**MR. LABARAN MAKU AND ANOTHER**

**V**

**ALH. UMARU TANKO AL-MAKURA AND OTHERS**

COURT OF APPEAL (MAKURDI DIVISION)

CA/MK/EP/GOV/23/2015; CA/MK/EP/GOV/24/2015

CONSOLIDATED ON FRIDAY, 27 NOVEMBER 2015

**LEX (2015) - CA/MK/EP/GOV/23/2015; CA/MK/EP/GOV/24/2015**

OTHER CITATIONS

2PLR/2017/197 (CA)

**BEFOREMTHEIR LORDSHIP**

M. L. GARBA, JCA (Presided)

IGNATIUS I. AGUBE, JCA (Read the Lead Judgment)

RITA N. PEMU, JCA

TANI Y. HASSAN, JCA

BITRUS G. SANGA, JCA

**BETWEEN**

1. MR. LABARAN MAKU & ANOR

2. ALL PROGRESSIVE GRAND ALLIANCE (APGA)

AND

1. ALH. UMARU TANKO AL-MAKURA

2. ALL PROGRESSIVES CONGRESS (APC)

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

**ORIGINATING COURT**

GOVERNORSHIP ELECTION TRIBUNAL, HOLDEN AT LAFIA, NASSARAWA STATE

**REPRESENTATION/LAWYERS**

B. O. ONAMUSI Esq. with V. T. TOR TSUGU Esq., T. T. CHAHUR Esq., Y. Z. EDOGO Esq., A. EDACHE Esq. and D. I. ONYEKWERE Esq. - for the 1st Appellant.

AWA U. KALU (SAN) with N. B. ADUNKUN Esq., O. M. OKUORI Esq., A. I. ASHOKPA Esq., B. FOLURONSO Esq. And C. I. OBIDIKE - for the 2nd Appellant.

YUSUF ALI (SAN) with PIUS AKUBO (SAN), K. K. ELEJA (SAN), AKIN OLADEJI Esq., ISAAC ADEBAYO Esq., R.O. BALOGUN, B. A. OMIPIDAN, YAKUB DAUDA Esq., A. O. ABDULKADIR ESQ., ALEX AKOJA Esq., R.O. ABDULKADIR I. F. YUSUF Esq., A. O. MOHAMMED Esq., A. O. USMAN Esq. and A. A. AHMED Esq. - for the 1st Respondent.

Prof. Wahab Egbewole with M. T. ADEKILEKUN, MATTHEW BURKA A. Esq., B. L. IBRAHIM Esq., M. Z. OSHAFU Esq., S. A. OSUOLALE Esq., AJEWALE AJEWOLE Esq., A. O. ORIRE Esq., M. A. AHMED Esq., T. A. ALATISE Esq. and R. O. LAWAL Esq.,) - for the 2nd Respondent.

H. M. LIMAN SAN with I. M. DIKKO Esq., Y. D. DANGANA Esq. and LIMAN, LIMAN & CO.) - for the 3rd Respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

ELECTION PETITION - DECLARATORY RELIEF IN ELECTION PETITION:- Claim for - Standard of proof required to sustain.

ELECTION PETITION - DOCUMENTARY EXHIBITS IN ELECTION PETITION:- Party dumping on election tribunal – Impropriety of.

ELECTION PETITION - OVER VOTING AND ACCREDITATION AT AN ELECTION:- Appellant who alleges - Onus on to prove.

ELECTION PETITION - RESPONDENT’S BRIEF:- Fresh issues raised therein - Right of petitioners to respond – Paragraph 16(1) of the First Schedule to the Electoral Act, 2010 (as amended), construed.

STATUTE - ELECTORAL ACT, 2010, PARAGRAPH 16(1) OF THE FIRST SCHEDULE TO:- Respondent’s brief in election petition- Fresh issues raised therein - Right of petitioners to respond thereto.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - ISSUES FOR DETERMINATION:- Argument of an appeal - Failure to distil issues for determination from grounds of appeal filed – Legal effect

APPEAL - ISSUES FOR DETERMINATION:- Need to distill same from grounds of appeal filed before court

APPEAL - RESPONDENT’S BRIEF:- Fresh issues raised therein - Right of petitioners to respond - Paragraph 16(1) of the First Schedule to the Electoral Act, 2010 (as amended), construed.

EVIDENCE - DOCUMENT - ADMISSIBILITY OF AND WEIGHT ATTACHED THERETO:- Distinction between.

EVIDENCE - CRIME ALLEGED IN CIVIL PROCEEDINGS:- Standard of proof required therefor - On whom lies the burden of proof.

EVIDENCE - DOCUMENTARY EXHIBITS IN ELECTION PETITION:– Party dumping on election tribunal - Impropriety of – Attitude of court hereto

EVIDENCE - EVALUATION OF EVIDENCE AND ASCRIPTION OF PROBATIVE VALUE THERETO - Primary duty of trial court to undertake same - Attitude of appellate courts to invitation to interfere therewith

EVIDENCE - EXPERT EVIDENCE:- Admissibility of - Criteria for - Sections 72 and 76 of the Evidence Act, 2011 construed.

EVIDENCE – FACT:- Party who asserts - Burden of proof on to prove such a fact - Sections 131-136 of the Evidence Act, 2011 construed.

EVIDENCE - WITNESS DEPOSITION:- Admission of – Legal effect of

STATUTE - EVIDENCE ACT, 2011, SECTIONS 72 AND 76:- Proper construction of

STATUTE - EVIDENCE ACT, 2011, SECTIONS 131-136:- Party who asserts - Burden of proof to prove same

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

At the general elections conducted by the 3rd respondent into the office of the Governor of Nassarawa State, the 1st respondent of the All Progressives Congress (APC), the 2nd respondent, was returned as the winner of the polls. He got the highest number of votes totalling 309,746 votes as opposed to the appellants’ 178,746. Seven candidates in all the contested for the governorship post. Dissatisfied with the 1st respondent’s election and return, the appellants petitioned the Governorship Election Tribunal, holden at Lafia, Nassarawa State, Nigeria.

The appellants alleged electoral malpractices and noncompliance with the Electoral Act which vitiated the conducted election. At trial, parties presented evidence in proof of their cases, only the 3rd respondent did not call evidence.

The election tribunal found at the close of trial that the appellants failed to prove their allegations. The tribunal found for the respondents in their judgment.

Dissatisfied, the appellants appealed. Two appeals were filed against the judgment of the tribunal; Appeal No. CA/MK/EPT/Gov.23/2015 and Appeal No. CA/MK/EPT/GOV.24/2015, which were consolidated by the order of court.

**DECISION(S) APPEALED AGAINST**

The Governorship Election Petition Tribunal entered judgment in favour of the Respondents, holding that the appellants failed to prove of their allegations. Dissatisfied, the Appellant appealed to the Court of Appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANTS:*

“1. Whether in view of the respondents’ collective failure to lead any credible evidence (1st and 2nd respondents) or any relevant evidence (3rd respondent); the tribunal below was right to have disregarded the evidence of the petitioners’ witnesses, particularly, PW51, PW48 and PW53? (Grounds 4 and 5).

2. Whether the tribunal was right when it failed/refused to attach any weight to the documents admitted in support of the appellants’ case particularly, the polling unit and ward collation results? (Grounds 8 and 9).

3. Whether in view of the respondents’ collective failure to lead any credible evidence (1st and 2nd respondents) or any relevant evidence (3rd respondent), the tribunal was right to come to the conclusion that the appellants failed to establish their allegations of non-compliance and malpractices? (Grounds 3, 6 and 7).

4. Whether the tribunal below was right to have struck out paragraphs 27, 47 and 49 of the appellants’ petition and paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the appellants’ reply?”

*BY 1ST RESPONDENT:*

1. Whether the trial Tribunal was not correct in striking out paragraphs 27, 47 and 49 of the petition for being generic, vague and general in terms and in striking out paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 14 of the petitioners/appellants’ reply when in fact the paragraphs raised new issues of facts, moreover when the tribunal still went ahead to consider the totality of the petition in coming to its decision?

2. Whether the tribunal was not right in holding that since there was no evidence to link the myriad of documents tendered to any specific part of the case of the appellants they were dumped and whether exhibit P32 which was made by PW53 had any probative value having regard to the finding of fact on the unreliability of the testimony of the PW53?

3. Whether the trial tribunal was not correct in holding that the appellants given the facts and circumstances of the case did not prove his case as required by law and in ordering the dismissal of same.

*BY 3RD RESPONDENT:*

1. Whether the trial tribunal was right when it refused to attach probative value to the witnesses called by the appellants as well as the documents tendered by the appellants thereby dismissing the appellants’ petition?

2. Whether the trial Tribunal was right when it held that the non-calling of witnesses by a respondent who has participated in trial, cross-examined and elicited evidence from the witnesses of the petitioners in support of its pleadings does not amount to abandonment of pleadings?

3. Whether the trial tribunal was right when it struck out some paragraphs of the petition as well as the petitioners’ reply which it found to be offensive?

**MAIN JUDGMENT**

AGUBE JCA: (DELIVERING THE LEAD JUDGMENT):

Sequel to the conduct of the general elections into the office of the Governor of Nassarawa State by the 3rd respondent on 11 April 2015, the appellant who was sponsored by the 4th respondent in Appeal No. CA/MK/EPT/GOV/24/2015 contested the said election along with the 1st respondent who was sponsored by 2nd respondent in both these consolidated appeals and six others candidates.

On 13 April 2015, when the results were announced, the 1st respondent (Alhaji Tanko Al-Makura of the All Progressives Congress APC, now the 2nd respondent), was declared the winner with 309,746 votes, while the appellants came second with 178,746 votes.

Dissatisfied with the return of the 1st and 2nd respondents as winners of that election, the appellants in these consolidated appeals filed a joint petition on 4 May 2015 at the Governorship Election Tribunal Holden at Lafia, Nasarawa State of Nigeria.

The petition was predicated on the following grounds:

“1. That the 1st respondent was not duly elected by a majority of lawful votes cast at the Governorship Election in Nasarawa State held on 11 April 2015 and announced on 13 April 2015.

2. That the Governorship Election, Nasarawa State held on 11 April 2015 specifically in the Local Governments, Ward Collation Centres and Polling Units complained of in this petition was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended),” see pages 2-5 of the records.

Upon the foregoing grounds, the appellants sought for the following reliefs at pages 102-103 of the records in paragraph 57 of the petition inter alia:

“57. Whereof your petitioners seek the following reliefs:

(a) That it may be determined and doth declared that the 1st respondent who was the candidate of the 2nd respondent was not duly elected or returned by the majority of the lawful votes cast at the Governorship Election in Nasarawa State held on 11 April 2015.

(b) That it may be determined and doth declared that the said election and return of the 1st respondent are voided by acts which clearly violates and breach the provisions of the Electoral Act, 2010 (as amended).

(c) That it may be determined and doth declared that all the unlawful votes recorded for the 1st respondent by the 3rd respondent as reflected in analysis in the tables 1 to 17 to be declared null and void.

(d) That it may be determined and doth declared that all the unlawful votes scored by the petitioners but wrongly cancelled, not recorded as indicated in tables 1 to 17 be added to the petitioners’ total score.

(e) That it may be determined and doth declared that based on the lawful votes cast at the said election, 1st petitioner ought to have been returned as the Governor of Nasarawa State having satisfied the requirements of the Electoral Act, 2010 (as amended) and the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

(f) That it may be determined and doth declared that the certificate of return issued to the 1st respondent by the 3rd respondent be cancelled and deemed null and void.

(g) An order of this honourable tribunal directing the 3rd defendant to issue a certificate of return to the 1st petitioner as the winner of the Governorship Election of Nasarawa State held on 11 April 2015 having scored the majority of the lawful votes cast at the Election and also satisfied the requirements of the Electoral Act, 2010 (as amended) and the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Alternatively:

That it may be determined and doth declared that the 3rd respondent should immediately conduct a re-run Election in the polling units affected by irregularities and non-compliance with the provisions of the Electoral Act as they appear in Tables 1-17 above.”

Issues having been joined, the respondents in the petition filed their respective replies beginning with the 3rd respondent on 26 May 2015, followed by the 2nd respondent on 26 May 2015 and the 1st respondent on 30 May 2015 respectively. See pages 230-437 Vol. 1 of the records, 844-924, volume 2 of the records and 433-843 thereof respectively. Upon receipt of the respective replies of the respondents, the appellants filed their replies to the respective replies of the respondents. (See pages 925-1272; 1273-1618; 1619-1976 of volumes 3 and 4 of the records. Several interlocutory applications were also filed and heard for regularization of processes as well as by way of preliminary objections to the competence of the petition and some seeking to strike out certain paragraphs of the petitioners’ reply on points of law and witnesses statements. However, it was mutually agreed that those motions and preliminary objections be heard along with the main petition but suffice it to say that at the hearing, the petitioners called fifty-six (56) witnesses while the 1st respondent called 2 (two). The 2nd respondent also 2 (two) whereas, the 3rd respondent called no witness at all in defence of the petitioners’ allegations against it.

At the close of the cases of the parties, written addresses were exchanged culminating in the judgment of the learned judges of the tribunal delivered on 30 September 2015, wherein they held at pages 3125/69 and 3126/70 of the records/judgment that the burden still remained on the petitioners and not on the respondents, not only to prove that the Electoral Malpractices and/or non-compliance with the Electoral Act, Guidelines and Manual for electoral officials 2015 was substantial and therefore the burden did not shift. In the words of the tribunal at page 3126/70 of the records/judgment lines 3-15:

“The respondents in fact had no business defending the petition in the first place based on the evidence presented at the trial. It is now settled that where evidence led by a party is virtually worthless, it is futile to presume that the party has by any standard discharged the burden of proof more so that the other opposite party presented a rebuttal. See Dibiamaka v. Osakwe (1989) 20 NSCC (Pt. 11) 253, (1989) 5 SCNJ 30, (1989) 3 NWLR (Pt. 107) 101. In the light of the above, we are thus unable to appreciate talk less of unholding the highly misplaced contention of the petitioners, learned counsel’s submission that the petitioners had discharged the burden of (sic) prove in this regard.

Not only have the petitioners failed to prove noncompliance and/or electoral malpractices the conduct of the election in the Local Governments complained of they have failed to prove that the non-compliance has substantially affected the outcome of the Governorship Election of 11 April 2015 in Nasarawa State. Accordingly, petition No. EPT/NS/1/2015 between Mr. Labaran Maku & 1 Anor. v. Alhaji Umaru Tanko Al-Makura & 2 Ors. is hereby dismissed for lacking in merit.”

