IN THE COURT OF APPEAL OF NIGERIA
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON FRIDAY THE 17TH DAY OF NOVEMBER, 2023

BEFORE THEIR LORDSHIPS:

MOORE ASEIMO ABRAHAM ADUMEIN	**JUSTICE, COURT OF APPEAL**
BITRUS GYARAZAMA SANGA	**JUSTICE, COURT OF APPEAL**
LATEEF ADEBAYO GANIYU	**JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/KN/EP/GOV/KAN/34/2023

BETWEEN:

YUSUF ABBA KABIR ==== **APPELLANT**

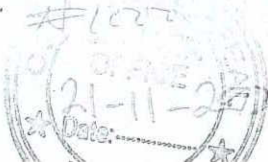
AND

1. **ALL PROGRESSIVES CONGRESS (APC)**
2. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
3. **NEW NIGERIA PEOPLE'S PARTY (NNPP)**

RESPONDENTS

JUDGMENT
(DELIVERED BY MOORE ASEIMO ABRAHAM ADUMEIN, JCA)

This is an appeal against the judgment of the Governorship Election Petition Tribunal **(Coram: Hon. Justice Oluyemi Akintan-Osadebay (Chairman), Hon. Justice I. Gandu (Member I)** and **Hon. Justice Benson Anya (Member II))** holden in Kano, Kano State, delivered on the 20th day of September, 2023 where the 1st respondent's petition was held to have succeeded and its candidate declared as having scored the majority of lawful votes cast. Miffed by the tribunal's decision, the appellant filed a notice of appeal on the 2nd day of October, 2023 setting out 43



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Jamil Ibrahim Zerrer
Registrar
20-11-2023

(forty-three) grounds and which notice spans pages 4833 to 4882 of the record of appeal.

The appellant contested the aforementioned governorship election on the platform of New Nigeria People's Party (NNPP) and was declared the winner by the 2nd respondent with a total votes of 1,019,602; while the 1st respondent, which sponsored one NASIRU YUSUF GAWUNA, was said to have scored a total of 890,705 votes. Being dissatisfied with the declaration and return of the appellant, the 1st respondent filed a petition on the grounds that:

> ***"(1) The election and return of the 2nd Respondent as Governor of Kano State was invalid by reason of non-compliance with the provision of Electoral Act.***
>
> ***(2) That 2nd Respondent whose election is being questioned was, as at the time of the election not qualified to contest the election.***
>
> ***(3) The 2nd Respondent was not duly*** **elected by majority of lawful votes cast at the election."**

The 1st respondent sought for the following reliefs from the tribunal:

> ***"1. That it be determined that the 3rd Respondent failed to present or sponsor any candidate who satisfied the requirement of the provisions of the Section 177 and 182 of the***

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Constitution of the Federal Republic of Nigeria, 1999 (as amended), Electoral Act, 2022, and other electoral laws, for the election of the Governor of Kano State.

2. *That it be determined that the 2nd Respondent was not qualified as candidate in the election to the office of Governor of Kano State held on the 18th March, 2023.*

3. *That it be determined that all the votes recorded for the 2nd and 3rd Respondents in the election were wasted votes by reason of the non-qualification/disqualification of the 2nd Respondent as a candidate in the election to the office of Governor of Kano State held on the 18th March, 2023.*

4. *That it be determined that on the basis of the remaining votes the Candidate of Your Petitioner; NASIRU YUSUF GAWUNA having scored a majority of lawful votes and having met the constitutional requirement be declared the winner of the election*

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and returned elected as the Governor of Kano State.

5. *That it be additionally determined that the 2nd Respondent was not duly elected by a majority of lawful votes at the election.*

6. *That it be determined that the candidate of Your Petitioner NASIRU YUSUF GAWUNA scored a highest number of lawful votes of 890,707 (after discounting the unlawful votes of the 2nd Respondent amounting to 282,496 votes) and having met the requirement of the law is declared the winner of the election to the office of Governor of Kano, Kano State and returned elected.*

7. *That the Certificate of Return issued to the 2nd Respondent by the 1st Respondent be set aside as invalid and nullity.*

8. *SETTING ASIDE AND OR NULLIFYING the Certificate of Return or any declaration of the 2nd and 3rd Respondents by any means whatsoever as the winner of the 2023*

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Gubernatorial election for Kano State held on 18th March, 2023.

9. ***DIRECTING** the 1st Respondent to immediately issue and serve a Certificate of Return on or in favour of the candidate of your Petitioner, as the winner of the 2023 Gubernatorial election for Kano State held on 18th March, 2023.*

IN THE ALTERNATIVE AND ONLY IN THE ALTERNATIVE

1. *The election into the office of Governor of Kano State held on the 18th March, 2023 was invalid by reason of non-compliance with the Electoral Act 2022 which non-compliance substantially subverted the principles of democratic elections laid down in the act and substantially affected the result of the election.*

2. ***AN ORDER** and direction setting aside and cancelling the elections held into the office of the Governor of Kano State on the 18th March, 2023.*

3. ***AN ORDER** directing Fresh elections be held in Kano for the office of Governor of Kano.*

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4. ***AN ORDER excluding the 2nd and 3rd Respondents from participating in any fresh elections ordered by the Tribunal since the 2nd defendant is not qualified to contest as a candidate in the election and the 3rd Respondent did not sponsor a qualified candidate in the election.***

5. ***AN ORDER of this Honourable tribunal setting aside the issuance of Certificate of Return to the 2nd respondent.***

As a further Alternative

6. ***In alternative to Relief 8 above, AN ORDER of this Honourable tribunal setting aside the return made by the 1st respondent of the 2nd Respondent as winner of the election and directing the 1st Respondent to conduct a rerun/supplementary election in the polling units which election were cancelled or not held or there was over voting."***

The parties exchanged pleadings and the petition was heard and determined by the tribunal, which, as stated earlier, found merit in the 1st respondent's petition and declared her candidate as the one who scored the majority of lawful votes cast in the election.

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The parties filed and exchanged the following briefs: the appellant's brief filed on 16th October, 2023; the 1st respondent's brief filed on 20th October, 2023 and the appellant's reply brief filed on 25th October, 2023. The 2nd and 3rd respondents did not file any brief but were duly represented by a consortium of legal practitioners, led by **A. B. Mahmoud (SAN)** and **Chief Adegboyega Solomon Awomolo, (SAN)**, respectively.

In his brief settled by his lead senior counsel, **Chief Wole Olanipekun (SAN)**, the appellant donated nine (9) issues for the determination:

> ***"i. Considering the nature of the cause at the tribunal whether the proceedings of 22nd July, 2023 did not vitiate the entire judgment. Ground 1.***
>
> ***ii. Was the tribunal right to have countenanced the petition (with offensive paragraphs) and declared Nasiru Yusuf Gawuna as the Governor of Kano State, describing him as the petitioner when he was not a party? Grounds 3, 5, 6, 7 & 8.***
>
> ***iii. Considering the evidence led by the respective parties, whether the tribunal was not wrong in its resolution and evaluation of evidential issues 11, 12, 19, 20, 30 and 43***

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iv. *Was the lower tribunal correct when it admitted Exhibit P169? Grounds 9, 10 & 42*

v. *Did the lower tribunal possess the vires to countenance and pronounce on allegations of crime when there was no ground of corrupt practices in the petition? Ground 41.*

vi. *Was the lower tribunal correct when it invalidated ballot papers predicated on Section 71 of the Electoral Act (as well as Section 63 thereof) and consequently, deducted appellant's votes return Nasiru Yusuf Gawuna as Governor of Kano State? Grounds 4, 28, 31, 32, 33, 34, 35, 36, 37, 38, 39 & 40.*

vii. *Was the lower tribunal right in its determination of the challenge by the Petitioner before it of the issue of appellants membership of and nomination by his sponsorship political party? Grounds 13, 14, 15,16, 17 & 18.*

viii. *Whether the lower tribunal was correct in its determination and application of the margin of lead principle. Grounds 21, 22, 23, 24, 25, 26, 27 & 29.*

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ix. ***Was the decision of the tribunal validly made? Ground 2".***

On her own part, the 1st respondent represented by a team of lawyers led by **Chief Akin Olujimi (SAN)** also formulated nine (9) issues for the determination, but couched thus:

"i. ***Based on relevant materials in the record whether the Tribunal was not right in admitting in evidence exhibits P171 (1 – 44) caviled at the Appellant. Ground 1.***

ii. ***Whether having regard to relevant and extant decisions of the superior courts and surrounding circumstances of this case, the judgment of the tribunal delivered virtually on 20th September, 2023 is not valid – Ground 2.***

iii. ***Whether on the state of relevant and applicable decisions, the tribunal was wrong in declaring NASIRU YUSUF GAWUNA, as the Governor of Kano State. Grounds 3, 4, 5 and 6.***

iv. ***Considering the grounds relied on by the appellant in attacking some paragraphs of the petition, whether the tribunal was not right in its decision refusing to strike out the paragraphs – Grounds 7, 8 and 41.***

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v. *Whether exhibit P169 was wrongly admitted in evidence – Grounds 9, 10 and 42.*

vi. *Whether on the pleadings and the evidence before the tribunal and applicable law, the tribunal did not properly evaluate the evidence in resolving the issues agitated by the parties – Grounds 11, 12, 19, 20, 30 and 43.*

vii. *On a proper consideration of the law and materials in the record, was the tribunal wrong the way it was resolved the issue of who scored the majority of lawful votes? – Grounds 28, 31, 32, 33, 34, 35, 36, 37, 38, 39 & 40.*

viii. *Whether the tribunal was not right in its determination that the appellant was not qualified to contest the election, not being a member of the 3rd respondent that sponsored him for the election – Grounds 13, 14, 15, 16, 17 and 18.*

ix. *Whether the tribunal was not correct in its resolution of the issue of margin of lead in the petition – Grounds 21, 22, 23, 24, 25, 26, 27 and 29."*

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The issues identified by the appellant and the 1st respondent, the contending or contesting parties, are essentially the same and I adopt them for the determination of this appeal, using the appellant's issues as benchmark. All the issues will be taken and treated together.

The appellant's contention in relation to the tendering and admission in evidence of documents (i.e. Exhibits P171 (1 – 44) by the tribunal was that the time allotted for the 1st respondent to prove her case had elapsed as at the time the learned counsel sought to tender them in evidence. According to the learned senior counsel to the appellant, during the pre-hearing session, 14 days were allotted to the 1st respondent to prove her case. On this learned senior counsel referred to pages 4395 to 4396 of the record of appeal.

It was contended that since the 1st respondent had closed her case and the appellant had started presenting his case, the certified true copies of the Directory of polling units were tendered without affording other parties opportunity to raise objection to the tendering and admissibility of the said exhibits. According to the appellant, in so doing the tribunal had allowed the 1st respondent to reopen her case without formal application to that effect and submitted that the procedure adopted by the tribunal is condemnable. On theses submissions, learned senior counsel referred the court to the cases of **Willoughby v. IMB Nigeria Limited (1987) 1 NWLR [Part 48] 105 at 127-129; Ifeadi v. Atedze (1998) 13 NWLR (Part 5817) 205 at 228; Andrew v. INEC & Ors. (2017) LPELR-42161 CA pages 36-38** and a host of other authorities.

The appellant submitted that going by the pronouncement of the tribunal at page 4822 (Vol. 6) of the record, where the tribunal held that: ***"It is hereby determined that the petitioner NASIRU YUSUF***

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GAWUNA is hereby declared the winner of the election and returned elected as the Governor of Kano State" and subsequently directed INEC to immediately issue and serve a certificate of return in favour of the said Nasiru Yusuf Gawuna"; the impression that would be created in the minds of everybody is that Nasiru Yusuf Gawuna was the petitioner before the tribunal whereas, All Progressives Congress (1st respondent) was the only petitioner. Therefore, posers were raised by the learned senior counsel as to whether the tribunal rightly gave judgment to a non-party to the action before it and whether the tribunal could have assumed that the said Nasiru Yusuf Gawuna met the constitutional requirements to be declared winner of the election in the absence of pleading or proving such constitutional requirements.

