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SEN. SMART ADEYEMI

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2. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
3. AHMED USMAN ODODO

SUPREME COURT OF NIGERIA

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MONDAY, 23RD OCTOBER, 2023

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PLEADINGS- Statement of claim - Reliefs sought therein - Plaintiff - Onus on to prove.

STATUTE- Evidence Act, 2011, Sections 131-133 - Burden of proof - Categories of.

STATUTE-Evidence Act, 2011, Section 133 (1) - Primary legal burden therein - Who bears.

WORDS AND PHRASES- Law of evidence - Basis of - Proof as - Meaning of.

Issues:

1) Whether Appellant's issues for determination not based on the grounds of Appeal are competent

2) Whether the Appellant was able to prove that the concurrent findings of fact by two lower Courts placing the initial burden of proof on him were perverse

Facts:

The Appellant filed an action in the Federal High Court, Abuja Division, claiming that the 1st Respondent failed to comply with its Guidelines, Constitution and Electoral Act,2022 by not conducting any Primary Election before the 3rd Respondent emerged as the party's Gubernatorial Candidate for Governorship Election in Kogi State. The Appellant therefore prayed the Court for the following reliefs; a declaration that no Primary Election was held by the 1st Respondent for the Kogi State Governorship Election, the 3rd Respondent was not validly elected as the party's candidate for the election and an order that the 1st Respondent conduct a fresh Primary Election. The Respondents in response averred that the 1st Respondent adopted the direct Primary Election which the 3rd Respondent emerged winner of. The trial Court dismissed Appellant's claims for lack of proof. Aggrieved, the Appellant Appealed to the Court of Appeal, where the findings of the trial Court were affirmed. Yet aggrieved, the Appellant Appealed to the Supreme Court were affirmed. Yet aggrieved, the Appellant Appealed to the Supreme Court on grounds that the lower Court

wrongly affirmed the trial Court's decision the trial Court's decision.

The following Statutes were considered in determine the Appeal;

S. 131 (1) "whoever desires any Court to give Judgment as to any legal right or liability dependent on the existent of facts which he asserts shall prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

133. (1) In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the Judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the proceedings.

(2) If the party referred to is subsection (1) of this section adduces evidence which ought reasonably to 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.

(3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.

Held:*(Dismissing the Appeal)*

1. *Scope of power of Appellate Court to determine Appeal against concurrent findings of facts by two lower Courts.*

The scope of the power of this Court to determine such an Appeal is limited only to complains that the decision is perverse in that the findings or inference of facts are not supported by the evidence, or that there is serious violation of some principle of law or procedure that has occasioned miscarriage of justice. Therefore only complains that the decision Appealed against is perverse in that the findings or inference of facts are not supported by the evidence, or that there is serious violation of some principle of law or procedure that has occasioned miscarriage of justice are triable and reasonable.

In the instant Case, where the concurrent findings of the lower Courts were based on proper evaluation of the evidence tendered, the Supreme Court affirmed same. *Aganwonyi v. A.G Bendel State, Adelere v. Aserita, Are v. Ipaye, Latunde v Lahiafin.*

Per Agim JSC; *[Pp. 37-43, Paras. F-H]*

No ground of this Appeal allege or suggest that the findings of facts by the Court of Appeal concurring with the findings of facts by the trial Court is perverse in any respect.

Ground 1 complain that the Court of Appeal was wrong to have affirmed the trial Court's decision that the Appellant had the burden to prove his case that the 1st Respondent did not conduct direct Primary Elections when it is the Respondents who affirmed that the said primary were conducted that should prove their positive assertion. Ground 2 complains that the Court of Appeal was wrong to have held that the case of *Agagu v Mimiko* (2009) 7 NWLR (pt. 1140) 342 is not applicable to this case on the ground that the facts are different. Ground 3 complained that the Court of Appeal misdirected itself when it held that the 'Respondents' evidence controverted and denied all the material facts in the Appellant's Affidavit in support of the originating summons and proved that INEC monitored the said Primary Election as shown in Exhibits APC 3 and 4, the Primary Election results and report respectively and that this misdirection is caused by the misdirection on who has the first or primary burden of proof in the case. Ground 4 complains that the Court of Appeal "failed to appreciate that the few criminal depositions in the case at hand could be severed from the depositions relating fo whether a valid Primary Election simpliciter was conducted or not". Ground 5 complains that the Court of Appeal erred in law when it dismissed the case of the Appellants on insufficient evidence, when the totality of the evidence on record show that the reliefs claimed for by, the Appellant should have

been granted. Ground 6 complains that the Court of Appeal erred in law for dismissing the Appellant's case on the ground that paragraphs 8,22, 25, and 26 of the Appellant's Affidavit in support of his Originating Summons contain allegation of commission of crime.

The complains in the grounds of this Appeal are about issues of facts adequately dealt with by the Court of Appeal in concurrence with the decision of the trial Court on those facts. The complains seek to re-open these issues of facts settled by the concurrent findings of the two lower Courts., This Court has no power to reconsider such issue of facts unless where the findings on them are alleged to be perverse or had been made in serious error of law that has occasioned a miscarriage of Justice.

Considering that it was the Appellant who filed the suit in the trial Court desiring the-Court to give Judgment that no valid direct Primary Election was held by the 1st Respondent on 14-4-2023 or any other date in the 239 wards of Kogi State, that the 3rd Respondent was not validly elected as the 1st Respondent's - candidate for the November 2023 election of Governor of Kogi State and an order that 1st Respondent conduct a fresh Primary Election and in the face of the concurrent findings of the two lower Courts that the 1st Respondent herein validly conducted a direct Primary Election of its candidate for the November 2023 general election of governor of Kogi State in all the 239 wards in the state on 14-4-2023, that the 3rd

Respondent herein was validly elected as 1st Respondent's candidate and that the Appellant did not prove his case and in the absence of any complain that the findings are perverse, it cannot be validly argued, as the Appellant has done here, that the burden to prove that the 3rd Respondent herein was validly elected as 1st Respondent's candidate rests on the Respondents that assert so and not the Appellant that asserts that he was not validly elected. This Court lacks, the power to review the said concurrent findings of facts merely on the basis of such complain and argument. See *Aganmwonyi v A.G of Bendel State* (1987) I SCNJ 33.

In our present case the issues raised by the Appellant for determination in this Appeal are stated in pages2- 3 of his brief as follows

1. **"Taking into consideration the categorical pronouncement of the Honourable Court below that the fundamental issue between parties across the divide is whether a valid Primary Election was conducted of not is it not a settle position of law that it is the party who asserts that the said election was conducted that bears evidential burden to party to prove same, and is it not too obvious that the Respondents who asserts that the said election was conducted failed woefully to prove that the said election was conducted in ATLEAST 228 Wards out of 239 Wards in issue?**
   (Grounds 1,2,3 and 5).

2. Taking into consideration the entire 35 paragraphs Affidavit of the Appellant in support of his Originating Summons can it be lawfully and equitably argued that paragraphs 8, 22, 25 and 26 of the said Affidavit had any negative impact on the case of the Appellant, even if any of these paragraphs contained criminal allegations? (Grounds 4 and 6)."

These two questions do not fall within; the kind of matters that are within the narrow scope of the Appellate power of this Court in an Appeal against concurrent findings of facts of the two Courts below on a point. They do not question the concurrent findings of the facts of the two lower Courts on any specific issue. In an Appeal against the findings of the Court of Appeal concurring with the trial Court's findings of facts on specific issues, this Court's Appellate power cannot be extended to consider the above questions. It cannot validly exercise, its Appellate powers to consider these questions. Therefore this Appeal does not come within the class of Appeals that can be determined by this Court as a second Appellate Court. The Appeal is incompetent. It is hereby struck out. See *Samaila v The State (supra).*

2. Determinant of relationship between issues for determination and Ground of Appeal.

What determines the relationship between issues for determination and Grounds of Appeal is the subject matter of the issue for

determination and the grounds. What determines that relationship is the subject matter of the complain in the Ground of Appeal and the subject matter of the issue for determination. If the subject matter of the Ground of Appeal and that of the issue for determination are the same, then the issue is connected to the Ground of Appeal. If the subject matter of the complain in the Ground of Appeal is different from that in the issue for determination, then the issue for determination is not derived from that Ground of Appeal.
In the instant case, where the Appellant failed to link his issues for determination to his grounds, the Supreme Court dismissed his Appeal. *[Pp. 46-47, Paras. F-A]*

3. *Incompetence of Grounds of Appeal where no issue for determination is distilled from.*
Grounds of Appeal from which no issue is raised for determination in Appeal are deemed abandoned as Grounds for the Appeal.
In the instant case, where Appellant failed to issues for determination from the grounds filed, the Supreme Court deemed the grounds abandoned. ***Obasi v. Onwuka, A.G Bendel State v. Aideyan.*** *[P. 47, Paras. G-H]*

4. *Who bears the primary legal burden in a Civil Matters, Section 133(1), Evidence Act,2011 Considered.*
By virtue of Section 133(1), Evidence Act, 2011, the party that has the primary legal burden to

prove the existence or non-existence of any facts is the one who desires a Court to give Judgment as to any legal right or liability dependent on the existence or non existence of facts which he asserts and is the party to fail if no evidence is led on either side. So, by virtue of the above provisions, particularly, S. 133 (1) of the said Evidence Act, the factor that determines who has the initial burden of proof is not whether the allegation is affirmative or negative. An allegation is affirmative when it asserts the existence of facts. It is negative when it asserts the non-existence, of facts. S. 133 (1) puts the matter beyond argument when it states that the burden of first proving the existence or non-existence of a fact lies on the party against whom the Judgment of the Court would be given if no evidence were produced on either side. The factor that determines who has the initial burden of proof is not whether the allegation is affirmative or negative. An allegation is affirmative when it asserts the existence of facts.

In the instant case, where the Appellant that no Primary Election was conducted in Kogi State, the lower Courts rightly held he bias it primary burden of proof to establish his allegations. *Osawaru v. Ezeiruka* (1978)2 6-7 (SC) (Reprint) 91, *Kaiyaoja & Ors v. Egunla* (1974)12 SC (Reprint) 49. See *Osidele & Ors v. Sokunbi* (2012) LPELR 927 (SC), *Duru v. Nwosu* (1989) 4 NWLR (pt 113)24 and *Agu v. Nnadi* (2002) 12 SC (pt 1) 173. *Egharevaba v. Osagie* (2009)18

NWLR (pt. 1173) 299 (SC), ***Melifonwu & Ors v Egbuji & Ors*** **(1982) LPELR- 1857(SC),** ***Dana Impex Ltd. v Aderotoye*** **(2006) 2 NWLR (pt. 966) 78 at 102 - 103,** ***Tukur v. Governor of Gongola State*** **(1988) 1 NSCC VOL. 19 P. 30 at 38 and** ***Bayelsa v. A - G Rivers State*** **(2006) 18 NWLR (pt. 1012) 596 at 644. Per Ogunwumiju JSC;"** *[Pp. 44-45, Paras. E-B]*

5. *Determinant of who bears initial burden of proof in civil cases.*
The initial burden of proof is fixed by the pleadings. ***Uzokwe v. Dansy Industries.*** *[P. 60, Para. E]*

6. *Onus on plaintiff to prove reliefs sought in statement of claim.*
A Plaintiff has the burden, to prove the reliefs sought in the Statement of Claim or Originating Summons to obtain Judgment. That burden does not shift. This is because he is the party who claims the reliefs in the Statement of Claim, and so the onus probandi rests on him. He must prove the affirmative content of his statement of claim. Our adversarial system of Justice demands that. *[Pp. 60-61, Paras. H-A]*

7. *Proper approach of Court to determination of action alleging breach of statutory provision.*
Where a party in a suit complains that the provisions of the Constitution or a statute have been breached by the acts performed by the other party, the Court ought to examine the acts

complained of against the relevant provisions of the law in order to resolve the issue. *[P. 61, Paras. B-C]*

8. *Proof as basis of law of evidence and meaning of.*

The law of evidence is all about proof of a particular issue. Proof in its legal meaning is the process by which the existence or non-existence of facts is established to the satisfaction of the Court. *[P. 61, Para. D]*

9. *Categories of burden of proof, Sections 131-133,Evidence Act,2011 Considered.*

By virtue of Sections 131-133, Evidence Act, 2011, burden of proof can be divided into three;
a) The legal burden;
b) The Evidence burden,
c) Burden on the pleadings. *[P. 61, Paras. D-E]*

10. *Who bears the primary legal burden of proof in a civil matter, Section 133(1) Evidence Act,2011 Considered.*

By virtue of Section 133 (1), Evidence Act, 2011, the party that has the primary legal burden to prove the existence or non-existence of any facts is the one who desires a Court to give Judgment as to any legal right or liability dependent on the existence or non existence of facts which he asserts and is the party to fail if no evidence is led on either side. The factor that determines who has the initial burden of proof is not

whether the allegation is affirmative or negative. An allegation is affirmative when it asserts the existence of facts. It is negative when it asserts the non-existence, of facts.

In the instant case, where the Appellant was the one that alleged that no Primary Election was conducted by the 2nd Respondent in Kogi State, the lower Court rightly affirmed the trial Court's decision that he had the primary burden of proving same. ***Osawaru v. Ezeiruka*** **(1978)2 6-7 SC (Reprint) 91,** ***Kaiyaoja & Ors v. Egunla*** **(1974)12 SC (Reprint) 49. See** ***Osidele & Ors v. Sokunbi*** **(2012) LPELR 927 (SC),** ***Duru v. Nwosu*** **(1989) 4 NWLR (pt 113)24 and** ***Agu v. Nnadi*** **(2002) 12 SC (pt 1) 173.** ***Egharevaba v. Osagie*** **(2009)18 NWLR (pt. 1173) 299 (SC),** ***Melifonwu & Ors v Egbuji & Ors*** **(1982) LPELR-1857(SC),** ***Dana Impex Ltd. v Aderotoye*** **(2006) 2 NWLR (pt. 966) 78 at 102 - 103,** ***Tukur v. Governor of Gongola State*** **(1988) 1 NSCC VOL. 19 P. 30 at 38 and** ***Bayelsa v. A - G Rivers State*** **(2006) 18 NWLR (pt. 1012) 596 at 644.**

Per Ogunwumiju JSC; *[Pp. 44-45, Paras. E-C]*

In civil cases, the burden of proof is cast on the party who asserts the affirmation of a particular issue: See ***Okechukwu v. Ndah*** **(1967) NMLR 368;** ***Akinfosile v. Ijose*** **(1960) SCNLR 447;** ***NBN Ltd. v. Opeola*** **(1994) 1 NWLR (pt.319) 126. The burden rests on the party whether Plaintiff or Defendant who substantially asserts the affirmative of an issue: See** ***Messrs Lewis & Peats (Nri) Ltd. v. A.E. Akhimien*** **(1976) 7 SC.p.157 at 169.**

Where there has been assertion and denial of a fact in issue, onus rests on the party asserting. *Ibrahim v. Ojomo* (2004) 4 NWLR (pt.862) pg.89 at 110.