Dissatisfied with the above decision of the tribunal amongst others, the petitioners filed separate notices of appeal at pages 3132 of volumes 6 of their respective compiled records of appeal. For purposes of appeal No. CA/MK/EPT/GOV/23/2015 filed by the 1st petitioner (now appellant), his notice of appeal dated Friday 16 October 2015 with a whopping ten (10) grounds was filed on 18 October 2015. In view of the copious nature of the particulars of the grounds, as couched by the learned senior counsel, Chief J. K. Gadzama SAN and his team of learned counsel on behalf of the appellants, the grounds of appeal are reproduced hereunder without their particulars as follows:

“Ground 1: Error in Law:

The governorship election petition tribunal of Nasarawa State erred in law which error occasioned a miscarriage of justice when it struck out paragraphs 27, 47 and 49 of the petition and held that:

“A petitioner is thus obliged to plead particulars of fraud or falsification or any other allegation alleged in an election. Petition, otherwise such allegation is generic, vague and incompetent. In this instant case, the petitioners alleged “... in several polling units and wards” but did not provide particulars of the polling units or wards where the alleged malpractices took place. It will thus be right to hold that the paragraphs of the petition in which the allegations were made are incompetent.” B

“Ground 2: Error in law:

The Governorship Election Petition Tribunal of Nasarawa State erred in law which occasioned a miscarriage of justice when it struck out paragraphs 2, 4, 5, 6, 8, 9, 10, 11, 12, 13 and 14 of the petitioners/appellants’ reply on the ground that the aforesaid paragraphs raised new issues that are not supported by the pleadings in the petition.

“Ground 3: Error in law:

The Governorship Election Petition Tribunal of Nasarawa State erred in law to have held that the 3rd respondent is empowered by the relevant laws to create voting points on election day for the purpose of accreditation and voting, having equal status with poling units.

“Ground 4: Error in law:

The Governorship Election Petition Tribunal of Nasarawa State erred in law and came to a perverse decision when it held that:

“On the above holding, we wish to state that the petitioners missed the case ab initio when at every given opportunity they heavily relied on the evidence of the PW1, PW51 and PW53 and the exhibits tendered from the bar. What is clear from the above cases is that their evidence limited to what they saw or did. The evidence of their agents at the ward, collation centres was what they needed to prove most of their witnesses like PW5, PW6, PW7, PW8 etc. stated that election was free and fair at the units, it was at the collation centres that the results were not entered.”

“Ground 5: Error in law:

The Governorship Election Petition Tribunal of Nasarawa State erred in law and came to a perverse decision when it failed to countenance the evidence of PW1 and PW51 in preference to that of the Ward Collation Agents in proof of unlawful declaration and Inflation/Reduction of votes.”

“Ground 6: Error in law:

The tribunal misdirected itself by holding that the petitioners failed to tender Ballot Papers produced under subpoena, relieved the 3rd respondent from producing voters’ register pursuant to the petitioners’ notice to produce.

“Ground 7: Error in law:

The Governorship Election Petition Tribunal of Nasarawa State erred in law, which occasioned a miscarriage of justice when it held that the appellants failed to prove the allegation of mutilation beyond reasonable doubt in accordance with the Evidence Act.

“Ground 8: Error in law:

The Governorship Election Petition Tribunal erred in law and came to a perverse decision when it held:

“It is therefore our humble view that except for those agents and voters whose unit results were tested under cross-examination, all the rest have not been tested in open court were dumped on the tribunal. We have previously stated that in fact most of the exhibits tendered by PW1 were dumped on the tribunal. We have previously stated that in fact, most of the exhibits tendered by PW1 were dumped on the tribunal as they were not tested.”

“Ground 9: Error in law:

The Governorship election petition tribunal erred in law which occasioned the miscarriage of justice and came to a perverse decision when it failed to rely on exhibit P32 and held:

“We, in the main therefore, hold that the evidence and report tendered in evidence as exhibit P32 through him clearly is from an interested party since he admitted that he was paid to produce the report, all he did therefore is to enable him earn his fees and nothing more. We are thus not bound to give much weight to exhibit P32. This is more so that the report was produced during the pendency of his litigation. For the reason variously stated, we find ourselves unable to rely on exhibit P32 and we hereby discountenance same.”

“Ground 10: Error in law:

The judgment is against the weight of evidence.”

Following the transmission of the record of appeal to this court, parties exchanged their respective briefs of argument in support or against the appeal. The appellants in their brief settled by Chief Joe-Kyari Gadzama SAN et al dated 2 November 2015 but filed on 3 November 2015, the learned senior counsel distilled four issues for determination couched in the following terms:

“1. Whether in view of the respondents’ collective failure to lead any credible evidence (1st and 2nd respondents) or any relevant evidence (3rd respondent); the tribunal below was right to have disregarded the evidence of the petitioners’ witnesses, particularly, PW51, PW48 and PW53? (Grounds 4 and 5).

2. Whether the tribunal was right when it failed/refused to attach any weight to the documents admitted in support of the appellants’ case particularly, the polling unit and ward collation results? (Grounds 8 and 9).

3. Whether in view of the respondents’ collective failure to lead any credible evidence (1st and 2nd respondents) or any relevant evidence (3rd respondent), the tribunal was right to come to the conclusion that the appellants failed to establish their allegations of non-compliance and malpractices? (Grounds 3, 6 and 7).

4. Whether the tribunal below was right to have struck out paragraphs 27, 47 and 49 of the appellants’ petition and paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the appellants’ reply?”

On the part of the 1st respondent, Mallam Yusuf Ali SAN and his team of learned counsel who settled his brief of argument dated 5 November 2015 and filed on 6 November 2015, nominated three issues for determination as hereunder reproduced apart from giving notice of preliminary objection at pages 4 to 5 paragraph 4.04 and argued in paragraphs 3.05 to 3.09 to page 6 of the brief:

“1. Whether the trial Tribunal was not correct in striking out paragraphs 27, 47 and 49 of the petition for being generic, vague and general in terms and in striking out paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 14 of the petitioners/appellants’ reply when in fact the paragraphs raised new issues of facts, moreover when the tribunal still went ahead to consider the totality of the petition in coming to its decision? (Grounds 1 & 2).

2. Whether the tribunal was not right in holding that since there was no evidence to link the myriad of documents tendered to any specific part of the case of the appellants they were dumped and whether exhibit P32 which was made by PW53 had any probative value having regard to the finding of fact on the unreliability of the testimony of the PW53? (Grounds 4, 5, 6 & 7).

3. Whether the trial tribunal was not correct in holding that the appellants given the facts and circumstances of the case did not prove his case as required by law and in ordering the dismissal of same. (Grounds 4, 5, 6 and 7).”

Finally, in the brief settled by Hassan M. Liman SAN and his team of learned counsel for the 3rd respondent which brief is dated and filed on 6 November 2015, three issues were also distilled for determination in the following terms:

“1. Whether the trial tribunal was right when it refused to attach probative value to the witnesses called by the appellants as well as the documents tendered by the appellants thereby dismissing the appellants’ petition? (Distilled from grounds 4, 5, 8 and 9 of the notice of appeal).

2. Whether the trial Tribunal was right when it held that the non-calling of witnesses by a respondent who has participated in trial, cross-examined and elicited evidence from the witnesses of the petitioners in support of its pleadings does not amount to abandonment of pleadings? (Distilled from grounds 3, 6 and 7 of the notice of appeal).

3. Whether the trial tribunal was right when it struck out some paragraphs of the petition as well as the petitioners’ reply which it found to be offensive?

(Distilled from grounds 1 and 2 of the notice of appeal).

Before delving into the resolution of the issues and arguments canvassed by the respective learned counsel for the parties, it is necessary at this juncture to determine the respective preliminary objections of the learned senior counsel for the 1st and 2nd respondents.

Notice of preliminary objection of the 1st respondent:

As earlier stated, the learned senior counsel for the 1st and 2nd respondents had given notice that the respondents shall at the threshold of the hearing of the appeal raise objection and pray the honourabe court to strike out grounds 3 and 10 of the appellants’ notice of appeal on the following grounds:

“(i) No issue for determination was distilled from ground 10.

(ii) Ground 10 in law is deemed abandoned.

(iii) Issue number 3 formulated in the appellants’ brief of argument and which purportedly encompassed ground 3 had nothing to do with the said ground 3.

(iv) No shred of submission was made under issue number 3 on ground 3.

(v) Having been deprived of an argument, ground 3 is deemed abandoned.

(vi) Ground 3 is liable to be struck out.”

Arguing the objection on the abandonment of the said grounds 3 and 10 of the notice of appeal, the learned senior counsel submitted that ground 10 was not related to any of the issues formulated at page 14 of the appellants’ brief of argument and no issue was also formulated on the said ground, the implication which in law is that the said ground is deemed abandoned and liable to be struck out. To buttress their above submissions, reliance was placed on Ajibola v. Ajayi (2014) 10 NWLR (Pt. 1392) 483 at page 494; Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587, (1962) 2 SCNLR 341, (1962) 2 NSCC 374; Rossek v. A.C.B. Ltd (1993) 8 NWLR (Pt. 312) 382, (1993) 10 SCNJ 20, (1993) LPELR - 2955 and Dingyadi v. INEC (2011) All FWLR (Pt. 581) 1426, (2011) 10 NWLR (Pt. 1255) 347, (2011) LPELR-950 (SC) per Adekeye JSC; to further submit that the court has no jurisdiction to entertain the grounds of appeal from which issues were not formulated.

In respect of ground 3, the learned senior counsel explained the purport and substratum of the complaint and submitted that the appellants in their brief of argument gave indication that the ground is covered by or dealt with under issues number 3 alongside grounds 6 and 7. Page 4 where the appellant formulated their issues was highlighted as well as paragraphs 5 to 5.17 of the appellant’s brief at pages 30-33 of 1st appellant where the arguments on ground 3 were canvassed and where issue number 3 indicated as having covered the said ground.

Conceding to the position of law that arguments in an appeal is supposed to be based on the issue for determination, they contended that it is still the law also that an issue for determination must truly capture and encompass all the grounds of appeal that form the fulcrum of the issue. In the same token he maintained argument on the issue must relate to and cover all the complaints contained in the grounds of appeal from which the issue had been distilled.

In the present case, the learned senior counsel further contended, there was no reference at all or any argument on the issue of voting points which forms the basis of ground 3 on which the issue number 3 is predicated to be related or distilled and the only reasonable inference to be drawn by this court in the circumstance that the ground has been deemed abandoned.

He therefore prayed us to strike out grounds 3 and 10 of the appellant’s notice of appeal.

Determination of the 1st and 2nd respondents’ preliminary objections:

There is no doubt, as argued by the learned senior counsel for the 1st and 2nd respondents that appeals in this court and the apex court are argued on the basis of issues formulated or distilled from the grounds of appeal as filed by the parties. See Ugo v. Obiekwe (1989) 1 NWLR (Pt. 99) 566, (1989) 2 SC (Pt. II) 14, (1989) 2 SCNJ 95; Okpala v. Ibeme (1989) 2 NWLR (Pt. 102) 208 at page 222, (1989) 3 SCNJ 152, (1989) 1 NSCC 567.

Furthermore, the issues for determination must perforce arise from the grounds of appeal and fall within the scope of the grounds.

Again, as rightly canvassed by the learned counsel for the respondents, in a given appeal, where issues are formulated from the grounds the appeal is argued on those issues and no more on the grounds of appeal. Accordingly, since the issues formulated from the grounds of appeal are the core substance of one or more grounds of appeal, an issue for determination must necessarily flow from or to be based on the ground or grounds of appeal. Thus, any issue formulated outside the ground(s) of appeal or any ground(s) from which an issue(s) is/are not formulated is/are deemed abandoned. For these propositions of the law, see Okonkwo v. Okonkwo (1998) 10 NWLR (Pt. 571) 554, (1998) 17 SCNJ 246 at page 252; Shitta-Bey v. Att.-Gen., Federation (1998) 10 NWLR (Pt. 570) 392, (1998) 7 SCNJ 264 at page 272; Animashaun v. University College Hospital (1996) 12 SCNJ 179 at page 184, (1996) 10 NWLR (Pt. 476) 65; Osafile v. Odi (1994) 2 NWLR (Pt. 325) 125, (1994) 2 SCNJ 15.

In the instant appeal, a careful perusal of the issues formulated at page 4 of the appellants’ brief of argument would reveal that no issue was formulated from ground 10 of the notice of appeal as aptly observed and submitted by the learned counsel for the respondents and on the authority of Ajibulu v. Ajayi (2014) 10 NWLR (Pt. 1392) 483 at page 494; the said ground 10 of the notice of appeal is by implication deemed abandoned and liable to be struck out.

The above position of the law was restated by a full complement of the Supreme Court in Madam Akon Iyoho & Ors. v. E. P. E. Effiong Esq. & Ors. (2007) All FWLR (Pt. 374) 204, (2007) 11 NWLR (Pt. 1044) 31, (2007) LPELR-1580 (SC) at page 16, paras. D-F, per Mukhtar JSC (as he then was) thus: “No issues were formulated in relation to grounds (1), (2) and (4), and so no argument was proffered to cover them, which situation translates to the fact that the said grounds of appeal have been abandoned.

The position of the law is that, a ground of appeal from which no issue has been distilled and upon which no argument have been canvassed is deemed abandoned by an appellant, and so should be struck out. In this wise, grounds (1), (2) and (4) of appeal in the appeal are struck out. See Aro v. Aro (2000) 3 NWLR (Pt. 649) 443; and Ikpuku v. Ikpuku (1991) 5 NWLR (Pt. 193) 571.” See further Ukiri v. Geo-Prakla (Nig.) Ltd (2010) All FWLR (Pt. 534) 53, (2010) 16 NWLR (Pt. 1220) 544, (2010) LPELR-3341 (SC) at 11, paragraphs C-D, 28, paragraphs A-E, per Musdapher JSC (as he then was) and Muntaka-Coomassie JSC concurring.

Since no issue was formulated from ground 10 of the notice of appeal, that ground is deemed abandoned and accordingly struck out moreso, when the learned counsel for the appellant whose attention was drawn to this anomaly had told the court at the hearing of this appeal that he had nothing to say about the notice of preliminary objection of the learned senior counsel for the 1st respondent.

In the same vein, the learned counsel for the appellant at page 4 of the appellant’s brief in formulating issue number 3 incorporated or purported that, that issue was formulated from grounds 3, 6, and 7 of the notice of appeal. Whereas ground 3 complains of the error of law committed by the tribunal in holding that the 3rd respondent is empowered by the relevant laws to create voting points on election day for the purpose of accreditation and voting which voting points were said by the 3rd respondents to have equal status with polling units (see particulars 1-11 of the said ground at pages 3135-3136 of the records); issue number 3 as couched, rather, questions whether in view of the respondents’ collective failure to lead any credible evidence or any relevant evidence, the tribunal was right to have come to the conclusion that the appellant failed to establish his allegations of non-compliance and malpractice.