Relying on the cases of **Abdgunde v. Ondo State House of Assembly (2015) LPELR-24588 (SC) at 63; Fajemrokun v. U. B. A. (2004) TWRN 116 at 132 – 134**; it was further submitted that by virtue of section 77 of the Electoral Act, 2022 the 1st respondent is a corporate person distinct from its handlers, whether officials, candidates or members.

Learned Senior Advocate of Nigeria submitted that from the decision of the tribunal in this regard, it is unequivocal that it had considered Nasiru Yusuf Gawuna as a necessary party before it, hence, the grant of relief to him, despite the fact that he was not a party to the petition was wrong. To buttress this submission reliance was placed on the cases of **Ndoma-Egba v. Chukwuogor (2004) 6 NWLR (Pt. 869) 382 at 423** and **Admin-Gen. C.R.S. v. Chukwunogor (Nig.) Ltd. (2007) 6 NWLR (Pt. 1030) 398 at 413-414**.

Chief Olanipekun (SAN) submitted that in view of the failure of Nasiru Yusuf Gawuna to establish that he met the constitutional

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requirements for him to be declared as the winner of the election, as provided for under section 179(2)(a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which makes it mandatory for the 1st respondent to plead and adduce evidence on votes cast for him and percentages of votes scored by him as well. On this point, he referred this court to the cases of **Perestrello v. United Paint C. (1969) 1 WLR 570 at 579** and **Okoronkwo v. Chukwueke (1992) 1 NWLR (Pt. 216) 175 at 194**.

He submitted further that in the absence of pleading and evidence, on the votes cast for the respondent and the percentage of votes scored by him, the decision of the tribunal that Nasiru Yusuf Gawuna won the election was based on speculation which the tribunal lacked power to do, on the authority of **INEC v. A.C.D. (2022) 12 NWLR (Pt. 1844) 257 at 297.**

Learned senior counsel submitted that the tribunal was in error for its failure to strike out paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68, 69, 73, 74, 80, 81, 92, 93 and 94 of the petition which according to him are vague, imprecise, generic and nebulous as they run foul of paragraph 4(1)(d) and (2) of the First Schedule to the Electoral Act and the decision of this Court in **Petition No: CA/PEPC/03/2023 – Mr. Peter Gregory Obi & Anor v. Independent National Electoral Commission & Ors.** and **Petition No: CA/PEPC/05/2023 – Abubakar Atiku & Anor. v. Independent National Electoral Commission & Ors.** both delivered on 6th September, 2023 and **PDP v. INEC (2012) 7 NWLR (Pt. 1300) 538 at 560**.

The court was referred to paragraphs 3, 4, 5, 6, 7, 8 and 9 of the appellant's reply to the petition, which is contained at pages (2851 – 2852) (Vol. 5) of the record relating to the appellant's membership of the 3rd

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respondent, his participation at the 3rd respondent's primary election, his emergence therefrom and sponsorship by the 3rd respondent for the governorship election and submitted that the striking out of exhibits O, P, Q and M by the tribunal, which are the documentary hangers for the aforesaid facts is erroneous because the law is trite that facts but not evidence to establish them are to be pleaded. He referred the court to the case of **Ezemba v. Ibeneme (2004) 14 NWLR (Pt. 894) 617 at 649-650** in support of his submission.

The appellant contended that Form EC9 which the tribunal rejected had earlier been tendered as exhibit P1 by the 1st respondent and same has appellant's membership card with it.

Senior counsel submitted that the tribunal, in its resolve to embark on a careful and dispassionate examination of documents tendered before it, ended up examining documents that were dumped before it which runs contrary to the decision in **Sokoto v. INEC (2022) 3 NWLR (Pt. 1818) 577 at 596**; because the tribunal had earlier held at pages 4744 – 4745 (Vol. 6) of the record that grievances of the 1st respondent relate to 177 polling units and the 1st respondent called 32 witnesses, which presupposes that the 32 witnesses called by the petitioner could not have given evidence that will cover the entire 177 polling units in controversy and the invocation of section 137 of the Electoral Act, 2022 cannot avail the 1st respondent in this case. He referred the court to the case of **Oyetola v. INEC (2023) 11 NWLR (Pt 1894) 125 at 193.**

Appellant contended that the resolve by the tribunal to find excuse for the 1st respondent's witnesses, who made remarkable admissions against the interest of the 1st respondent to the effect that their said admissions were as a result of their lack of understanding of English language. Thus,

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he submitted that in view of the fact that interpreters were made available to them, excusing their several admissions by the tribunal was uncalled for. Reference was made to the cases of **Ipinlaiye II v. Olukotun (1996) 6 NWLR (Pt 453) 148 at 165** and **Sylva v. INEC (2018) 18 NWLR (Pt. 1651) 310 at 368**.

The appellant argued that in view of the excuse given to the 1st respondent witnesses that their admissions was as a result of their lack of understanding of English language, the tribunal had allowed the even scale expected of it to maintain, to slant against him and he cited the cases of **Uzodinma v. Izunaso (No. 1) (2011) 17 NWLR (Pt. 1275) 30 at 79, Sarki v. FRN (2018) 16 NWLR (Pt. 1646) 405 at 469-470** and **Kenon v. Tekam (2001) 14 NWLR (Pt. 732) 12 at 41-42**.

Appellant referred to exhibit P169 which according to him was recorded by the tribunal as ***"Analysis of the one Hundred and Sixty-Five Thousand and Six Hundred and Sixteen invalid votes by Dr. Aminu Idris Harbau "[see page 4557 (Vol. 6) of the record]"*** and went further to submit that due to failure of the tribunal to expunge the exhibit, which is a computer generated document from its records, it had relied on inadmissible document in reaching its conclusion and consequently unilaterally deducted the appellant's votes .

Learned counsel submitted that exhibit P169, being a computer generated document which is not accompanied with the certificate of authenticity, runs contrary to the provision of section 84 of the Evidence Act, 2011 and as such inadmissible on the authority of **Dickson v. Sylva (2017) 8 NWLR (Pt. 1567) 167 at 200**.

The learned senior counsel contended that the testimony of PW32 who tendered exhibit P169, who admitted that he was engaged by the 1st

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respondent in anticipation of the petition negates the provision of section 83(3) of the Evidence Act 2011. He referred to **Peter Gregory Obi & Anor, v. INEC (supra) and Abubakar Atiku & Anor. v. INEC (supra)**.

Furthermore, counsel submitted that PW32 who claimed to be an expert did not place before the tribunal anything to show that he is indeed an expert and as such, his evidence ought not to be discountenanced. – **Adeleke v. Oyetola (2023) 11 NWLR & Anors. (2019) LPELR-49572 (CA)**.

Appellant submitted that the decision of the tribunal which, *inter alia* determined allegations bordering on the use of illegal ballot papers which constitutes a criminal offence under section 115(1)(e) and (h) of the Electoral Act, violence and sundry criminal electoral malpractices/offences levelled by the 1st respondent before the tribunal without any ground relating to corrupt practices in the petition, is erroneous and liable to be set aside because the law is trite that something cannot be put on nothing and be expected to stand. He cited and relied on **Skenconsult vs. Ukey (1981) 1 SC 6 at 9**.

Appellant further submitted that allegations relating to violence, disruption, allocation of votes, disenfranchisement of voters, illegal and unlawful use of ballot papers and such other allegations constituting corrupt practices were raised in the petition without specifically making corrupt practice as a ground for presenting the petition. The cases of **Goyol v. INEC (No. 2) (2012) 11 NWLR (Pt. 1311) 218 at 230, Audu v. INEC (No. 1) (2010) 13 NWLR (Pt. 1212) 431 at 612, PDP v. INEC (2022) 18 NWLR (Pt. 1863) 653 at 698-699** and **Wada v. INEC (2022) 11 NWLR (Pt. 1841) 293 at 323** were cited and relied upon.

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Learned senior counsel to the appellant submitted that the basis upon which the final four (4) orders granted by the tribunal was predicated is not unconnected with the decision of the tribunal to deduct 165,616 votes from the score of 1,019,602 votes scored by the appellant and that the said deduction was consequent upon the tribunal's prior incorrect finding that ballot papers – Exhibits P5, P6 – P16 and P18 – P34A were not in tandem with sections 63 and 71 of the Electoral Act, 2022.

He submitted that section 71 of the Electoral Act, 2022 relied on by the tribunal is not applicable to the issue at stake in the instant appeal and that the provision of the section is clear and unambiguous and must be so interpreted and applied. Reliance was placed on the cases of **Abegunde v. Ondo State House of Assembly (2015) 8 NWLR (Pt. 1461) 314 at 353, 364**. See **Gwede v. D.S.H.A. (2019) 8 NWLR (Pt. 1673) 30 at 47; Oni v. Gov., Ekiti State (2019) 5 NWLR (Pt. 1664) 1 at 23**.

He argued that the trial tribunal fell into error in its judgment by applying section 71 of the Electoral Act, 2022 to the issue of invalid ballot papers because it acted outside the purview of the law by entertaining issues outside the pleadings of the parties and thereby breached the appellant's right of fair hearing which is capable of vitiating the entire proceedings. – **Orugbo v. Una (2002) 16 NWLR (Pt. 292) 175 at 199**.

On connotation of section 63 of the Electoral Act, 2022, the appellant submitted that the tribunal expanded the purport of section 63 of the Electoral Act, 2022 to cover signing, stamping, dating and inserting the name of presiding officer contrary to the purport of the section which like section 71 of the Electoral Act, 2022 that relates to different documents and simultaneously erroneously relied on the case of **Lawrence v. Olugbenga [sic – Olugbemi) 2018) LPELR-45966 (CA)** which relates to

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pre-election case. He submitted that the tribunal's decision was perverse having taken into account section 71 of the Electoral Act in resolving the validity of ballot papers. On this, learned senior counsel referred the court to the case of **Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360 at 375**.

The appellant referred to section 42(2) of the Electoral Act, 2022, and submitted that all previous Electoral Acts that make serialization of ballot papers compulsory but notwithstanding the provision, the Supreme Court held that there was no substantial non-compliance even though there was proof of non-serialization in the case of **Abubakar v. Yar'Adua (supra)**.

Moreover, learned senior counsel submitted that no polling unit agent or voter from the units, where unlawful ballot papers were allegedly used, gave evidence before the tribunal. According to him, the allegation of use of unlawful ballot papers relate to event that took place at the polling units which can only be proved by direct testimonies of those at the polling unit, as was held in **Andrew v. INEC (2018) 9 NWLR (Pt. 1625) 507 at 563**.

Appellant submitted that the tribunal having failed to grant reliefs 1 – 4 sought for by the petitioner, which relate to qualification, its decision at pages 4702 – 4716 of the record is academic and of no utilitarian purpose whatsoever. He relied on the cases of **Adeogun v. Fashogbon (2008) 17 NWLR (Pt 1115) 149 at 193; Agbakoba v. INEC (2008) 18 NWLR (Pt. 1119) 489 at 546; Plateau State v. A.G. Federation (2006) 3 NWLR (Pt. 967) 346 at 419 – 420** to buttress his submission.

Appellant further submitted that going by the 1st respondent's petition to the effect that as at the time/date of election, the appellant was not a member of his political party and predicated her entire claim on disqualification on a membership register that predated 18th March, 2023,

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as pleaded in paragraph 14 of the petition, the 1st respondent failed to prove her case and allegation as pleaded and, as such, the tribunal should have so held.