Section 133 is the most pertinent in the circumstances of this case. Section 133(1) provides that whether the Appellant is making an affirmative assertion i.e. the existence of a fact or a negative assertion - the non existence of a fact, the burden of first proving either of the two lies on the party against whom Judgment would be given if no evidence is led on either side. Section 133(2) provides that the burden of proof shifts as the facts preponderates or as the facts in issue are proved by each side. Section 133 of the Evidence Act speaks of existence and non-existence of a fact the affirmation of a fact is the claim, of existence thereof. The negation of a fact is the claim of non-existence thereof. Therefore Section 133 talks about existence of a fact which means both the positive and negative assertions are contemplated.

Section 133(1) talks about "the burden of first proving" the existence or non-existence of a fact. With humility I would not agree that the Appellant making a negative assertion needs only to make the assertion in the pleadings and thereafter fold his arms expecting the Respondent to bring forth evidence to debunk the assertion in the pleadings. If after the Appellant had started the process and had discharged the burden of first proof on a balance

of probabilities then the onus shifts to the Respondents to debunk the negative assertion. In my humble view, what the law requires is that the initial onus being on the Appellant as Applicant or Claimant at the trial Court, he has to adduce evidence that no election took place. Then, in spite of the presumption that a return by INEC is regular the burden then shifts on the Respondents to prove that indeed election took place.

Where the burden of proof of the non existence or existence of a fact is in issue, regard must be had for presumptions arising from the pleadings. See *Chief Archibong v. Chief Itong Ita* (2004) 1 SCNJ 141 also (2004) 4 NWLR (pt.858) Pg.590 per TOBI JSC on page 619.

There is no doubt that by the combined effect of Section 145 and Section 168 of the Evidence Act, 2011 there is presumption of regularity in respect of judicial or official Acts. That is to say formal requisites for validity of all judicial or official acts are presumed to have been complied with until the contrary is proved. See *The Nigerian Air Force v. Ex.wing Commander L. D. James* (2002) 12 SCNJ 380; *Uchenna v. Nwachukwu v. The State* (2002) 7 SCNJ 230, *Udom v. Umana* (NO. 1) (2016) 12 NWLR (pt. 1526) Pg. 179; (2016) LPELR 40649 (SC), *P.D.P. v. I.N.E.C.* (2022) 18 NWLR (pt. 1863) Pg, 653, *Atuma v. APC & Ors* (2023) LPELR- 60352(SC).

Now let us talk about the presumption in Section 133 (1) of the Evidence Act. Section 133(1) states that the burden of first proof lies

on the party against whom Judgment would be given if no evidence is adduced on either side regard being had to presumption that may arise on the pleading. The presumption arising from the pleading of both parties is that INEC which witnessed the primary as an official act declared that a valid Primary Election took place in all the local governments...

In *Shitta-Bey v. AG Federation* (1978) 7 SCNJ 264 Pg.287, the Supreme Court held that:

"Apart from what is called presumption of regularity of official acts, there is the presumption that where there is no evidence to the contrary, things are presumed to have been rightly and properly done."

See also *Nig. Air Force v. James* (2002) 12 SCNJ 379 at 392.

The presumption is resorted to in respect of official acts where there is no evidence to the contrary. Thus, there must be evidence to the contrary before the presumption of regularity can be rebutted. It is the person who wants to rebutregularity that leads evidence first.

In the instant case, the Appellant made certain assertions regarding the conduct of the 1st Respondent's Primary Election and by the provisions of law, he should adduce evidence to support these assertions.

If the Appellant claims that there was no Primary Election and for that reason he did not have any result to tender, there are no restrictions on him to tender other Affidavit evidence from his agents in the wards all over

the state that would substantiate his claim. No Court would pronounce Judgment in a matter in favour of a Claimant who does not tender evidence to support his claim.

On the other hand, the Respondents have produced evidence which prove the fact that the Primary Elections were indeed conducted. The 2nd Respondent tendered the Primary Election results and Reports on the conduct of the Primary Election in the various local governments duly signed by its electoral officers. In the peculiar circumstances of this case being a pre-election matter there is a presumption of regularity of the results released by INEC which were pleaded, this presumption based on the pleadings must then be rebutted by the Appellant. See *Lawal v. APC* (2019) 3 NWLR (pt. 1658) Pg. 86 at 105-106, *All Progressives Congress v. Bashir Sheriff & Ors* (2023) LPELR-59953(SC). I do not think the Courts below misdirected themselves as to the placement of the legal burden of proof on the Appellant. I also do not think that the Appellant adduced enough evidence to persuade the Court to give Judgment in his favour. *[Pp. 62-65, Paras. C-F]*

11. Attitude of Supreme Court to concurrent findings of fact by two lower Courts.

The Supreme Court will not disturb the concurrent findings of the Courts below unless they have been shown to be perverse and have occasioned a miscarriage of Justice.

In the instant case, where the concurrent findings of facts by the two lower Courts were unassaillable the Supreme Court affirmed same. ***APC v. Obaseki, Akinlade v. INEC, INEC v NPP.*** *[Pp. 68-69, Paras. G-A.]*

12. Whether doctrine of severance is applicable in a civil action where the criminal allegations thereon are not proved.

Per Ogunwumiju JSC; *[Pp....., Paras.....]*

Learned Senior Counsel for the Appellant argued that since his case is that the Primary Election did not take place in any of the 239 wards consequent upon which he deposed that there were no results to be collated, his obligation to prove forgery can only arise after the Respondents had been able to come up with the 239 ward results. Appellant's Counsel argued that the Court should apply the doctrine of severance in this matter. Counsel argued that the allegation of crime in paragraphs 8, 25 and 26 is forgery, and it does not arise for determination in the case at hand in the 228 wards, it can only come into play in 11 wards if it is agreed that the mere provision of a unit result is sufficient *prima facie* evidence that an election has taken place in such a ward. Counsel argued that the election materials were diverted from the headquarters of the ward to some local government chairmen and local government party chairmen. Learned Senior Counsel argued that a fictitious figure of 763 was allotted to the Appellant.

On the other hand, Counsel for the 1st Respondent emphasized that Appellant's allegations are criminal in nature and must be proved beyond reasonable doubt. Learned Counsel relied on *Obitude v. Onyesom Community Bank Ltd* (2014) 9 NWLR (pt. 1412) Pg. 352, *Yakubu v. Jauroyel & Ors* (2014) 4 S.C (pt 1) Pg. 88. Counsel argued that the averment in the Affidavit of the Appellant cannot be sufficient proof of the allegations of crime made by the Appellant as it was countered by the evidence of the 1st Respondent.

The 2nd Respondent's Counsel in its own brief countered the Appellant on his argument on the principle of severance. Learned Counsel argued that the criminal allegations cannot be severed from the civil case as they are intertwined. Counsel relied heavily on *Gurundi v. Nyako* (2014) 2 NWLR (pt. 1391) Pg. 211. Counsel relying on *Gurundi v. Nyako (Supra)* also argued that the Court can only adopt the doctrine of severance where the party seeking it must have applied formally on record stating the reason for its application.

Counsel for the 3rd Respondent argued that the submission of the Appellant that the Court below ought to have severed paragraphs 8, 25 and 26 of the Appellant's Affidavit from the other depositions in the Affidavit, is a call for the Court to make out a case for the Appellant, which has no place in our legal jurisprudence. My Lords, the allegations of the Appellant are indeed criminal in nature. I agree with the

Court below when it held on page 1416-1417 of the Record thus:

"To falsify is to alter so as to make false or to misrepresent of forge which in my view connotes to a crime and thus diverting voting materials to private residence wherein fictitious scores were rolled out qualifies as a criminal allegation. As stated earlier the election matters are not exempt from the law that says that allegation of crime in any proceedings must be proved beyond reasonable doubt. See *Adenigba & Anor v. Onwworare & Ors* (2015) LPLER 40531 (CA)"

To begin an exposition on the standard of proof in criminal cases at this point would amount to over flogging an age long principle of this hallowed Court. It is also trite that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt. It simply means establishing guilt with compelling and conclusive evidence.

I dare say that, the Appellant in this case has failed to support his allegations with compelling and conclusive evidence. I agree with the Court below when it held on page 22 of the Records thus:

"... However, in *Buhari v. Obasanjo* (2005) 13 NWLR (pt. 941), the apex Court has held that manipulation or alteration of election result is a criminal offence and the proof required is high that is, beyond reasonable doubt."

If the Appellant claims that the results of the 11 wards were forged, it must first mean that,

elections took place in those wards, and secondly that, the original results were swapped, with the forged copies. TheAppellant in paragraph 22 of his Affidavit in Support of the Originating Summons deposed to the fact that he had party agents in all the 239 wards. By this fact, his agents must have been a witness to the alleged falsification of results. How is it that none of the agents deposed to an Affidavit in respect of these allegations?

It is impossible to apply the doctrine of severance in the instant case. The civil and criminal elements in this case are so closely interwoven that none can stand on its own. See *Undiri v. Nyako (Supra)*

The Court of law is an unbiased umpire and will continue to remain so. The Court cannot take a party's word for it. Any party who makes an allegation must tender credible evidence in order to be entitled to a Judgment in its favour. If the Court succumbs to giving Judgment in favour of any party who makes criminal allegations in electoral matters, it Will soon become a play house as all parties who lose elections will adopt the system of formulating flimsy allegations and bringing such before the Courts. *[Pp. 65-68, Paras. G-F]*

Nigerian Cases Referred to in the Judgment.

Achibong v. Ita (2004) 1 (SC) (pt 1) 108 - 120
Adamu v. Nigerian Airforce (2022) LPELR - 56587 (SC)
Adegoke v. Adibi (2016) 5 NWLR (pt. 242) 410- 423
Adeleke v Aserita (1990) 5 (SC) (pt I) 104

Adenigba v. Onwworare (2015) LPLER 40531 (CA)
A-G Bendel State v. Aideyan (1989) 9 SCNJ 80
Agagu v Mimiko (2009) 7 NWLR (pt. 1140) 342
Aganmwonyi v A.G of Bendel State (1987) I SCNJ 33
Agu v. Nnadi (2002) 12 (SC) (pt 1) 173
Akinfosile v. Ijose (1960) SCNLR 447
Akinlade v. Independent National Electoral Commission (2019) LPELR-55090(SC)
All Progressive Congress v. Obaseki (2021) LPELR-55004 (SC)
Archibong v. Ita (2004) 1 SCNJ 141 (2004) 4 NWLR (pt.858) 590
Are v Ipanye (1990) 3SC (pt.11) 109
Attorney General of Rivers State v. Attorney of Bayelsa State (2013) NWLR (pt. 1340)
Attorney General Anambra State v. Onuselogu (1987) 4 NWLR (pt 66)
Atuma v. APC (2023) LPELR- 60352(SC)
Bamgboye v Olarewaju (1991) 5 SCNJ 88
Bamgboye v Uni. of Ilorin (1999) 6 (SC) (pt 11) 72
Bayelsa v. A - G Rivers State (2006) 18 NWLR (pt. 1012) 596 - 644
Buhari v. Obasanjo (2005) 13 NWLR (pt. 941)
Dana Impex Ltd. v Aderotoye (2006) 2 NWLR (pt. 966) 78
Duru v. Nwosu (1989) 4 NWLR (pt 113) 24
Ebolor v. Osayande (1992) 7 SCNJ 217
Egharevaba v. Osagie (2009)18 NWLR (pt 1173)299 (SC)
Emmanuel v. Umana (2016) LPELR - 40037 (SC)
Ezemba v. Ibeneme (2004), LPELR - 1205 (SC)
Fashanu v. Adekoya (1974) 6 (SC) 83
Ferodo Limited v. Ibeto Industries Limited (2004) LPELR-1275 (SC)

Gurundi v. Nyako (2014) 2 NWLR (pt. 1391) 211
Ibrahim v. Ojomo (2004) 4 NWLR (pt.862) 89 - 110
Iheanacho v. Chigere (2004) 7 SCNJ 272
INEC v. NNPP (2023) LPELR-60154 (SC)
Jolayemi v. Olaoye (2004) LPELR - 1625 (SC)
Kaiyaoja v. Egunla (1974)12 (SC) (Reprint) 49
Kente v. Bwacha (2023) 9 NWLR (pt. 1889) 329
Latunde v Lahiafin (1989) LPELR- 1760 (SC)
Lawal v. APC (2019) 3 NWLR (pt. 1658) 86
Maba v. State (2020) LPELR - 52017 (SC)
Melifonwu v Egbuji (1982) LPELR- 1857(SC)
Messrs Lewis & Peats (Nri) Ltd. v. Akhimien (1976) 7 (SC) 157 - 169
Mohammed v. Wammako (2018) 7 NWLR (pt. 1619)
MTN v Hanson (2017) LPELR - 48456 (SC)
NBN Ltd. v. Opeola (1994) 1 NWLR (pt.319) 126
Nig Air Force v. James (2002) 12 SCNJ 379 -392
Nigerian Air Force v. Ex.wing Commander L. D. James (2002) 12 SCNJ 380
Obasi v. Onwuka (1987) 7 SCNJ 84
Obitude v. Onyesom Community Bank Ltd (2014) 9 NWLR (pt. 1412) 352
Odom v. PDP (2015) 6 NWLR (pt. 1456) 527
Okechukwu v. Ndah (1967) NMLR 368
Okonkwo v. Adigwu (1985)1 NWLR (pt.4) 694
Omajali v. David (2019) LPELR - 49381 (SC)
Osawaru v. Ezeiruka (1978) 6-7 (SC) 135
Osho v Foreign Finance Corporation (1991) 5 (SC) 59
Osidele v. Sokunbi (2012) LPELR 927 (SC)
Owuru v. Adigwu (2018) 1 NWLR (pt. 1599) 1
PDP v. INEC (2022) 18 NWLR (pt. 1863) 653
Shitta-Bey v. AG Federation (1978) 7 SCNJ 264
Tukur v. Governor of Gongola State (1988) 1 NSCC VOL. 19

UBA v. Moghalu (2022) 15 NWLR (pt. 1835) 271
UBN Plc v. *Astra Builders (W.A) Ltd* (2010) LPELR-3383 (SC)
Uchenna v. Nwachukwu v. State (2002) 7 SCNJ 230
Udom v. Umana (NO. 1) (2016) 12 NWLR (pt. 1526) 179; (2016) LPELR 40649 (SC)
Unity Bank Plc v. Ahmed (RTD) (2019) LPELR- 47395 (SC)
Uzodinma v. Izunaso (No. 1) (2011) 17 NWLR (pt. 1275) 30 - 56
Uzokwe v. Dansy Industries (2002) 1 SCNJ 1
Yakubu v. Jauroyel (2014) 4 S.C (pt 1) 88
Yerima v. Balami (2023) 6 NWLR (pt. 1881) 487

Statutes Referred to in Judgment

Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 177(C)
Evidence Act, 2011 Sections 131-133, 168
Electoral Act 2022 Section 82
Electoral Act and Article 20(4) of the APC Constitution Sections 29(1) and 84(4) (a) (b) (c) and (8)
Evidence Act; Cap 112, Laws of the Federation of Nigeria 1999, Sections 135-139

Counsel.