Apart from the above scenario, just as the learned counsel failed, refused and/or neglected to proffer any argument on ground 10 of the grounds of appeal, so did he not in respect of ground 3 which was incorporated with grounds 6 and 7 in the formulation of issue number 3. For the avoidance of doubt, the arguments in support of issue number 3 span page 30 paragraph 5.1 to page 33 paragraph 5.17 and as aptly submitted by the learned senior counsel for the 1st and 2nd respondents, there is no iota of argument touching and/or concerning the issue of creation of voting points which the 3rd respondent equated with polling units as purportedly erroneously held by the lower tribunal which is the bone of contention of ground 3 of the notice of appeal.

Going by the authorities earlier cited and indeed Hagemeyer (Nig.) Ltd v. Chukwu (1993) 5 NWLR (Pt. 294) 464 at page 471, ably cited and relied upon by the learned senior counsel for the 1st respondent, the only reasonable inference that can be drawn by this honourable court, from the refusal to argue those grounds is that the appellant has also abandoned ground 3 from which no argument was proffered.

Accordingly, grounds 3 and 10 of the appellant’s notice of appeal are hereby struck out and the preliminary objection of the 1st and 2nd respondents sustained.

Determination of the substance of the appeal on the arguments of learned counsel and resolution of issues:

In the determination of this appeal, I shall adopt the four issues formulated by the learned senior counsel for the appellant and subsume those of the respondents within the said appellant’s issues.

Resolution of issues numbers 1 and 2 of the appellants and issues number 2 of the 1st and 2nd respondents as well as issue number one (1) of the 3rd respondent.

As was rightly argued by the learned counsel for all the respondents, issues number 1 and 2 of the appellant and indeed his issue number 3 complained of improper evaluation of evidence and ascription of probative value to the evidence of the petitioner/appellant as well as the documentary evidence tendered and admitted as exhibits when the respondents particularly the 3rd respondent against whom was the centre of the appellant’s grouse that the election was not conducted in substantial compliance with the Electoral Act, 2010 (as amended) did not adduce evidence in support of his pleadings.

The respective learned counsel for the respondents, particularly, the senior counsel for the 3rd respondent, have aptly stated the time honoured position of the law as settled by a plethora of authorities like Yadis Nigeria Limited v. Great Nigeria Insurance Company Ltd (2007) All FWLR (Pt. 370) 1348, (2007) 14 NWLR (Pt. 1055) 584 at page 607 paragraphs B-D, Teriba v. Adeyemo (2010) All FWLR (Pt. 533) 1868, (2010) 11 NWLR (Pt. 1211) 242, (2010) 4-7 SC (Pt. II) 1 at page 14, lines 5-15; Military Governor of Lagos State & 4 Ors. v. Adeyiga & 6 Ors. (2012) All FWLR (Pt. 616) 396, (2012) 5 NWLR (Pt. 1293) 291, (2012) 2 S.C, (Pt. 1) 68 at pages 114-115, lines 1-5 and Gboko at 305 paragraphs G-H, where this court restated this position of the law. In the recent case of Chief S. O. Adedayo & 2 Ors. v. PDP & 2 Ors. (2013) All FWLR (Pt. 695) 203, (2013) 17 NWLR (Pt. 1382) 1, (2013) LPELR-20343 SC at page 40, the Supreme Court, per Onnoghen JSC with whom Ogunbiyi JSC concurred; endorsed the dicta of his predecessors of the apex court in the celebrated cases of Balogun v. Agboola (1974) 1 ALL NLR (Pt. 2) 60, (1974) 10 SC 111; Fatoyinbo v. Williams (1959) 1 FSC 98; Peterside v. Oligakwe 11 NLR 41; Woluchem v. Gudi (1981) 5 SC 291, (1981) 5 SCNLR 372, (1981) 12 NSCC 216 and Ebba v. Ogodo (1984) 1 SCNLR 372, (1984) 4 SC to the effect that: “It is settled law that ascription of probative value to evidence is a matter primarily for the trial court.

Where a trial court unquestionably evaluated the evidence and appraises the facts, it is no business of the appellate court to substitute its own view of undisputed facts with the view of the trial court.”

Also, settled is the principle of law to the effect that an appellate court can only interfere with such findings after evaluation by a trial court where the said findings are perverse, i.e. not supported by the evidence on record or is based on wrong evaluation or not based on the evidence at all.

Against the background of the above authority and others cited by the learned senior counsel, we shall look at the records and the evidence of the appellant and his witnesses as well as the exhibits tendered in order to determine whether the Tribunal erred in not ascribing any probative value to the evidence of the appellant, his witnesses as well as their documentary exhibits in holding that the appellant’s petition failed and same was accordingly dismissed.

We shall start by considering the evidence of the PW51 which the learned senior counsel for the appellant claimed was inappropriately evaluated and not accorded the necessary probative value along with the exhibits he analyzed. At pages 2407-2462, the said Samuel Adam’s witness’ statement on oath is reproduced and from his antecedents as deposed to in paragraphs 2-6 at page 2407, he claimed that he obtained his Masters Degree in Statistics from the University of Ilorin in 2007 and undergraduate Degree from the University of Abuja in the year 2000. He also claimed to belong to the Nigerian Statistical Association (NSA) and a qualified Statistician with a broad range of experience in data collection, analyses and related matters, having started practicing as a Statistician since 2001.

At page 2408 he deposed to the following facts as far as this case is concerned in paragraphs 9-14 of his statement on Oath as follows:

“9. That I was briefed by the petitioners to calculate, analyse and confirm the final results of Governorship Election of Nassarawa State as declared by the 3rd Respondent on 13 April 2015.

10. That I have carried out a thorough, extensive and detailed study of all INEC FORMS EC8A to EC8E used for the Governorship election in Nassarawa State held on 11 April 2015.

12. That to arrive at the correct figures of all the results as collated and announced by the 3rd respondent, I relied on the INEC Result Sheets Series i.e. Forms EC8A, EC8B, EC8C, EC8D and EC8E to do the calculations and the analysis of all the results.

13. That I found various discrepancies in numerous polling units of certain wards of 12 out of the 13 Local Government Areas of Nassarawa State, to wit: Awe, Doma, Akwanga, Keana, Karu, Lafia, Nassarawa and Keffi, Kokona, Obi, mamba and Toto.

14. That these 12 Local Government Areas in Nassarawa State were marred by various acts of malpractices including mutilation/alteration, inflation of votes, over-voting, unlawful declaration, non-signing of results by Presiding Officers and exclusion of the 2nd petitioner (APGA) in some polling units and at same ward levels.”

In paragraph 15, the witness went on to state that he critically analysed the results of the election and also did the calculation on the effect of the malpractices on the total votes scored by both parties and the methodology of such calculation as well as the votes scored, were highlighted from page 2409 Local Government by Local Government and at page 2461 came up with the findings that the correct votes for APGA were 169,639 while those from APC were 143,352 and the difference between the parties votes was 26,287. He further averred in paragraphs 16-20 of the statement to us:

“16. That a mathematical computation of the total lawful votes cast places the 1st petitioner far ahead of the 1st respondent with a vote difference of 26,287.

17. That the total lawful votes of the petitioners stands at 169,639 as against the 1st respondent vote of 143,352.

18. That the petitioners’ votes are well spread out over the affected 12 Local Government Areas of Nassarawa State to wit: Awe, Doma, Akwanga, Keana, Karu, Lafia, Nassarawa, Keffi, Kokona, Obi, Wamba and Toto.

19. That if the total number of votes cast in the polling units affected by the various acts of malpractice detailed above are properly accounted for, and votes are subtracted or added, as the case may be, from the final results of both parties as declared by INEC, the petitioners will be the clear winner by majority of lawful votes.

20. That having carefully carried out this exercise, it is my view that the 1st petitioner wins by a majority of the lawful votes cast at the Nassarawa Gubernatorial Election by 169,639 votes to what the 1st respondent scored - 143,352 and the difference in votes between the duo is 26,287 votes.”

As was submitted by the learned counsel for the appellant there is no doubt that the PW51 testified to the fact that he participated in the physical inspection of electoral materials and therefore his evidence was based on what he observed, such evidence cannot be said to be hearsay if it is not discredited and ordinarily, the lower Tribunal ought to attach weight or probative value to same.

However, the learned counsel to the 3rd respondent has drawn our attention to the answers of the PW51 to cross-examination by K. K. Eleja SAN at pages 3015-3018 and at page 3015. The witness answered when questioned in lines 26-27 to page 3016 thus:

“It is not true that in some information, I did not lift the information wrongfully. I see exhibit P6A7KL, O, M, F and N. this is the result for Wamba at page 34 which is also what the above quoted exhibits are.

I state that the exhibits were not signed, but by the above exhibits, they were signed. I see exhibit PIA80, I also see page 3 paragraph 1 Gayam-08 of my report where I indicated Urguwam Magaji Mallam, I stated that the result was mutilated, but exhibit PIA80 is not mutilated. I state in my report that in several polling units, the results of APGA was not recorded.

I see my report in page 41 of my report; I stated that APGA’s results were recorded. I see the exhibits. I came to the conclusion that certain votes ought to be deducted based on the conclusion I drew from the guideline. I did not use the guideline which formed the basis of my conclusion for irregularities, over voting, mutilation, etc.”

See page 3016 lines 1-13 of Vol. 6 of the record of appeal.

It is penitent to note that at page 3015 of the same volume of the record of appeal, lines 14 - 23, despite the fact the learned senior counsel for the appellant had argued in his brief that the evidence of PW51 is not hearsay in that he was one of those who participated in the inspection of electoral materials and the witness had purported at page 3016 that he came to the conclusion that certain votes ought to be deducted based on the conclusion he drew from INEC guideline, he did not use the guideline as the basis of his conclusion, he however stated earlier under cross-examination by Eleja SAN thus: “I did not take part in inspection of documents at INEC, I am familiar with the procedure of election.

I am aware that when the number of voters has reached a certain number in a polling unit, INEC is entitled to create voting points. In my report, I made references to voting points in some polling units. I remember that in my paragraph 14, I mentioned over voting, and also at page 16 and thereafter. In my report, I stated that there is over-voting when total number of votes cast exceed the number of votes cast exceed in queue. This definition of over-voting is not wrong because I saw the INEC guidelines and came to the conclusion on the definition.” Page 3015 lines 14-23 refer.

The pattern of equivocations, inconsistencies, approbations and reprobation’s as well as contradictions apart from admissions to the effect that the purported report was not error-proof has purported earlier in his witness statement on oath, continued under cross-examination by the Y. S. Usman Esq, at page 3016, lines 19-26 of Vol. 6 of the records, the witness further stated that the source of data was stated but he did not include INEC guideline. On further cross-examination, he stated:

“I see exhibits P6A9B and G, it is also at page 14 Kwara 09. I stated therein that the votes of APC were inflated from 173 to 518 (P6A9B), I only have the result of the polling unit when I came to this conclusion. I see exhibit P6AG, it is the result of Kwara 009 and it is the result of the voting points.

It is true that I used only the result from exhibit P6A9G, I did not use the report in exhibit P6A9B to add up which is the main polling unit of Kwara in my report.”

The witness also has answered to the further question put to him that he saw exhibit P9A31 and page II of his report on Obi Local Government Area Column 6 (Gidan Ausa II) and that in Unguwan Kassa II he had seen where he wrote - “199” but in exhibit P9A31, it is 119, but according to him that was a typographical error as he can make mistakes as a statistician.

He finally in reply to the cross-examination of Y. S. Usman Esq stated that he saw his report on Lafia Local Government Column 1 Gayan - 08 Unguwan Magaji Mallam; where he stated that there were mutilations but upon being shown exhibit PlA80, he replied, “it is not mutilated as I stated in my reports”.

Under cross-examination by M. I. Dikko Esq., the learned counsel for the 3rd respondent and when shown exhibit P24A15, column 852 and pages 32-34 of his analysis for Lafia and not Nassarawa Local Government Area as according to him there is always room for error. On further cross-examination, he also admitted that his analysis at page 32 column 15.4 on lawful declaration of results, all the polling units there listed are for Lafia Local Government Area instead of Nassarawa. He was also shown pages 42-45 of the petition at page 42 table 15 and also saw his report at page 33 and admitted that it is exactly what is contained in the petition that he quoted in his report for Nassarawa Local Government Area. He finally admitted that: “I know that all the Units are supposed to be under Lafia Local Government Area not Nassarawa Local Government Area.”

In spite of the fact that the witness’s answers to cross-examination were fraught with admissions against interest, contradictions, inconsistencies and unexplained flaws, the learned counsel for the appellants, Awa Kalu SAN did not re-examine the witness. Upon evaluation of the evidence of the PW51, the lower tribunal rightly held at pages 3105, 3111 and 3121 as quoted by the learned senior counsel for the appellants at page 7 paragraph 3.13 of the appellants’ brief and the 1st and 2nd respondents’ brief, paragraphs 7.03, 7.04, 7.05 and 7.06 and in particular at pages 3121-3122, where the Tribunal unassailably held that:

“These are some of the flaws in the report of the expert as pointed out by the respondents to the witness had to say is that the report admits of human error. We, in the given circumstances rather hold that it was one too many to allow for such human error where a report by an export seeking to discredit a result is in issue. Our simple appraisal of this report cum evidence is that it cannot be relied on and we are bound to see Ngige v. Obi (2006) All FWLR (Pt. 330) 1041 at pages1123-1124, (2006) 14 NWLR (Pt. 999) 1 paragraphs G -A, per Muhammed JCA ...........................................................................................

It is thus normal for this court to be wary of admitting the evidence of this expert. He was clearly commissioned by the petitioners to fish out data in support of the petition.”

I cannot agree more with the above findings of the tribunal since in my humble view, apart from the fact that he appeared to have an interest to serve, the witness had been so discredited that no reasonable tribunal worth its salt can attach any weight to either his testimonies or probative value to the documents tendered or even his purported report.

Contrary to the position taken by the learned senior counsel for the appellants and the reliance placed on the authority of Aregbesola v. Oyinlola (2011) All FWLR (Pt. 570) 1292, (2011) 9 NWLR (Pt. 1253) 458 at page 610; which was cited out of context; the authorities of Ngige v. Obi (supra); Oshimowo v. Oshinowo (supra); Adelekun v. Oruku (supra); Ukershina v. The State (supra) and indeed the recent dictum of C. C. Nweze JSC in Omisore v. Aregbesola (2015) All FWLR (Pt. 813) 1673, (2015) 15 NWLR (Pt. 1482) 205 at page 284; where the erudite law lord in a similar scenario as we have found ourselves, took the view in line with earlier authorities that where as in this case, the evidence of the PW51 (and as shall be demonstrated anon); those of the PW48 and PW53 and their respective exhibits, could not weather the storm of cross-examination as they have been amply discredited; the trial tribunal was right to have held that their evidence and documentary exhibits were unreliable as they lacked the requisite probative value and this court as an appellate court has no business interfering with the findings of the facts of the Tribunal in this respect.

