed record.

These polling units results super cede the content of Exhibits P2 (Form EC8C(ii) and P3 Form EC8B(ii) as stated in **URUMA VS ALUNS, (Supra)** 55 Ratio 16 where the Court of Appeal held:

> **"Polling unit/boot results are the primary evidence of the votes cast. It is the foundation of the votes cast. It is the foundation in which the pyramid of an election process is built. Thus, where the unit results are recorded in the relevant forms are established and there is any conflict with any other Forms in the upper hierarchy of the election, the unit results should and ought to be preferred"**

On the complaint of the Appellants regarding the evaluation and resolution of the issue of the alleged discrepancy between the ballots and votes recorded by the Tribunal, we submit with respect that the findings of the Tribunal that the Appellants failed to lead credible and cogent evidence to prove same and that the omission to tender the ballots is fatal to the claim are unassailable and are not perverse in any form or manner.

Counsel submitted that the sole witness who testified on behalf of the Appellants - TASIU MUSA admitted that he neither visited any of the polling units nor witnessed any incident that occurred in any of the polling units as he was at the Local Government Collation Center throughout the period of the election. The want of competence of the sole witness of the Appellants to testify on the alleged discrepancy between the ballots and votes recorded was admirably evaluated by the Honourable Tribunal in a portion of its judgment contained at pages 953-954 of the printed record thus:

> **"Founded on the above, we hold that PW1 Tasiu Musa who was not a presiding Office or RA/Ward Collation Officer during the election now in contention is not qualified to testify as a witness regarding this alleged discrepancy pleaded by the petitioners and stipulated in paragraphs 41 and 42 of INEC Regulations and Guidelines for conduct of Elections, 2022. Thus, it is clear that the petitioner averments relating to the said discrepancy between number of ballots and votes recorded in paragraphs 46-58 of the petition, the tabulation in paragraphs 49, 52, 54, 55 and 56**

including the purported votes of 1,285, and 2,612 for the 1st petitioner and the 2nd respondent respectively have not been proved by evidence."

And the finding of the tribunal reproduced above is fortified by the decision of the Supreme Court in the case of TAKORI VS MATAWALE (2020) 17 NWLR (PT.1752) 165 At 182 183 H-G.

Counsel submitted that the ratio in the cases of **OMISORE VS AREGBESOLA (Supra), AREGBESOLA VS OYINLOLA (Supra)** and **UZODINMA & ANOR VS IHEDIOHA & ORS (Supra)** cited and relied upon by the Appellants is not applicable to the facts of this case as the scenario in those cases did not reveal allegation of irregularities or infraction at the respective polling units.

On the necessity for the presiding officer to produce a written report of the alleged discrepancy in the ballots and votes recorded does not arise as there is no iota of admissible evidence about the said alleged discrepancy to warrant to the issuance of the report.

The 1st Respondent has not alleged that there is any discrepancy in the ballots and the votes recorded and the Appellants who made the allegation have failed to lead concrete evidence in proof of same thereby justifying the finding of the Honourable Tribunal that the Appellants have failed to prove this particular allegation particularly as the Appellants failed to even tender the ballots that they predicated their allegation of discrepancy before the Honourable Tribunal. The allegation of discrepancy between the ballots and votes recorded is not one that can be said to be manifest on the polling units results in Form EC8A(ii) to warrant the invocation of the

provision of Section 137 of the Electoral Act, 2022 as canvassed by the Appellants.

In relation to the complaint of non-conduct of election in some polling units leading to alleged disenfranchisement of votes and over voting, the Appellants did not call any voter or polling agent in the respective polling units to lead evidence in support of same but merely placed premium and reliance on Exhibit P16 to come up with the argument that the number of voters who collected their PVCS in the areas affected by the allegation of infraction aggregate to 9878 which figure is in excess of the margin of win.