Learned senior counsel for the appellant referred to page 4715 of the record of appeal wherein it is stated thus: ***"We hold that the 2nd respondent was not qualified to be nominated to contest the 2023 General Election"*** and submitted that issue relating to nomination of candidate for election is outside the jurisdiction of an election tribunal in this regard ought to be set aside; placing reliance on the case of **APP v. Obaseki (2022) 13 NWLR (Pt. 1846) 1 at 45**.

On sponsorship of appellant by the 3rd respondent and his membership of the party, appellant referred this court to pages 4714 – 4715 of the record where the tribunal acknowledged that sponsorship document and membership identification are acceptable means of proving membership but subsequently held that there was no such proof before the tribunal, yet, at pages 4702 and 4712 of the record it acknowledged exhibit P1 as the nomination form (form EC9) of the appellant, which according to the appellant was perversely not considered. The appellant went further to submit that exhibit P1 also contained the membership identification card of the appellant which is a conclusive evidence of the appellant's sponsorship by is party for the election. He referred the court to the case of **Oni v. Oyebanji (2023) 13 NWLR (Pt. 1902) 507 at 543 – 544**.

It was submitted by the appellant that the tribunal wrongly rejected Exhibit 3R1 containing appellant's name on the ground that it did not contain the register of other local Governments in Kano State when it was not the case of the appellant that he was a member of any other Local

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Government or Ward apart from Gwale Local Government Area, Diso Ward which Exhibit 3R1 covered.

On rejection of exhibits P163, P163A and 2R20X on the ground that they were made by the 3rd respondent who was an interested party, learned senior counsel submitted that the 1st Respondent having forayed into the 3rd respondent's affair was bound to be faced by her documents and as such estopped from complaining about reliance on documents made by interested party because *volenti non fit injuria*

On application of margin of lead principle, appellant submitted that the 1st respondent's case before the tribunal was that whenever over voting or disruption of voting process is established and the number of PVCs collected exceed the margin of lead between the two leading candidates a rerun should not be ordered but a supplementary poll be taken.

Relying on the case of **Ecobank v. Anchorage Leisures Ltd (2018) 18 NWLR (Pt. 1651) 201 at 221**; learned senior counsel argued that since none of the alternative reliefs was granted and none of the parties has appealed against the tribunal's decision, the refusal to grant the alternative relief 6 is deemed abandoned by the parties.

On tribunal's finding that there was resistance to the use of BVAS, appellant submitted that the finding of the tribunal is a pointer to foreclosure of any consideration of margin of lead because by virtue of paragraph 100 (ii) of the INEC Regulations and Guidelines, such finding presupposes that application of margin of lead principle should be jettisoned and Zero/nil vote recorded for all parties.

The appellant submitted that the tribunal did not find that any vote was entered for the appellant in any of the areas in respect of which a complaint of margin of lead was made and that failure of the tribunal to so

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hold is capable of making the issue under consideration to be resolved in favour of the appellant.

On failure to prove allegation of disruption, violence, general wave of unrest, lawlessness and killings of innocent Nigerians which the tribunal found occurred during the election, appellant submitted that the tribunal acted ultra vires in this connection and he cited the case of **Adeleke V. Oyetoal (2023) 11 NWLR (Pt. 1894) 71 at 103-104** as a prop for this submission.

It was contended that failure of the tribunal to notify the appellant either before, during and after the delivery of the judgment in controversy in this appeal, the venue where same was delivered amounts to breach of his right to fair hearing as provided for under section 36(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). According to the appellant, delivery of judgment is part of hearing and it must be carried out in open court. He referred the court to the cases of **Ogidi v. The State (2005) 5 NWLR (Part 981) 286; NAB Ltd v. Barri Nig. Limited (1995) 8 NWLR (Part 413) 257; Ogele v. Nuhu (1997) 10 NWLR (Pt. 523) 109; Nuhu v. Ogele (2003) 18 NWLR (Pt. 852) 1; Inakoju v. Adeleke (2007) 4 NWLR (Part 1025) 427** and **Menakaya v. Menakaya (2001) 16 NWLR (Pt. 738) 203 at 249**.

Appellant referred this court to the Hearing Notice issued to the appellant (4832, Vol. 6 of the record) to the effect that judgment would be delivered on 20th September 2023 at ***"High Court Complex Miller Road, Kano"***

The appellant contended that assuming without conceding that the trial tribunal was at liberty to deliver judgment anywhere and anyhow, for whatever reason which according to him amounts to an infraction of the

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provision of Section 36 (3) of the Constitution, on the part of the tribunal failure of the trial tribunal to invoke the provision of paragraph 54 of the First Schedule to the Electoral Act, 2022, which mandates the tribunal to apply the Federal High Court Civil Rules, where there are no provisions for doing or taking some specific steps or procedures in the main Act and that the Federal High Court of Nigeria Practice Directions, 2020 provides for procedure to follow when cases are to be heard virtually, which include that cases for virtual proceedings shall be stated on the cause list and shall be posted on Federal High Court website and communicated to counsel and parties either by email or any other electronic means as the case may be. The appellant submitted that failure of the tribunal to duly, notify the appellant of where the judgment was rendered from before, during and after the delivery, constitute a further and continuous breach of the appellant's right to fair hearing and as such, the entire judgment of the is a nullity and should be set aside.

In his reaction, learned senior counsel to the 1st respondent; instant Appeal, **Chief Akin Olujinmi (SAN)** submitted that the contention of the appellant in relation to the procedure adopted by the tribunal in allowing the 1st Respondent counsel to tender from the Bar exhibits P171 – (1 – 44) was raised before the tribunal and same was properly resolved by it at pages 4672 to 4674 of the record.

Learned senior counsel further submited that the appellant did not appeal against this decision of the tribunal and that it is binding on the appellant. On this submission, he referred this court to the cases of **Saleh v. Abah (2017) 12 NWLR (Pt. 1447) 578 at 599** and **Akere v. Governor of Oyo State (2012) 12 NWLR (Pt. 1314) at 278**.

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Learned senior counsel submitted that the appellant, having consented to the procedure adopted by the tribunal to allow the 1st respondent to tender documents from the Bar after it had closed its case, cannot turn round to complain against the procedure, citing the case of **Noibi v. Fikolati (1981) 1 NWLR (Pt 52) 619 at 632** and **Adebayo v. Shomomo (1969) 1 ANLR 176 at 190**.

Learned senior counsel referred the court to the affidavit of facts, contained at pages 4828 to page 4829 of the record, filed by appellant to complain against the delivery of the judgment virtually. However, in paragraph 4 of the said affidavit, it was averred therein that the secretary of the tribunal announced to the appellant's lawyers and others in court room that the judgment would be delivered vide Zoom which implies that the appellant was aware that the judgment would be delivered virtually and as such, the admission of the appellant of his awareness that the judgment will be delivered virtually renders the affidavit otiose.

On alleged breach of the appellant's fundamental right to fair hearing as provided for in section 36(3) of the Constitution, which was said to be capable of rendering the judgment a nullity, learned senior counsel submitted that all the cases cited by the appellant's learned senior counsel are not relevant to the instant case because in those cases judgments were not delivered virtually.

Learned senior counsel to the 1st respondent referred the court to subsection (4) of section 36 of the Constitution which permits a court to exclude members of the public from any sitting of court for any of the reasons stated in the proviso.

According to the learned counsel, the situation that necessitated virtual sitting to deliver the judgment of the court is well captured in the

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concurring judgment of Member II of the tribunal – **Hon. Justice Benson Anya** at pages 4825 to 4827 of Vol. 6 wherein His Lordship stated thus:

> ***"I use this opportunity to condemn the gang of Red Cap wearers who like a violent and terrorist cult chased us out of Kano and put us in the fear of our lives."***

Thus, learned counsel submitted that circumstances expressed in the judgment is capable of invoking the provision of the proviso to section 36 of the Constitution by the tribunal to deliver its judgment virtually.

Be that as it may learned senior counsel to the 1st respondent referred this court to the Supreme Court sitting as a full court in the case of **A.G. Lagos State v. A.G Federation (2020) 12 NWLR 345 at 347** wherein the apex court held that virtual sitting of Court is not unconstitutional.

On the affidavit of facts filed by the appellant, learned senior counsel to the 1st respondent submitted it was meant to prop up the appellant's case, is incompetent because court proceedings ended with the delivery of judgment except where there are post judgment applications filed.

According to the senior counsel, the affidavit of facts in question does not form part of the documents or evidence placed before the tribunal and as such it serves no other purpose than to challenge the record of proceedings which ordinarily, in case there is need to do so, is by swearing to an affidavit setting out the facts or part of the proceedings omitted or wrongly stated in the record and must be served on the judge or registrar of the court concerned. He referred the court to the cases of **Adegbuyi v. APC (2015) 2 NWLR (Pt. 1442) 1 at 243** and **Waziri v. State (1997) 3 NWLR (Pt. 496) 689 at 723 D-E.**

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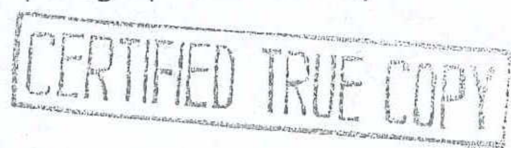
It was further submitted that the affidavit having not been endorsed by the appellant for service on their lordships of the tribunal or the registrar of the tribunal, the whole efforts made by the appellant to impugn the validity of the judgment of the tribunal becomes unproductive.

On alleged impropriety of declaring NASIRU YUSUF GAWUNA as the Governor of Kano State, learned senior counsel submitted that:

> ***"i. Section 133 of the Electoral Act, 2022 does not make it obligatory for both the political party that sponsored a candidate for an election and the candidate himself or herself to be joined as co-petitioners unless they elect to do so. Thus, learned silk submitted that either or both of them may initiate election petition. See APC v. PDP (2019) LPELR-49499 (CA).***
>
> ***ii. On the authority of Boko v. Nungwa & Ors. (2018) LPELR-45890 (CA), learned counsel submitted that once a candidate wins primary election, he has acquired a vested interest in the petition and he is entitled to reliefs that his party seeks on his behalf.***
>
> ***iii. Learned counsel submitted that all the authorities cited by the Appellant on this issue are not apposite to this case."***

Learned senior counsel submitted that the attack of the appellant on the refusal of the tribunal to strike out paragraphs of the petition is unsustainable because:



The appellant's attack against the paragraphs of the petition is that they did not comply with paragraph 4(1)(d) of the 1st Schedule of the Electoral Act, 2022 because according to him the paragraphs were vague, imprecise and generic, while in the motion through which objection was raised by the appellant, the paragraphs ground of attack against those paragraphs as shown at page 3817, item was that allegation of corrupt practices and over-voting were made by the petitioner in those paragraphs whereas the petitioner did not make corrupt practices as a ground of the petition.

It was the submission of learned counsel that exhibit P169 is not a computer generated document and that the provision of section 84 of the Evidence Act will be applicable to. On this he referred this court to the case of **A.G.F. v. Anuebunwa (2022) 4 NWLR (Pt 1850) 211 SC at 270** per ***Ogunwunmiju, JSC***.

Learned senior counsel submitted that unlike in **Oyetola v. INEC (2023) 11 NWLR (Pt. 1894) 125 SC at 176 A-G**, where PW1 called in that case testified that he was a member of the 2nd appellant and had been a special assistant to the 1st appellant, which held him out as an interested party, PW32 who tendered exhibit is not an interested party was adduced before the tribunal.