Section 76 of the Evidence Act, 2011 no doubt provides that:

“Whenever the opinion of any living person is admissible, the grounds on which such opinion is based are also admissible, and section 68(1) of the Act which provides for admissibility of expert opinion clearly states that:

‘When the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible.’”

By the provision of subsection (2) of section 68: “Persons so specially skilled as mentioned in subsection (1) of this section are called experts.”

As earlier highlighted in the paragraphs of the statement on oath of the PW51, the witness no doubt created the impression that he was an expert and from the academic qualifications paraded, he could be held out to have qualified as an Expert (Statistician) of varied and considerable experience. However, even if by those qualifications he had satisfied the three criteria set out in the English case of USSB v. The Ship St. Albans (1931) A.C. 632 at page 642 per Lord Russell of Kilowen as followed by our erstwhile Supreme Court in the Causus classicus of Seismograph Series Ltd. v. Onokpasa (1972) All NLR (Reprint) 347 at pages 357-359, (1972) 4 SC 123, per Sowemimo JSC (as he then was), where the questions relevant in ascertaining whether a witness is an expert properly so called was posed as follows:

1. Is he paritus?

2. Is he skilled?

3. Has he an adequate knowledge? Akusobi v. Obineche (2004) 2 NWLR (Pt. 289) 617; Uchegbu v. State (1993) 2 NWLR (Pt. 309) 89; R. v. Onitiri II WACA 58 and Aregbesola v. Oyinlola (2011) All FWLR (Pt. 570) 1292, (2011) 9 NWLR (Pt. 1253) 458 at pages 612-613 paragraphs. D -A; refer): the onus is on the person/witness holding out himself as an expert to show from his conduct in the course of adducing evidence that he is actually an expert as claimed otherwise where he fails to satisfy the court or Tribunal that he possessed or acquired the knowledge, special experience and/or expertise in the subject of his evidence, his evidence cannot be admitted as that of an expert under sections 72 (10(2) and 76 of the Evidence Act.

In other words, it is only credible evidence which was not discredited under cross-examination that can pass as an expert opinion which is capable of being acted upon and where as in this case, the PW51’s evidence was so discredited, the learned honourable judges of the Tribunal were right to have disbelieved him and placed no probative value on his said testimony as well as the documentary exhibits he purportedly analyzed. Omoregbe v. Lawani (1980) 12 NSCC 164, (1980) 3-4 SC 108; Okeke v. Aondoakaa (2008) 12 NWLR (Pt 1098) 320 and Fayemi v. Oni (2009) All FWLR (Pt. 472) 1122, (2009) 7 NWLR (Pt. 1140) 342, all refer.

It is against this background that I shall discountenance the submission of the learned counsel for the appellants and affirm the decision of the Tribunal which is borne out of the record of appeal as earlier highlighted that the testimony of the PW51 was marred by a pattern of serious inconsistencies which were not isolated nor explained away.

Turning to PW48-ADAJI SAMUEL, the learned silk has appropriately drawn our attention to page 2611 Vol. 6 of the record of appeal where in the affidavit in support of the motion for leave to call the said witness it was disposed to the facts that on the 11 May 2015, the honourable Tribunal made an order upon the application of the petitioners/appellants for inspection of Electoral materials used in the conduct of the Nassarawa State Governorship election and because the 3rd respondent could not comply with that order, another order was made on 25 June 2015 which the 3rd respondent complied with and made available the materials with the PW48 participating in the exercise. See paragraphs 6-10 of the affidavit.

Also, as rightly pointed out by the learned senior counsel for the appellants, the said witness statement on oath can be found at pages 2625 to 2626 of the same Vol. 6 of the records and accompanied by a document captioned: “Report on the Joint Inspection of Electoral Materials and Ballot Papers Used for the Nassarawa State Governorship Election Held on 11 April 2015 in Toto, Nassarawa, Kafu, Keffi, Akwanga, Kokona And Wamba Local Government Areas Of Nassarawa State”, which spans pages 2627-2639 of the said records. The unsigned report is dated Saturday, 1st August 2015.

As was also submitted by the learned senior counsel for the appellants, the said Adaji Samuel deposed in paragraphs 4-7 of his witness statement on oath that pursuant to the order for inspection, he was engaged by the petitioners to represent them in the inspection of electoral materials and ballot papers used in the 2015 Nassarawa State Governorship Election; that the inspection exercise was jointly conducted by representatives of all the parties in the Local Government Areas of Toto on the 14th day of July, Nassarawa on the 22 July; Karu on the 24 July Keffi on the 23 July; Akwanga on 27 July; Kokona on the 25 July, and Wamba on the 28 July 2015, respectively; that the inspection exercise was concluded on the 28 July 2015 and finally that he had prepared an inspection report on the said inspection dated 28 July 2015.

At page 3006, the witness indentified his statement on oath and same was tendered along with the inspection report and the report was admitted and marked exhibit P20. Thereafter the following appears in lines 24-27: “Yusuf Ali (SAN):- “No cross-examination “Y.S Usman Esq: - No cross-examination “Hassan M. Linan (SAN):- No cross-examination”.

I have also used the record of proceedings of the 5 August 2015 when the said PW48 tendered and adopted his witness statement, as well as the inspection report and as rightly pointed out, there is no indication as to the reason why the PW48 was not cross-examined on the said exhibit P20 which he tendered.

Furthermore, although the Inspection Report (exhibit PW20) was unsigned, his name appears at the last page as the maker. Inspite of this fundamental flaw, the document was not expunged.

However, notwithstanding the above facts, the learned senior counsel for the appellants was conscious of the implication of an unsigned document when he submitted at page 12 of the appellants’ brief paragraph 3.44 thereof conceding that:

“Now, it is trite law that an unsigned admitted in evidence...”; although he tried to rationalize that the situation is different, as in this case, where PW48, the maker of the unsigned document stepped into the witness box and gave evidence on same in effect translates to the fact that he had recognized in writing that he made and produced the report and indeed vouched for its accuracy as had earlier been stated at page 2615 of the record in paragraph 7 of his witness statement on oath.

In the circumstances ordinarily, the statement on oath and the exhibit ought to be taken as having not been challenged and accordingly since they have not been challenged, weight ought to be attached to the said exhibit P20. The learned senior counsel for the appellants has cited the dictum of Ogunbiyi JCA (as he then was) in Aregbosola v. Oyinlola (supra) at page 609, paragraphs E-F; where he held that they agree with the contention that any unsigned document carries no weight even if admitted in evidence. Omega Bank (Nig.) Plc v. O.B.C. Ltd (2005) All FWLR (Pt. 249) 1964, (2005) 8 NWLR (Pt. 928) 547 and Garuba (Pt. 917) 160, were alluded to in so holding. The learned law lord (now of the Supreme Court) then posited that “however, the instant case is clearly distinguished from the scenario that played out in the above cases. The witness (PW80) was a member of the team (of experts who did the analysis and prepared the said reports). In our view therefore, he qualifies as a maker of the said reports.

(In our view therefore, he qualifies as a maker of the said reports) - see section 91(4) of the Evidence Act (now section 83(4) Evidence Act, 2011.... The Tribunal was therefore in error in not according the documents their due weight.”

The above section 83(4) of the Evidence which was also cited and reproduced by the senior counsel for the appellants succinctly provides that:

“for the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part of it was: (1) written, made or produced by him with his own hand or

(2) was signed or initialed by him or

(3) otherwise recognized by him in writing as one for the accuracy of which he is responsible”.

The PW48 may not have been cross-examined on the document and he may have given evidence that he prepared the report but suffice it to state in line with the authorities of Omega Bank (Nig) Plc. v. O.B.C Ltd (supra); Global Soap & Detergent Int. Ltd v. NAFDAC (2011) ALL FWLR (Pt. 601) 1476 at page 1507, that an unsigned document still remains a worthless document and the learned counsel for the respondent failure to cross-examine the PW48 on it, is immaterial as you cannot put something on nothing and expect it to stand.

On another wicket on why the trial tribunal ought not to attach any probative value to the said exhibit P20 and the averments of the said PW48 in his statement on oath, his said averment in paragraphs 6 and 7 of the statement on oath are at variance with the content of the said exhibit PW20. For the avoidance of doubt, whereas the said paragraphs of the witness statement aver inter alia: “6” That the inspection exercise was concluded on the 28 July 2015.

“That I have prepared an inspection report on the said inspection dated the 28 July 2015” (See page 2626 of the records); exhibit P20 is purportedly dated 1 August 2015. This clearly shows that the inspection report tendered and admitted by the court without objection is not even the one purportedly prepared by the PW48.”

Apart from the fact the Tribunal had rightly held that of all the documentary exhibits tendered by PW53 secured to have passed through the crucible of being tested with some Forms EC8A’ and other documents tested through the respondents from which the appellants could benefit even the said P32 was not backed up with the ballot papers through the appropriate witnesses with as shall also demonstrated anon.

The law is trite that the admissibility of a document is one thing the weight to be attached to the admitted document is another kettle of fish.

In Abubakar v. Chuks (2007) 18 NWLR (Pt. 1066) 319 at page 403, paragraphs E-F; Tobi JSC stated the position as was done by the learned trial tribunal judges that:

“Admissibility of a document is one thing and the weight to be attached to it another. The weight the court will attach to the document will depend on the circumstances of the case as contained or portrayed in the evidence”.

In the instant case, the honourable judges of the lower Tribunal, were conscious of the fact that whatever phantom figures as contained in exhibit P20 went to no issue as those figures were as worthless as the unsigned papers on which they were written. Again, whatever anomalies and irregularities identified in the report regarding unstamped and unsigned, undated and uncustomized ballot papers missing and unidentified or unseen ballot papers were held by the Tribunal after a dispassionate evaluation of the evidence and in exercise of its undoubted powers and exclusive preserve came to the inevitable conclusion that the petition ought to fail and same was accordingly dismissed.

As for PW53, it is also clear as was argued by the 3rd respondent that he was called because the petitioners realized the uselessness of the evidence of PW48 and Exhibit P20. The said PW53, Alumbugu Anyu Abaga testified on the 6 August, 2015 by adopting his witness statement on oath made on the 5 August 2015. The said statement on oath is also reproduced at pages 2659-2660 of vol.6 of the record of appeal to the effect that he participated in the inspection of electoral materials and ballot papers used for the 2015 Nassarawa State Governorship Election which held on the 11 April 2015 by virtue of which he was conversant with the facts deposed to in the statement on oath.

He stated that he had the consent of the petitioners and their authority to depose to the witness statement on oath; that the Honourable Tribunal made an order for inspection of INEC materials and ballot papers used for the 2015 Nassarawa State Governorship Election; that the inspection exercise was jointly conducted by the representatives of all the parties in the following Local Government Areas of Nassarawa State to wit: Toto on 14 July 2015; 32 Nassarawa on 22 July; Karu on the 24 July; Keffi on 23 July; Akwanga on 27 July; Kokona on 25 July and Wamba on 28 July 2015, see paragraphs 1-5 of the witness statement on oath at page 2660.

Just like the PW48, the witness had deposed in paragraphs 6 and 7 of that statement on oath thus:

“6 That the inspection exercise was concluded on 28 July 2015” and,

7. That I have prepared an inspection report on said inspection dated 28 July 2015”.

Underlining mine for emphasis.

The witness statement of the PW53 was also tendered along with his inspection report at the hearing of the petition on the 6 August 2015 (see pages 3020 -3021) and the said report was admitted and marked exhibit P32. As observed in the case of the PW48, contrary to the deposition in paragraph 7 of the witness statement that he prepared the inspection report dated the 28 July 2015, the purported report tendered admitted and marked exhibit P32 which spans pages 2661-2679 is dated the 1 August 2015. Although the PW53 signed the report wherein he came to the same conclusion in his analysis of the electoral materials that at the end of this exercise he discovered that it was clear that 67,771 votes for APC were invalid while 4,853 votes for APGA were also invalid; it is also clear that the date on that report is different from the date he purportedly prepared it as deposed to in paragraph 7 of his statement on oath. Where his deposition on oath contradicts the so-called report, the court or tribunal ought not to attach any probative value to both his statement and the document.

In any case, from the answers of the said witness at page 3021, lines 19-21, when cross-examined by K. K. Eleja Esq. (now SAN); that “I cannot say the number of ballot papers made available to us in the course of inspection,” and in line 27 of the same page he admitted that, “I was paid for my effort at carrying out the inspection for the petitioners;” and at page 3023 under cross-examination by Dikko Esq., the witness displayed his ignorance on the Electoral materials, he purportedly inspected and infact the spurious nature of the report (exhibit P32) when he stated as follows:

“My focus was on the ballot papers, whether they were signed, stamped, dated and their serial numbers.

It is true that up till now as I speak, the unidentified ballot papers could not be placed to the particular polling unit as in my page 5 of my report. On the missing ballot papers, I have not seen the ballot papers. I said they were missing up till now as I speak. I do not acquire any special skill for inspection but I am conversant with what I am required to do,” see page 3023 lines 1-7 of the records.

From lines 12-23, the witness continued wallowing in his ignorance on the exercise he was supposed to have carried out with the mindset of his being conversant with what he was expected to do and come out with near fool-proof report thus:

“I do not know that in Toto Local Government there were 36,562 ballot papers cast. I do not know if I were to spend 20 seconds on each ballot paper from 10.30am to 4.00pm. I can only inspect ballot papers.

I don’t know that in Kokona, there were 48,728,00 votes cast. In Karu, I don’t know there were 48, 205,00 votes cast. I don’t know that there were 77,918,00 votes cast in Nassarawa Local Government”.

Pray! if the witness did not know the totality of votes cast in each of the Local Government Areas whereof he carried out his so-called inspection, how then did he come to the conclusion on the invalid number of votes cast by each of the political parties? In spite of this display of ignorance, there was no effort at re-examining the witness by the learned counsel for the appellants.

Contrary to the submission of the learned counsel to the appellants, in paragraphs 3-63 of the appellants’ brief at pages 15-16 thereof where the date the inspection report was prepared is different from the date the witness deposed to in his witness statement, prima facie, the lower tribunal was right in holding that the PW53 and the report admitted as exhibit P32, had nothing to offer because of discrepancies or contradictions between his evidence and the report.

The Tribunal which had the singular opportunity of watching the demeanour of the witness in course of being cross-examined, was in the best position to ascribe probative value to witness’s testimony which the Tribunal rightly did in this case. Where, as has been demonstrated in the answers to cross-examination that the PW53 did not tie the ballot papers to their respective polling units, the witness admitted that he simply dumped his so-called report on the Tribunal and contrary to the submission of the learned counsel to the appellants, to evaluate the contents of exhibit P32 when the witness who prepared same failed to tie his findings to the polling units or the ballot papers purportedly inspected in order to establish whatever irregularities inherent in the conduct of the election as claimed Tribunal could ill afford as this will be tantamount to doing the petitioners’ case for them.