The requirement of law regarding proof of non-conduct of election and over voting have been settled in a well beaten legal track which include that there must be in evidence, the voters registers and the oral evidence of the voters who were allegedly prevented from casting their votes. See: Haruna Vs Modibbo (2004) 16 NWLR (Pt.900) 487."

In the circumstances, the tribunal was justified in coming to the conclusion that no evidence has been led to warrant the invocation of the principle of margin of win in the instant petition.

The Honourable Tribunal was equally justified in invoking the substantial compliance principle enshrined in Section 135(1) of the Electoral Act, 2022. The cases of OKE VS MIMIKO (NO.2) (2014) 1 NWLR (PT.1388) 332 at 395 B - H, 396 A-H, OMISORE VS AREGBESOLA (2015) 15 NWLR (PT.1482) 205 at 298 C-G are all instructive on this point. He urged the court to resolve the above issue against the Appellants.

SUBMISSION OF COUNSEL FOR THE 3RD RESPONDENMT

Counsel for the 3rd respondent equally argued his two issues in line with those nominated by counsel for the 2nd Respondent i.e. the failure to state the scores of all the candidates that took part in the election and the evaluation of evidence by the Tribunal.

In his conclusion he submitted that failure to state the scores of all the candidates that participated in the election in compliance with the mandatory provisions of paragraph 4(1)(C) of the First Schedule to the Electoral Act, 2022 is fatal to the petition in the peculiar circumstances of this petition.

And that the Appellants misconceived the requirement of burden of proving an election petition by shifting the burden to prove allegations of discrepancies between the number of ballot papers and votes recorded on the 1st Respondent. He buttressed his submissions with numerous cases and at the end urged on the court to dismiss the Appeal.

THE REPLY BRIEF

Learned senior counsel in his reply to the 2nd Respondents brief raised the issue canvassed in the cases of Adams V Umar (Supra) where the provisions of paragraph 4(1) © of the First Schedule to the Electoral Act can be exempted particularly where the petitions are not predicated on majority of lawful votes cast but on margin of lead principle and therefore inapplicable. So also the case of Okechukwu V Obiano (supra) cited by the 2nd Respondent where the principle was applied because the petition was predicated on the majority of lawful votes cast and therefore the absence of scores of candidates was fatal to the petition. He added that this Court in **Obuzor V Ake** (supraalso emphasized when it held that in a number of

decisions that failure to State the scores of candidates in an election would not be fatal to the petition where the scores are not relevant to the issues foe determination. Counsel added that the case of **APGA V Ohakim** cited by the 2nd Respondent is distinguishable from the present appeal as in that case the Petitioner did not state any score of the candidates at all leaving the court with no facts to determine the petition. And finally, that the case of **Nyesom V Peterside (2016) & NWLR Pt 1512 Pg 452** cited by counsel for the 2nd Respondent is no longer applicable as regards over-voting following the enactment of the Electoral Act 2022 and as such not applicable in the circumstances of the Appeal at hand.

RESOLUTIONS

I have carefully read through the entire record of appeal particularly the pleadings and the evidence presented before the court by the Appellants and the 2nd Respondent. I have equally considered the judgment of the trial tribunal based on the evidence before them and the submissions of all counsel in their respective briefs. I therefore find as follows on the four issues distilled by the Appellants for the determination of this appeal.

On issue one, I agree with the position of the Appellants Counsel that indeed the tribunal misconceived the formular set by this Court in the case of **Kalu v Chukwumereije** (2011) LPELR-1988 (CA). This is because the scores of the other candidates not listed did not hinder the Tribunal in determining the complaints in the Petition. Indeed the Petition is predicated on the Margin of Lead and their Lordship in the final analysis saw that it was only faced with a determination of the margin of lead between the scores of the **"Petitioner and the Contender".** See

pages 964 to 967 of the Record. Thus, their Lordships erred in law when they found that the Petition is liable to be struck out in spite of the fact that they found that the scores of the Petitioners and the 2nd and 3rd Respondents have been stated in the body of the Election, and the fact that the Petition can be resolved based on these two candidates scores and the failure to state the scores of other candidates did not hinder the tribunal in the resolution of the Petition.