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Abdulwahab Mohammed SAN with A.M Adoyi Esq, H.S Danjuma Esq and Q.M. Adelanwa Esq - *For 1st Respondent*

Chief A.A. Adeniyi SAN, with Adetunji' Oso Esq, and Abdulhameed Umar - *For 2nd Respondent*

M.Y. Abdullahi SAN with. Liman Salihu Esq, S.O Abas Esq, F.O Ekpa Esq and S.I.E Edino Esq - *For 3rd Respondent.*

AGIM JSC (Delivering the Lead Judgment): This Appeal No. SC/CV/892/2023 is against the Judgment of the Court of Appeal delivered on 18-8-2023 in Appeal No. CA/ABJ/CV/818/2023 concurring with the findings of facts by the trial Federal High Court in its Judgment delivered, on 12-7-2023 in Suit No. FHC/ABJ/CS/556/2023 that the 1st Respondent hereinvalidly conducted a direct Primary Election of its candidate for the November 2023 General Election of governor of Kogi State in all the 239 wards in the state on 14-4-2023, that the 3rd Respondent herein was validly elected as 1st Respondent's said candidate and that the Appellant's evidence did not prove his claim.

Two Notices of Appeal were fped by the Appellant to commence this Appeal. The first bne was filed on 25-8- 2023. The second was filed on 29-6-2023. The Appellant's brief states that it is predicated on the second Notice of Appeal filed on 29-8-2023. The implication of this is that the initial Notice of Appeal fijed on 25-8-2023 is abandoned. It is therefore hereby struckout.

The parties herein have filed their respective briefs as follows- Appellant's brief, 1st Respondent's brief, 2nd Respondent's brief, 3rd Respondent's brief and Appellant's reply to each Respondent's brief.

The Appellant's brief raised the following issues for determination as follows-

1. "Taking into consideration the categorical pronouncement of the Honourable Court below that the fundamental issue between parties across the divide is whether a valid Primary Election was conducted, or not is it not a settle position of law that it is the party who asserts that the said election

A was conducted that bears evidential burden to party to prove same, and is it not too obvious that the Respondents who asserts that the said election was conducted failed woefully to prove that the said
B election was conducted in ATLEAST 228 Wards out of 239 Wards in issue?
(Grounds 1,2,3 and 5).

C 2. Taking into consideration the entire 35 paragraphs Affidavit of the Appellant in support of his Originating Summons can it be lawfully and equitably argued that paragraphs 8, 22, 25 and 26 of the said Affidavit had any negative impact on
D the case of the Appellant, even if any of these paragraphs contained criminal allegations? (Grounds 4 and 6)."

E The 1st Respondent raised one issues for determination as follows-

"Whether in view of the Appellant's cause of action, that no direct Primary Election was held by the 1st
F Respondent on the 14th of April, 2023 for the nomination of its candidate for the scheduled 11th November 2023 Gubernatorial Election in Kogi State *vis a vis* the evidence led by the 1st Respondent to the
G contrary; the lower Court was right to have dismissed the Appellant's Appeal for lacking in merit (Distilled from Grounds 1, 2, 3, 4, 5, and 6 of the Notice of Appeal)"

H The 2nd Respondent's brief raised two issues for determination as follows-

1. "Whether the two lower Courts' concurrent Findings of facts to the effect that the Appellant as the Claimant before the trial Court failed to discharge the onus of establishing that the Primary Election that produced the 3rd Respondent was not substantially conducted in accordance with the Electoral Act, 2022 and his case was therefore liable to be dismissed? (This is distilled from grounds 1 and 3 of the Appellant's Notice of Appeal)

2. Taking into consideration the entire 35 Paragraphs Affidavit of the Appellant in support of his Originating Summons, can it be lawfully and Equitably Argued that Paragraphs 8, 22 and 26 of the said Affidavit had any negative impact on the case of the Appellant, even if any of these Paragraphs contained criminal allegation?"

The 2nd Respondent by a motion on notice filed on 12-9-2023 applied for -

1. "AN ORDER of this Honourable Court striking out Ground 2 of the Appellant's Notice of Appeal for being incompetent and invalid.

2. AN ORDER of this Honourable Court striking out all the particulars in support of Grounds 1, 2, 3, 4, 5 and 6 as couched and supplied in support of the said Grounds of Appeal in the Appellant's Notice of Appeal.

3. AN ORDER of this Honourable Court striking out the Appellant's Issue One for the being incompetent

A as it was formulated from an incompetent Ground 2 of the Notice of Appeal."

The motion states the grounds upon which it is based as follows -

B

i. "Ground 2 on the Appellant's Notice of Appeal is a mere review by his Lordship, devoid of any specific findings or holding of the lower Court that can be Appealed against.

C

ii. All the particulars in support of the Appellant's Grounds 1, 2, 3, 4, 5 and 6 are either argumentative or conclusion of law or inference.

D

iii. Particulars in support of Grounds of Appeal are to state facts and not argument, conclusion or legal inference."

E

The 2nd Respondent argument in support of the application is contained at pages 1 to 7 of the 2nd Respondent's brief. The Appellant's response to the said arguments is contained in his reply to 2nd Respondent's brief.

F

I prefer to determine the 2nd Respondent's objection to the grounds of this Appeal together with the merits of the issues raised for determination in this Appeal.

G

I have carefully read and considered the arguments in the respective briefs concerning the competence or validity of the grounds of this Appeal.

H

The relevant consideration in the determination of the competence or validity of a Ground of Appeal is whether it

discloses a triable or arguable or reasonable complain against the Judgment Appealed against. So that even if it is improperly or poorly or inelegantly couched, phrased or framed, if it discloses a triable or reasonable complain, then it would be valid and how it is couched or framed would not matter.

In our present case, the arguments of the 2nd Respondent against The validity of the Grounds of this Appeal are in substance about how the grounds were framed or couched. These arguments would be valid only if the grounds framed or couched disclose no triable or reasonable complain.

Let me find out if the grounds of this Appeal against the concurrent findings of facts by the two lower Courts disclose any triable or reasonable complain.

The scope of the power of this Court to determine such an Appeal is limited only to complains that the decision is perverse in that the findings or inference of facts are not supported by the evidence, or that there is serious violation of some principle of law or procedure that has occasioned miscarriage of Justice. Therefore only complains that the decision appealed against is perverse in that the findings or inference of facts are not supported by the evidence, or that there is serious violation of some principle of law or procedure that has occasioned miscarriage of Justice are triable,and reasonable.

Concerning the case of the Appellant that the 1st Respondent did not conduct direct Primary Election on 14- 4-2023,or any other date, the trial Court found as follows-

> "In this case, the 2nd Respondent monitored the Primary Election and even tendered the monitoring report and

result sheets from the elections. This is enough proof to the Court that indeed the direct Primary Election of the 1st Respondent held on the 14-4-2023. After the ward and local government direct primaries, the 1st Respondent. This monitoring report was corroborated by the report of the Kogi State Governorship Primary Election Committee attached as EXHIBIT APC 6 to 1st Respondent's Counter Affidavit and Exhibit APC 7 which is the CTC of the Police Report signed by the Commissioner of Police Kogi State Command, Lokoja. I therefore have no doubt that the direct Primary Election held in Kogi State on the 14-4-2023.

The Applicant after losing the Primary Election wrote to the 1st Respondent's Governorship Primary Election Appeal Committee vide a fetter dated 14- 4- 2023, which was dismissed by the committee. Some of the findings of the Appeal Committee led by Lawal Samaria Abdullahi from their report (EXHIBIT ARC 7 of 1st Respondent's Counter Affidavit) were really poignant. The committee stated that the Applicant as petitioner never attended to the hearing to substantiate his claim. Also that he and the other petitioners substantially duplicated theircomplaints word for word and that they did not provide sufficient proof that the Primary Election did not hold at all.

Clearly, the case of the Applicant has no basis in fact and law. It is made up of mere assertions without any concrete proof. In the opinion of this Court, the case of the Applicant is an invitation of this Court to speculate on what really transpired on the 14-4- 2023. The evidence before this Court all shows that the

Primary Election and the 3rd Respondent validly emerged as candidate of the 1st Respondent for the Kogi state Gubernatorial election in November 2023.

In final analysis, this Court will not allow the will of a few persons such as the Applicant to defeat the will of the majority. The case of the Applicant is unsupported by evidence and as such this Court has no option than to dismiss this suit for lack of merit. Consequently, the suit of the Plaintiff is hereby dismissed."

The Court of Appeal affirmed the above findings of facts by the trial Court thusly -

"The plank of the Appellant's case before the lower tribunal was that the 1st Respondent did not conduct its Primary Election for November, 2023 Governorship election in Kogi State. In other words, the Primary Election that produced the 3rd Respondent was not conducted in accordance with the Party's Guidelines, Constitution, arid the Electoral Act, 2022.

The question is, did the Appellant proved the assertions that the Primary Election that produced the 3rd Respondent did not conform with the laid down guidelines, 1st Respondent's Constitution and the Electoral Act? In paragraph 22 of the Affidavit in support of the Appellants' Originating Summons it averred as follows:-

"22. That there are 21 Local Governments in the whole of Kogi State which comprise of Adavi, Ajaokuta, Ankpa, Bassa, Dekina, Ibaji, Idah, Igala- Mela Odolu, Ijumu, Kabba Bunu, Kotonkarfe, Lokoja, Mopa-

Amuro, Omala, Yagba East, Yagba West Local Government respectively. That my agents in these 21 Local Government, at about 12 noon to 6:45pm did called me from 239 wards at various while still waiting at my ward and I verily believe them so be saying the truth that:

(a) On 14-4-2023 the scheduled date of the Kogi State APC Gubernatorial Primary Election, no electoral material was delivered to their local government and wards.

(b) That no electoral officer or officer of the 1st Respondent Showed up for the Primary Election in their local government and wards.

(c) No member of the party was accredited for the election in their local government and wards.

(d) No member of the 1st Respondent in the local government and wards participated in the Primary Election.

(e) No result was collated and or declared at their local government and wards.

In response to the above, all the Respondents averred that direct Primary Election was adopted by the 1st Respondent in lines with Section 84 (4) (a) (b) (c) of the Electoral Act, 2022 and Article 20 (4), of the APC constitution and each contestants were given equal right and level playing field. For instance, the 1st Respondent averred in paragraph 4 of its counter Affidavit in opposition to the Appellant's in originating summons thus:

4. That Hon. Abdullahi Bello chairmam of the Kogi State Chapter of the 1st Responent informed me at No: 1 (Terrace House) part 265 S. E. Asebe Streey, adjacent Emadel Filling Station behind G.A 247 by Kingfem Plaza, Mabushi, Abuja on the 22nd day of May 2023 at 11:00am of the following facts:

(f) That the 1st Respondent in view of the foregoing, issued to the 2nd Respondent on the 25-1-2023 notice of the conduct of the gubernatorial primaries in Kogi, Imo and Bayelsa State. The Notice issued to the 2nd Respondent by the 1st Respondent is herewith attached and marked "EXHIBIT APC1"

(g) That the 1st Respondent however on the 6th of April 2023 decided against the in direct primaries mode of electing or nominating its candidates for the 2023 gubernatorial election in Kogi State issued another notice to the 2nd Respondent of change of mode of election for its gubernatorial Primary Election in Kogi State which was received by the 2nd Respondent on the 6-4-2023. The notice of change of mode of Primary Election for the 1st Respondent gubernatorial election in Kogi State is herewith attached and marked Exhibit APC2"

(s) That after the conduct of the direct Primary Elections in all the 239 wards of the 21 Local Government Area in Kogi State results were collated from the polling units wards, Local Government collation centres of Kogi State wherein the 3rd Respondent emerged winner of the 1st Respondent's primary, election, having polled the highest number of votes cast in the Primary Election. The 1st Respondent's 2023 Primary

Election result sheet is herewith attached and marked "EXHIBIT APC 3"

a. That EXHIBIT APC 4 "1st Respondent's 2023 Primary Election result sheet is a reflection of what transpired at the 21 Local Government Areas of Kogi State as election did hold in the said local government Area that is Yagba West, Yagba East, Omala, Olamaboro, Okehi, Ogori- Magongo, Ofu, Mopamuro, Lokoja, Kogi, Kabba/Bunu, Ijumu, Igalamela/Odolu, Idah, Okene, Ajaokuta, Adavi, Ibaji, Dekina, Bassa and Ankpa and the results collated accordingly.