In any case, as was submitted by the learned counsel for the respondents, the lower Tribunal’s holdings at pages 3116 and 3119 of the vol. 6 of the records that:

“However, the fact that exhibit P32 was admitted does not exonerate the petitioners from tendering the ballot papers through the appropriate witness, to back up the report tendered as exhibit P32. This is more so that the PW53 failed to tie his evidence to the ballot papers which were brought but not tendered, thus there is nothing before the tribunal to test the report on the uncustomised, unsigned, undated ballot papers with as sought by the petitioners” and that: on the evidence of PW53 and the report now in evidence as exhibit P32, we are of the opinion that this witness has nothing to offer as his report was full of discrepancies, he did not impress the Tribunal by his evidence either for reason that he was coherent in his evidence under cross-examination when he made all efforts to avoid simple questions. But to him forgetting that as a witness, he was not there to play to the gallery the fact that he is a lawyer...”

...were unassailable and the learned senior counsel for the appellants were most uncharitable to the Tribunal to accuse the Tribunal of committing obvious errors in the appraisal of exhibit P32 and also the PW53’s testimony. The approach of the Tribunal to the evaluation of the evidence of PW53 and his spurious Exhibit P32, his so-called Inspection Report was not hasty as it was borne out of the records and as I had earlier held from the inception, the evidence of PW53 on oath as to the date of preparation of the report was at variance with the date as contained in the report itself. The Tribunal was therefore duty bound to discountenance both the testimony and the exhibit as their lordships were not expected in the circumstances to pick and choose as between the testimony and Inspection Report whom or which to believe or disbelief.

With the greatest respect to learned senior counsel to the appellants, Abibu v. Bintu (1988) 1 NSCC 55 must have decided that “where there are obvious errors on appraisal of oral evidence and ascription of probative values to it... or where the learned trial judges had approached the determination of facts in a manner which such facts cannot and do not only entitles but justified to interfere and set aside the findings” but am afraid this authority has again been cited out of context as the lower Tribunal carried out a dispassionate appraisal of the totality of the evidence and came out with the inevitable conclusion that the evidence of the PW48, PW51 and indeed PW53 and their respective exhibits P20 and PW32 had been discredited during cross-examination, apart from the neglect and/or refusal of the appellants’ witness aforesaid to tie the ballot papers to the report from the polling units which amounted to dumping of the report and the ballot papers on the Tribunal without speaking to the said exhibits. We shall consider the effect of this approach of the witnesses as we attempt to resolve the issue of whether the documentary exhibits were dumped on the Tribunal. Suffice it to say that at pages 19-20 of the appellants’ brief, the learned silk went on to reproduce the holdings of the Tribunal at pages 3105 of the records, 3106, 3110, and 3117 of the records to support his view that the appellants’ witnesses were competent whereas the Tribunal from the above extracts of the judgment was indirectly saying that Ward Collation Agents cannot testify about polling units which reasoning, this court per Ogunbiyi JCA (as he then was) deprecated as erroneous, without foundation and predicated on a hollow wind and that this erroneous holding occasioned a miscarriage of justice in Aregbesola v. Oyinlola (supra) at pages 573-576 paragraphs E-F. See also Lasun v. Awoyeni (2009) 16 NWLR (Pt. 1168) 513 at page 554, where this court again held that it is totally alien to our law to so hold as the Tribunal did, that only polling agents, presiding officers, polling clerks, voters and observers are competent to give evidence of what happened at a polling unit or collation centre but that any person can qualify as a competent witness upon satisfying the conditions laid down in sections 77 and 155 of the Evidence Act, 2004 (now sections 126 and 175 of the Evidence Act, 2011).

The above provisions of the Evidence Act, no doubt are to the effect that oral evidence must in all cases whatever, be direct and if it refers to a fact which could be seen, heard, perceived by any other sense or manner or opinion or the grounds on which that opinion.

Furthermore, all people shall be competent to testify, unless the court considers them prevented from understanding the questions put to them, or from giving rational answers to questions put to them by reason of tender years, extreme old age, disease, whether of body or mind or any other cause of same kind. In the instant case, the Tribunal carried out a dispassionate evaluation of the evidence of all the witnesses to the appellants’ beginning from Mr. Labaran Maku; the PW1 and 1st petitioner to PW53, as well the documentary exhibits tendered as inspection report (see pages 3060-3068); and from the answers to cross-examination of the witnesses.

It is clear that even though all the witnesses claimed seeing or hearing what transferred at either the polling units or the collation centers most of them were discredited and rendered themselves incompetent to testify or to be ascribed probative value as we had noted earlier. Besides, apart from the PW48, PW51 and PW53, the PW1 and 1st petitioner who alleged in the petition that the 1st respondent was not duly elected by a majority of the lawful votes cast at the election and that the results of the units, wards and Local Government Areas were invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Acts, 2010 (as amended); under cross-examination, after tendering exhibits P1-P14, series of documentary evidence relied upon in proof of his allegation, stated and admitted under cross-examination on these documents that his party had agents in all the polling units in the State but they were not allowed to operate, though he did not report this unwholesome development to INEC. He stated further that on the day of election, he did not go round the State but only went to vote at his unit, waited for the result to be announced after being counted. According to him, he relied on reports from his polling units agents to formulate the petition. The said witness also admitted as far as his popularity and that of his political party (the 2nd appellant) were concerned, that they only won one House of Assembly seat out of the thirteen (13) Local Government Areas.

PW2, Usman I. Alkali, one of the polling unit agents who alleged that even though voting took place peacefully at his unit and party agents signed the results sheets, the ward collation officer refused to collect the results and enter same in Form EC8B at the collation centre, when cross-examined, however, stated that he could not read or write and having been shown the Form EC8A for his Unit could not read the contents. On further cross-examination after having told the court about his illiterate status, he answered that he confirmed his deposition by signing his statement on oath. Again, even though he was a Muslim, his statement on oath showed that he was a Christian and was surprised by that development.

The evidence of the PW3, 5, 6, 7, 8, 9, 12, 13, 17, 18 and so did not fare better and the Tribunal copiously addressed the issue of competence of witnesses as raised in the appellants’ brief as earlier highlighted.

The lower Tribunal at pages 3103-3104 of the records was right to have disregarded the evidence of the appellants’ numerous witnesses on wrongful cancellation of ward collation centers results, not only because they were not ward collation agents as purported by the learned senior counsel for the appellants and even when they testified what they purportedly saw, but because those witnesses were discredited and the witnesses did not prove the allegations of malpractices and noncompliance by the standard of proof required of the witnesses irrespective of the nature of the allegations, some which were criminal in nature and others civil.

With the greatest respect and as shall be demonstrated anon, the learned trial judges, the honourable tribunal did a marvellous and commendable job in their evaluation of the evidence before them and rightly rejected the evidence of the PW1 and PW51 as indicated in the passage of their judgment as quoted as shall also be demonstrated anon. Accordingly, the Tribunal’s discountenancing of the PW1 and PW51 was not erroneous nor did it occasion any miscarriage of justice but was borne out of the fact that the appellants failed to prove their allegations by credible evidence when they could not discharge the onerous burden placed on them by law.

Turning to issue of dumping of the documents pleaded by the appellants on the Tribunal which forms the bases of issues two of the appellants’ and the 1st and 2nd respondents but which the learned counsel incorporated as part of his argument on issue one (1) of the 3rd respondent’s brief, on whether the Tribunal was not right when it failed/refused to attach weight to the documents admitted in support of the appellants’ case, particularly the polling units and wards collated results as exhibit P32, this question had earlier been answered in the affirmative and I reiterate that the Tribunal was right to have held that the documents were dumped on it by the appellants and their witnesses and even though. I had held elsewhere, see the case of Mr. John Eboh Uzu & Another v. Anthony Ikechukwu Ogbu & 36 Ors. (2012) LPELR-9775 (CA) at pages 127-128 paragraphs F-E that: “As was held in Agagu v. Mimiko (2009) All FWLR (Pt. 462) 1122, (2009) 7 NWLR (Pt. 1140) 342, (2010) 32 WRN 10 and Aregbesola v. Oyinlola (2011) All FWLR (Pt. 570) 1292, (2011) 9 NWLR (Pt. 1253) 458, (2010) 1 WRN 33 at page 149 that witnesses depositions once admitted become evidence-in chief and the documents as analysed and incorporated in the statement on oath having been tendered without objection by the respondents, the Tribunal was bound to dispassionately and discreetly assess and evaluate them and draw the necessary inferences therefrom before arriving at their judgment. See INEC v. Oshiomole (supra) at 416. Thus, I agree with the learned counsel for the appellants and the authorities of Aregbesola v. Oyinlola (supra). Ogbe v. Sule Asade (2009) 12 SC (Pt. 111) 34, (2009) 18 NWLR (Pt. 1172) 106, (2010) All FWLR (Pt. 510) 612 at page 632 per Eneh JSC paragraph F; that the law accords a measure of primacy to documentary evidence against oral evidence particularly election matters like the one before us. Also in line with the dicta of the apex court in S.P.D.C Nig. Ltd v. Edamkue & Ors. (2009) All FWLR (Pt. 489) 407 at page 435, (2009) 6-7 SC 74, (2009) LPELR - 3048, (2009) 7 SCNJ 124; BCC Nig. v. Anyim (2009) All FWLR (Pt. 400) 435.”

My basis in so holding was that where the testimonies of the PW16 and PW17 who were Forensic Analysts and exhibits were able to show from their analysis and charts that through the voters’ register and the results in the 31 complained units, all the process denoting elections to wit: accreditation, voting, recording of results in all INEC Forms; and collation of results and provided under section 49 (1), (2) of the Electoral Act, 2010 (as amended), chapters 3 and 4 of the Manual for Electoral officers, election did not take place.

In that case too, the petitioners/appellants demonstrated palpably as claimed that the result sheets were mutilated, majority of which were neither signed nor dated, results sheets of two or more Polling Units had same serial numbers which was not suppose to be the case. Moreover, the appellants had demonstrated, having tendered the ballot papers, that contrary to the mandatory provisions of chapter 4 bullet 4:21 of the Manual for Electoral officials, that unsigned and unstamped ballot papers were counted as valid votes in favour of the 1st respondent; and on the authority of Ajadi v. Ajibola, per Adekeye JCA (as he was then) at 166 of the report cited that those ballot papers ought to be discounted.

Above all, and as required by any petitioner challenging election on the basis of the grounds upon which this present petition now on appeal is predicated, the petitioner in that case were able to show by comparative analysis that the figures recorded in the result sheets from the questioned polling units were markedly different with the figures of voters markedly ticked as accredited and having voted in the register of voters which was tendered before the Tribunal; and the results obtained from result sheets with such discrepancies and contradictions could not stand. In that case, we relied on the case of Nweke v. Ejims; Ajadi v. Ajobola (supra); Ogboru v. Uduaghan (supra); Terab v. Lawson (1999) 3 NWLR (Pt. 231) 569 and section 49(1) and (2) and chapters 3 and 4 of the Manual for Electoral officials and held that the marking of Voters’ Registers in the 2011 Election as provided by the manual was the only ascertainable method of proving that accreditation and voting took place.

In the same case, where PW5 was confronted with Voters Register (exhibit P52), and he admitted that there was only one tick at the left side of his picture, PW9 also admitted signing three different Result Sheets which were admitted apart from all motley discrepancies and overwhelming evidence of manifest anomalies and non-compliance which substantially affected the outcome of the election and displaced the presumption of regularity of the results, we had no hesitation in nullifying the election of the 1st respondent.

The question pertinent to the present appeal is whether the appellant and witnesses at the lower Tribunal complied with the requirement of the law as enunciated in the above cited case and others that we followed in so deciding to set aside the judgment of the Tribunal and our consequential nullification of the election? Our answer is a big nay! The learned senior counsel for the respondents and indeed the appellants had rightly cited the cases of Alao v. Akano (supra) where Ejiwunini JSC (now of blessed memory) succinctly stated that it must be borne in mind that admitted documents, useful as they, would not be of much of assistance in the absence of admissible evidence (in this use the witnesses statement on oath), to explain its purport.

I agree with the submissions of the learned silks on behalf of the respondents that the appellants simply dumped documentary exhibits on the Tribunal which necessitated the Tribunal to hold as it did at pages 60/3116 of the judgment/record of appeal. In fact the lower Tribunal stated the correct position of the law at page 3115 paragraph 2 of the records/page 59 of the judgment and went further at page 3116/page 60 of the records/judgment thus:

“However, the fact that exhibit P32 was admitted in evidence does not exonerate the petitioners from tendering the ballot papers through the appropriate witnesses to back up the report tendered as exhibit P32. This is more so when the PW53 failed to tie his evidence to the ballot papers which were brought before the Tribunal but not tendered. Thus there was nothing before the Tribunal to test the report on the uncustomized, unsigned, undated ballot papers with, as sought by the petitioners. On the unit agents and voter called by the petitioners, all they did was to allege that there was no collation, no proper accreditation, there was over-voting by the inflation of votes, etc. when they were brought in as witnesses, the petitioners never tested them with their Unit Result, showing no alteration but yet the results were cancelled at the collation centres. No collation agent was tested on his ward result to the effect that on submission of Unit result handed over to him by his Unit Agent, the collation officer refused to collect same or refused to enter the result in Form ECSB as alleged, thus Form ECSB is not reflecting the Unit Result.”

The honourable judges of the Tribunal then went on to cite Alao v. Akano (2005) All FWLR (Pt. 264) 799, (2005) 11 NWLR (Pt. 935) 160, (2005) 43 SC 25 at page 36 supra and concluded that except for those agents and voters whose unit reports were tested under cross-examination, all the rest of them having not been tested were dumped in the Tribunal. As for the PW 1, the

Tribunal also held that: “We have variously stated that in fact, most of the exhibits tendered by the PWZ were dumped on the Tribunal as they were not tested.”

What does the Tribunal mean by the non-testing of the documents? It would appear that it is the duty of the exhibits tendered by the process of cross-examining the witnesses which the respondents did and the Tribunal copiously evaluated the testimonies of the DW1-24 at pages 3117, 3118 and 3119, those of PW49-56 and gave reasons why they were discountenanced as being because the appellants and their witnesses did not tie the documents to the parts of the case, they intended to prove as it did not lie on the Tribunal or court to fish, for evidence for the party tendering documents from the bar, from those documents.