Learned counsel submitted that the failure of exhibits O, P, Q and M to comply with the provision of Paragraph 41 (8) of the First Schedule is not about pleading and evidence but compliance with statutory provisions. He submitted that where statue provides for the fulfillment of certain condition,

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failure to comply will render the subsequent action a nullity. He rested on the cases of **Shugaba v. U. B. N. Plc (1999) LPELR-3068 (SC); Ayedaniwa & Ors. . Victor & Ors. (2015) LPELR-40285 (CA)** and **Zarewa & Ors. v. Falgore & Ors (2020) LPELR-50870 (CA)**.

Learned senior counsel submitted that the tribunal was right in expunging the exhibits for failure to comply with the mandatory provisions of Paragraph 41(8) thereof. Reliance was placed on the cases of **Momodu v. Ibrahim (2021) LPELR-54137 (CA)** and **Durosinmi v. Adeniyi & Ors. (2017) LPELR-42731 (CA)**.

On evaluation of evidence relating to unlawful votes ascribed to the appellant, which were deducted and the findings of the tribunal that the appellant was not duly elected by majority of lawful votes cast at the election, learned senior counsel submitted that whenever an assertion that a candidate was not elected by majority of lawful votes cast is raised, the court will be guided by the number of votes added or affected, the votes recorded and subsequently declared void will assist the tribunal in the deduction of the unlawful votes from the total recorded votes for the returned candidate and after deduction, the candidate with the highest number of votes is returned as elected. On this, the court was referred to **Aregbesola v. Oyinlola (2009) 14 NWLR (Pt 1162) 429** and **Iniama v. Akpabio (2008) 17 NWLR (Pt. 1116) 225**.

The 1st respondent's leading senior counsel submitted that there is no criminal allegation raised in the petition to justify it to be founded under corrupt practices and as such, the requirement of proof beyond reasonable doubt is not applicable to this appeal – **Adeleke v. Oyetola (supra)** and **Oyetola v. INEC (supra)**.

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He submitted that the 1st respondent through its witnesses proved her case on preponderance of reasonable probability and the tribunal rightly evaluated the evidence, considered sections 63 and 71 of the Electoral Act, 2022 and resolved the issue against the appellant.

Learned senior counsel argued that in order to prove that the appellant did not score majority of lawful votes cast in the election, the 1st respondent tendered in evidence exhibit P169 which is the statician's report detailing the analysis of the invalid votes in favour of the appellant and 3rd respondents across 34 Local Government Areas of Kano State.

Exhibits P5 – P34 series i.e. the unlawful ballot papers used by the 2nd respondent during collation after the Kano State Governorship election of 18th March, 2023 at the collation centres in the affected 34 Local Governments by Exhibit P169 equally counted in favour of the appellant and a full consideration of Exhibits P5 – P34, P157 – P162 series will reflect that the total number of affected ballot papers that were unlawfully counted for the 2nd respondent is 165,610 and that a deduction of same from 2nd respondent's total scores will reduce same to 853,986. Hence, the actual lawful votes for both the 1st respondent and the 3rd respondent will reflect:

(a) 1st Respondent = 890,705 votes

(b) Appellant = 853,986 votes

Learned Senior Advocate of Nigeria referred this court to the provisions of section 42 of the Electoral Act, 2022 and regulation 19 and submitted that for a ballot paper to be valid and lawful in an election, it must be "stamped, signed and dated at the back" by the presiding officers of the polling unit and failure of the presiding officer to comply with that provision will render the ballot void. See **Amadisun & Anor. v. Ativie & Ors (2009) LPELR-37611 (CA).**

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Learned counsel submitted that the submission of the appellant's counsel that there is no provision in the Electoral Act, 2022 for stamping, dating and signing of ballot papers is misconceived. He referred to the case of **Buhari v. INEC & Ors. (2008) 18 NWLR (Pt. 1120) 246 SC** and **Oyetunji O. & Anor. v. INEC & Ors. (2019) LPELR-4915) (CA)** in support of this submission.

The 1st respondent's learned senior counsel referred the court to exhibits P169, P5 – P34 series and P157 – P162 series and submitted that they are the necessary documents tendered and the 1st respondent called oral evidence in support of them.

On the total invalid votes from the 34 LGA identified by exhibits P5 – P34A, P157 – P162 and P169 is 165,616, senior counsel contended that the tribunal considered the pleadings and evidence before it, 2nd respondent's reply admitting these invalid votes from the appellant's votes, an action which is in line with the decision in **Agbaje v. Fashola (2008) 6 NWLR (Pt. 1082) 90 at 148** to the effect that the tribunal has a duty to compute the final scores after deducting invalid votes. He also referred to the case of **Ngige v. Obi (2006) 14 NWLR (Pt. 999) 1 at 161 – 162**.

Learned counsel submitted that contrary to the submissions of the appellant, the wrong reference to section 71 of the Electoral Act, 2022 by the tribunal as the section which provided that ballot papers must be signed and dated cannot affect the conclusion of the tribunal that they were invalid votes and that the error does not invalidate the decision of the tribunal; on the authority of **Wiliams v. Ibejiako & Ors. (2008) LPELR-5102 (CA)** per **Garba, JCA (PP 9 – 10) Paras. F – C**.

On appellant's contention that the 1st respondent did not call witnesses to testify in respect of all the polling units in which the vote cast

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that were declared in valid on account of non-stamping, non-signing and dating of ballot papers, it was submitted that doing so is unnecessary because the issue in contention is limited to what transpired between the voters and presiding officer, who has the obligations to stamp, sign and date the ballot papers at the back, otherwise taking step as argued by the appellant would be tantamount to invitation to illegality because section 50 of the Electoral Act, 2022 provides for open secret ballot. Thus, learned counsel submitted that the appellant's argument in this regard should be discountenanced as it will be commanding the doing of the impossible. The 1st respondent referred the court **Uzodima v. Iheodia (2020) LPELR-50260 (SC); Oyetola v. INEC (supra) at 193** and **Section 137 of the Electoral Act, 2022.**

On non-qualification of the appellant to contest for the governorship election of Kano State, on account that he was not a member of the 3rd respondent as established by the evidence before the tribunal, the 1st respondent argued that by "Part A INEC Form EC9" submitted by the appellant to the 2nd respondent, the appellant asserted under oath that his membership number is NNPP/HQ/KN/GWL/DS/001, exhibits 2R20 (X), a private list of members kept, which were tendered by DW3, none of those documents bear the membership number NNPP/HQ/KN/GWL/DS/001 expressed in INEC FROM EC9, exhibit P1.

The 1st respondent maintained that the tribunal examined all the exhibits tendered in this regard as well as the pleadings and found that the private membership document belatedly made does not correspond with the membership number expressed by the appellant in exhibit P1 and same was not stamped by INEC. That being the case, the tribunal rightly resolved the issue in favour of the 1st respondent.

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Furthermore, learned senior counsel contended that the 1st respondent tendered three complete volumes of NNPP register of members (i.e. exhibits P2, P2A and P2B and the appellant's name is not included in the register in which the appellant purportedly work his so-called membership number. In addition, 1st respondent referred this court to

The 1st respondent referred this court to section 77 (2) and (3) of the Electoral Act, 2022 and the case of **Odinakachukwu v. PDP & Ors. (2022) LPELR-59013 (CA)** and submitted that membership of the political party that sponsored a candidate is a paramount consideration.

The 1st respondent submitted that issue in this appeal is not about nomination of the appellant but it has to do with his qualification to contest the election in question. See **Onubogu v. Anazonwu & Ors. (2023) LPELR-60288 (SC)**.

On appellant's allegation that the tribunal rejected exhibits P163, P163A and 2R20(x), the 1st respondent submitted that the exhibits were not rejected but no value was on them in view of the various contradictions in the exhibits. Thus, the 1st respondent urged this court to affirm the findings of the tribunal that the appellant was not constitutionally qualified to contest the election.

On margin of lead principle, the 1st respondent referred the court to paragraph 62 of the Regulations and Guidelines for the Conduct of the Election, 2022 and submitted that by virtue of that principle, return of a candidate at an election cannot be made where the number of permanent voters cards collected in the affected areas where the election did not hold, were postponed or voided is in the excess of the margin of lead between the Respondent and the Petitioner. See **KUMURVA & ANOR. V. GURIYA & ORS. (2019) LPELR-48972 (CA)**.

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The 1st respondent submitted that the 2nd respondent in contravention of margin of lead principle declared the 3rd respondent as the winner of the election and that the main relief sought for by the 1st respondent upon the granting of the alternative relief was unnecessary.

Finally, the 1st respondent urged us to resolve all the issues in her favour and against the appellant.

In his reply the learned senior counsel for the appellant submitted that the submission of the 1st respondent on issue 1 touches on consent of parties which cannot override the constitutional provisions. He cited and relied on the case of **Menakaya v. Menakaya (2001) LPELR-1859 (SC) at 63**.

On issue 2, appellant contended that the 1st respondent's position was based on the pronouncement of Member II, which was not backed up by any piece of evidence.

On issues 5 and 6, Appellant submitted that the 1st respondent did not deny that exhibit P169 was made during the course of proceedings by a person commissioned by 1st respondent/petitioner and relied on section 84 of the Evidence Act, 2011 and **OYETOLA v. INEC (supra)**.

The strenuous argument of the appellant is that the tribunal erred when, without an application, it allowed the 1st respondent, who had closed her case, to reopen same after the 14 (fourteen) days allotted to her during the pre-hearing session had elapsed. The 1st respondent, however, referred to the judgment of the tribunal and submitted that the tribunal's action was right.

In its judgment, the tribunal advanced cogent and compelling reasons why exhibits "P170", "P171 (1 – 44)" and "B126" – "B171",

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complained of by the appellant were admitted in evidence and it refused to expunge them when an objection was raised. For the avoidance of any doubt and easy comprehension, the tribunal elaborately stated and held as follows:

> **"The last objection of the 1st Respondent, is on the objection on the admissibility of some certified true copies of INEC forms and documents. It is on the strength of this ground, that the 1st Respondent urged the Honourable Tribunal to expunge the documents admitted as Exhibits P170, P171(1-44) and Exhibits B126-B171 respectively.**
>
> **It is pertinent to state, that on the 21st day of July 2023 and during the cross examination of 2RWI by counsel to the Petitioner, these Exhibits were admitted by this tribunal.**
>
> **It is trite, that the basic principle on admissibility in law, is whether the documents are duly pleaded; whether they are relevant to the facts in issue and whether they are admissible in Law? See the cases of AONDO AKAA V OBOT 7 OR 2021 SC; TORTI V UKPABI 1984 1 SC PG 370 and DIKIBO & ORS VIZIME 2019 LPELR - 48992-CA.**
>
> **There is no gainsaying the fact, that the certified true copies admitted by the court**

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met the criteria on admissibility, as relevancy governs admissibility and the said documents were pleaded. See the cases of NAB LTD VS SHUAIBU (1991) 4 NWLR (PT. 186) 450, OKECHUKWU VS INEC (2014) 17 NWLR (PT.1436) 256 AT 294-295.

Be that as it may, the question is whether they can be admitted at the stage they were admitted and after the Petitioner had closed its case, on the hallowed principle of fair hearing as canvassed by the objectors? This is the crux of this objection.

It is of note, that on the 23rd of June 2023, during trial and upon the failure of the 1st Respondent to produce to the Petitioner all the INEC documents requested by the Petitioner at once, but producing same piecemeal during the course of trial, this tribunal varied its order in the Pre-Trial Report, on the time for the tendering of documents, as follows;

> ***'with the joint consent of counsel to the parties, this tribunal hereby varies the resolution in the pre-hearing report, that counsel can tender documents not tendered during the pre-hearing, at the commencement of***

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their case and not thereafter. This order is hereby varied now, it is agreed that counsel can only tender documents throughout the hearing of this Petition, but before the conclusion of trial'

In effect, trial was still going on, when counsel to the Petitioner sought to tender the INEC documents said to have been given to him that day.