(t) That "EXHIBIT APC 3" 1st Respondent election result sheet is also a reflection of what transpired at the 239 wards of the 21 Local Government Area of Kogi State as election did not hold in the said wards. The report from the official of the 3rd Defendant who acted as electoral officers in the aforesaid wards as well as the results from the wards of the 21 Local Government Areas attached thereto are herewith attached and marked : EXHIBIT APC 4" From the above and indeed from other Respondents' Affidavit evidence it is glaringly clear that indirect Primary Election in respect of nominating the 1st Respondent flag bearer for the November, 2023 Governorship election in Kogi State did not hold. And instead, the party opted for direct primary wherein the 3rd Respondent emerged the winner. It is beyond any pre adventure that political parties have the latitude to adopt either direct or indirect primary procedure in choosing candidate provided that all aspirants are

given equal opportunity of being voted for by members of the party. See Section 84 (4) and (8) of the Electoral Act, 2022. A

The law is also settled that in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against whom the Judgment of the Court would be given if no evidence were produced on either side, regard being heard presumption that may arise on the pleadings. Therefore, in most cases, the burden of proof lies with or rests on the Plaintiff because, he is the person who is making the claim. See *Osawaru v. Ezeiruka* (1978) 6-7, (SC) 135, *Attorney General, Anambra State v. Onuselogu* (1987) 4 NWLR (pt 66) and *Achibong v. Ita* (2004) 1 SC (pt 1) 108 at 120. B C D

In the instant case, it was the Appellant who assets that the Primary Election that produced the 3rd Respondent did not hold and has the onus of proving his case. Where as in this case, he fails to get the appropriate findings relevant to the reliefs he had sought, he must fail. In *Fashanu v. Adekoya* (1974) 6 (SC) 83, it was held that a mere speculative observation cannot be a substitute to proof of fact asserted. E F G

Counsel to the Appellant relied on the decision in the case of *Agagu v. Mimiko* (2009) 7 NWLR (pt 1140) to contend that the Respondents failed to justify their assertion that direct Primary Election did held and that having not controverted the averments in the Affidavit in support of the H

A Originating Summons, the only logical inference to be drawn is that direct primary did not hold as well. First of all, the facts and circumstances of *Agagu v. Mimiko (supra)* are not mutually the same as the
B entire results of the wards where the results of ten of the thirteen polling units were rejected being tainted by discrepancies which is hot the position in the present case, in effect, none of the results of the
C Primary Election that produced 3rd Respondent was challenged not to talk of being nullified.

Secondly and more importantly, the evidence placed before the lower Court especially by the 1st and 2nd
D Respondents controverted and denied all the material facts in the Appellant's supporting Affidavit. The Respondents went further to supply cogent evidence that direct Primary Election did hold and that same
E was monitored by the 2nd Respondent as shown in EXHIBIT APC 3 and APC 4, the Primary Election results and report respectively. In the circumstances, issue 1 resolved against the Appellant."

F No ground of this Appeal allege or suggest that the findings of facts by the Court of Appeal concurring with the findings of facts by the trial Court is perverse in any respect.

G Ground 1 complain that the Court of Appeal was wrong to have affirmed the trial Court's decision that the Appellant had the burden to prove his case that the 1st Respondent did not conduct direct Primary Elections when it is the Respondents who affirmed that
H the said primary were conducted that should prove their positive assertion. Ground 2 complains that the Court of Appeal was wrong to have held that the case of *Agagu v Mimiko* (2009) 7 NWLR

(pt. 1140) 342 is not applicable to this case on the ground that the facts are different. Ground 3 complained that the Court of Appeal misdirected itself when it held that the 'Respondents' evidence controverted and denied all the material facts in the Appellant's Affidavit in support of the Originating Summons and proved that INEC monitored the said Primary Election as shown in Exhibits APC 3 and 4, the Primary Election results and report respectively and that this misdirection is caused by the misdirection on who has the first or primary burden of proof in the case. Ground 4 complains that the Court of Appeal "failed to appreciate that the few criminal depositions in the case at hand could be severed from the depositions relating fo whether a valid Primary Election simpliciter was conducted or not". Ground 5 complains that the Court of Appeal erred in law when it dismissed the case of the Appellants on insufficient evidence, when the totality of the evidence on record show that the reliefs claimed for by, the Appellant should have been granted. Ground 6 complains that the Court of Appeal erred in law for dismissing the Appellant's case on the ground that paragraphs 8,22, 25, and 26 of the Appellant's Affidavit in support of his Originating Summons contain allegation of commission of crime.

The complains in the grounds of this Appeal are about issues of facts adequately dealt with by the Court of Appeal in concurrence with the decision of the trial Court on those facts. The complains seek to re-open these issues of facts settled by the concurrent findings of the two lower Courts., This Court has no power to reconsider such issue of facts unless where the findings on them are alleged to be perverse or had been made in serious error of law that has occasioned a miscarriage of Justice. See *Agannhwonyi v A.G of Bendel State* (1987) I SCNJ 33, *Adeleke v Aserita* (1990) 5 (SC) (pt I) 104, *Are & Anor v Ipanye & Ors* (1990) 3SC (pt.11) 109, *Latunde & Anor v Lahiafin* (1989) LPELR- 1760 (SC).

Considering that it was the Appellant who filed the suit in the trial Court desiring the Court to give Judgment that no valid direct Primary Election was held by the 1st Respondent on 14-4-2023 or any other date in the 239 wards of Kogi State, that the 3rd Respondent was not validly elected as the 1st Respondent's candidate for the November 2023 election of Governor of Kogi State and an order that 1st Respondent conduct a fresh Primary Election and in the face of the concurrent findings of the two lower Courts that the 1st Respondent herein validly conducted a direct Primary Election of its candidate for the November 2023 general election of. governor of Kogi State in all the 239 wards in the state on 14-4-2023, that the 3rd Respondent herein was validly elected as 1st Respondent's candidate and that the Appellant did not prove his case and in the absence of any complain that the findings are perverse, it cannot be validly argued, as the Appellant has done here, that the burden to prove that the 3rd Respondent herein was validly elected as 1st Respondent's candidate rests on the Respondents that assert so and not the Appellant that asserts that he was not validly elected. This Court lacks, the power to review the said concurrent findings of facts merely on the basis of such complain and argument. See *Aganmwonyi v A.G of Bendel State* (1987) I SCNJ 33.

In *Ebolor v. Osayande* (1992) 7 SCNJ 217, this Court had restated thusly "This brings me to the question of concurrent findings on the point. This Court usually approaches such findings from the premises, that following from the fact that making of findings on primary facts is a matter pre-eminently within the province of the Court of trial which has the opportunity of seeing and hearing the witnesses testify, a Judge's conclusion on the facts is presumed to be correct. So, that presumption must be displaced by the person seeking to upset the Judgment on facts".

In *Bamgboye v University of Ilorin & Anor* (1999) 6 (SC) (pt 11) 72 it held that it is trite law that findings of primary facts are matters peculiarly within the competence of the Court of trial. The assessment, evaluation, appraisal of evidence there from and the ascription of probative values thereto, being primarily and pre-eminently that of the trial Court, any interference by an Appeal Court therewith is by law, confined to narrow and limited dimensions.

In *Bamgboye & Ors v Olarewaju* (1991) 5 SCNJ 88, this Court held that "the occasions whereby the Appellate Court will interfere are those where the findings of facts do not relate to the evidence or are not even in evidence which case the Court relied on facts not in evidence before it".

In *Osho & Anor v Foreign Finance Corporation & Anor* (1991) 5 (SC) 59 this Court repeated that "Concurrent findings cannot be interfered with by the Supreme Court unless they are not justified by the evidence and have occasioned miscarriage of Justice". See also *Amadi v Nwosu* (1992) 6 SCNJ59 and *Jimoh & Ors v Ors* (2002) LPELR 8087 (SC).

In *Samaila v The State* (SC.1158C/2019 on 7-7- 2023) this Court again held that- "With the acceptance of the findings of fact of the trial Court by the Justices of the Court below, there is in existence two concurrent findings of facts of the two lower Courts which, in the absence of a substantial error shown, the Court will not make it a policy to disturb them unless there is a substantial error apparent on the record of proceedings or where there is some miscarriage of Justice or a violation of some principle of law or procedure or the findings shown to be perverse.

A It is also trite law that it is not part of the function of an Appeal Court to substitute its own views for those of the trial Court particularly where the issue turns on the credibility of witnesses.

B In the light of the foregoing, the only Appeal that can validly lie against the findings of facts by the Court of Appeal concurring with the finding of facts by a trial High Court is an Appeal complaining that the findings are perverse or violate some principle C of law or procedure, which violation has caused a miscarriage of Justice or that the concurrent findings are defeated by a substantial error that is apparent on the face of the proceedings and which error has occasioned a miscarriage of Justice. Any Appeal against D the concurrent findings of the two Courts below on grounds; outside the ones listed above is not valid for consideration by this Court. The Appellate power of this Court does not extend to the consideration of such Appeal. An Appeal against concurrent E findings of facts cannot lie to complain that the prosecution did not prove its case beyond reasonable doubt as this would involve a review and re-evaluation of the totality of the evidence. It is for this reason that such an Appeal cannot lie on a general ground. F Such an Appeal cannot lie to merely canvass an alternative view on the evidence."

In our present case the issues raised by the Appellant for G determination in this Appeal are stated in pages2- 3 of his brief as follows

1. "Taking into consideration the categorical pronouncement of the Honourable Court below that H the fundamental issue between parties across the divide is whether a valid Primary Election was conducted of not is it not a settle position of law

that it is the party who asserts that the said election was conducted that bears evidential burden to party to prove same, and is it not too obvious that the Respondents who asserts that the said election was conducted failed woefully to prove that the said election was conducted in ATLEAST 228 Wards out of 239 Wards in issue?
(Grounds 1,2,3 and 5).

2. Taking into consideration the entire 35 paragraphs Affidavit of the Appellant in support of his Originating Summons: can it be lawfully and equitably argued that paragraphs 8, 22, 25 and 26 of the said Affidavit had any negative impact on the case of the Appellant, even if any of these paragraphs contained criminal allegations? (Grounds 4 and 6)."

These two questions do not fall within the kind of matters that are within the narrow scope of the Appellate power of this Court in an Appeal against concurrent findings of facts of the two Courts below on a point. They do not question the concurrent findings of the facts of the two lower Courts on any specific issue. In an Appeal against the findings of the Court of Appeal concurring with the trial Court's findings of facts on specific issues, this Court's Appellate power cannot be extended to consider the above questions. It cannot validly exercise, its Appellate powers to consider these questions.

Therefore this Appeal does not come within the class of Appeals that can be determined by this Court as a second Appellate Court. The Appeal is incompetent. It is hereby struck out. See *Samaila v The State (supra)*

It was the Appellant who filed the suit in the trial Court desiring the Court to give Judgment that no valid direct Primary Election was held by the 1st Respondent on 14-4-2023 or any other date in the 21 Local Government Areas of Kogi State, that the 3rd Respondent was not .validly elected as the 1st Respondent's candidate for the November 2023 election of Governor of Kogi State and an order that 1st Respondent conduct a fresh Primary Election on the basis of his assertion in his Affidavit in support of his Originating Summons that no valid direct Primary Election was held by the 1st Respondent on 14-4-2023 or any other date-in the 21 Local Government Areas of Kogi State. The grounds of this Appeal, the two issues raised from them for determination in the Appellants brief and their arguments therein are unreasonable, not triable and without substance and vexatious in view of Ss.131, 132 and 133 of the 2011 Evidence Act, which prescribe who as between the parties in a civil suit has the burden to prove the existence or non-existence of facts which he asserts in a civil suit. For ease of reference, the full text of those provisions are reproduced here as follows -

S. 131 (1) "whoever desires any Court to give Judgment as to any legal right or liability dependent on the existent of facts which he asserts shall prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

133. (1) In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the Judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the proceedings.

(2) If the party referred to is subsection (1) of this section adduces evidence which ought reasonably to 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.

(3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.

It is glaring from these provisions that the party that has the primary legal burden to prove the existence or non-existence of any facts is the one who desires a Court to give Judgment as to any legal right or liability dependent on the existence or non existence of facts which he asserts and is the party to fail if no evidence is led on either side. So, by virtue of the above provisions, particularly, S. 133 (1) of the said Evidence Act, the factor that determines who has the initial burden of proof is not whether the allegation is affirmative or negative. An allegation is affirmative when it asserts the existence of facts. It is negative when it asserts the non-existence, of facts. S. 133 (1) puts the matter beyond argument when it states that the burden of first proving the existence or non-existence of a fact lies on the party against whom the Judgment of the cburt would be given if no evidence were produced on either side.

An established and settled case law. already exists from a long line of decisions of this Court applying the above provisions of the Evidence Act. Examples include *Egharevaba v. Osagie* (2009)18 NWLR (pt. 1173) 299 (SC), *Melifonwu & Ors v Egbuji & Ors* (1982) LPELR- 1857(SC), *Dana Impex Ltd. v Aderotoye* (2006) 2 NWLR (pt. 966) 78 at 102 - 103, *Tukur v. Governor of Gongola State* (1988) 1 NSCC VOL. 19 P. 30 at 38 and *Bayelsa v. A - G Rivers State* (2006) 18 NWLR (pt. 1012) 596 at 644. In *Egharevaba v. Osagie* (2009)18 NWLR (pt 1173)299 (SC) the Supreme Court applying exactly similar provisions held that the burden of first proving the existence or non-existence of a fact lies on the party against whom the Judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings, See Section 137 (1) of the Evidence Act. If such party adduces evidence which ought reasonably to satisfy the Judge 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 adduced and so successively, until all the issues in the pleadings have tiff who brought the action, though not invariably so".

Dana's case restated that - "where an allegation is made whether affirmative or negative by a part, the burden of proving that allegation rest squarely on the party who made it.... it is to be emphasized here that it was the Respondent who asserted the fact of non-registration of the 1st Appellant and the burden of proving that therefore rested on him". In *AD v. Fayose* it was held that - "By the rule of pleading, where a given allegation, whether affirmative or negative forms an essential part of a party's case, the proof of such allegation lies squarely on him. Therefore a legal burden or primary burden lies on him to establish the allegation.