Issue one is therefore resolved in favour of the Appellants.

On issue two, it is my finding that the tribunal went outside the pleadings of the petitioners when it held amongst others from page 939 to 944 of the Record of Appeal viz:

> **"However, our examination has revealed that this issue of miscalculation of votes is not in respect of 278 votes alleged by the Petitioners.**
>
> **It is also not limited to Exhibits P2 and P3, as it is more than that. It includes Exhibit P9(same with Exhibit R2(2) which are Forms EC8A(ii) of Statement of Results from Polling units of** Rigachikun **Ward Code 06 made of** 69 **Polling Units, PJ5 being** Form **EC8(ii) of Statement of Result of 153 polling Units of Rigasa Ward and P17 which is Form EC40G(PU) of Polling Unit Code 13 in Rigachikun Ward Code 06.**
>
> **Now from the above, the issue of miscalculation of votes is not that of the alleged 278 votes said**

to have been added to the 2nd Respondent as per Exhibit P2 and P3. We hold that this allegation has not been proved.

Exhibit P17 was presented by the Petitioners as proof of Item 3 of the categories of its complaints which pertains to "wrongfully marked as over voting and as a result not recorded in the summary of Results from Polling Units in Registration Area Form EC8B(II)" which the Tribunal found to be correct. They did not form part of the complaint under Item 1 which is "miscalculation of votes as recorded on the summary of results from Polling units in Registration Area Form EC8B(ii) of 12 Registration Areas"

I agree with learned senior counsel for the Appellants that the Tribunal had no basis for including these votes when the result from these Polling Units have been cancelled by the 1st Respondent and none of the parties complained about the cancellation before it. The Tribunal has a duty to restrict itself to the pleadings of the parties, it is the failure of the Tribunal to restrict itself to the pleadings that led it to make the erroneous finding that the Petitioners did not prove the allegation that there was wrongful calculations of the entries in the Form EC8B(ii) for Code 06 and Code012 in the Rigachikun Registration Area. In the case of **Awani & Ors v. Erejuwa**

ii, Olu of Warri & Ors (1976) LPELR-644(SC) the Supreme Court per Alexander, J.S.C at p. 11 paras. A, held that:

> **"In Solanke v. Ajibola (1969) 1 NMLR 253, this Court held that an appeal from a decision made in the exercise of a trial Judge's discretion can be entertained when, in exercising his discretion, the trial Judge has acted under a mistake of law, or in disregard of principle, or under a misapprehension of the facts, or has taken into account irrelevant matters, or on the ground that injustice could arise."**

Issue two is equally resolved in favour of the Appellants.

As to issue three, I find the submission of learned senior counsel succinct.

I reproduce the submissions of counsel and the position of the Tribunal on same.

By the provisions of Regulation 41 of the Regulations & Guidelines for the conduct of Elections, 2022 where after a crosscheck and recount, the total sum of spoiled ballot papers, rejected ballots and valid votes is not equal to the total number of used ballots, an anomaly exists, **and** the Presiding Officer shall submit a written report to the RA/Ward Collation Officer. **Regulation 42 then goes ahead to prescribe that:**

> **"The RA/Ward Collation Officer shall examine the report of the Presiding Officer on any**

discrepancy in ballots and votes **and further attempt to reconcile the figures. Where the figures cannot be reconciled, the RA/Ward Collation Officer shall make his/her own report to the LGA Collation Officer, attaching the Presiding Officers' Report."**

The evidence presented by the Appellants are Exhibits P4 Code 001, 007, 019, 030, 041, 041, 046 for Turunku Ward, Exhibit P6 Code 011 for Gwaraji Ward, Exhibit P8 Code 009, 019, 030 and 038 for Igabi Ward, Exhibit P9 Code 001, 055, 069 for Rigachikun Ward, Exhibit P13 Code 014, 019, 026, 029, 030 and 031 for Kwarau Ward, and Exhibit P14 Code 008 for Gadan Gayan Ward.