It is the considered view of this tribunal, that the 1st Respondent cannot have its cake and eat it. Fair hearing is a double edged sword, which can be used by either party in the conduct of a fair trial. See the case of OPARA V MORECAB FINANCE LTD & ANOR 2018 LPELR-43990 P 31-36 PARAS D"

(Underlining mine for the sake of emphasis)

It should be noted that the objection to the admissibility of exhibits "P170", "P171 (1-14) and "B126 – B171" was not even raised by the appellant, but by the 2nd respondent, who was the 1st respondent in the tribunal, and who was supposed to accord the appellant and the 1st respondent equal rights, opportunities, access to documents in its custody and justice. As can be seen from the underlined portions of the parts of the tribunal's judgment, reproduced above, the tribunal acted in the overall interest of justice. This is because a court or tribunal has no business condoning any litigation as a game of "**hide and seek**", as the 2nd

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respondent tried to do, by releasing copies of public documents to the 1st respondent piecemeal, so as to defeat the ends of justice. Such behaviour was roundly condemned in the case of **Hon. Muyiwa Inakoju v. Hon. Abraham Adeolu Adeleke (2007) 4 NWLR (Pt. 1025) 425 at 627** per **Niki Tobi, JSC**; where the Supreme Court held, *inter alia*, as follows:

> **"The appellants were so miserly in the way they approached the court in this matter. They kept so much of their defence (if they had any defence at all) in their bosom and cleverly making efforts to out-smart the respondents. All their strategy was to delay the proceedings till the 29th May, 2007 to make the judgment of this court barren or useless, if in favour of the respondents. What type of cleverness is that? What type of smartness is that? What type of trick is that? I am tempted to add "prank" to the list. I will not yield to the temptation.**
>
> **Litigation is not a game of cleverness, smartness or tricks. It is not a hide and seek game where one of the parties in all cleverness and smartness takes ambush and waits with all acrobatic dexterity for the opponent to fall into a trap and get him thoroughly harmed or destroyed. Litigation is not a game of chess where one of the parties attempts to trap the opponent's king to obtain victory. On the contrary, litigation has an**

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inbuilt dispute settling mechanism where the parties come out in the open to make their cases frankly and not cunningly or craftily."

In any case, the order of the tribunal made on 23rd of June, 2023 varying its order in the Pre –Trial Report was "**with the joint consent of counsel to the parties**" and the appellant cannot now be heard to complain. The law requires that a party must be consistent and will not be permitted to approbate and reprobate over one and the same issue. See the case of **Intercontinental Bank Ltd. v. Brifina Ltd. (2012) 3 NWLR (Pt. 1316) 1 at 22.**

It should be noted that by virtue of paragraph 18(10) of the First Schedule to the Electoral Act, 2022 a tribunal or court has the power to modify a report or reports issued after a pre-hearing session or series of pre-hearing sessions.

The law is now trite that the provisions in a schedule to an Act or Statute are part of the Act or Statute and are as potent as any part thereof. See **Saraki v. FRN (2006) LPELR-40013 (SC)** and **NNPC v. Famfa Oil Ltd (2012) 17 NWLR (Pt. 1328) 148.**

The proceedings of a court or tribunal, after modifying its pre-hearing reports, are not invalid nor vitiated. See the case of **Sani A. & Anor. v. Akwe & Sons (2019) LPELR-48206 (CA).**

The cases relied upon, including **Andrew v. INEC (2017) LPELR-42161 (CA)**, by the appellant to advance his case are not applicable to this case, with its peculiar circumstances and facts.

Without any rigmarole, the appellant's complaints that the candidate sponsored for the general election by the 1st respondent, **Nasiru Yusuf**

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Gawuna, was a necessary party who ought to have been joined as a petitioner to the 1st respondent's petition has no sound legal prop upon it can stand. This is because under section 133(1) of the Electoral Act, 2022 "**an election petition may be presented by... a candidate in an election; or... a political party which participated in the election.**"

The use of the word "or" by the Legislature in section 133(1) of the Electoral Act, 2022 is very instructive, because in the interpretation of statutes the word "or", in its ordinary usage, is disjunctive. See the case of **Da Karikim & Anor. v. Hon. Justice Luke Emefor & 6 Ors. (2009) 14 NWLR (Pt. 1162) 602 at 623-624,** per **Onnoghen, JSC; at 640,** per **Muntaka-Coomasie, JSC**.

Thus, under section 133(1) of the Electoral Act, 2022 an election petition can be presented either by a candidate who contested the election or the political party which sponsored the candidate. Both the candidate and his political party can also present a joint election petition. Where it is only a political party that presents an election petition, the petition is be deemed as having been presented on behalf of the party's candidate also. This analogy was made by the Supreme Court, whilst interpreting section 137 of the Electoral Act, 2010 *in pari materia* with section 133 of the Electoral Act, 2022. For clarity, section 133 (1) of the Electoral Act, 2022 provides that:

> **"133.(1) An election petition may be presented by one or more of the following persons**
>
> **(a) a candidate in an election; or**

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(b) a political party which participated in the election"

In the case of **Alhaji Adamu Maina Waziri & Anor. v. Alhaji Ibrahim Geidam & Ors. (2016) 11 NWLR (Pt. 1523) 230,** the Supreme Court stated who may present an election petition

In the case of **All Progressives Congress v. Peoples Democratic Party (2019) LPELR – 49499 (CA)** this court, per **Agim, JCA** (as he then was, now JSC) held that:

> **"…. Therefore such a petition is a representative action by the political on behalf of its candidate for the election and its members, the political party's candidate for the election is an unnamed party for his benefit and that of the political party. An unnamed party in a representative action is a party to the action."**

The 1st respondent clearly presented its petition for itself and its candidate, when it averred in paragraphs 3, 9, 17, 91 and 99 (4), (6) and (9) as follows:

> **"3. Your Petitioner duly sponsored NASIRU YUSUF GAWUNA as its Candidate to contest the Governorship election held on the 18th day of March 2023."**

> **"9. Your Petitioner has the right to present this Petition having participated as a political party that sponsored its**

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candidate **NASIRU YUSUF GAWUNA**, in the election to the Office of Governor of Kano State held on Saturday, 18th March, 2023."

"91. That the Petitioner's candidate (Nasiru yusuf Gawuna) is, therefore, entitled to be declared the winner of the election, being the candidate with the highest number of lawful votes cast, 890,705 votes in the Kano State Governorship Election as shown in the table below and who has satisfied the constitutional requirements."

"99. **WHEREFORE YOUR PETITIONER** seeks the following reliefs from this Honourable Tribunal:

(4) That it be determined that on the basis of the remaining votes the Candidate of your Petitioner; **NASIRU YUSUF GAWUNA** having scored a majority of lawful votes and having met the constitutional requirement be declared the winner of the election and returned elected as the Governor of Kano State.

(6) That it be determined that the candidate of Your Petitioner **NASIRU**

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YUSUF GAWUNA scored a highest number of lawful votes of 890,705 (after discounting the unlawful votes of the 2nd Respondent amounting to 282,496 votes) and having met the requirement of the law is declared the winner of the election to the office of Governor of Kano, Kano State and returned elected.

(9) **DIRECTING the 1st Respondent to immediately issue and serve a Certificate of Return on or in favour of the candidate of your Petitioner, as the winner of the 2023 Gubernatorial election for Kano State held on 18th March, 2023."**

Since the 1strespondent's petition was a representative petition and whether or not her (1st respondent's) candidate was a named party, he would be entitled to reap the benefits of the success of the said petition. See **Boko v. Nungwa & Ors. (2018) LPELR – 45890 (CA).**

In this case, the said candidate – **Nasiru Yusuf Gawuna**, although an unnamed party in the petition, specific reliefs were sought for him by his political party.

The appellant's arguments on whether or not the said **Nasiru Yusuf Gawuna "met the constitutional requirement"** set out in section 179(2) (a) and (b) of the Constitution go to no issue, because this factual contention is not borne out of the appellant's pleadings. As stated earlier,

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the 1st respondent specifically pleaded that its candidate– Nasiru Yusuf Gawuna – scored higher number of votes than the appellant and "**a majority of lawful votes**" and he "**met the constitutional requirement**"..."**as shown in the table below**". If the appellant was contesting that the 1strespondent's candidate did not satisfy "the constitutional requirement", he should have clearly pleaded so.

The law is that, as a general rule, the pleading of a learned counsel is binding on the party who has retained him in the case or suit. See cases of **Lewis & Anor. v. Majekodunmi (1966) 1 All NLR 189** and **Emmanuel T. Ayeni & Ors. v. William Abiodun Sowemimo (1982) All NLR 52 at 62**, per **Udoma, JSC**.

Of profound importance is that parties are bound by their pleadings. See **Incar (Nig) Ltd. v. Benson Transport Ltd. (1975) 3 SC 117; Enang v. Adu (1981) 11-12 SC 25** and **Osatile v. Odi (1990) 3 NWLR (Pt. 137) 130**.

I need not say it, but it is also trite that a court or tribunal has a duty to confine itself to evidence on only matters which have been included in the pleadings of the parties. See **George v. Dominio Flour Mills (1963) 1 SCNLR 117; Emegokwue v. Okadigbo (1973) 4 SC 113; Woluchem v. Gudi (1981) 1-5 SC 291** and **Sosanya v. Onadeko (2005) 8 NWLR (Pt. 926) 185**.

In this case, the tribunal acted on the evidence borne out of the 1st respondent's pleadings.

It should be noted the appellant's grouse relating to the testimony of PW19 and the tribunal's alleged non-compliance with virtual sitting protocols are only of infinitesimal significance. I say so because both the

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Hausa language and English language versions of the witness' written statement on oath were put in evidence by the 1st respondent. However, it was one of the learned counsel who moved the tribunal that the English language version of the statement on oath of PW19 should be used and all other learned counsel agreed. What injustice did the appellant suffer by the use of the English language version of the PW19 written statement by the tribunal, when PW19 even testified under cross-examination at page 4513 of the record of appeal as follows:

> **"I can write particularly in Hausa, but not in English. I can read and write. Nobody tutored me. I was the one who read the contents of the document given to me."**

The appellant has not shown that if the Hausa language version of the written statement on oath of PW19 had been used, the decision of the tribunal would have been different or favourable to him.

The appellant has also failed to show that the manner the tribunal sat virtually to deliver its judgment adversely affected his right to fair hearing. If the tribunal had sat in open court, would the court hall have accommodated the millions of Nigerians who would have been physically present, if they desired to do so?

The appellant's complaint on the rejection of exhibits "O", "P", "Q" and "M", which he claims are his membership card, 3rd respondent's constitution, evidence of waiver and appellant's Form EC9, respectively, is no moment because the said documents were neither listed nor attached to the his reply to the 1st respondent's petition, contrary to the clear and mandatory provisions of paragraphs 12(3) and 41(8) of the First Schedule to the Electoral Act, 2022 which stipulate respectively, that:

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"The reply... shall be accompanied by copies of documentary evidence,..."

And

"Save with the leave of the Tribunal or Court after an applicant has shown exceptional circumstances, no document, plan, photograph or model shall be received in evidence at the hearing of a petition unless it has been listed of filed along... with the reply in the case of the respondent."

In this case, the documents/exhibits complained of were neither listed nor filed along with the appellant's reply and the appellant did not first seek leave of the tribunal for the said documents/exhibits to be received in evidence. The tribunal rightly expunged them after considering the 1st respondent's objection.

The law is settled that where leave is required and it was neither first sought nor obtained, any process filed or step taken by a party will be incompetent and liable to be struck out or discountenanced. See **Abubakar v. Dankwambo (2015) 18 NWLR (Pt. 1491) 213**.