See also *Osawaru v. Ezeiruka* (1978)2 6-7 SC (Reprint) 91, *Kaiyaoja & Ors v. Egunla* (1974)12 SC (Reprint) 49. See *Osidele & Ors v. Sokunbi* (2012) LPELR 927 (SC), *Duru v. Nwosu* (1989) 4 NWLR (pt 113)24 and *Agu v. Nnadi* (2002) 12 SC (pt 1) 173.

The grounds of this Appeal, the issues raised for determination in the Appellant's brief and the arguments of same are contrary to the express provisions of a statute and settled or established case law. This Appeal is therefore frivolous and vexatious.

As it is, the grounds of this appeai do not disclose any triable or reasonable complain against the said concurring findings of facts by the Two lower Courts that the 1st Respondent herein' validly conducted a direct Primary Election of its candidate for the November 2023 general election of governor of Kogi State in all the 239 wards in the state on 14-4-2023, that the 3rd Respondent herein was validly elected as 1st Respondent's said candidate and that the Appellant's evidence did not prove his claim.

It is noteworthy that the two issues raised for determination in the Appellant's brief have no relationship with/the complains in grounds 2, 3 and 5. The Appellant, had indicated under issue No. 1 in bracket grounds 1,2,3 -and 5 suggesting that the issue is distilled from those grounds. Such an indication is not what determines the relationship between the issue for determination and the grounds. What determines that relationship is the subject matter of the complain in the ground of Appeal and the subject matter of the issue for determination. If the subject matter of the ground of Appeal and that of the issue for determination are the same, then the issue is connected to the ground of Appeal. If the subject matter of the complain in the Ground of Appeal is different

A from that in the issue for determination, then the issue for determination is not derived from that ground of Appeal.

As earlier stated herein, Ground 2 complains that the Court
B of Appeal was wrong to have held that the case of *Agagu v Mimiko* (2009) 7 NWLR (pt. 1140) 342 is not applicable to this case on the ground that the facts are different, Ground 3 complain that the Court of Appeal misdirected itself when it held that the
C Respondents' evidence controverted and denied all the material facts in the Appellant's Affidavit in support of the Originating Summons and proved that INEC monitored the said Primary Election as shown in Exhibits APC 3 and 4, the Primary Election results and report respectively and that this
D misdirection is caused by the misdirection on who has the first or primary burden of proof in the case and Ground 5 complains that the Court of Appeal erred in law when it dismissed the case of the Appellants on insufficient evidence, when the
E totality of the evidence on record show that the reliefs claimed for by the Appellant should have been granted. The subject matter of each of these Grounds of Appeal are obviously different from the subject matter of issue No. 1 in the
F Appellant's brief which is about who has the primary burden of proof in the case between the Appellant who asserted that no direct Primary Election was conducted and the Respondents that asserted that it was conducted. As it is grounds 2,3 and 5 of this Appeal are not covered by issue No 1 of this Appeal.
G Since no issues were distilled from those grounds, they are deemed abandoned by the Appellant and must be struck out. it is trite law that Grounds of Appeal from which no issue is, raised for determination in an Appeal are deemed abandoned
H as grounds for the Appeal. See *Obasi & Anor v. Onwuka & Ors* (1987) 7 SCNJ 84 and *A-G Bendel State & Anor v. Aideyan* (1989) 9 SCN3 80.

For the above reasons, Grounds 2,3 and 5 of this Appeal having been abandoned by the Appellant, are hereby struck out. A

On the whole this Appeal fails for lack of any merit. It is accordingly hereby dismissed. The Appellant shall pay costs of three million naira to the 1st and 3rd Respondents. B

OKORO JSC: I have had the advantage of reading in advance the leading Judgment just delivered by my learned brother, Emmanuel Akomaye Agim, JSC. I 2entirely agree with his reasoning and conclusion. C

The Appeal is against the concurrent findings of the two lower Courts, dismissing the Appellant's case. The Appellant complained in the main about the emergence of the 3rd Respondent as the gubernatorial candidate of the 1st Respondent for Kogi State in the direct Primary Election held on 14th April, 2023. lie contended that there was no level playing ground as the Primary Election was not held in the entire 239 Wards of the 21 bocal Government Areas of Kogi State due to the interference of Governor Yahaya Bello whom he alleged used the instrumentality of the council chairmen to write fictitious scores on the result sheets in favour of the 3rd Respondent, except for 11 (Eleven) Wards in Koton Karfe Local Government Area. This was the main thrust of the Appellant's case both at the trial Court and the Court of Appeal. D E F G

Suffice to say that both trial Court and the intermediate Court concurrently dismissed the case for lack of merit. The Appellant has now proceeded to this Court with same complaint without showing the perversness in the Judgment of the Court below. H

A The law is now well settled that concurrent finding of facts cannot be re-opened unless the Appellant is able to show exceptional circumstances to warrant the interference of the Supreme Court. See *Mtn v Hanson* (2017) LPELR - 48456 (SC);
B *Maba v. State* (2020) LPELR - 52017 (SC); *Ezemba v. Ibeneme* (2004), LPELR - 1205 (SC) *Okonkwo v. Adigwu* (1985)1 NWLR (Pt.4) 694; *Ferodo Limited v. Ibeto Industries Limited* (2004) LPELR -1275 (SC).

C

I feel obligated to say that this Court, in its Appellate Jurisdiction, has no business reviewing or re-evaluating evidence previously reviewed by the Court of Appeal unless there is a special circumstance which may warrant such exercise, to wit:
D where the Judgmentis perverse or where thereis a miscarriage of Justice or where it is manifest that the finding is not supported by the evidence on record.

E

In this case, the Appellant has been unable to show any special circumstance to justify the re-opening of the facts of this case other than to say that the Primary Election was not conducted in compliance with the provision of
F Section 84(4) of the Electoral Act, 2022. That is not sufficient reason to interfer with the concurrent findings of the two lower Courts.

G On the whole, this Appeal has no merit and must fail. I affirm the Judgment of the Court below in Appeal NO.CA/ ABJ/CV/818/2023 delivered on 18th August, 2023 which affirmed the Judgment of the trial Court delivered on 12th
H July, 2023.

Appeal Dismissed.

OGUNWUMIJU JSC: I have read before now the Judgment just delivered by my learned brother EMMANUEL AKOMAYE AGIM JSC and I agree with the view that this Appeal has no merit and should be dismissed.

This is an Appeal against the Judgment of the Court of Appeal Coram: Habeeb Adewale Olumuyiwa Abiru, Muhammed L. Shuaibu and Abdul- Azeez Waziri JJCA in Appeal No. CA/ABJ/CV/842/ 2023, delivered on 18th August, 2023 Wherein the Judgment of Hon. Justice J. K. Omotosho J of the Federal High Court in Suit No. FHC/ABJ/CS/556/2023, deliveredon 12th day of July, 2023 in favour of the Respondents and against the Appellant was affirmed.

The Appellant herein is a member of the 1st Respondent (hereinafter referred to as APC) who aspired to contest in the gubernatorial election in Kogi State slated, for 11th November, 2023 by'the 2nd Respondent (hereinafter referred to as INEC) consequent upon which he along with other aspirants including the 3rd Respondent purchased forms for the purpose of contesting the Primary Election of APC which was held on 14th April, 2023.

The 3rd Respondent was said to have polled the highest number of valid votes and having been ratified by the Special Congress was returned as the winner of the 1st Respondent's Primary Election.

Dissatisfied with the outcome of the said Primary Election and all the processes that followed thereafter, the Appellant approached the Federal High Court, Abuja Division, vide an Originating Summons, to challenge same, seeking the following reliefs:

A

1. A declaration that failure of the 1st Respondent to conduct a valid Primary Election in the 21 local governments of Kogi State before nominating the 3rd Respondent as its candidate for the 2023 Gubernatorial Election in Kogi State is a violation of Section 177(C) of the 1999 Constitution of the Federal Republic of Nigeria as amended, Section 29(1) and 84(4) of the Electoral Act and Article 20(4) of the APC Constitution.

B

C

2. A declaration that the 3rd Respondent is not validly nominated as candidate for the 2023 Gubernatorial Election in Kogi State.

D

3. An order compelling the 2nd Respondent to reject/ refuse to recognize the name of the 3rd Respondent for failure to emerge from a valid Primary Election.

E

4. An order against the 1st Respondent to conduct a fresh Primary Election by giving all aspirants equal opportunity as prescribed by the electoral act.

F

The learned trial Judge in a Judgment delivered on the 12th of July, 2023 dismissed the Appellant's suit. Dissatisfied with the decision of the trial Court, the Appellant filed a notice of Appeal to the Court of Appeal wherein five (5) grounds were raised, challenging the Judgment of the trial Court. The Court of Appeal delivered Judgment on the 18th of August and affirmed the Judgment of the trial Court.

G

H

Dissatisfied with the Judgment of the Court of Appeal, the Appellant has now Appealed before this Court.

On Appeal to this Court, the Appellant raised the following issues for determination:

1. Taking into consideration the categorical pronouncement of the Honourable Court below that the fundamental issue between parties across the divide is whether a valid Primary Election was conducted or not is it not a settled position of law that it is the party who asserts that the said election was conducted that bears the evidential burden to prove same, and is it not too obvious that the Respondents who asserted that the said election was conducted failed woefully to prove that the said election was conducted in at least 228 wards Out of 239 wards in issue? (Grounds 1, 2, 3 and 5)

2. Taking into consideration the entire 35 paragraphs Affidavit of the Appellant in support of his Originating Summons can it be lawfully and equitably argued that paragraphs 8, 22, 25 and 26 of the said Affidavit had any negative impact on the case of the Appellant, even if any of these paragraphs contained criminal allegations? (Grounds 4 and 6)

The 1st Respondent raised a sole issue for determination to wit:

Whether in view of the Appellant's cause of action, that no direct election was held by the 1st Respondent on the 14th of April, 2023 for the nomination of its candidate for the scheduled 11th November, 2023 Gubernatorial Election in Kogi State vis a vis the evidence led by the 1st Respondent to the contrary; the lower Court was right to have dismissed the Appellant's

A

Appeal for lacking in merit (Distilled from ground 1, 2, 3, 4, 5 and 6 of the Notice of Appeal)

The 2nd Respondent raised two issues for determination to wit:

B

1. Whether the two lower Courts' concurrent findings of fact to the effect that the Appellant as the claimant before the trial Court failed to discharge the onus of establishing that the Primary Election that produced the 3rd Respondent was not substantially conducted in accordance with the Electoral Act, 2022 and his case was therefore liable to be dismissed? (Distilled from Grounds 1 and 3)

C

D

2. Taking into consideration the entire 35 paragraphs Affidavit of the Appellant in support of his Originating Summons, can it be lawfully and equitably argued that paragraphs 8, 22, 25 and 26 of the Affidavit had any negative impact on the case of the Appellant, even if any of these paragraphs contained criminal allegations?

E

F

The 3rd Respondent in its brief raised two issues for determination to wit:

1. Whether from the fact and circumstances of this case, the onus of establishing non-conduct of direct Primary Election for the nomination of the 3rd Respondent does not rest squarely on the Appellant. (Distilled from Grounds 1, 2, 3 and 5)

G

H

2. Whether the allegation of the Appellant that, though direct Primary Election did not hold in any ward in

Kogi State, fictitious results were allotted to aspirants, which is clearly a criminal allegation requiring prove beyond reasonable doubt, is not part and parcel of the Appellant's case. (Distilled from Grounds 4 and 6)

In the determination of this Appeal, I have recouched the issues on which the Appeal turns as follows:

1. Whether the Courts below were right in their concurrent findings of fact to the effect that the Appellant as the claimant before the trial Court failed to discharge the onus of establishing that the Primary Election that produced the 3rd Respondent was not substantially conducted in accordance with the Electoral Act, 2022 and his case was therefore liable to be dismissed?

2. Whether the Appellant's petition contains criminal allegations which must be proved beyond reasonable doubt.

ISSUE 1

Whether the Courts below were right in their concurrent findings of fact to the effect that the Appellant as the claimant before the trial Court failed to discharge the onus of establishing that the Primary Election that produced the 3rd Respondent was not substantially conducted in accordance with the Electoral Act, 2022 and his case was therefore liable to be dismissed?

A Counsel for the Appellant in the brief settled, by Musibau Adetunbi SAN, MCIARB (UK) argued that the Appellant's *ipse dixit* on oath is *prima facie* evidence that the Primary Election did not hold and that a deposition on oath is believable until the contrary
B is proved. Learned Senior Counsel relied on *Owuru v. Adigwu* (2018) 1 NWLR (pt. 1599) Pg. 1 at Pg. 24 Paras D-E.

Learned Senior Counsel argued that since the case of the Appellant
C is that the Primary Election did not hold, calling on the Appellant to prove that the Primary Election was not conducted is like placing on him a burden he cannot discharge. Counsel cited *Adegoke v. Adibi* (2016) 5 NWLR (pt. 242) Pg. 410 at 423 Paras B-C. Counsel argued that there is a difference between legal
D burden of proof and evidential burden of proof and that the evidential burden of proof shifts depending on the averments and evidence led. Counsel urged this Court to set aside the pronouncement of the Court below that the burden to prove that
E the Primary Election in issue was conducted rests on the Appellant. Counsel relied on *Odom v. PDP* (2015) 6 NWLR pt. 1456 527 at 560-562. Also *Uzodinma v. Izunaso* (No. 1) (2011) 17 NWLR (pt. 1275) Pg. 30 at 56.

F

Counsel submitted that a critical examination of Exhibit INEC 2 alongside all other documents and oral depositions of the Respondents show beyond any iota of doubt that the Primary Election was never conducted in at least 228 wards out of 239
G wards in the 21 local governments of Kogi-State. Counsel argued that by the provisions of article 20 of the APC Guidelines, Primary Elections must be conducted in all the wards. Learned Senior Counsel argued that election materials which were supposed to
H be distributed to the various wards were smuggled to the local governments. Counsel also argued that there is evidence by the Local Government Electoral Officers that voting materials were

not taken to all the wards in 17 local governments. Counsel stated that only 11 ward results out of the 239 wards were provided. Counsel alleged that all his agents were waiting at the wards as provided by law, APC's Constitution and as directed by the Mattawalle Committee but none of the presiding officers appointed by the Committee were present to conduct the Primary Election. Learned Senior Counsel argued that the 1st and 3rd Respondents ought to have produced the election materials with which the, Primary Election was conducted or at least the results from all the wards and the various ward registers. Counsel urged, this Court to hold that elections did not take place in the 228 wards as any election that contradicts the Electoral Act and the APC Constitution cannot be regarded as a valid election. Counsel cited *Kente v. Bwacha* (2023) 9 NWLR (pt. 1889) Pg. 329 at Pg. 372-374 Paras H-G, *Yerima v. Balami* (2023) 6 NWLR (pt. 1881) Pg. 487 at Pg. 524-526 Paras H-H.