The Tribunal rightly relies on the case of Obasi Brothers Merchant Co. Ltd v. Merchant Bank of Africa Securities Ltd (2005) All FWLR (Pt. 261) 216, (2005) 2 SC (Pt. 1) 51 at page 68 to unassailably hold that the position of the law in dumping of documents on courts is that the party is under an obligation to tie his documents to the facts or evidence or admitted facts in the open court and not through counsel’s oral or written address.

As for the contention of the learned counsel for the appellants that no barrier was on the way of the Tribunal to evaluate the documents tendered, the Tribunal also was on very strong wicked when it held that from a plethora of authorities, it is not the duty of a court or Tribunal to embark on inquiry outside the court, not even by examination of documents which were in evidence when the documents had not been examined or analyzed as in the instant case by the party who tendered them.

In this wise, the learned senior counsel for the respondents have also rightly alluded to the findings of the court that the evidence of the PW1 was hearsay as the polling and ward collation agents who gave him the information on allegations of unlawful declaration, inflation/reduction of votes contained in the petition were not called to testify to the veracity and accuracy of the information. They rightly cited Ogboru v. Uduaghan (2011) All FWLR (Pt. 577) 650, (2011) 2 NWLR (Pt. 1232) 532 at pages 580-581, paragraphs F -A on the rationale behind the insistence by the court that a party relying on a document as part of his case must specifically relate each of such documents to that part of its case in respect of which the document is being tendered as the learned trial judges of the Tribunal held. See Ucha v. Elechi (2012) All FWLR (Pt. 625) 237, (2012) 13 NWLR (Pt. 1317) 330 at page 360, per Rhodes-Vivour JSC who also re-echoed the rationale in the host of cases earlier cited and decided that on no account should a party or his counsel dump documents on the court of trial as no court would spend precious judicial time linking documents to specific area of the party’s case (A.N.P.P. v. INEC (2012) 13 NWLR (Pt. 1212) 549).

According to the erudite law lord:

“A Judge is not to descend from his heavens abode, not lower than the tree tops to resolve earthly disputes and return to the Supreme Lord, His duty entails examining the case presented by the parties in accordance with standards well laid down.

Where a judge abandons that duty and starts looking for irregularities in electoral documents, and investigating documents not properly before him, he would most likely be submerged in the dust of the conflict to render a perverse judgment in the process.”

Truly and as aptly observed by the learned counsel for the respondents, the appellants consciousness of late here on appeal of the palpable failure of the appellants and their witnesses to link the avalanche of documentary exhibits with the parts of the case they sought to prove, has necessitated that appellants’ learned senior counsel’s resort to analysis of the documents dumped on the Tribunal. See paragraphs 4.19 to 4.34 and 4.37 to 4.40 to call on us to hold that the Tribunal failed to evaluate the documents mentioned in those paragraphs which occasioned a miscarriage of justice.

In response to this wasteful exercise, the learned senior counsel for the respondent has rightly cited and relied on the authorities of Omisore v. Aregbesola (2015) All FWLR (Pt. 813) 1673, (2015) 15 NWLR (Pt. 1482) 205 at pages 308-309 and Ucha v. Elechi (2012) All FWLR (Pt. 625) 237, (2012) 13 NWLR (Pt. 1317) 330, (2012) LPELR 78235 and in particular the dictum of Ogunbiyi JSC in the Aregbesola’s case that:

“... documentary evidence, no matter its relevance, cannot on its own speak for itself without the aid of an explanation relating to its existence, the validity and relevance of documents to admitted facts or evidence is when it is done in the open court and not a matter for counsel’s address. It is not also the duty of the court to speculate or work out either mathematically or scientifically, a method of arriving at an answer on an issue which could only be elicited by credible and tested evidence at the trial.”

Thus, I agree that the appellants’ brief is not the appropriate forum to adduce evidence or carry out the analysis of the dumped documents which learned counsel for the appellants would have tutored or advised his clients to do at the trial court.

From all indications, the learned Tribunal judges were right to have disregarded the evidence of the petitioners’ witnesses particularly, PW51, PW48 and PW53,as well as not attaching any weight to the documents admitted in support of the appellants’ case particularly, the polling units and ward collation results because as borne out of the Records, the witnesses’ were discredited under cross-examination, apart from some of their witnesses’ depositions being at variance with the contents of the exhibits which were tendered in support of their case. Accordingly, since the appellants were supposed to rely on the strength of their case in proof of the declaratory reliefs they sought, their case would stand on the relative strength of the evidence they adduced which had been discredited. As shall be demonstrated anon while considering issue number 3 of the appellants, the respondents as rightly held by the lower Tribunal had nothing to defend since the appellants failed to establish their claims on the preponderance of evidence so as to shift the burden of proof on the respondents.

These issues 1 and 2 of the appellants, 2 of the 1st and 2nd respondents and issue number 1 (one) of the 3rd respondent, shall be resolved against the appellants and in favour of the respondents.

Resolution of issue number 3 of the appellant as well as issue 3 (three) of the 1st and 2nd respondents and part of issue number one and issue two of the 3rd respondent:

“Whether in view of the respondents’ collective failure to lead credible evidence (1st and 2nd respondents) or any relevant evidence (3rd respondent), the Tribunal was right to come to the conclusion that the appellants failed to establish its allegations of non-compliance and malpractice?”

The grouse of the appellant and indeed the ground upon which this issue is predicated is the alleged failure of the respondents to adduce any cogent or credible evidence to challenge the appellants’ evidence on record and the coming into conclusion by the lower trial Tribunal that the appellants failed to establish allegations of non-compliance and malpractices. It is indubitable that in the course of hearing the petition, the 1st respondent called two witnesses (RW1 and RW2 Audu Ibrahim and Peter Musa) both who testified that in their Polling Units, APGA won. But when cross-examined, the RW1 said he went to the collation centre to give his ward collation officer the result and later left. He admitted that election was conducted peacefully with no problem. He would however not know upon further cross-examination whether the result was cancelled nor was he told whether the result was entered. He maintained that since he was not INEC, he did not know whether INEC was supposed to enter same.

As for RW2, under cross-examination, he also disclosed that he was the unit agent and having seen the result it was not cancelled. After the election at the unit, he took the result to his Collation Centre Agent and left. He would not know what happened thereafter at the Collation Centre as he was only a Unit Agent and did not hear from his Ward Collation Agent whether the result was entered or not.

At page 3034 of the records, Akin Oladeji for the 1st respondent, on the 13 August 2015 when hearing told the Tribunal that:

“After a careful study of the petitioner’s case, we have decided to rest our case on the case of the petitioners. We urge the court to close our case with the two witnesses we called.”

Since the other learned counsel for the respective parties did not oppose the application, the Tribunal granted the application and closed the 1st respondent’s case.

Upon resumption of hearing on the 17 August 2015, the 2nd respondent opened her case by calling Ahmadu Haleru as RW3 and tendered from the Bar, the following documents:

1. Two forms EC8As for Alogani South and Randa Arikpa,

2. counterpart copy of Form EC8A for Randa Arikpa,

3. A receipt evidencing payments for due certification, which application was not objected to by the other respective learned counsel and the documents were admitted and marked exhibits (1) P36A 2B (2) P37 and (3) P38.

The RW3 adopted his statement on oath subsequently and when cross-examined by Onamusi Esq.. for the appellants, the witness admitted that he was not trained on the use of card reader on the date of the election. He denied being aware that all accreditations were captured by the card reader as the card reader was not used and it was plain paper that was used for the accreditation. He denied knowing one Sharuddeen Lawal whom he had never met. He finally denied seeing his deposition before the day of giving evidence as that was the first time he was seeing the said deposition before coming to Tribunal.

On further cross-examination, the witness stated that he was the APC agent at Alogani South. He tendered his letter of appointment and Agent at the Alogani South Polling Unit which letter was admitted as Exhibit P39 along with is specimen signature marked exhibit P40. He however, denied the signature on exhibit P36B i.e. Form EC8A for Alogani South, Galle Tudu. RW4 Haruna Ayaka was also called by the 2nd respondent’s counsel and after adopting his witness statement on oath and was cross-examined by Onamusi Esq., for the petitioner, the witness stated amongst others thus:

“I can read my deposition but not very well. My statement is in English language because I gave it in English language. I stand by my deposition. I can tell when electoral irregularity is substantial. On 11 April 2015, election irregularity was substantial. The result of my polling unit was signed by someone else. I reported to the police.

Upon being cross-examined by Olageji Esq., for the 1st respondent, the witness replied:

“The signature on exhibit P36A is not mine. I don’t know whether the number of voters was more than the accredited voters. I was given letter of appointment as an agent. This is the letter.” See pages 3037-3041 of the records.”

The letter was tendered and admitted in evidence and marked exhibit P41, while his specimen signature was marked exhibit P42. The witness finally admitted that INEC officials were at this Unit to conduct the election in the presence of other political party agents. On this note, the 2nd respondent also closed her case.

The 3rd respondent was to open its case on the 19 August 2015 (see pages 3042 and 3043. At page 3043, H. M. Liman SAN for the 3rd respondent applied to tender from the Bar, the following documents:

“1. A certified true copy of Form EC8D for the Governorship Election in Nassarawa State titled “Summary of Results from Local Government Areas.

2. Declaration of Result of Election to the Office of Governor of Nassarawa State, Form EC8E Declaration Certificate.

There were no objections from the other learned counsel for respective parties and the said Forms ECSD and EC8E were duly admitted and marked exhibit P43 and P44 respectively.”

At page 3044 of the records, the learned senior counsel for the 3rd respondent, after intimating the Tribunal that on the 3 August 2015, the petitioners served the 3rd respondent with subpoena duces tecum to produce before the Tribunal the Electoral materials listed in a subpoena and in compliance with the order had produced the materials for the six Local Government Areas; he further informed the court that the witnesses who were listed in the subpoena were staff of the 3rd respondent to be called at the trial but after viewing the case for the petitioners and that of the 1st and 2nd respondents and the evidence tendered by the 3rd respondent was applying to close its case. No objection was raised by any other learned counsel for the other respective parties and accordingly, the Tribunal also closed the case of the 3rd respondent.

Now, from the testimonies of the RW1-RW4, it would appear that the petitioner won the election at the polling units where these witnesses were Agents. However, the RW1 and RW2 having told the Tribunal that they were not in a position to know whether the said results were entered at the Ward Collation Centres since they were not the Ward Collation Agents, their evidence were neither here nor there. Even the RW4 on the long run who stuck out his neck that the Election of 11 April 2015 was fraught with substantial irregularity upon being shown the result he purportedly signed, denied the signature adding that the result was signed by someone else and would not know whether the number of voters was more than the accredited votes. The learned counsel has however confirmed that the Ward Result Sheets for both Polling Units testified to by the RW1 and RW2 were cancelled.

Although, the learned counsel has submitted on the authorities of Aregbesola v. Oyinlola (supra); Imana v. Robinson (1979) 3-4 S.C. 1 at 8, (1979) 12 NSCC 1; Alhaji Muhammed Maigari Dingyadi & Anor. v. Alhaji Magatakada Wamako & Ors. (2008) 17 NWLR (Pt. 116) 395, that for choosing not to call further evidence and rest their cases on that of the appellants, the respondents shall be deemed to have abandoned their pleadings, deemed to have accepted the facts as presented by the appellants who called 56 witnesses in support of their case and also tendered numerous documentary exhibits; there is no doubt that cases cited may have decided as such as well as the other implications of the respondents being deemed to have no issues to argue even in the final address or closing arguments before the Tribunal.

The learned senior counsel for the respondents have rightly countered the above assertions, with the 1st and 2nd respondents’ counsel referring us to the dictum of C. C. Nweze JSC in the recent case of Omisore v. Aregbesola (2015) All FWLR (Pt. 813) 1673, (2015) 15 NWLR (Pt. 1482) 205, where the erudite law lord put it beyond per adventure on this vexed issue at page 284 as follows:

“The submission that, in the absence of rebuttal evidence from the respondents’ expert witnesses, the trial Tribunal had the obligation to accept the testimonies of the PW15 and PW38 is unavailing. In the first place, as shown above, their testimonies did not weather the barrage of questions in cross-examination. Worse still, the Tribunal agreed that the exhibit, subject of PW15’s evidence “has been so discredited under cross-examination, page 7498. Still on page 7498”... PW38, another expert witness for the petitioners admitted under cross-examination that his report covers more ground that the complaints of the petitioners.”

Upon the above basis and others, the learned law lord of the apex court held in that case that the Tribunal was right to have discountenanced the evidence of the so-called expert witnesses called by the appellants, just as in this case where 52 the Tribunal discountenanced the evidence of the PW51, PW53 and indeed that of the PW1-56 for not tying the documents tendered to the particular aspects of their case apart from the evidence of the witnesses being discredited under cross-examination.

However, the position of the learned senior counsel for the 3rd respondent is more illuminating when he cited Buhari v. INEC (2005) 7 SCNJ 1 at page 47 paragraphs 15-20, in submitting that the position of the law in elections petitions had long been settled and I totally agree with him that the burden of proof lies upon the party that makes the assertion to adduce credible evidence in proof of that assertion. See sections 131- 136 of the Evidence Act of 2011. Beginning from section 131(1) and (2), that section provides in sum that whoever desires any court to give judgment as to any legal right or liability dependent on a set of facts which he asserts shall prove the existence of such facts; and where a person is bound to prove the existence of any fact, the burden of proof lies on that person. By the provision of section 132 of the Act, the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.

In civil cases the legal burden of first proving the existence of facts lies on the party, against whom judgment would be given if no evidence were to be produced on either side, having regard to any presumption that may arise on the pleadings. Where the party referred to in subsection (1) of section 133 of the Evidence Act, adduces evidence which ought to reasonably satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with. The above provisions of section 133(1) and (2) has generated the stance of the courts that whereas the legal burden is fixed on the pleadings, the burden of proof oscillates like a pendulum back and forth until all the issues in the pleadings have been dealt with.

Also, it is pertinent to note that whereas the standard of proof in civil matters is discharged on the balance of probabilities (see section 134), by section 135(1) - (3). If the commission of a crime by a party to any proceedings civil or criminal, is in issue, it must be proved beyond reasonable doubt and the burden of proving that a person has been guilty of a criminal or wrongful act, lies on the person who asserts it, whether the commission of such act is or is not directly in issue. Where the prosecution proves the commission of crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on the defendant.

See per Tobi JSC in Buhari v. INEC (supra) at 369-370 paragraphs F -D.

I have gone thus far in view of the nature of the appellants’ petition before the lower Tribunal, where they claimed that the Governorship Election in Nassarawa State held on 11 April 2015 specifically in Ward Collation Centres and Polling Units complained of in the petition was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010, (as amended) and in consequence sought for declaratory reliefs.

Section 138 of the Electoral Act by its sub-section (1) (w) stipulates that an election may be questioned on any of the following grounds, that is to say: “that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act.”