In this case, the appellant's Form EC9 had earlier been admitted in evidence and it was marked as exhibit "P1". It is important to state that the tribunal duly considered and evaluated exhibit "P1" (the appellant's Form EC9) in its judgment before arriving at its final decision. For ease of reference, see pages 4702 to 4716 of the record of appeal, where the tribunal considered exhibit "P1" – the appellant's Form EC9 together with other documents, exhibits, evidence before concluding that the appellant

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"was not a member of the 3rd respondent and his name is not contained in the register of members".

It should be noted that exhibits "P171 (1 – 44)", amongst others were tendered from the Bar by the 1st respondent's senior counsel during cross-examination of 2RW. These documents were produced by the 2nd respondent (INEC) and the 1st respondent's witnesses were duly cross-examined on them. These documents are EC8C(ii) Forms of forty-four Local Government Areas of Kano State. The purport of the documents was to establish whether or not they contain the official marks of the 2nd respondent (INEC) and which could be done by a perusal of the documents, including exhibits "P5", "P6 – P16C", "P18 – P34A". Therefore, the provision of section 137 of the Electoral Act, 2022 availed the tribunal, in its task of evaluating the evidence before it. The case of **Oyetola v. INEC (supra)**, heavily relied upon by the appellant is not applicable to the facts and circumstances of this case.

In this case – PW32 – one **Dr. Aminu Idris Harbau**, a research and data analyst who is a "special scientist" and who testified under a subpoena carried out a scientific analysis of the ballot papers – exhibits "P6" to "P16C", "P18 – P34A" and gave unchallenged evidence that "165, 616 invalid votes" were wrongly credited to the appellant and his "Analysis" was admitted in evidence and marked exhibit "P169". There was no contrary analysis or evidence from the appellant or the 2nd respondent or 3rd respondent. PW32 was thoroughly cross-examined – see pages 4557 to 4559 of the record of appeal.

The records of this court show that the appellant attempted, unsuccessfully, to ensure that the evidence of **Dr. Aminu Idris Harbau – PW32 was discountenanced or set aside. See Appeal No:**

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CA/KN/EP/GOV/KAN/05/2023 between: ABBA & 2 ORS. (delivered on the 24th day of August, 2023).

All that the appellant can say is that exhibit "P169" ought not to have been admitted in evidence because it was computed generated and was not accompanied by a certificate, as required by section 84 of the Evidence Act, 2011.

It should interest the public to know that at page 1 of exhibit "P169", the source of the data, that is the source of the information, upon which it was prepared has been disclosed as follows:

> ***"Sources of data: Certified True Copies of the Ballot Papers embodying NNPP votes cast in the 18th March, 2023 gubernatorial election collected from INEC after court order was given, inspection of the ballot papers and sorting were done."***

In essence, by virtue of the disclosure of the source through which the information used in preparing the report (exhibit P169) was made, I am of settled view that same was not generated from computer but hard copies of Certified True Copies of documents collected by the witness from the 2nd respondent (INEC). That being the case, the provision of section 84 of the Evidence Act, 2011 is not applicable to exhibit P169. See **AROCOM GLOBAL INVESTMENT LTD V. UNITED PARCEL (2021) LPELR-5289 (CA)** per ***OJO, JCA*** *(PP. 14-17, paras. A-D)* where waybills were excluded from documents that can be classified as computer generated documents.

On the allegation that PW32 is invariably an interested party, it is crucial to note that the mere fact that a witness was engaged by a party to

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give evidence, in a cause or matter involving the appointor, does not make him a witness interested in the outcome of the case. See **PETERSIDE & ORS. v. WABARA & ORS. (2010) LPELR-4847 (CA).**

By the resume of PW32, as disclosed in exhibit P169, he is a skilled analyst and qualified to be engaged in the thorough analysis of INEC documents and his engagement is purely in his professional capacity, as an analyst. See **LADOJA v. AJIMOBI (2016) LPELR-40658 (SC)**.

To say the least, the 1st respondent proved, as required by law, by a very high degree of preponderance of credible evidence, duly pleaded, presented and admitted by the tribunal. The tribunal was eminently right in finding and holding *inter alia,* as follows:

> **"The Respondent themselves in my opinion were the ones who helped this Court to arrive at the conclusion that this petition is meritorious for the following reasons:**
>
> 1. **The 1st Respondent supplied Certified True Copies of all the critical Electoral documents on the fact of which we found the clear evidence to arrive at the conclusion that the 2nd Respondent did not win the 18th day of March, Governorship Election in Kano State.**
> 2. **The Respondents at the points of pleadings made massive admissions as already stated by my learned brother in the lead judgment.**

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3. The few areas where issues were joined relatively to the invalid votes discovered as stated in the lead judgment. The petitioners tendered documentary evidence supplied by the 1st Respondent in proof that there was indeed at least 165,616 invalid votes wrongly credited to the score of the 2nd Respondent.

This court was highly justified to pluck all the invalid votes off and deduct same from the 2nd Respondent's votes. After the deduction of the invalid votes. The Petitioner became the rightful person that scored the majority of lawful votes in the said Kano State Election. This initial return of the 2nd Respondent was like building something on nothing. The effect of building in the air is that the wind will blow the structure away and bring it to nothing. That is what this Tribunal done. We dedare the Return of the 2nd Respondent by the 1st Respondent as manifestly wrong and I so hold.

The only witness called by the Respondent urge this Court to use all the documents certified and supplied by the 1st Respondent to arrive at he just determination of this case. So the Tribunal saw good reason with him to make use of the Evidence before us to

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demolish the paper house built by the 1st Respondent for the 2nd Respondent while in the said paper house, the 2nd Respondent presided over a state where anarchy was being supported and prevented Agents of the Government were allowed to malign the Judiciary. The Judges of this Tribunal were harassed, intimidated and made to run under cover. What is the offence of the Judiciary. It is the duty of the Judiciary to disperse Justice and no more. The Judiciary is an arm of Government constituted by the Constitution of the Federal Republic of Nigeria.

As stated above the Respondents contributed heavily in the success of this petition. At the pleading stage they made critical admissions. At the trial stage they supplied critical and important documents. Yet at judgment stage the 20 Respondent does not wasn't this Tribunal to stand by justice by stating the truth of the matter. They took the position as was widely reported in the media both print and social that if they loose the case, they will kill the Judges and put the Residence of Kano State on fire. They threatened to bring unrest and banditry to Kano State. We are also citizens of this country in Kano to discharge our lawful duties. We have not committed any

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offence by performing our duty of adjudication."

Section 177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that:

> **"177. A person shall be qualified for election to the office of Governor of a State if-**
>
> **(a) he is a citizen of Nigeria by birth;**
>
> **(b) he has attained the age of thirty-five years;**
>
> **(c) he is a member of a political party and is sponsored by that political party; and**
>
> **(d) he has been educated up to at least SchoolCertificate level or its equivalent."**

Of direct importance to this appeal is paragraph or sub-section (c) of 177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It is a two-edged qualification requirement. The first compulsory edge for a person to be qualified for election to the office of the Governor of a State in Nigeria is that "**he is a member of a political party**".

The provision of section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is very clear, plain and unambiguous and the law mandates the court to accord such a provision its ordinary grammatical meaning, unless that approach would result in an illogical, incongruous or irrational conclusion, termed absurdity. See the case of **Josiah Ayodele Adetayo & 2 Ors. v. Kunle Ademola & 2 Ors.**

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(2010) 15 NWLR (Pt. 1215) 169 at 205, per **Adekeye, JSC**; where the Supreme Court held thus:

> **"In the interpretation of a statute, where the words... are clear, plain and unambiguous, there is no need to give them any other meaning than their ordinary, natural and grammatical construction would permit unless that would lead to absurdity".**

See also the cases of **African Newspapers Ltd. v. Federal Republic of Nigeria (1985) 2 NWLR (Pt. 6) 137; Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 546; Ekeogu v. Aliri (1991) 3 NWLR (Pt. 179) 25** and **Victor Manyo Ndoma-Egbav. Nnameke Chikwukeluo Chukwuogor & Ors. (2004) 6 NWLR (Pt. 869) 382 at 409**, per **Uwaifo, JCA (as he then was).**

In the case of **All Nigeria Peoples' Party v. Goni (2012) All FWLR (Pt. 623) 1821 at 1850 – 1851**, per **Adekeye, JSC**; the Supreme Court set out the guidelines for the interpretation of statutes by holding as follows:

> **"The jurisdiction of the court is derived from the Constitution or statutes creating the court. In its interpretative jurisdiction, a court must abide by certain rules and principles as follows:**
>
> **1. The intention of the legislature should be sought.**

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2. The intention of the legislature is to be ascertainedfrom the words of the statute alone and not from other sources.
3. The words used are to be given their ordinary and unambiguous meaning, that is, the legislature is to be presumed not to have put a special meaning on the words.
4. It is not the court's province to pronounce on the wisdom or otherwise of the statute but only to determine its meaning.
5. The court must not import into legislation words that were not used by the legislature and which will give a different meaning to the text of the statute as enacted by the legislature.
6. The court must not bring to bear on the provisions of a statute, its prejudice as to what the law should be or the reasonableness or unreasonableness but rather should interpret the law from the clear words used by the legislature.
7. The court must not amend a legislation to achieve a particular object or result, the court is to expound the law and not to expand it.

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8. The courts should adhere to the purposes of a provision where the history of the legislation indicates to the court the object of the legislature in enacting the provision: ***Aqua Limited v. Ondo State Sports Council (1988) 4 NWLR (Pt. 91) 622; Fawehinmi v. IGP (2000) FWLR (Pt. 12) 2015, (2000) 7NWLR (Pt. 665) 481; Awolowo v. Shagari (1979) 6 - 9 SC 51, (2001) FWLR (Pt. 73) 53; Attorney-General, Bendel Statev. Attorney-General, Federation (1982) 3 NCLR 1, (2001) FWLR (Pt. 65) 448; Bronik Motors Ltd v. Wema Bank (Nig.) Lic (1983) 1 SCNLR 296; Tukur v. Governor of Gongola State (1989) 4 NWLR (Pt. 117) 517."***

By the provision of section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Legislature has in plain English language provided that a person "**shall be qualified for election to the office of the Governor of a State if... he is a member of a political party...**" In its ordinary grammatical meaning "**qualified**" is:

> **"Officially eligible having met a condition or requirement to become legally eligible for or entitled to a position..."**

See Encarta World English Dictionary, page 1536.

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At page 1360 of Black's Law Dictionary, Deluxe Ninth Edition, the learned authors define "**qualified**" as:

> **"Possessing the necessary qualifications..."**

And "**qualification**" is defined as meaning:

> **"The possession of qualities... inherently or legally necessary to make one eligible for a position or office..."**

By section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) membership of a political party is a *sine qua non* for eligibility to contest a governorship election in Nigeria.

It should be noted that section 77(2) of the Electoral Act, 2022 provides as follows:

> **"Every registered political party shall maintain aregister of itsmembers in both hard and soft copy."**

The court interpreted provision in *pari materia* as that of section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 77 of the Electoral Act, 2022, in the case of **Dr. Nwadiubu Anthony Odinakachukwu v. Peoples Democratic Party & Ors. (2022) LPELR – 59013** and held, per **Jummai Hannatu Sankey, JCA**; as follows:

> ***"The law is as sculpted into the Constitution of the Federal Republic of Nigeria 1999 (as amended) that by Section 65(2) (b) thereof, one of the main***

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qualifications that makes a person eligible to contest election as a member of the House of Representatives, is that he is a member of political party and is sponsored by the party. In order to give effect to this constitutional provision, Section 77(2) & (3) of the Electoral Act, 2022 mandates every registered political party to maintain a register of its members in both hard and soft copy, which shall be made available to the 2nd Respondent (INEC) not later than 30 days before the date fixed for the party primary election."