Their Lordship at page 952 found as follows:

> The Petitioners posit that there is discrepancy between the number of ballot papers and votes recorded. But we wish to state clearly that in this Petition there is no evidence adduced by the Petitioners relating to the said discrepancy. Further no single ballot paper issued, spoiled or rejected during the Election of member of Igabi Federal Constituency on 25/2/2023 was tendered by the Petitioners or the respondents before the Tribunal during trial
>
> In addition to the above for there Paragraphs 41, 42, 65, and 99 of the INEC Regulation and Guidelines for Conduct of Elections, 2022, to be applicable in this Petition, there must be in existence the following: -

iv. The evidence of the discrepancy stated in Paragraph 41 above

v. Report of the Presiding Officer to the RA/Ward Collation Officer

vi. Report of the RA/Ward Collation Officer to the Local Government Area Collation Officer

In this Petition, we reiterate that there is no evidence of this discrepancy before us. Equally there is no report either from the Presiding officer or the RA/Ward Collation Officer was tendered before this Tribunal. In addition, no Presiding Officer, RA/Ward Collation Officer or Local Government Area Collation Officer was called by the Petitioners to appear before this Tribunal to testify on the said discrepancy

In fact, the Petitioners averred in Paragraph 71 (wrongly referred as Paragraph (51) ofthe Petition thus:

> **Your petitioners aver that there was no written report to the RA/Ward Collation Officer neither did the RA/Ward Collation Officer make his/her own report to the LGA Collation Officer, attaching the Presiding Officers' Report.**

We are not persuaded by the Petitioners submission in Paragraph 86 of their adopted written address that the Respondent especially the 1st Respondent (INEC) has custody of such report and same was not tendered. This is because the Petitioners did not prove that the reports

envisaged by Paragraphs 42 was in custody of the Respondents especially the 1st Respondent.

First, counsel submits that where the complaint is that there are discrepancies in the entries on the Result, sheet, it is not the law that ballot papers must be presented before the Tribunal before it can be said to have been proven. In **okoye v. charles & ors** (2015) LPELR-40664(CA), this Court recognises that it is the nature of the pleadings that determine whether Ballot Papers need to be presented in proof or otherwise.

Secondly, once it is shown on the face of the Result Sheets that those discrepancies exist, then it becomes the duty of the 1st Respondent to provide a report stating why the Result of the Polling Unit is utilised in spite of the discrepancy. In the case of **APC v. adeleke & ORS (2019) LPELR-47736(CA)** their Lordship stated this much when they held at p. 1034 paras. B-F that:

> **"It is the duty of the Presiding Officer to give report to Ward Collation Officers, who receive and consider the reports and communicate the Local Government Collation Officer etc and any report of anomalies, adverse incidents and equipment failure from the presiding officers, including report of where polls are either cancelled or not held, by the Presiding Officer was to be made in Form EC40G at the polling units, where election was cancelled, or not**

held; and the original copies of Forms EC8B, EC8BI and EC8BII, together with other materials and equipment and reports (if any) were to be forwarded to the Ward Collation Officer, who, would in turn, communicate the LGA Collation centre, and finally the State Collation/Returning Officer, who would receive similar report from the LG Officer.

Since the law imposes a duty on the 1st Respondent to make such a report, their Lordships held that failure to produce the Report entitled the Court to apply the principle of adverse inference as envisaged by 167(d) of the Evidence Act. We rely on INEC v. adeleke & ors **(2019) LPELR-47545(CA) at p. 94 paras. C-G See also** Aremu v Adetoro **(2007) 16 NWLR (Pt. 1060) at 261 where the Supreme Court held as follows: "A Court of law can invoke Section 149 (d) of the Evidence Act that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."**

Submits that once the Appellants show that there is discrepancy on the face of the Results, the burden shift to the 1st Respondent to explain away the discrepancy by following the 1st Respondent's Regulation. Thus, the

non presentation of the Report shows that the pleadings in paragraph 71 of the Petition is proved.