On the other hand, Counsel for the 1st Respondent in the brief settled by Adoyi Michael Adoyi Esq argued that depositions in an Affidavit do not in themselves constitute evidence in proof of facts averred therein. Counsel argued that facts deposed to in an Affidavit in support of an Originating Summons must be proved like averments in pleadings.

Counsel relied on *UBN Plc* v. *Astra Builders (W.A) Ltd* (2010) LPELR-3383 (SC), *Emmanuel v. Umana & Ors* (2016) LPELR - 40037 (SC) and *Omajali v. David & Ors* (2019) LPELR - 49381 (SC).

Counsel argued that the argument of Counsel for the Appellant that the burden of proving that the Primary Election held is on the Respondents and that there is no corresponding duty on the Appellant to prove that the Primary Election did hot hold is

untenable in view of the declaratory nature of the reliefs sought by the Appellant in this Appeal. Counsel argued that even if the Respondents did not file, any defence/the Appellant was still required by law to establish his case by cogent and convincing evidence to be entitled to the grant of the declarative reliefs sought. Counsel relied on *Mohammed v. Wammako & Ors* (2018) 7 NWLR (pt. 1619), *Attorney General of Rivers State v. Attorney of Bayelsa State & Anor* (2013) NWLR Pt. 1340.

On its own part, the 2nd Respondent in the brief settled by Adetunji Oso Esq. argued that the documentary evidence of the 2nd Respondent in form of the 2nd Respondent's Monitoring Report made pursuant to Section 82 of the Electoral Act 2022, and production, in evidence of results of the Primary Election, duly signed by the 1st Respondent's agents and on 1st Respondent's letterhead raises a presumption of the holding of the Primary Election and therefore shifts the burden to the Appellant to prove that the Primary Election was invalid. Counsel relied on *UBA v. Moghalu* (2022) 15 NWLR (pt. 1835) Pg. 271. Counsel argued that. the Matawale Committee Report is not one of the documents that the Courts will give consideration to in determining whether a Primary Election was conducted in substantial compliance with the Electoral Act, the party guidelines and the Constitution. Counsel also relied on *Lawal v. APC* (2019) 3 NWLR (pt. 1658) Pg. 86 Pg. at 105- 106 Paras G-B and argued that Primary Election results recorded on a political party letterhead and signed by the party's accredited agents is *prima facie* proof of holding of a Primary Election.

In the same vein, the 3rd Respondent in his brief settled by F. O. Ekpa Esq. argued that the 1st Respondent provided evidence that it conducted direct Primary Elections on the 14th of April, 2023 and the result of the election was ratified by a special congress

the following day. That the 2nd Respondent tendered reports of its officers who monitored the Primary Election. The 3rd Respondent also produced evidence to show that he participated in the Primary Election and that the other Respondents complied with the Electoral Act, the Party's guideline and the Constitution. Counsel argued that on the other hand, the Appellant was unable to adduce any cogent evidence to establish his allegation that direct Primary Election was not conducted in all the wards in Kogi State.

All Respondents by their briefs urged this Court to resolve this issue against the Appellant.

OPINION

The Appellant in this case made heavy weather about his perceived opinion that the burden of proof in this case should rest on the Respondents since they are making a positive assertion that the Primary Election did indeed hold. Learned Senior Counsel for the Appellant argued that the Appellant had led the required minimal evidence in support of that relief by deposing on oath that the said election was never conducted and that he personally witnessed the fact that the said election was never conducted. By implication, the position of the Appellant on this issue, and on other issues in this Appeal is two faced:

1. That the burden of initial or legal proof should rest on the Respondents.

2. That even if the burden of proof rests on the Appellant, he has provided sufficient evidence to discharge that burden.

There is no doubt that where a Court misplaces the burden of proof, the Judgment would be set aside. See *Iwuorie Iheanacho v. Mathias Chigere* (2004) 7 SCNJ 272.

Generally, in civil cases, the burden of proof is cast on the party who asserts the affirmation of .a particular issue. See *Unity Bank Plc v. Colonel Bello Mohammed Ahmed (RTD)* (2019) LPELR-47395 (SC). However, by the provisions of Section 131, 132 and 133 (1) of the Evidence Act, 2011 the burden of proof falls on the party who would fail if no evidence at all were given oh either side.

These Sections of the Evidence Act 2011 provide as follows:

131. (1) Whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the but Jen of proof lies on that person.

132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

133. (1) In civil cases the burden of first proving existence or nonexistence of a fact lies on the party against whom the Judgment, of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

(2) If the party referred to in subsection (1) adduces evidence which ought reasonably to 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.

(3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.

The two sides hold opposing views. I have no doubt that the Respondents are not obliged to do anything until the Appellant had discharged the onus probandi and that both the initial legal and subsequent evidential burden rests on the Appellant. The determination of this issue cannot be taken in an isolated or, theoretical context. The Court must take into consideration the context of the reasoning of the two Courts below.

It is certain that the initial burden of proof is fixed by the pleadings. See *Uzokwe v. Dansy Industries* (2002) 1 SCNJ 1. Let us look at the pleadings in this case and while looking at the pleadings let us remember that this is a pre-election petition which is sui generis and is outside, the normal genre of civil procedure and is in a class of its own. Contrary to the view of learned 1st Respondent's Counsel, the law is that in a case fought by originating summons, the declarations sought and questions posed to the Court for determination constitute the pleadings,while the Affidavit in support of the summons and the exhibits attached thereto constitute the evidence in support of the pleadings.

It is elementary law that a Plaintiff has the burden, to prove the reliefs sought in the statement of claim or Originating Summons

to obtain Judgment. That burden does not shift. This is because he is the party who claims the reliefs in the Statement of Claim, and so the onus probandi rests on him. He must prove the affirmative content of his Statement of Claim. Our adversarial system of Justice demands that.

Then where a party in a suit complains that the provisions of the Constitution or a statute have been breached by the acts performed by the other party, the Court ought to examine the acts complained of against the relevant provisions of the law in order to resolve the issue.

The law of evidence is all about proof of a particular issue. Proof in its legal meaning is the process by which the existence or non-existence of facts is established to the satisfaction of the Court. Burden of proof can be divided into three.

(1) The legal burden - S. 131 Evidence Act

(2) The Evidential burden - S. 132 Evidence Act

(3) Burden on the pleadings - S. 133 of the Evidence Act.

Uwais CJN held in *Buhari v. Obasanjo* (2005) 7 SCNJ Pg.l at Pg.47 that:

> "In general, in a civil case, the party that asserts in its pleadings the existence of a particular fact is required to prove such fact by adducing credible evidence. If the party fails to do so, its case will fail. On the other hand, if the party succeeds in adducing evidence to prove the pleaded fact, it is said to have discharged the burden of proof that rests on it. The burden is then said

to have shifted to the party's adversary to prove that the fact established by the evidence adduced, could not on the preponderance of evidence, result in the Court giving Judgment in favour of the party. These propositions are the product of Sections 135-139 of the Evidence Act, Cap 112 Laws of the Federation of Nigeria 1999."

Thus, generally, in civil cases, the burden of proof is cast on the party who asserts the affirmation of a particular issue: See *Okechukwu v. Ndah* (1967) NMLR 368; *Akinfosile v. Ijose* (1960) SCNLR 447; *NBN Ltd. v. Opeola* (1994) 1 NWLR Pt.319 126. The burden rests on the party whether Plaintiff or Defendant who substantially asserts the affirmative of an issue: See *Messrs Lewis & Peats (Nri) Ltd. v. A.E. Akhimien* (1976) 7 (SC).p.157 at 169.

Where there has been assertion and denial of a fact in issue, onus rests on the party asserting. *Ibraham v. Ojomo* (2004) 4 NWLR (pt.862) pg.89 at 110.

Section 133 is the most pertinent in the circumstances of this case. Section 133(1) provides that whether the Appellant is making an affirmative assertion i.e. the existence of a fact or a negative assertion - the non existence of a fact, the burden of first proving either of the two lies on the party against whom Judgment would be given if no evidence is led on either side. Section 133(2) provides that the burden of proof shifts as the facts preponderates or as the facts in issue are proved by each side.

Section 133 of the Evidence Act speaks of existence and non-existence of a fact the affirmation of a fact is the claim, of existence thereof. The negation of a fact is the claim of non-

existence thereof. Therefore Section 133 talks about existence of a fact which means both the positive and negative assertions are contemplated.

Section 133(1) talks about "the burden of first proving" the existence or non-existence of a fact. With humility I would not agree that the Appellant making a negative assertion needs only to make the assertion in the pleadings and thereafter fold his arms expecting the Respondent to bring forth evidence to debunk the assertion in the pleadings. If after the Appellant had started the process and had discharged the burden of first proof on a balance of probabilities then the onus shifts to the Respondents to debunk the negative assertion. In my humble view, what the law requires is that the initial onus being on the Appellant as Applicant or Claimant at the trial Court, he has to adduce evidence that no election took place. Then, in spite of the presumption that a return by INEC is regular the burden then shifts on the Respondents to prove that indeed election took place.

Where the burden of proof of the non existence or existence of a fact is in issue, regard must be had for presumptions arising from the pleadings. See *Chief Archibong v. Chief Itong Ita* (2004) 1 SCNJ 141 also (2004) 4 NWLR (pt.858) Pg.590 per TOBI JSC on page 619.

There is no doubt that by the combined effect of Section 145 and Section 168 of the Evidence Act, 2011 there is presumption of regularity in respect of judicial or official Acts. That is to say formal requisites for validity of all judicial or official acts are presumed to have been complied with until the contrary is proved. See *The Nigerian Air Force v. Ex.wing Commander L. D. James* (2002) 12 SCNJ 380; *Uchenna v. Nwachukwu v. The State* (2002) 7 SCNJ 230, *Udom v. Umana* (NO. 1) (2016) 12 NWLR (pt. 1526) Pg. 179; (2016) LPELR 40649 (SC), *P.D.P. v. I.N.E.C.*

(2022) 18 NWLR (pt. 1863) Pg, 653, *Atuma v. APC & Ors* (2023) LPELR- 60352(SC).

Now let us talk about the presumption in Section 133 (1) of the Evidence Act. Section 133(1) states that the burden of first proof lies on the party against whom Judgment would be given if no evidence is adduced on either side regard being had to presumption that may arise on the pleading. The presumption arising from the pleading of both parties is that INEC which witnessed the primary as an official act declared that a valid Primary Election took place in all the local governments...

In *Shitta-Bey v. AG Federation* (1978) 7 SCNJ 264 Pg.287, the Supreme Court held that:

> "Apart from what is called presumption of regularity of official acts, there is the presumption that where there is no evidence to the contrary, things are presumed to have been rightly and properly done."

See also *Nig. Air Force v. James* (2002) 12 SCN3 379 at 392.

The presumption is resorted to in respect of official acts where there is no evidence to the contrary. Thus, there must be evidence to the contrary before the presumption of regularity can be rebutted. It is the person who wants to rebutregularity that leads evidence first.

In the instant case, the Appellant made certain assertions regarding the conduct of the 1st Respondent's Primary Election and by the provisions of law, he should adduce evidence to support these assertions.

If the Appellant claims that there was no Primary Election and for that reason he did not have any result to. tender, there are no restrictions on him to tender other Affidavit evidence from his agents in the wards all over the state that would substantiate his claim. No Court would pronounce Judgment in a matter in favour of a Claimant who does not tender evidence to support his claim.

On the other hand, the Respondents have produced evidence which prove the fact that the Primary Elections were indeed conducted. The 2nd Respondent tendered the Primary Election results and Reports on the conduct of the Primary Election in the various local governments duly signed by its electoral officers. In the peculiar circumstances of this case being a pre-election matter there is a presumption of regularity of the results released by INEC which were pleaded, this presumption based on the pleadings must then be rebutted by the Appellant. See *Lawal v. APC* (2019) 3 NWLR (pt. 1658) Pg. 86 at 105-106, *All Progressives Congress v. Bashir Sheriff & Ors* (2023) LPELR-59953(SC). I do not think the Courts below misdirected themselves as to the placement of the legal burden of proof on the Appellant. I also do not think that the Appellant adduced enough evidence to persuade the Court to give Judgment in his favour.

ISSUE 2

Whether the Appellant's petition contains criminal allegations which must be proved beyond reasonable doubt.

On this issue, Learned Senior Counsel for the Appellant argued that since his case is that the Primary Election did not take place in any of the 239 wards consequent upon which he deposed that there were no results to be collated, his obligation to prove forgery

can only arise after the Respondents had been able to come up with the 239 ward results. Appellant's Counsel argued that the Court should apply the doctrine of severance in this matter. Counsel argued that the allegation of crime in paragraphs 8, 25 and 26 is forgery, and it does not arise for determination in the case at hand in the 228 wards, it can only come into play in 11 wards if it is agreed that the mere provision of a unit result is sufficient *prima facie* evidence that an election has taken place in such a ward. Counsel argued that the election materials were diverted from the headquarters of the ward to some local government chairmen and local government party chairmen. Learned Senior Counsel argued that a fictitious figure of 763 was allotted to the Appellant.

On the other hand, Counsel for the 1st Respondent emphasized that Appellant's allegations are criminal in nature and must be proved beyond reasonable doubt. Learned Counsel relied on *Obitude v. Onyesom Community Bank Ltd* (2014) 9 NWLR (pt. 1412) Pg. 352, *Yakubu v. Jauroyel & Ors* (2014) 4 S.C (pt 1) Pg. 88. Counsel argued that the averment in the Affidavit of the Appellant cannot be sufficient proof of the allegations of crime made by the Appellant as it was countered by the evidence of the 1st Respondent.