The appellant relied on the case of **Buhari v. Obasanjo (2005) 2 NWLR (Pt. 910) 241 at 500-501**, where it was held that the register of members of a political party is not the only proof of who is a member of the party. It is true that it was so decided in that case. However, a political party qualifies as "**a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name**" by virtue of section 77(1) of the Electoral Act, 2022. Being a body corporate, just as a company or body incorporated under the Companies and Allied Matters Act, its best evidence of its members is its register of members as mandated by section 77(2) of the Electoral Act, 2022; just as the relevant register of members of a Company under sections 105, 109, 110, and 111 of the Companies and Allied Matters Act, 2020 (as amended) constitutes the best legal evidence of membership of a duly incorporated company, association and partnership.

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The 1st respondent pleaded in paragraphs 82, 83, 84 and 85 of her petition that the appellant was not qualified to contest the election because he "**was not a member of the 3rd respondent at the time of the election**" and that he "**was not a registered member of the 3rd respondent and his names** (sic) **is not contained in the register of members of the 3rd respondent.**" And in paragraph 96 (xli) of the petition, the 1st respondent specifically pleaded "**NNPP Register**" as one of the documents to be relied upon at the trial.

At the trial, the 1st respondent tendered exhibits "P2", "P2a" and "P2b", which are three volumes of certified true copies of the 3rd respondent's membership register.

In paragraph 66 of his reply to paragraphs 82, 83, 84 and 85 of 1st respondent's petition, the 1st appellant pleaded casually as follows:

> **"66. The 2ndRespondent in further denial of paragraphs 82, 83, 84, 85 and 86 of the petition states that the 2nd Respondent was at all material timesand still is a member of the 3rdRespondent who sponsored him as acandidate for the Governorship Election in Kano State after a successful party primaries where he scored majority of votes and was nominated and sponsored thereby. The 2nd Respondent hereby pleads the membership register of the 3rd**

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Respondent out of abundance of caution."

It should be noted that the appellant carefully, but to his own detriment, omitted to list the membership register or his membership card of his political party as one of the documents he would rely on at the trial of the petition. The worse aspect of the appellant's defence is that he did not even attach his written statement on oath to his reply. Rather, one **Dr. Abdullahi Baffa Bichi**, whose written statement on oath dealt with the fact of whether or not the apppelalnt was a member of the 3rd respondent, obliquely deposed in paragraph 64 thereof thus:

> **"64. That I know as a fact that the 2nd Respondent was at all material times a member of the 3rd Respondent. And the 3rd Respondent sponsored the 2nd Respondent as a candidate for the Governorship Election in Kano State after a successful party primaries where the 2nd Respondent scored majority of votes and was nominated and sponsored thereby. The membership register of Kano chapter of the NNPP (3rd Respondent) contains the name of the 2nd Respondent and for the abundance of caution, the register of members will be put in evidence at the trial."**

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If one may ask: Is the appellant's alleged membership of his political by proxy, through **Dr. Abdullahi Baffa Bichi**?

The 3rd respondent, of which the appellant claimed to be a member, also pleaded generally in paragraph 65 of her reply to the petition as follows:

> **"65. The 3rd Respondent, in further denial of paragraphs 82, 83, 84, 85 and 86 of the petition, states that the 2nd Respondent was at all material times a member of the 3rd Respondent. And the 3rd Respondent sponsored the 2nd Respondent as a candidate for the Governorship Election in Kano State after a successful party primaries where the 2nd Respondent scored majority of votes and was nominated and sponsored thereby. The 3rd Respondent hereby pleads the membership register of Kano chapter of the 3rd Respondent out of abundance of caution."**

Surprisingly, the 3rd respondent also did not plead its membership register, in paragraph 71 or at all of its reply, as one of the documents she would rely on. What the appellant and the 3rfd respondent did was to try- to smuggle into the tribunal a purported updated register of its members, long after the 1st respondent's petition was filed. The tribunal was right to have held that such an act was "caught by section 83(3) of the Evidence Act, 2011.

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Even on the face of the pleadings of the parties, the appellant and his alleged political party – the 3rd respondent did not put forward any resistance to the 1st respondent's serious allegation that the appellant was not a registered member of the political party, which purportedly sponsored him in the disputed election.

Whereas it is settled that:

> **"...membership of a political party is a domestic affair of a party concerned. Therefore, the courts do not have jurisdiction to determine who the members of a political party are."**

— per **Clara Bata Ogunbiyi, JSC**; in **Agi v. Peoples Democratic Party & Ors. (2016) LPELR – 42578 (SC)**. See also the cases of **Onuohav. Okafor (1983) 2 SCNLR 244**; **ANPP v. Usman (2008) 12 NWLR (Pt. 1100) 1**; **Lado v. CPC (2011) 18 NWLR (Pt. 1279) 689**; **PDP v. Sylva (2012) 13 NWLR (Pt. 1316) 85** and **APGA v. Anyanwu (2014) 7 NWLR (Pt. 1407) 541**.

It should be noted, however, that courts will not allow a political party to act arbitrarily. A political party must obey its own constitution, not to talk about a political party obeying the Constitution of the Federal Republic of Nigeria, 1999 (as amended). See the cases of **Hope Uzodinma v. Senator O. Izunaso (No. 2) (2011) 11 NWLR (Pt. 1275) 30; Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1331) 55** and **Tarzoorv. Ioraer (2016) 3 NWLR (Pt. 1500) 46**.

Now section 134(1)(a) of the Electoral Act, 2022 permits a petitioner to question an election on the ground that the person, whose election is

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questioned, was not qualified to contest election. For ease of reference, section 134(1)(a) of the Electoral Act, 2022, provides thus:

> **"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."**

When section 134(1)(a) of the Electoral Act, 2022 is juxtaposed and read in conjunction with section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), it is clear that a door, or at least a window, of jurisdiction has been opened to a court or tribunal to entertain and determine a claim or an assertion in an election petition that the person, whose election has been challenged, was not qualified to contest the election because he was not a member of a political party.

The Constitution of the Federal Republic of Nigeria, 1999, (as amended) is regarded as the organic law or *grundnorm* of the people; and **"is Supreme"** and its provisions are binding on all authorities and persons, including political parties, "**throughout the Federal Republic of Nigeria**". See section 1(1) of the Constitution and the cases of**Peoples Democratic Party v. Independent National Electoral Commission (2001) FWLR (Pt. 31) 2735; Miscellaneous Offences Tribunal v. Okoroafor (2001) 8 NWLR (Pt. 745) 295 at 350**, per **Karibi-Whyte, JSC**; and **Attorney General of Ondo State v. Attorney General of the Federation (2002) 9 NWLR (Pt. 772) 222 at 418 – 419**, per **Uwaifo, JSC**. Thus in **Imonikhe v. Attorney General of Bendel State**

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(1992) 6 NWLR (Pt. 248) 396 at 411, per **Nnaemeka-Agu, JSC;** the Supreme Court held that:

> **"Now a constitution is the organic law, a system or body of fundamental principles according to which a nation, a state, body politic or organization is constituted and governed. In this respect, we have the Constitution of the Federation of Nigeria and of the States of the Federation, as well as that of different organizations in the country and of different towns and villages in Nigeria. Any act which infringes or runs contrary to those organic principles or systems is said to be unconstitutional."**

Whilst it is settled that membership of a political party is a domestic or internal affair of the party concerned, the political party cannot be permitted to circumvent and breach the clear and mandatory provisions of section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

It is trite that for a person to qualify as a candidate for a general election, he must not only be a member of a political party but he must have been sponsored for the election by his political party. See the cases of **Gwede v. INEC & Ors. (2014) LPELR — 23763 (SC);** and **Al-Hassan & Anor v. Ishaku & Ors. (2016) LPELR — 40083.**

Section 77 sub-sections (2) and (3) of the Electoral Act, 2022 make it mandatory for a political party to maintain a register of its members and

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such membership register must be made available to the Independent National Electoral Commission (the 1st cross respondent).

The 1st respondent pleaded in paragraphs 83, 84 and 85 of its petition that the appellant was not a member of the 3rd respondent and tendered in evidence exhibit "**P2**", "**P2a**" and "**P2b**" – the certified true copy of the register of the members of the 3rd respondent – New Nigeria People's Party; clearly showing that the appellant's name is not in the party's membership register. The tribunal pronounced, at page 4703 of the record of appeal, as follows:

> "**The undisputed and unchallenged findings of the tribunal is that the name of the 2nd Respondent is not in the 3 volumes of the documents to wit Exhibits P2, P2a and P2b**."

The pendulum of proof oscillated to the appellant to show that he was indeed a registered member of the 3rd respondent. Unfortunately, there was neither pleading nor evidence from the appellant to debunk the 1st respondent's claim.

The tribunal proceeded to hold at pages 4715 to 4716 of the record of appeal that:

> "**The Respondents therefore failed to discharge the burden of proof which shifted to them to prove that the 2nd Respondent is a member of the 3rd Respondent at the time of the election into the office of Governor of Kano State.**

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In the circumstances, this issue is hereby resolved in the favour of the Petitioner and against the Respondents.

On the strength of the foregoing, we hold that the 2nd Respondent was not qualified to be nominated to contest the 2023 General Election, because he was not a member of the 3rd Respondent and his name is not contained in the register of members submitted by the 3 Respondent to the 1st Respondent in compliance with the provision of Section S177 (c) of the Constitution of the Federal republic of Nigeria 1999 (as amended) and S134 (1) of the Electoral Act 2022."

If, as rightly found by the tribunal, that the appellant – Yusuf Abba Kabir, was not a member of the 3rd respondent – New Nigerian Peoples Party, at the time he was purportedly sponsored for the governorship election held on the 18th day of March, 2023; then he was not qualified to contest the election by virtue of section 177(c) of the Constitution of the Federal Republic of Nigeria 1999, (as amended). A court must be consistent in its judgment; it should not allow not itself to approbate and reprobate over an issue. See the cases of **Adeka v. Vaatia (1987) 1 NWLR (Pt. 48) 134**; **Kayode v. Odutola (2001) 11 NWLR (Pt. 725) 659** and **Bulus Golit v. Inspector General of Police (2020) 7 NWLR (Pt. 1722) 40 at 60**, per **Ejembi Eko, JSC**. The tribunal was wrong not to have disqualified the appellant. The law is that: *"Fiat justitia, ruat coelum":* **"Let justice be done, though heavens fall"**, per **Michael**

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Ekundayo Ogundare, JSC; in the case of **Nwachinemelu I. Okonkwo v. Mrs. Lucy U. Okagbue (1994) 9 NWLR (Pt. 368) 301 at 326**.

At this juncture, it is perhaps, necessary to clarify that the decision of this court in **Peter Gregory Obi & Anor. v. Independent National Electoral Commissioner & 3 Ors. (Unreported Appeal No: CA/PEPC/03/2023 delivered on the 6th day of September, 2023)** is not applicable to this case, as the issue in that case was whether the 1stpetitioner, who was a member of another political party before leaving it to join another political party which eventually sponsored him for the general election, had *locus standi* to present his election petition. In this case, the evidence before the tribunal was that the appellant was not a member of a political party – the 3rd respondent before purporting to contest the disputed election.

What the tribunal did was to technically waive the mandatory provisions of section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). The law is that statutory provisions must be given effect and they should not be waived. See, for example, the case of **General Muhammadu Buhari & Anor. v. Alhaji Mohammed Dikko Yusuf & Anor. (2003) 6 SCNJ 344; (2003) 14 NWLR (Pt. 841) 446**.