However, their Lordships felt otherwise. Submits that the finding of their Lordships that Ballot papers must be provided before the discrepancies complained about by the Petitioners is accepted is perverse. It is not supported by any law. Their Lordship's finding that because we failed to produce the Reports, the Pleading fails is with the greatest respect perverse. This is because the burden of proof is not static but it oscillates even in election cases so that once we show the discrepancy, the burden shifts to the 1st Respondent to explain same in the Report which it has a duty to produce before the Court. See **Omisore** V. **Aregbesola** (2015) 15 NWLR (PT. 1482) 205; **Agbaicoba** V. I.N.E.C. (2008) 18 NWLR (PT. 1119) 489; **Eseigbe** V. **Agholor** (1993) 9 NWLR (PT. 316) 128.

Counsel submitted that their Lordship agreed that the Report was not produced before it but with all sense of humility misconceived the person who has the duty to produce same and rather found that the failure to produce the Report is tantamount to the failure of the Appellants to prove the averment.

However, its true these discrepancies complained of by the Appellants are apparent on the face of the documents containing these exhibits. By section 137 of the Electoral Act 2022, the- Court was entitled to act on them and having activated the section, cannot pick and choose where to apply them as it did in this case. The law prevents the court from approbating and reprobating at the same time. We rely on **FRN v. Iweka** (2011) LPELR-9350(SC).

The Tribunal ought to find that this aspect of the Appellants' case has been proven in the light of the evidence before the Court. See **Igba & ors v. Angbande & ors** (2021) LPELR-53295(CA) per Nimpar, J.C.A p. 45-48 paras. F).

Based on the facts above I am inclined to the position of learned senior counsel that their Lordships misconstrued the provisions of the Regulation despite their finding that there was no report. See page 953 to 954 of the Records where they held:

> **We are not persuaded by the Petitioners in paragraph 86 of their adopted written address that the Respondents especially the 1st Respondent (INEC) has custody of such report and same was not tendered. This is because the Petitioners did not proved(SIC) that the reports envisaged by paragraph 42 was in custody of the Respondents especially the 1st Respondent (INEC)....**
>
> **Founded on the above we hold that PW1 Tasiu Musa who was not a presiding officer or RA/Ward Collation Officer during the election now in contention is not qualified to testify as a witness regarding this alleged discrepancy pleaded by the Petitioners and stipulated in Paragraph 41 and 42 of INEC Regulations and Guidelines for Conduct of Elections, 2022.**

The submission of learned counsel for the Appellants that where there is a discrepancy on the face of a result sheet which showed that there are more Ballot Papers than the Ballot Papers issued or less Ballot Papers than the Ballot Papers Issued, the Presiding Officer is duty bound to submit a written a report and where the figures cannot be reconciled by the RA/Ward Collation Officer, he/she shall also make his/her own report to the LGA Collation Officer, attaching the Presiding Officers' Report is indeed the correct position and I so hold.

Issue three is resolved in favour of the Appellants.

Finally on issue four, learned counsel for the Appellants drew the attention of the court to Section 51 of the Electoral Act, 2022 which states:

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.**
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.**
3. **Where the result of an election is cancelled in accordance with subsection (2), there shall be no return for the election until another poll has taken place in the affected polling unit.**
4. **Notwithstanding the provisions of subsections (2) and (3) the Commission may, if satisfied that the result of the election will not substantially be affected by**

voting in the area where the election is cancelled, direct that a return of the election be made.