The 2nd Respondent's Counsel in its own brief countered the Appellant on his argument on the principle of severance. Learned Counsel argued that the criminal allegations cannot be severed from the civil case as they are intertwined. Counsel relied heavily on *Gurundi v. Nyako* (2014) 2 NWLR (pt.1391) Pg. 211. Counsel relying on *Gurundi v. Nyako (Supra)* also argued that the Court can only adopt the doctrine of severance where the party seeking it must have applied formally on record stating the reason for its application.

Counsel for the 3rd Respondent argued that the submission of the Appellant that the Court below ought to have severed paragraphs 8, 25 and 26 of the Appellant's Affidavit from the other depositions in the Affidavit, is a call for the Court to make out a case for the Appellant, which has no place in our legal jurisprudence.

My Lords, the allegations of the Appellant are indeed criminal in nature. I agree with the Court below when it held on page 1416-1417 of the Record thus:

> "To falsify is to alter so as to make false or to misrepresent of forge which in my view connotes to a crime and thus diverting voting materials to private residence wherein fictitious scores were rolled out qualifies as a criminal allegation. As stated earlier the election matters are not exempt from the law that says that allegation of crime in any proceedings must be proved beyond reasonable doubt. See *Adenigba & Anor v. Onwworare & Ors* (2015) LPLER 40531 (CA)"

To begin an exposition on the standard of proof in criminal cases at this point would amount to over flogging an age long principle of this hallowed Court. It is also trite that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt. It simply means establishing guilt with compelling and conclusive evidence.

I dare say that, the Appellant in this case has failed to support his allegations with compelling and conclusive evidence. I agree with the Court below when it. held on page 22 of the Records thus:

> "... However, in *Buhari v. Obasanjo* (2005) 13 NWLR (pt. 941), the apex Court has held that manipulation or alteration of election result is a criminal offence and

the proof required is high that is, beyond reasonable doubt."

If the Appellant claims that the results of the 11 wards were forged, it must first mean that, elections took place in those wards, and secondly that, the original results were swapped, with the forged copies. The Appellant in paragraph 22 of his Affidavit in Support of the Originating Summons deposed to the fact that he had party agents in all the 239 wards. By this fact, his agents must have been a witness to the alleged falsification of results. How is it that none of the agents deposed to an Affidavit in respect of these allegations?

It is impossible to apply the doctrine of severance in the instant case. The civil and criminal elements in this case are so closely interwoven that none can stand on its own. See *Undiri v. Nyako (Supra)*

The Court of law is an unbiased umpire and will continue to remain so. The Court cannot take a party's word for it. Any party who makes an allegation must tender credible evidence in order to be entitled to a Judgment in its favour. If the Court succumbs to giving Judgment in favour of any party who makes criminal allegations' in electoral matters, it Will soon become a play house as all parties who lose elections will adopt the system of formulating flimsy allegations and bringing such before the Courts.

My Lords, there are a legion of authorities that have established the principle that this Court will not disturb the concurrent findings of the Courts below unless they have been shown to be perverse and have occasioned a miscarriage of Justice. See *All Progressive Congress & Anor v. Godwin Nogheghase Obaseki & Ors* (2021) LPELR-55004 (SC), *Adekunle Abdulkabir Akinlade & Anor v. Independent National Electoral Commission & Ors* (2019)

A LPELR-55090(SC), and *Independent National Electoral Commission (INEC) v. New Nigeria Peoples Party (NNPP)* (2023) LPELR-60154 (SC).

B I agree with the trial Court and the Court below on their concurrent findings of fact and conclusions of law on this Appeal.

In the circumstances, this Appeal is resolved against the Appellant. I abide by the order as to costs in the lead Judgment.

C

Appeal dismissed.

D **JAURO JSC:** I have read the judgrnent of my Lord Emmanuel Akomaye Agim, JSC and agree with my Lord's reasoning and conclusion, to the effect that the Appeal is devoid of me it and deserving of a dismissal.

E The contention of the Appellant right from the trial Court up till this Court is that the 1st Respondent failed to conduct its direct gubernatorial Primary Elections in all wards of Kogi State, on 14th April, 2023. The two Courts below found that the Appellant F failed to adduce evidence in proof of his claims and allegations. The Appellant however maintained that he had no duty to prove a negative assertion and that the burden of proof is on the Appellants to prove that the direct gubernatorial Primary Election took place. In other words, he sought to shift the burden to the Respondents G to disprove his assertion that direct Primary Election was not held.

With respect, the position maintained by the Appellant is untenable in the light of Section 133(1) of the Evidence Act, 2011 which H imposes the *burden of first proving existence or non-existence of a fact on the party against whom the Judgment of the Court would be given if no evidence were produced on either side,*

regard being had to any presumption that may arise on the pleadings. It therefore means that in appropriate situations, a party may bear the burden of proving a negative assertion, or to use the language, if the Evidence Act, the burden of proving the non-existence of a fact,. In the case, at hand, the burden of proving the non-conduct of direct Primary Election by the 1st Respondent was on the Appellant who made that assertion.

The Appellant having not discharged the burden of proof placed on him by law, there was nothing for the Respondents to disprove. See *Adamu v. Nigerian Airforce & Anor* (2022) LPELR - 56587 (SC); *Jolayemi & Ors v. Olaoye & Anor* (2004) LPELR - 1625 (SC).

In conclusion, I join my learned brother in holding that the Appeal lacks merit and ought to be dismissed, it is hereby dismissed. I abide by the order made in the lead Judgment as to costs.

ABUBAKAR JSC: I had the privilege of reading in draft the leading Judgment prepared and rendered in this Appeal by my learned brother, *AGIM, JSC*, My Learned brother sufficiently dealt with all the issues submitted for determination by the contending parties.

Just by way of supporting the position of the Jaw, I wish to add a few words of fortification. The Appellant strenuously contended at all levels that the 1st Respondent in this Appeal did not conduct Primary Elections in all the wards in Kogi State conducted on the 14th day of April 2023. That Appellant said he suffered serious disadvantage due to the influence of the incumbent Governor of the State, who according to the Appellant used the chairmen of the Local Government to cook fictitious scores on the result sheets in favour of the 3rd Respondent. The Appellant felt sincerely

A aggrieved by this and therefore filed an action challenging the conduct of the Primary Elections that saw the emergence of the 3rd Respondent.

B The trial and the intermediate Courts all found in favour of the Respondents in other words, the Appeal is against concurrent findings of facts. Appellant therefore made for this Court by way of Appeal against the concdrrent findings. The law is well settled that this Court cannot tinker with concurrent findings of facts C unless the findings are out, and out perverse and exceptional circumstances are shown to justify interference see: *Ferodo Limited v. Ibeto Industries Limited* (2004) LPELR-1275 (SC).

D The Appellant clearly failed to show that the concurrent findings are perverse, and the law is well settled that the burden of establishing the existence or otherwise of a fact is on the party alleging the existence or otherwise of that fact, the Appellant failed E to support his allegations and claims that direct Primary Elections did not hold, his failure to prove that fact is fatal to his Appeal. This Court cannot activate and apply its Appellate Jurisdiction to review the Judgment of the lower Court unless the Appellant gives F good and compelling reasons to prompt intervention by this Court, in the instant Appeal I find no scintilla of reason to hold that the Appellant has anything useful to urge this Court, the Appeal is therefore frivolous and vexatious, it deserves to be dismissed, I therefore join my learned brother in holding that the Appeal lacks G merit and it is hereby dismissed. I affirm the Judgment of the lower Court delivered on the 18th day of August 2023 in Appeal number, and abide by all consequential orders made in the leading Judgment.

H

Appeal dismissed

ALL PROGRESSIVES CONGRESS

V.

OJUKWU CHIKAOSOLU
(TRADING UNDER THE NAME AND STYLE OF OJUKWU CHIKAOSOLU & CO.)

COURT OF APPEAL OF NIGERIA

E. O. WILLIAMS-DAWODU JCA (*Presided*)
JAMILU YAMMAMA TUKUR JCA *(Read the Lead Judgment)*
UGOCHUKWU A. OGAKWU JCA

CA/ABJ/CV/713/2022

TUESDAY, 8TH AUGUST, 2023

EVDIENCE– Judgment of Court - Party who seeks - Sufficient evidence therefor - Onus on to tender.

LEGAL PRACTITIONER- Bill of charges of – Required contents of.

LEGISLATION- General provisions on an issue - Specific provision there in – Whether overrides.

PRACTICE AND PROCEDURE- Pre-Undefended list- Action there under - Defendant in – What must established to ground transfer of to general cause list.

PRACTICE AND PROCEDURE– Undefended list procedure - Liquidated sum - Factors which determine.

PRACTICE AND PROCEDURE– Undefended list procedure - Liquidated money demand - What constitutes.

PRACTICE AND PROCEDURE-Undefended list procedure - Action filed thereunder - Statutorily prescribed procedure therefor.

STATUTE– Evidence Act, 2011, Sections 131-134 - Claimant thereunder - Liquidated money demand - Money being claimed - Onus on to establish that it is.

STATUTE- High Court of FCT, Abuja, Civil Procedure Rules, 2018 - Undefended list procedure - Matter- Formal application to set thereunder - Claimant – Whether mandated to file.

UNDEFENDED LIST PROCEDURE – Action filed thereunder - Statutorily prescribed procedure therefor.

UNDEFENDED LIST PROCEDURE- Action there under - Defendant in – What must to ground transfer of to general cause list.

UNDEFENDED LIST – Claimant thereunder - Liquidated money demand - Money being claimed - Onus on to establish that it is – Sections 131-134, Evidence Act, 2011 Considered.

UNDEFENDED LIST PROCEDURE – Liquidated sum - Factors which determine.

UNDEFENDED LIST PROCEDURE –Liquidated money demand - What constitutes.

UNDEFENDED LIST PROCEDURE- Matter - Formal application to set thereunder - Claimant - Whether mandated to file – Order 35, High Court of Federal Capital Territory, Abuja Civil Procedure Rules, 2018 Considered.

UNDEFENDED LIST PROCEDURE – Nature of.

Issues:

1. Whether the trial Court properly assumed jurisdiction to enter and hear the Respondent's Suit under the Undefended List or in entertaining the Suit at all. (Grounds 2, 3 & 4)

2. Whether on the state of the affidavit evidence before the trial Court, the Court was right to have entered judgment for the Respondent against the Appellant for the reliefs claimed in the Suit under the Undefended List or at all. (Grounds 5, 6, 7, 8 & 9)

Facts:

The Respondent, a Legal Practitioner claimed that he rendered professional services to the Appellant and he forwarded separate bills of charges to the Appellant, but that the letters refunded to pay same. The Respondent therefore filled an action in the High Court of FCT under the undefended list, seeking order for his professional fees with post Judgment interest. The Appellant filed a notice of intention to defend. The trial Court discountenanced the notice of intention to defended and granted Respondent's claims. Aggrieved, the Appellant appealed to the

court of Appeal on grounds that the trial Court erred in assuming Jurisdiction to determine Respondent's action
The Statute considered in the Appeal are

- *Order 35 of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018*, which contains the procedure for undefended list are herein reproduced thus:

> "1. (1) Where an application in Form 1, as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand, supported by an Affidavit stating the grounds on which the claim is based, and stating that in the Deponent's belief there is no Defence to it, the Judge in chambers shall enter the suit for hearing in what shall be called the "Undefended List".
>
> (2) A Writ of Summons for a suit in the undefended list shall contain the return date of the writ.
>
> 2. A claimant shall deliver to a registrar on the issue of the Writ of Summons, as many copies of the supporting Affidavit, as there are parties against whom relief is sought, for service.
>
> 3. (1) Where a party served with the writ delivers to registrar, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an Affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.

(2) Where leave to defend is given under this Rule, the action shall be removed from the Undefended List and placed on the ordinary Cause List; and the Court may order pleadings or proceed to hearing without further pleadings.

4. Where a Defendant neglects to deliver the notice of defence and an Affidavit prescribed by Rule 3(1) or is not given leave to defend by the Court the suit shall be heard as an undefended suit and Judgment given accordingly.

5. A Court may call for hearing or require oral evidence where it feels compelled at any stage of the proceedings under Rule 4."

- *Section 16(1), (2)(a) & (b) of the Legal Practitioners Act, Cap. L. 11 Laws of the Federation of Nigeria,* 2004 applicable as at the time the bill of charges was sent. The section provides thus:

(1) Subject to the provision of this Act, a Legal Practitioner shall be entitled to recover his charges by action in any Court of competent Jurisdiction.

(2) Subject as afore said, a Legal Practitioner shall not be entitled to begin an action to recover his charges unless: (a) a bill for the charges containing particulars of the principal items Included in the bill and signed by him, or on the case of a firm by one of the partners or in the name of the firm, has been served on the client personally or left for him at last address as known to the legal practitioner or sent by post address to the client at that address; and (b) the

period of one month beginning with the date of delivery of the bill has expired.

Held:*(Allowing the Appeal)*

1. *Nature of undefended list procedure.*
The Undefended list procedure as a mode of summary Judgment is *sui generis,* applicable in the Federal Capital Territory Abuja and some other States. It is a simple procedure devoid of complexity of full trial and allows the claimant to obtain justice without the rigour of having to go through the whole hog of delayed litigation which usually takes much time and resources. Once there is a claim for a liquidated money demand, the Claimant is expected to make an application using the undefended list procedure as available in the Rules of the Court. *[Pp. 101-102, Paras. G-B]*

2. *Purport of undefended list and onus on Defendant there under.*
The essence of undefended list is to save the *scarce* judicial time where the Defendant has no reasonable defence to the claims of the Claimant. The Defendant in undefended list is expected to raise a genuine defence and not a sham defence or needless technicality. *Nkwo Market Comm. Bank (Nig) Ltd v Obi, Atagbuba & Co v Gwa, Fagbohun v Leye, Madewell Products v Citibank (Nig) Ltd.* *[P. 102, Paras. B-C]*

3. What Defendant in an action under the undefended list must contain establish to grow transfer of to general cause list.

In order to convince the Court to transfer the suit to the General Cause List, the Defendant must, in his Affidavit disclosing a defence, among other things "condescend upon particulars" and deal specifically with the Plaintiff's claim by stating clearly and concisely what the defence is and the facts relied upon in support.