The Act, however, in section 139 thereof has clearly stipulated that:

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

Interpreting section 134 of the Evidence Act as it affects section 138 of the Electoral Act, 2010 (as amended), the Supreme Court in CPC v. INEC & Ors. (2011) 12 SC (Pt. V) 80 at pages 91-92, lines 25-10 held that:

“Having regard to the above provision, the burden of proof generally in the sense of establishing a case lies on the plaintiff or initiator of the suit. He who asserts must prove what he asserts i.e. qui affirmat non a qui negat incumbit probat. The party who asserts in his pleadings the existence of a particular fact is required to prove such fact by adducing credible evidence. If he fails to do so, his case fails.

A plaintiff would be expected to succeed on the strength of his own case not on the weakness of the defence.”

The same position above taken was re-emphasized by the apex court in Ali Ucha & Anor. v. Elechi & Ors. (2012) All FWLR (Pt. 625) 237, (2012) 13 NWLR (Pt. 1317) 330, (2012) LPELR-7823 (SC) 43, paragraphs B-E on the standard of proof in claims for declaratory reliefs where Mohammed JSC posited following the authorities of Nwokidu v. Okanu (2010) All FWLR (Pt. 522) 1633, (2010) 2 NWLR (Pt. 1181) 362; Ekundayo v. Baruwa (1965) 2 ALL NLR 211 and Dantata v. Mohammed (2000) FWLR (Pt. 21) 889, (2000) 7 NWLR (Pt. 664) 176 thus:

“...the law is indeed well settled that in such claims for declaratory reliefs which are in fact the backbone in all election petitions, the onus remains on the petitioners to prove and establish their claims on their own evidence without relying on the weakness of the case of the respondents. In other words, the petitioners must satisfy the election petition Tribunal upon enough credible and cogent evidence which ought reasonably be believed and which, if, found established, entitles the petitioner to the declaration sought.”

On whom the onus of proving non-compliance with the provision of the Electoral Act rests as well as the standard of proof, on the allegations as made by the petitioner in his petition now on appeal, Rhodes Vivour JSC, characteristic of his lucid and succinct style copiously held still in that case that the results declared by INEC are prima facie correct and the onus is on the petitioner to prove the contrary. Where a petitioner as in our instant case complains of non-compliance with the provisions of the Electoral Act, 2010 (as amended), the petitioner is said to be duty bound to prove it, polling unit by polling unit, ward by ward and the standard required is on the balance of probabilities and not on minimal proof.

According to the learned law lord: “He must show figures that the adverse party was credited with as a result of the noncompliance.

Form EC8A, election materials not stamped/signed by the presiding officers. He must establish that non-compliance was substantial, that it affected the result. It is only then that the respondents are to lead evidence in rebuttal. See Buhari v. Obasanjo (2005) All FWLR (Pt. 273) 1, (2005) 13 NWLR (Pt. 941) 1; Awolowo v. Shagari (1979) 6-9 SC 51; Akinfosile v. Ijose (1960) SCNLR 447. (See pages 33-34 of (2012) LPELR7823 (SC).”

On the other hand, where the grounds of non-compliance are criminal in nature, the learned law lord further held that the standard of proof is beyond reasonable doubt. His lordship also had cause to pronounce on the contention herein by appellant that the respondents abandoned their pleadings and indirectly accepted the plaintiff’s case when they called few or refused to call any rebuttal evidence inter alia at pages 39-40 paragraphs E-D of the LPELR:

“Minimal proof can only be entertained by the court and acted upon positively where the petitioner’s case is unchallenged and that is unheard of in election petitions in these chimes. A petitioner succeeds on the strength of his case and not on the weakness of the opponent’s case.”

The above position taken by the learned law lord is in tandem with the submissions of the learned senior counsel for the 3rd respondent who relied on the authorities of Dumez Nig. Ltd v. Nwakhoba (2008) 18 NWLR (Pt. 1119) 361, (2009) ALL FWLR (Pt, 461) 842 at pages 850-851 paragraphs F-A; Omisore & Anor. v. Aregbesola (2015) All FWLR (Pt. 813) 1673, (2015) 15 NWLR (Pt. 1482) 205, (2015) 5-7 M.J.S.C 1 at pages 47-48 paragraphs G-B and Agbaje v. Fashola (2008) All FWLR (Pt. 443) 1302, (2008) 6 NWLR (Pt. 1082) 90 at pages 133-134 paragraphs G-B, when he submitted, as he did in paragraphs 4- 47 of the 3rd respondent’s brief.

In the circumstances of this case, where the evidence of the star witnesses for the appellants like the PW1, PW48, PW51 and PW53 and the documentary exhibits tendered by them were simply dumped on the Tribunal, and have been declared to be not worth any ascription of probative value, they having been massively discredited under cross-examination, the learned silk for the appellants cannot seriously contend as he has done that the respondents abandoned their pleadings and had accepted the facts of the case as stated by appellants.

On the authorities of PDP v. INEC (2012) 7 NWLR (Pt. 1300) 538 at page 561; Olayemi v. Olaoye (2004) All FWLR (Pt. 217) 584 at page 610 and Omisore v. Aregbesola (supra) at page 322, I agree with the submission of the learned counsel for the 1st and 2nd respondents and as was rightly held by the Tribunal (see pages 3091-3092 of the records as well as 3101- 3119 on the allegations of malpractices and non-compliance) that the appellants failed to prove those allegations either on the balance of probabilities or beyond reasonable doubt.

Accordingly, no burden shifted to the respondents to disprove that the election was not conducted in substantial conformity with the Electoral Act. Thus, as was rightly held in by the learned C. C. Nweze, JSC in the Omisore v. Aregbesola’s (supra) case; in the present case, since the appellants’ failed to lead credible evidence to prove:

(1) Allotment of votes;

(2) Illegal creation of voting points;

(3) Manipulation of ballot papers and voters before votes were cast;

(4) Non or improper accreditation of voters before casting of votes;

(5) The election being marred by violence, and other sundry offences;

(6) Dereliction of duty by staff and officials of the 3rd respondent;

(7) Falsification of results and unlawful entries of figures in the Result Forms;

(8) Alteration, nullification and manipulation of Result Forms as have been criminalized by sections 117, 118, 120, 122, 123, 124, 125, 127, 128, 129, 130 and 131 of the Electoral Act, 2010 (as amended) which offences, ought to have been proved beyond reasonable doubt. The appellants’ claims were appropriately dismissed by the Tribunal. See the cases of Jalingo v. Nyame (1992) 3 NWLR (Pt. 231) 535; Azike v. Ararume (2005) All FWLR (Pt. 263) 740 at page 754 ably cited by the learned counsel for the 3rd respondent and Chime v. Onyia (2009) All FWLR (Pt. 480) 673 at page 702, (2009) 2 NWLR (Pt. 1124) 1; APC v. PDP (2015) 15 NWLR (Pt. 1481) 1 at page 78; Goyol v. INEC (No. 1) (2012) 11 NWLR (Pt. 1311) 207 at page 216 and Audu v. INEC ably cited by the learned senior counsel for the 1st and 2nd respondents in submitting that, the quality of the evidence is so poor that it cannot even prove those allegations on the balance of probabilities when the allegations were criminal in nature.

The Tribunal aptly captured these allegations and rightly held in my humble view that:

“We have considered the submission of counsel to both parties and it is trite that unlawful declaration, inflation/reduction of votes directly raises the issue of falsification which constitutes an allegation of crime, the standard which is (sic) beyond reasonable doubt. We refer to section 138 (1) of the Evidence Act, 2011 as amended (sic).” See page 3103 of the records.

Furthermore, the learned judges of the Tribunal were also on very firm ground when they held at page 3106 of the records after a copious and dispassionate appraisal of the totality of the witnesses’ testimonies, held that the evidence of PW1 and PW51 fell short of expectation on the allegations of unlawful declaration, inflation/reduction of votes and non-accreditation at the Polling Units which required the calling of polling agents who were at the Polling Units to witness such scenario but which the appellant failed to call and when called rather buttressed the case of the respondents that voting was peaceful and regular. Accordingly, Awuse v. Odili (2005) All FWLR (Pt. 253) 720, (2005) 16 NWLR (Pt. 352) 416 at page 471 and Abubakar v. Yar’Adua (2009) All FWLR (Pt. 457) 1, (2008) 12 SCNJ 3 (Pt. 1) 217, (2008) 19 NWLR (Pt. 1120) 1 at pages 173-174 ably cited by the learned counsel for the respondents are apt.

As for over-voting, the Tribunal was also on firm ground to have held at page 3108 of the records that the voters’ register is the foundation of a valid election without which any election conducted is void and that the appellant could not have alleged and proved over-voting and accreditation without tendering the register.

On the whole, this issue is resolved in favour of the respondents, as the Tribunal was right to have held that the appellants failed to prove their allegation of substantial noncompliance with the Electoral Act.

Issue number 4 of the appellants and issue number 1 of the 1st and 2nd respondents, as well as issue number three (3) of the 3rd respondent: whether the Tribunal below was right to have struck out paragraphs 2, 4, 5, 6, 7 , 8, 9, 10, 11, 12, 13 and 14 Of appellants’ reply to the respondents’ reply? (Grounds 1 and 2). Argument of learned senior counsel for the appellants.

The gravamen of this issue as formulated by the learned senior counsel is that because the relevant paragraphs of the First Schedule to the Electoral Act, 2010 (as amended) permits a petitioner to file a reply where a respondent’s reply to petition raises new issues, the Tribunal below ought to have recognized that the appellants’ reply was merely a reaction to the new issues raised by the respondents in their own replies to the petition.

Accordingly, it was submitted on behalf of the appellants that paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the appellants’ reply to the respondents’ replies as contained in page 925 of the record of appeal did not raise new issues unsupported by the petition as wrongly held by the Tribunal.

In the light of the above submission, our attention was drawn to paragraph 16(1) of the First Schedule to the Electoral Act, 2010 (as amended) which according to him, a careful reading thereof would reveal that it is concerned more with new facts, grounds or prayers which have the effect of amending or adding to the petition. It was also the view of the learned silk that the provision of the Schedule contemplates that issues to be addressed in a petitioner’s reply may in fact not be in his petition at all which explains the reference in the said paragraph 16(1) of the Schedule to issues “not dealt with in the petition.”

Furthermore, the paragraph also explains why facts to be raised in the petitioners’ reply are seen by law as “new issues of facts” to the petition which is why the petitioner is allowed to respond. He then posed the question as to whether if the facts are expected to be new, why/how the Tribunal could be right to hold that issues must be supported by the pleadings; to urge us to reject the Tribunal’s odd interpretation of paragraph 16(1) of the First Schedule to the Electoral Act and find with them (the appellants) that the paragraphs of the petitioners’ reply were wrongly struck out.

We were on the whole urged to allow the appeal and set aside the judgment of the Tribunal below delivered on the 3 September 2015 and grant all the reliefs sought in the 4th paragraph of the notice of appeal filed by the 1st appellant on the 1 October 2015.

Argument of learned senior counsel for the 1st and 2nd respondents:

Reacting to the arguments of the learned senior counsel for the appellants on this issue, the learned senior advocates for the 1st and 2nd respondents countered that the Honourable Tribunal rightly struck out the purported offensive paragraphs of the petitioner’s reply to 1st respondent’s reply as earlier enumerated because in their view, the petitioner/appellant had taken undue advantage of their right to reply to the respondent’s reply to introduce new issues of fact not contained in their petition or which issues of fact they had already taken care of in the petition which was a flagrant contravention of paragraph 16(1)(a) and (b) of the First Schedule to the Electoral Act which provisions they reproduced.

Upon reproducing the provisions of the Schedule in question, they then contended that a clinical examination of the offending paragraphs of the petitioner’s reply would reveal that they violated the provisions of the said Schedule, for in the first place, all the paragraphs of the respondents’ reply to the appellants’ petition being replied to in the petitioners reply never raised any new issues of facts as the respondents merely denied the allegations contained in the petition which reply by the respondents did not warrant the filing of any reply.

In the view of the learned senior counsel for the 1st and 2nd respondents, what the appellants did was to amend the petition and incorporate new facts and crucial issues by way of petitioners’ reply.

To drive home their above contention, and their insistence that those paragraphs were rightly struck out, our attention was drawn to paragraphs 2, 4, 6, 9, 10 and 11 of the reply of the petitioners/appellants and paragraphs 2, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the 1st respondent’s reply to the petition which the appellant responded to by paragraphs 2, 4, 6, 9, 10 and 11 of the appellants’ reply quoted above, a fact apposition of the two sets of replies which would reveal that the appellant went on a frolic to introduce new issues of facts in the petitioners’ reply and even came up with new charts as if it is another petitioner. They (respondents) maintained that a petitioner’s reply is not an avenue for the supply of missing facts in the petition.

They prayed us to hold that the offending paragraphs struck out were a clever subterfuge to bring in new issues of facts which amounts to amendment of the petition and as such the paragraphs were rightly struck out. Reference was made to page 3098 of the records where the Tribunal ruled on the said offending paragraphs of the petitioners’ reply.

On their contention still that what the appellants intended to do by the introduction of the offending paragraphs amounted to the amendment of the petition, they cited and relied on Oke v. Mimiko (2013) All FWLR (Pt. 693) 1853 at pages 1857- 1878, paragraphs H-E Or (2013) LPELR - 20645 at pages 20 - 21, paragraphs C-C, per Muhammad JSC in further that the appellants realized that it will be an exercise in futility to file a motion to amend their petition after the expiration of 21 days when the petition was filed, as done by Oke in the above-cited case, hence the appellants by clever subterfuge came through the back door to introduce those crucial facts in the petitioners’ reply and accordingly, the lower Tribunal was right in striking out the offending paragraphs which amounted to amending the petition to introduce new crucial facts which can only be accommodated before the expiration of the time to present a petition.

On their contention that allowing the paragraphs of the petitioners’ reply to sail through would spring surprises on the respondents, the learned senior counsel for the 1st and 2nd respondents cited and relied on the cases of Adepoju v. Awoduliyemi (1999) LPELR - 6703 (CA), per Salami JCA, (1999) 5 NWLR (Pt. 603) 364 and APC v. PDP (2015) 15 NWLR (Pt. 1481) 1 at pages 118 and 120.

Finally, on the question whether the appellant suffered any prejudice by the striking out of those offensive paragraphs, we were referred to page 3100 of the records where the lower Tribunal held that even if they were wrong, the Tribunal considered those paragraphs alongside other paragraphs of the petition and the evidence led to determine the petition on its merit which the Tribunal did and found same unmeritorious, and accordingly dismissed same.

Against the foregoing background, it was submitted by the learned senior counsel for the 1st and 2nd respondents that striking out the offensive paragraphs of the appellants/petitioners’ reply never affected the judgment of the Tribunal and that even if the appellants succeeded on this grounds/issues, it will make no difference other than being an academic exercise.