Their Lordship did find at page 966 of the Record that the 2nd Respondent has 46,438 votes while the 1st Petitioner has 41,677 votes respectively. And by this figures the margin of lead between the 2nd Respondent and the 1st Petitioner is a total of 4,671 votes. And by the evidence already examined in this Judgement there is no number of registered voters who were denied the opportunity/right to vote in any Polling unit where election did not take place or cancelled. Hence there is no number of votes of registered voters who did not vote/or collect their PVCs in any Polling Unit that will upset these 4,761 votes; which **is** now the margin of lead between the **2nd** Respondent and the 1st Petitioner

Once the Appellants shows that above finding that is perverse, this Honourable Court will be entitled to reverse the finding of the Tribunal.

By Exhibit PI6 the Form EC40G the 1st Respondent, the conductor of the General Election agreed that the total number of voters in Polling Units where Elections did not hold or elections were cancelled is 7820. This number exceeded the Margin of Lead as found by the Tribunal. Their Lordship did not rely on Exhibit P16 merely because it found at page 958 of the record that

> ... Exhibit P16 being the summary of registered voters of polling units in eight (8) Registration Areas where Election was said not to be held and cancelled does not assist the Petitioners in this Proof. In the first place Exhibit P16 is not the Register of

voters of any of the Polling Units where Elections was said not to be held, further Exhibit P16 does not disclose the name or identity of any voter who was Said to have been denied the right to vote.

In short in our view, Exhibit P16 is not the Electoral document (Form) Required for Proof of disenfranchisement of voters at Polling unit.

I agree with learned counsel for the Appellant that to allow the above finding to stand is to say that the Court will not agree that the total number of votes scored by a candidate can be proved by the production of the Declaration of Result Form until is shown the name and voters that voted for the candidate which is not the intendment of the law makers.

The Information in Form EC40G is not provided there for fun as it has its purpose which was recognised by this Court in the case of **GIDADO & ANOR V. MOHAMMED & ORS (2015) LPELR-40356(CA) Per Hussaini, J.C.A at p. 34-38 paras. E).**

On the issue of cancellation of election, Paragraphs 31 of the approved guidelines and regulations for the conduct of 2015 general elections state that:

> **"For polling units where election is not held or is cancelled, or the poll is declared null and void in accordance with these guidelines, the presiding Officer shall report same in writing to the RA/Ward collation officer explaining the nature of**

the problem and the collation Officer shall fill forms EC40G where applicable."

Those guidelines or rules made pursuant to Section 73 of the Electoral Act, it is incumbent on the operators of the system to ensure compliance with the guidelines.

The purpose for which the report in Form EC40G is further meant in my view to put the relevant authority on Notice and to prepare their mind on the need as for instance for a re-run of election in the Units or centres where election has been cancelled. **A** report made through Form EC 40G is meant to establish facts that something is not amiss with any particular polling unit but a form of Notice prepared and served on the relevant Section or department of INEC to prepare their mind of what they should do as the need for a re-run of the election in the units or centres where election have been cancelled. In the case of **Mohammed & Anor v. Danladi & Ors** (2019) LPELR-49138(CA) at p. 57 paras. B C)'This Court recognised that a certified True copy of the Form EC40G is a "legitimate document" that enjoys the presumption attached to Election Results issued by the 1st Respondent. This Court held that:

"Exhibits R10(a) and (b) were the Form EC40G (1) and the report on the cancellation of the Makera 004 Polling Unit for over-voting. There was no cogent and credible evidence adduced by the Appellants to dislodge the presumption in favour of the legitimacy of these documents."

Thus I find the Learned Justices of the Trial tribunal erred in law in failing to give effect to the principle of margin of lead in the light of the pleadings and evidence before the court. See **PDP v. okogbuo & ors** (2019) LPELR-48989(CA) p. 72-74 paras. B)

This is more so that at the proceedings of 20th June 2023 after PW1 has identified all the Exhibits tendered including Exhibit PI6, the parties agreed that the documents be deemed read in open court following the provisions of Paragraph 46(4) of the 1st Schedule to the Electoral Act. The proceedings is reproduced hereunder for ease of reference:

Abdul SAN	PW1 Tasiu Musa having identified. Exhibits P1-P20 as the documents mentioned in his adopted statement on oath, I apply that by virtue of Paragraphs 46(4) of the 1st schedule to the Electoral act same deem to be read
Abdulsalam Esq.	We have no objection
Habeeb Esq.	We have no objection
Nuhu Esq	We have no objection
Tribunal	The application by Abdul SAN for Exhibits P1-P20 to be deemed as read having been stated in PW1 adopted written statement on oath having not been objected to by the Respondents is hereby granted.