It is also settled law that a court should not decide any case on the basis of empathy or sentiments but only on the facts and law presented before it. See the case of **Oniah v. Onyia (1989) 1 NWLR (Pt. 99) 514**.

It should be borne in mind that an election petition has been describednumerous times, by the Supreme Court, as *sui generis*. Even recently, in the case of **Abubakar Atiku & Anor. v. Independent National Electoral Commission & 2 ors. (Unreported Appeal No:**

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SC/CV/935/2023 delivered on the 26th day of October, 2023) the Supreme Court, per **John Inyang Okoro, JSC;** held as follows:

> **"Let me reiterate the already trite position of the law that election petition is *sui generis*. That is to say it is in aclass of its own. As was held by this court in *Abubakar v Yar'adua (2008) 19 NWLR (pt. 1120) 1*, this is no longer amoot point. It is different from a common law civil action. In *Kalu v Uzor (2004) 12 NWLR (pt. 886) 1 at 20*, this court stated clearly that the Electoral Act of whatever version (particularly that of 2022) contains mandatory provisions, thus election petitions have certain peculiar features which make them *sui generis*. They stand on their own and bound by their rules under the law. It was further held that defects or irregularities which in other proceedings are not sufficient to affect the validity of the claim are not so in an election petition. A slight default in compliance with a procedural step could result in fatal consequences for the petition."**

Therefore, the adjudged failure by the appellant and 3rd respondent to comply with the provisions of session 177(c) of the Constitution of the FederalRepublic of Nigeria, 1999, (as amended) is fatal to their election. A

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person must first be a member of a political party before he can be legally or validly sponsored by that party as a candidate for a general election. Where a political party carelessly sponsors a person who is not its member as a candidate for an election, such an act of sponsorship, like a court or tribunal, which undertakes to exercise jurisdiction, which it does not have or possess, is nothing but a nullity, irrespective of whether such a person performs excellently well in the questioned election. Sponsorship without membership is like putting something on nothing and it cannot stand. The applicable legal maxim is: "*Ex nihilo nihil fit*" which means: "From nothing nothing comes". In this case, the 3rd respondent shot herself in its foot by undertaking to sponsor the appellant before fishing for his membership of the party after the election.

By way of a subtle reminder to our political actors and players, this case is a very clear example of a political party or some of its members acting with brazen, imperforate or impervious impunity, as if the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is not binding; by presenting a person as its candidate for a serious general election when, by its own member register, it is *ex facie* manifest that the person was not its member before the election. And the same political party, or members thereof, would wake up to accuse the Judiciary of sundry wrongdoings, including the infamous allegation of corrupt practices.

From the facts of this case, I am tempted to think and say that within the collective conscience of the appellant and the 3rd respondent they know the truth of this matter. And I am reminded of those indelible and evergreen words, credited to the highly revered sage – **Uthman Dan Fodio, that: "Conscience is like an open wound, only truth can heal it."** I will say no more.

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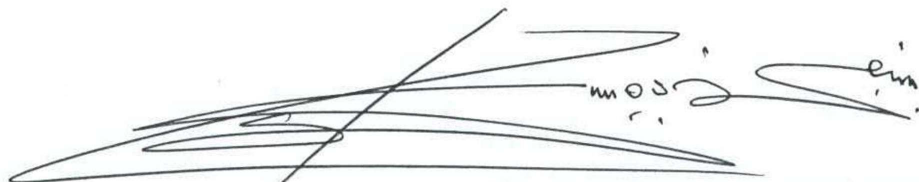
I will conclude by stating that the live issues in this appeal are hereby resolved in favour of the 1st respondent and against the appellant.

In the circumstances, I resolve all the issues in favour of the appellant and against the 1st respondent.

Therefore, I find no merit in this appeal which is liable to be and is hereby dismissed.

The judgment of the tribunal in Petition No.: **EPT/KN/GOV/01/2023 between: ALL PROGRESSIVES CONGRESS (APC) v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & 2 ORS**. delivered on the 20th day of September, 2023 is hereby set aside.

The sum of ₦1,000,000.00 (one million naira only) is hereby awarded as costs in favour of the appellant and against the 1st respondent.



MOORE ASEIMO ABRAHAM ADUMEIN
JUSTICE, COURT OF APPEAL

COUNSEL:

Chief Wole Olanipekun (SAN) and **Chief Gideon Musa Kuttu (SAN)** with **Ibrahim G. Waru, Esq., Opeyemi Adekoya, Esq., Akintola Makinde, Esq.,** and **Ope Muritala, Esq**. for the appellant.

Chief Akin Olujimi (SAN) and **Nureni S. Jimoh (SAN)** with **Olumide Olujimi, Esq., Akinsola Olujimi, Esq., A. A. Ahmed, Esq., Mrs. Abolaji A. Falana** and **Maryam Ahmed Abubakar, Esq.** for the 1st respondent.

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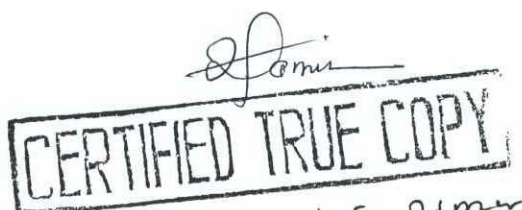
Jamil Ibrahim Umar
Registrar
21-11-2023

A. B. Mahmoud (SAN) and **A. M. Aliyu (SAN)** with **M. K. Umar, Esq., Aminu Sadauki, Esq., Oseni Sefiullahi, Esq., M. S. Danmusa, Esq.,** and **Abdulkarim Maude, Esq.** for the 2nd respondent.

Chief Adegboyega Solomon Awomolo (SAN) and **A. J. Owonikoko (SAN); Kehinde Ogunwumiju (SAN); Abdulhamid Mohammed (SAN); Eyitayo Fatogun (SAN); B. J. Akomolafe (SAN)** with **Bashir Yusuf Mohammed, Esq., Umar Faruk Yakubu, Esq., Olajide Olaleye Kumuyi, Esq., M. K. Fidelis, Esq.** and **E. A. Farry-Okuobeya, Esq.** for the 3rd respondent



Jamil Ibrahim Umar
Registrar
21-11-2023

CA/KN/EP/GOV/KAN/34/2023
BITRUS GYARAZAMA SANGA, JCA

I have read in draft form the Judgment just delivered by my learned brother **MOORE ASEIMO ABRAHAM ADUMEIN, JCA.** My brother in the leading judgment considered the pleadings of the parties, the evidence adduced in support thereof together with statutory and judicial authorities cited, quoted and relied upon before reaching the inevitable decision that this appeal is bereft of merit. I agree with and adopt as mine the finding and conclusion reached by my learned brother and also dismissed this appeal and affirm the decision by the trial Tribunal in its judgment delivered on 20/9/2023 in Petition No. **EPT/KN/GOV/01/2023.** I also abide by the consequential order as to cost.

BITRUS GYARAZAMA SANGA,
JUSTICE, COURT OF APPEAL

Jamil Ibrahim Umar,
Registrar
21-11-2023

CA/KN/EP/GOV/KAN/34/2023;

LATEEF ADEBAYO GANIYU, JCA

I was afforded the opportunity to read in advance, the elucidative judgment just delivered by my learned brother, **MOORE ASIMO ABRAHAM ADUMEIN, JCA**. I agree with the logical reasoning and analytical conclusion reached in the same, which I adopt as mine.

I must add that by virtue of the combined provisions of Section 134 (3) of the Electoral Act, 2022 and Section 177 (c) of the 1999 Constitution of the Federal Republic of Nigeria, (as amended), quoted hereunder, opportunity to challenge qualification of a candidate for election to the office of Governor and simultaneously jurisdiction of court to entertain same, has been created. The said sections provide thus:

> "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
>
> (3) With respect to subsection (1)(a), a person is deemed to be qualified for an elective office and his election shall not be questioned on grounds of disqualification if, with respect to the particular election in question, he meets the applicable requirements of sections 65, 106, 131 or 177 of the Constitution and he is not, as may be applicable, in breach of sections 66, 137or 182 of the Constitution."
>
> "177 - A person shall be qualified for election to the office of Governor of a state if
>
> (c) he is a member of a political party and he is sponsored by that political party; and"

A cursory look at the above-quoted provisions of sections 134 (1) and (3) and 177 (c) of the 1999 Constitution of the Federal Republic of Nigeria will reveal that those sections among others, are incorporated into the Constitution for the purpose of elucidating on conditions precedent that a candidate seeking for elective office, such as the office of the Governor which is the res in the instant appeal, must satisfy and failure to meet those conditions will automatically disqualify such candidate from

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contesting the election because violation of constitutional provision(s) cannot be remedied. See JEGEDE & ANOR V. INEC & ORS (2021) LPELR - 55481 (SC)

Where it was held that:

> "As was held by the supreme court per OGUNBIYI, JSC in OSI V.ACCORD PARTY (2017) 3 NWLR (Part 1553) 387; (2016)LPELR -41388 (SC) 27, Para. B-F; "A breach of the Constitution is so fundamental and which cannot be remedied. It is an abuse of process." See also EDIBO V. STATE (2007) 13 NWLR (Part 1051)306; (2007) LPELR 1012 (SC) at 32, Para. B -C where the court on this salient point held thus - "In effect, it is now firmly established that a breach of a mandatory constitutional provision, is more than a mere technicality. That it touches on the legality of the whole proceedings...". If it touches on the legality of the letter signed by the Governor, it cannot conceivably be an act which affects the Governor. It is indeed the other way round. The act of the Governor invariably rendered the letter signed by him in breach of the Constitution illegal. If the act is illegal, then the consequences of that illegality must be given their resultant effect. See KNIGHT FRANK per PETER ODILI, JSC (Pp. 124-125,Paras. B-C).

It is noteworthy that, the provision of section 134 (3) of the Electoral Act, 2022is a novel provision which makes compliance with the provisions of certain sections of the 1999 Constitution of the Federal Republic of Nigeria, which inter-alia include section 177 (c) of the same mandatory unlike the Electoral Act, 2010 which is silent in this regard.

In a nutshell, the issue of non-qualification of the Appellant in the instant appeal on account of his not been a member of the 3rd Respondent (i.e. New Nigeria People's Party - NNPP) as at the time of the election in controversy borders on breach of constitutional provision and as such, an avenue to challenge his qualification to contest the election in question has been opened which necessitated the need to avoid treating the issue of membership of the Appellant as an internal affair of his political party. See ONUBOGU V. ANAZONINU & ORS. (Supra)

Where it was held that:

> "Although membership of a political party is within the domestic affairs of the party and is ordinarily not justiciable, where however the complaint borders on non-qualification on account

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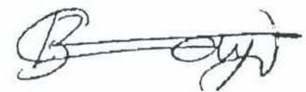
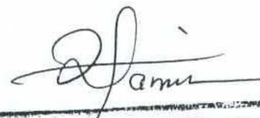
of breach of the constitution; it can be accommodated within the narrow window provided by section 84 (14) of the Electoral Act. See SC/CV/176/2023 BETWEEEN: IBRAHIM SANI V. HON. SANI UMAR DAN GALADIMA & ORS. (Unreported) and SC/CV/142/2003 BETWEEN: SEN (DR) ITA SOLOMON ENANG V.MR AKANIMO ASUQUO & ORS. (Unreported), both delivered on 7th March, 2023." Per JAURO, JSC (Pp. 37- 38, Paras, E-B).

In the circumstance, I am of solemn view that this Appeal is liable to be and is hereby dismissed. I abide with the consequential order as to cost.



LATEEF ADEBAYO GANIYU,

JUSTICE, COURT OF APPEAL.



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Jamil Ibrahim Umar

Registrar

20 — 11 — 2023