On what constitutes academic exercise, they referred to the authorities of Amah v. Nwankwo (2007) 13 NWLR (Pt.1049) 552, (2008) All FWLR (Pt. 411) 879 at page 895 paragraphs A -B and Ben Electronics Co. Nig. Ltd v. A.T.S. & Sons & Ors. (2013) LPELR - 20870 (CA), where this court decided on the concept of academic exercise, to urge the court to hold that all the arguments of learned counsel for the appellants are lame and cosmetic and that the issue be resolved against the appellants.

Argument of learned counsel for the 3rd respondent Reacting to the arguments of the learned senior counsel for the appellants, the learned senior counsel for the 3rd respondent on his part submitted that the law is settled that a party in a case can raise issue on points of law at any stage of trial [Olorunkunle v. Adigun (2012) All FWLR (Pt. 614) 139, (2012) 6 NWLR (Pt. 1293) 40 at page 424, paragraphs A-B refers] provided such issue on points of how will be determinative of the case.

Speaking specifically about the issue of the propriety vel non of the striking out of some of the paragraphs of the appellants’ reply to the respondents’ replies, he argued that the trial Tribunal found out that some paragraphs of the appellants’ reply to the respondents’ replies were incompetent after due consideration of the arguments of the respective learned counsel for the parties in respect of the preliminary objection of the respondents.

Placing reliance on the case of APC v. PDP (2015) 15 NWLR (Pt. 1481) 1, (2015) LPELR - 24587 and Belgore v. Ahmed (2013) All FWLR (Pt. 705) 246, (2013) 8 NWLR (Pt. 1355) 60 at page 95, it was further argued that the findings of the trial Tribunal in that respect were based on the position of the law as held by the Supreme Court in the above cited cases.

Accordingly, we were urged to affirm the striking out of the said paragraphs of the petition and petitioners’ reply to the replies of the respondent on the ground that an appellate court will not interfere with the decision of a trial court except such decision is perverse [University of Ilorin v. Adesina (2009) ALL FWLR (Pt. 487) 56 at pages 131-132 paragraphs C-B refers]; more particularly where the holding of the Tribunal was based or given on sound legal footing.

In the light of the foregoing, we were urged to resolve this issue in favour of the respondents and against the appellants and dismiss the appeal.

Resolution of issue number 4:

This issue borders on the interpretation of paragraph 16(1) of the First Schedule to the Electoral Act, 2010 (as amended) which provides that:

“16 (1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the registry, within five(5) days from the receipt of the respondent’s reply, a petitioner’s reply in answer to the new issues of fact, so however that:

(a) the petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him; and,

(b) the petitioner’s reply does not run counter to the provisions of sub-paragraph (1) of paragraph 14 of the schedule.”

The above provisions are straight forward and unambiguous and should be given their simple, ordinary and grammatical meaning without resort to any interpretational skills or tasks. It simply means that where a person (respondent) in his reply to a petition raises fresh issue(s) of facts not contained in the petition, the petitioner shall have a right to respond by way of reply to the respondent’s reply. However, by the provision of sub-paragraph 1(a) of paragraph 16 of the Schedule, the petitioner shall not at that stage of his reply be entitled to smuggle in new facts, grounds or relieves tending to amend or add to the contents of the petition. In other words, such a petitioner’s reply to the respondent’s reply as in the case herein, should be restricted to those new facts or issues of fact introduced by the respondent - the rationale being that the respondent will be deprived of the opportunity of a further reply thereby springing an element of surprise on him and impugning on his right of being heard.

Furthermore, by the purposive construction of subparagraph 1(a) of the said Schedule, new facts, grounds or prayers which have the tendency of amending or adding to the contents of the petition at the stage of the appellant’s reply to the respondent’s reply, is prohibited in absolute terms by the use of the mandatory word “shall”.

Again by the provision of sub-paragraph 1(b) of paragraph 16 of the Schedule, the petitioner’s reply should not run counter to sub-paragraph (1) of paragraph 14 of the First Schedule to the Electoral Act, 2010 (as amended) which provides for amendment of election petition and reply in the following terms:

“14 (1) Subject to sub paragraph (2) of this paragraph, the provisions of the Civil Procedure Rules relating to amendment of pleadings shall apply in relation to an election or a reply to the election petition as if for the words “any proceedings” in those rules there were substituted, the words “the election petition or reply.”

Sub-paragraph (2) of paragraph 14 in turn stipulates or prohibits the introduction in an amendment after the time stipulated for the presentation of election petition:

“(i) Any of sub-paragraph (1) of paragraph 4 of the First Schedule to the Act, not contained in the original Election Petition filed;

(ii) Effecting a substantial alteration of the ground for, or the prayer in the election;

(iii) Effecting a substantial alteration of or addition to the statement of facts relied on to support the ground for or sustain the prayer in the election petition, except anything which may be done under the provisions of sub-paragraph 2(a)(ii) of paragraph 14 of the Schedule;

(iv) Except anything that may be done under paragraph 12 of the First Schedule for the filing of a reply by the respondent, no amendment shall be made alleging that the claim of the seat or office by the petitioner is incorrect or false; or,

(v) Except anything which may be done under the provisions of sub-paragraph (2)(a)(ii) of the said paragraph 14, no amendment shall be done affecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply.”

It is also pertinent to note that paragraph 4 of the Schedule to the Electoral Act, 2010 (as amended) deals with the contents of an election petition and the provisions are quite copious but suffice it to say that in order to determine the propriety vel non of a petitioner’s reply to the replies of the respondents as in the instant case; paragraph 16(1) (a) and (b) should be construed holistically along with paragraphs 4, 12 and 14 of the First Schedule to the Electoral Act, 2010 (as amended).

At page 3098 of the record of appeal the learned judges of Tribunal considered the totality of the impugned paragraphs of the appellants’ reply to the replies of the respondent and held in part thus:

“It must be noted that some of the paragraphs now sought to be introduced by the petitioners raised new issues that are not supported by the pleadings in the petition, more so, that time for filing pleadings by petitioners had lapsed. Such acts we hold have the tendency of springing surprises at the respondents since they may not have a right to respond. It thus runs counter to the principles of audi alteram

We shall not also embark on a voyage in a sea that has no shore, we thus decline to honour the invitation of the Petitioners. We refer to the case of Ajiogu v. Ajiogu (2010) 9 NWLR (Pt. 11980) 1 at page 20. In the light of this, paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 are hereby struck out.”

I have taken a critical look at paragraphs 2, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the 1st respondent’s reply brief to which the appellants responded by their paragraphs 2, 4, 6, 9, 10 of which the learned senior counsel for the respondents urged us to juxtapose in the determination of the competence of the purported impugned appellants’ reply and I am of the firm view that paragraph 2 of the petitioners’ reply is a mere reply to the averment of the 1st respondent in paragraph 2 of his said reply.

Pleadings of invalid ballot papers was part of the original facts upon which the petitioner predicated his petition and to debunk the claim by the 1st respondent that he scored 1/4 of all the valid votes cast in each of at least 2/3 of all Local Government Areas in Nassarawa State.

I also do not see any new facts pleaded in paragraph 4 of the petitioner’s reply which the petition could not sustain in that the said paragraph of the appellants’ reply was also to merely deny paragraph 9 of the respondent’s reply on the basis that the total number of votes cast at the mentioned Local Government

Areas exceeded the number of accredited voters which was the subject of the forensic analysis by the PW51 which report was along with his evidence discredited at the trial. The pleadings of voters’ register, Data Bank Record of Card Reader on the number of accredited voters, used and unused ballot papers with respect to the Polling Units in the aforesaid Local Government Areas, were predicated on the allegations in the original petition. As regards paragraph 6 where the petitioner merely denied the averments contained in paragraph 11 of the respondents’ reply, the issue of creation of voting points from where votes were merely allocated to parties was not a new issue but was a reaction to the 1st respondent’s pleadings in the aforesaid paragraph of the 1st respondent’s reply. Therefore no fresh issue of facts was raised in paragraph 6 of the appellants’ reply.

In respect of paragraph 9 of the appellants’/petitioners’ reply, it was also a mere response to the allegations contained in paragraphs 13,14,15,16,17,18 and 19 of the respondents’ reply and repetition or re-emphasis of their pleadings in paragraphs 26-59 of the petition and there is nothing wrong in giving the 3rd respondent notice to produce the electoral materials as mentioned which in any case, the 3rd respondent said she produced but the appellants could not utilize them adequately to buttress their case, thus leading to the subsequent dismissal of the petition as a consequence.

Turning to paragraph 10 of the petitioners’ reply, there is nothing offensive or new in the facts pleaded in response to paragraph 20 of the 1st respondent’s reply when the appellants merely averred that after the exclusion of all unlawful votes, deduction of all wrongly added votes, and addition of all unlawfully cancelled votes, they met all the constitutional requirements for them to be returned as winners of the election.

This is because by the grounds upon which the petition was predicated, the petitioners alleged that the 1st respondent was not duly elected at the disputed election, and that the election in the various Local Government Areas aforementioned was invalid by reason of corrupt practices and non-compliance with the Electoral Act, 2010 (as amended).

Also by reliefs (a) - (e) of the petition, the so-called offensive paragraphs were sustainable if proven and were therefore competent. I am also not prepared to concede that paragraph 11 of the appellants’ reply raised any fresh issues of cancellation of votes by their illustration through charts depicting the units in the various Local Government Areas where their votes were unlawfully cancelled. The appellants were merely reacting further to the 1st respondent’s allegations in paragraph 21, and indeed 22 of the 1st respondent’s reply where the said respondent denied the appellants’ earlier assertion that their votes were unlawfully cancelled and that the 1st respondent scored more than 1/4 of the total votes cast in at least two thirds of the total number of the Local Government Areas in Nassarawa State, while the second petitioner scored only 178,983 at the election.

A careful perusal of the reply of the 1st respondent to the petition will reveal that the said respondent at pages 846, 847, 848, 849 and 850, supported his pleadings with charts in vehemently denying the petitioners’ allegations of inflation of votes and over-voting in the various Local Government Areas of Nassarawa State where such malpractices allegedly took place. To the best of my opinion, the appellants were merely supplying the respondents with further particulars of malpractices and non-compliance to debunk the denial by the respective respondents in their replies to the petition.

In Dingyadi v. Wamako (2008) 17 NWLR (Pt. 1116) at pages 442-443, it was held that:

“A petitioner is entitled to file a reply where the respondent’s reply raises new issues of facts. However, it is not open to the petitioner who is filing a reply to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition.

In the instant ease, where the 1st and 2nd respondents attached to their reply (defence) certain documents, which if not responded to were capable of completely knocking off the very foundation of the appellants’ claim, the only option open to the appellants was to tender such defence evidence as would make such defence untenable and not maintainable. In the circumstance, the tribunal erred when it struck out the appellants’ reply, which did not raise any new issues, grounds or prayers but only sought to plead facts that would make the 1st and 2nd respondent’s defence untenable.” See also Adepoju v. Aladuyilemi (1999) 5 NWLR (Pt. 603) 364, (1999) 4 LRCN 53; Ikoro v. Izunaso & Ors. (2008) 4 LRECN 17, (2009) 4 NWLR (Pt. 1130) 45, (2010) All FWLR (Pt. 521) 1550 and Orji v. Ugochukwu (2009) 14 NWLR (Pt. 1161) 207.

With the greatest respect to the learned counsel to the 1st and 2nd respondents, the purported offensive paragraphs which were highlighted in their briefs of argument were not incompetent as no reason was advanced by the learned members of the Tribunal in striking them out. Oke v. Mimiko (2013) All FWLR (PT. 693) 1853 At pages 1875 - 1876 & pages 1877-1878, (2013) LPELR - 20645; must have been decided on its peculiar facts but on the facts and circumstances of the instant appeal, the appellants were not attempting to amend the petition nor to deprive the respondents of their right to fair hearing under section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), by subterfuge. The authorities of Williamson v. Northwestern Railway Co. (1879) 12 Ch.D 787 at page 794, and APC v. PDP (2015) 15 NWLR (Pt. 1481) 1 at page 118; as cited by the 1st and 2nd respondents were apt on the principle enunciated on reply of the appellants to the respondents’ reply.

By striking out those salient paragraphs of the appellants’ reply to the respondents’ reply, the appellants definitely ought to have suffered a miscarriage of justice. However, since the lower Tribunal still went on to consider those paragraphs on their merits when their lordships held at page 3100 of the records that:

“In the event that we are wrong for striking out some paragraphs of the petition and reply by the petitioners to the respondents’ reply, we now seek to take the whole paragraphs holistically with a view to doing substantial justice in tackling issues one and four on the merits.”

I am minded to agree that even if the appeal succeeds on these grounds/issues, no difference would have been made, as the case of the appellants has become spent and academic without any utilitarian value to them. See Amah v. Nwankwo (2007) 13 NWLR (Pt.1049) 552, (2008) All FWLR (Pt. 411) 879; Okulate v. Awosanya (2000) FWLR (Pt. 25) 1666, (2000) 2 NWLR (Pt. 646) 530, (2000) 1 SC 107, (2000) 74 LRCN 167; Obi-Odu v. Duke (No.2) (2005) All FWLR (Pt. 250) 171, (2005) 10 NWLR (Pt. 932) 105 and Bakare v. A.C.B. Ltd (1986) 3 NWLR (Pt. 26) 47, (1986) LPELR (708) 1. The learned counsel for the respondents have ably cited and relied on the above cited cases as well as Ben Electronics Co. Nig. Ltd v. A.T.S. & Sons & Ors. (2013) LPELR - 20870 (CA), where we cited the dictum of the erudite and emeritus law lord, Tobi JSC; on what amounts to academic questions in agreeing with the learned senior counsel that since the lower Tribunal still considered the case of the appellant in the light, the struck out paragraphs of the petitioners’/appellants’ petition, no miscarriage of justice has been occasioned them as they failed to discharge the burden of establishing that the election that threw up the first respondent as the Governor of Nasarawa State was vitiated by corrupt practices and substantial non-compliance with the Electoral Act, 2010 (as amended).

On the whole, I shall resolve this issue partly in favour of the appellants and dismiss the appeal of the present appellants for being generally unmeritorious. I shall however make no order as to costs.

**GARBA JCA:** My learned brother, Ignatius Igwe Agube JCA has comprehensively and lucidly considered and dealt with all the crucial issues which call for decisions in respect of this appeal in the lead judgment delivered by him, a draft of which I had read before now. For the reasons ably adumbrated therein, I completely agree with the views expressed on and the resolutions of the said issues to the effect that the appeal is wanting in merit. I join in dismissing the appeal in terms of the lead judgment.

**PEMU JCA:**

I agree.

**HASSAN JCA:**

I agree.

**SANGA JCA:** I agree.

Appeal dismissed