Issue four too must be and is resolved in favour of the Appellants.

On the whole therefore having considered in depth the evidence led in this case both oral and documentary, the pleadings of the parties and the submissions of all counsel and I am satisfied that all the four issues raised

by the Appellants having been resolved against the Respondents, this appeal succeeds and is hereby allowed.

Accordingly, it is hereby **declared that:**

1. That the election and return of 2nd Respondent **Jallo Hussaini Muhammed** as winner of the election to the Igabi LGA Federal Constituency Elections, Kaduna State conducted on the 25th February 2023 is void by reason of substantial non-compliance and acts which clearly violates and breach various provisions of the Electoral Act, 2023 including but not limited to violence, over-voting, manipulation and miscalculation of votes, discrepancies between ballot papers issued and total votes cast, non-stamping of INEC form and non-signing or dating of same.
2. That the results of the election in the Igabi LGA Federal Constituency Elections, Kaduna State conducted on the 25th of February 2023 as declared and announced variously by the 1st Respondent in the following Polling Units thus:

a) **Lawanati Kofar Jauro – Code 006**

b) Yelo lima – Code 005

c) Abba Kalu – Code 012 and

d) Shilo Abone – Code 015 are void and are hereby nullified.

Consequently, it is **HEREBY ORDERED** that:-

i) The Certificate of Return issued to the 2nd Respondent by the 1st Respondent is hereby set aside.

ii) **The 1st Respondent is hereby ordered to conduct fresh election within 30 days in the above mentioned Polling Units affected by substantial non-compliance.**

Parties to bear their respective costs.

IBRAHIM W. JAURO
JUSTIUCE OF THE COURT OF APPEAL

APPEARANCES:

Abdul Moh'd SAN for the Appellant with him Kabir Momoh Esq, Prince O. Aniukwa, Hajara Shehu Esq and A. G Bello Esq.

Eric Otojahi Esq for the 1st Respondent with him I. O. Ogunde Esq.

O. I. Habeeb Esq for the 2nd Respondent with him M. Sani Esq.

J. K. Nuhu (Mrs) Esq for the 3rd

APPEAL NO: CA/K/EP/HR/KT/35/2023
MOORE ASEIMO ABRAHAM ADUMEIN, JCA

I had a preview of the judgment just delivered by my learned brother, **IBRAHIM WAKILI JAURO, JCA**.

I agree with the decision in the leading judgment and abide by the consequential orders therein.

MOORE ASEIMO ABRAHAM ADUMEIN
JUSTICE, COURT OF APPEAL

CERTIFIED TRUE COPY
COURT OF APPEAL ABUJA
ADEBAYO O. JOHNSON
PRINCIPAL EXECUTIVE OFFICER 1
Signature.....
Date: 13/11/23

APPEAL NO: CA/K/EP/HR/KT/35/2023
SAMUEL ADEMOLA BOLA, JCA

I have read in advance the judgment of my learned brother, **Ibrahim Wakili Jauro, JCA.** I am in agreement with his reasoning and conclusion.

I adopt them as mine. I abide by his decision including the issue as to costs.

SAMUEL ADEMOLA BOLA

JUSTICE, COURT OF APPEAL

CERTIFIED TRUE COPY
COURT OF APPEAL ABUJA
ADEBAYO O. JOHNSON
PRINCIPAL EXECUTIVE OFFICER 1
Signature.....
Date: 13/11/2023