In sum, the principal requirements for the application of the above is that:

1. The Defendant has no defense; and

2. The Plaintiff is claiming for debt or liquidated money demand. *[Pp. 102-103, Paras. H-B]*

4. Whether a Claimant is mandated to file a formal application to say a maters down under the undefended list, Order 35, High Court of Federal Capital Territory, Abuja Civil Procedure Rules, 2018 Considered.

Per Tukur JCA; *[P. 94, Paras. A-H]*

Learned Counsel for the Appellant argued that by virtue of the provisions of *Order 35 Rule 1 of the Rules of the trial Court,* the trial Judge can only competently place or enter a Suit for hearing under the Undefended list upon fulfilment of certain conditions duly stated therein and that the suit which led to this appeal failed to meet with three conditions, that is that: (i). There must be an application to the

Court praying for the issuance of a Writ of Summons; (ii). The claim in the Writ must relate to or be in respect of recovery of a debt or liquidated money demand; and that (iii). There must have been an express judicial determination by the trial Court that the claim in the Writ is to recover a debt or liquidated money demand suitable for placement under the Undefended List. Counsel stressed that where the trial Court fails to make a prior judicial determination that the suit is one suitable for placement or hearing under the Undefended list, the suit will be incompetent thereby depriving the trial Court of Jurisdiction to hear it and enter Judgment thereon under the Undefended List regardless of whether or not the Defendant filed a Notice of Intention to Defend with an Affidavit disclosing a defence on the merit, as failure to do so will amount to placing the burden of proof on the Defendant contrary to the provisions of *Sections 133 - 136 of the Evidence Act, 2011* and amount to a breach of the Defendant's right to fair hearing, which would render any Judgment a nullity.

The specific provisions of *Order 35 of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018,* which contains the procedure for undefended list are herein reproduced thus:"1. (1) Where an application in Form 1, as in the Appendix is made to issue a Writ of Summons in respect of a claim to recover a debt or liquidated money demand,

supported by an Affidavit stating the grounds on which the claim is based, and stating that in the Deponent's belief there is no defence to it, the Judge in chambers shall enter the suit for hearing in what shall be called the "Undefended List".

(2) A Writ of Summons for a suit in the undefended list shall contain the return date of the writ.

2. A Claimant shall deliver to a registrar on the issue of the Writ of Summons, as many copies of the supporting Affidavit, as there are parties against whom relief is sought, for service.

3. (1) Where a party served with the writ delivers to registrar, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an Affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.

(2) Where leave to defend is given under this Rule, the action shall be removed from the Undefended list and placed on the ordinary cause list; and the Court may order pleadings or proceed to hearing without further pleadings.

4. Where a Defendant neglects to deliver the Notice of Defence and an Affidavit prescribed by Rule 3(1) or is not given leave to defend by the Court the suit shall be heard as an undefended suit and Judgment given accordingly.

5. A Court may call for hearing or require oral evidence where it feels compelled at any stage of the proceedings under Rule 4."

The above procedure is very simple and straightforward, in line with the intention behind the special procedure. It is immediately clear that there is no need for a special application, nor a formal judicial determination, other than what is done in chambers and is evidenced by marking of the writ as "undefended" as was done in the case that culminated in this Appeal. It is indeed true that wherever the law gives a definite procedure to follow before a matter can be deemed to be properly instituted or where a condition precedent to the institution of an action is given, either by law or agreement of the parties, failure to comply with such procedure or condition precedent means that the Court would not have the needed authority (Jurisdiction) to hear the matter, the so called conditions to the proper filing of an action under the undefended list as argued by the Appellant do not exist and as such, cannot inure to invalidate the Jurisdiction of the lower Court to hear the matter. What the rules of the lower Court requires is an Affidavit accompanying the writ, not a formal application and the determination as to the suitability or otherwise of a newly filed suit for the undefended list procedure is to be done by the Judge in Chambers.

[Pp. 103-106, Paras. C-F]

5. Statutorily prescribed procedure for action filled under undefended list.

Per Tukur JCA; *[Pp. 105-106, Paras. A-C]*

The Supreme Court in the case of *Bank of Industry Ltd. v. Obeya* (2021) LPELR-56881 (SC) (Pp 23 - 25 Paras E - F) per Helen Moronkeji Ogunwumiju, JSC gave an exposition on what undefended list in FCT, Abuja entails thus:

"In this instant case, the matter is listed under the undefended list. Whenever an application is made to a Court for the issue of a Writ of Summons in respect of a claim to recover a debt or liquidated money demand and the application is supported by an affidavit stating that in the Deponent's belief there is no defence to the Plaintiff's claim, the Court shall if satisfied that there are good grounds for believing that there is no defence to the claim, enter the suit for hearing in what shall be called the undefended list. By Order 21 Rule 3 of the Federal Capital Territory, Abuja High Court Civil Procedure Rules, 2004, if the party served with the Writ of Summons and Affidavit delivers to the Registrar not less than 5 days before the date fixed for hearing a notice in writing that he intends to defend the suit, together with an Affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just. Hence, where leave to defend is given the action shall be removed from the Undefended List and

placed on the Ordinary or General Cause List. Thereafter, the Court may order pleadings or proceed to hearing without further pleadings. Where any Defendant neglects to deliver the Notice of Defence and Affidavit prescribed or is not given leave to defend by the Court, the suit shall be heard as an undefended suit, and Judgment given thereon, without calling upon the Plaintiff to Summon witnesses before the Court to prove his case formally. See Order 21 Rule 4 of the Federal Capital Territory; Abuja High Court Civil Procedure Rules, 2004. The Appellant failed to put up any defence before the trial Court but rather filed a Preliminary Objection to the suit neglecting its defence to the claim. This presumes that the Appellant had no defence. Therefore, when a matter is on the undefended list, there is no need to summon witnesses at all. It is basically decided on Affidavit evidence. See *Obaro v. Hassan* (2013) 8 NWLR (pt. 1357) Pg. 425; Massken Nig. Ltd."

See: *Ekaete v. UBN Plc* (2014) LPELR-23111 (CA); *Kingtony Ventures (Nig) Ltd & Anor v. E-Barcs Micro Finance Bank Ltd* (2022) LPELR - 57087(CA); and *Ibeto & Anor v. Oguh* (2022) LPELR-56803(CA).

6. What Constitute liquidated Demand.

"A liquidated demand is a debt or other specific sum of money usually due and payable and its

amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any other or further investigation. Whenever, therefore, the amount to which a Plaintiff is entitled can be ascertained by calculation or fixed by any scale of charges or other positive data, it is said to be 'liquidated' or made clear. Again, where the parties to a contract, as part of the agreement between them, fix the amount payable on the default of one of them or in the event of breach by way of damages, such sum is classified as liquidated damages where it is in the nature of a genuine pre-estimate of the damage which would arise from breach of the contract so long as the agreement is not obnoxious as to constitute a 'penalty' and it is payable by the party in default. The term is also applied to sums expressly made payable as liquidated damages under a statute." ***Maja v Samouris.*** *[P. 107, Paras. B-G]*

7. Factors determining liquidate sum.

"It is now clear that the factors for determining a liquidated sum are as follows:

(a) The sum must be arithmetically ascertainable without further investigation.

(b) If it is in reference to a contract, the parties to same must have mutually and unequivocally agreed on a fixed amount payable on breach.

(c) The agreed and fixed amount must be known prior to the breach."

***See: Onyima Global Resources Investment (Nig) Ltb v. Ecobank* (2022) LPELR-57875(CA); *GTI Asset Management & Trust Ltd v Oyo State Government & Anor* (2022) LPELR- 58765(CA); and *Coasterners Integrated (Nig) Ltd & Anor v. Pillar Micro Finance Bank Ltd* (2020) LPELR-52299(CA).** *[P. 108, Paras. A-D]*

8. Required contents of a bill of charges of a legal practitioners.

"A legal practitioner should be able to present a bill of charges which, among other facts, should particularize his fees and charges, e.g. (a) perusing documents and giving professional advice; (b) conducting necessary (specified) inquiries; (c) drawing up the Writ of Summons and Statement of Claim; (d) number of appearances in Court and the dates; (e) summarized statement of the work done in court, indicating some peculiar difficult nature of the case (if any) so as to give an insight to the client as to what he is being asked to pay for; (f) the standing of Counsel at the bar in terms of years of experience and/or the rank with which he is invested in the profession) It is necessary to indicate amount of fees against each of these item:

In the instant case, where the Respondent failed itemise and give particulars of the various leads of works done by him, the trial Court erred in granting him the refers sought in respect of . *Rebold Ind Ltd v Magreola, Oyekanmi v NEPA, SBN Plc v Opanubi, Comm.*

for Justice v Ngavan, Shior v Lower Benue River Basin Dev. Authority, MRS Oil & Co Ltd v Bello. *[P. 111, Paras. B-F]*

9. Whether general provision of law on an issue can Supercede specific provision of law thereon.

The arguments of the Respondent on the principle of law to the effect that failure to answer formal correspondence/demand would Constitute admission is sound but as a general principle would not override or supersede the specific provisions of the Legal Practitioners Act. It was based on a similar reasoning that the Supreme Court in In *FBN Plc v. Maiwada* (2013) 5 NWLR (pt. 1348) 444 at 497, held that the provisions of the Companies and Allied Matters Act cannot be employed to supplant the legal requirement imposed by the legal practitioners Act in the sense that the Legal Practitioners Act provides specific provision that governed that particular subject mater. This position was adopted by this Court in the case of *Omini & Ors v. Yakurr LGA & Ors* (2019) LPELR-46300(CA). *[Pp. 117-118, Paras. G-B]*

10. Onus on Claimant under undefended list to establish that the sum being claimed is liquidated money demand, Sections 131-134, Evidence Act, 2011 considered.

By virtue of Sections 131-134, Evidence Act, 2011, a person who has brought his claim under the undefended list as provided under the rules of the High Court must establish that the sum

being claimed is either a debt or a liquidated money sum, which is easily ascertainable. ***Agbabiaka v First Bank, Akinsola v Eyinaya, Peak Merchant Bank Ltd v Tilad Nig Ltd.*** *[Pp. 116-117, Paras. F-A]*

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AG & Commissioner for Justice v. Ngavan (2021) LPELR-56285(CA)

Agbabiaka v. First Bank (2019) LPELR-48125(SC)

Akingbade v. African Paints (Nig) Plc (2008) LPELP-8655 (CA) 27

Akingbehin v. Thompson (2007) LPELR- 8168(CA)

Akinsola v. Eyinnaya (2022) LPELR- 57284(CA)

Alfotrin v. A.G. Federation 9 NWLR (pt. 475) 634

Alhaji Isiyaku Yakubu Ent Ltd v. Teru (2020) 16 NWLR (pt. 1751) 505 (CA)

Alogu v. Tura Int'l Ltd Nigeria (2017) LPELR-42284(CA)

Ataguba & Co. v. Gura (Nig) Ltd. (2005) LPELR - 584 (SC)

Azuasonogo v. Benue State Government (2019) LPELR - 47270 (CA) 39 – 44

Bank of Industry Ltd. v. Obeya (2021) LPELR-56881 (SC)

Berliet (Nig) Ltd. v. Kachalla (1995) LPELR - 775 (SC) 44

Coasterners Integrated (Nig) Ltd v. Pillar Micro Finance Bank Ltd (2020) LPELR-52299(CA)

Denirol International Company Limited v. Guaranty Trust Bank Plc (2019) LPELR- 48965(CA)

Denton-West v. Muoma (2009) LPELR - 8371 (CA) 23 - 24

Ekaete v. UBN Plc (2014) LPELR-23111 (CA)
Ekwunife v. Wayne West Africa Ltd. (1989) LPELR -1104 (SC) 33.
Enye v. Ogbu (2003) 10 NWLR (Pt. 828) 403; (2002) LPELR- 7152 (CA) 10 - 20
Fagbohun v. Ogunleye (2014) LPELR-22453(CA)
FBN Plc v. Maiwada (2013) 5 NWLR (pt. 1348) 444 - 497
GMON & S. Co LTO. v. Akputa (2010) 9 NWLR (pt. 1200) 433
GTI Asset Management & Trust Ltd v Oyo State Government (2022) LPELR- 58765(CA)
Guinness (Nig.) Plc v. Onegbeoan (2012) 15 NWLR (pt. 1322) 31
Ibeto v. Oguh (2022) LPELR-56803(CA)
Ige v Amakiri (1976) II (SC) 1
Johnson v. Mobil Producing (Nig) Unlimited (2009) LPELR-8280 (CA)
Kingtony Ventures (Nig) Ltd v. E-Barcs Micro Finance Bank Ltd (2022) LPELR -57087(CA)
Madewell Products Ltd v. Citibank Nig (2014) LPELR - 22421 (CA)
Maersk Line v. Addide Investments Ltd (2002) LPELR-1811 (SC) 36-37
Maja v. Samouris (2002) LPELR-1824(SC)
Maley v. Isah (2000) 5 NWLR (Pt. 658) 651
MRS Oil & Gas Co. Ltd v. Bello & Karibi- Whyte (2021) LPELR-56842(CA)
Muhammed v. Maglodan (Nig) Ltd (2017) LPELR - 43191 (CA) 13 -15
NBA v. Gbenoba (2015) 15 NWLR (pt.1483) 585
Nishizawa v. Jethwani (1984) 12 S.C. 124/234
Nkwo Market Community Bank (Nig) Ltd v. Obi (2010) LPELR-2051 (SC)

NMCB (NIg) Ltd v. Obi (2010) 14 NWLR (pt. 1213) 169
Nnechi v. Onioha (2019) LPELR - 47097 (CA) 20
Obaro v. Hassan (2013) 8 NWLR (pt. 1357) 425
Offa LG v Oladipo (2013) 11 WRN 124- 142
Ojo v. FRN (2023) LPELR -59970(SC)
Okoli v. More Cab Finance (Nig.) Ltd. (2007) 14 NWLR (pt. 1053) 37
Omini v. Yakurr LGA (2019) LPELR-46300(CA)
Onyima Global Resources Investment (Nig) Ltd v. Ecobank (2022) LPELR-57875(CA)
Oyekanmi v NEPA (2000) LPELR- 2873 (SC)
Oyo v. Mercantile Bank (Nig.) Ltd. (1989) 3 NWLP (pt. 108) 213
Peak Merchant Bank Ltd v. Tilao Nig Ltd (2017) LPELR -50863(CA)
Popoola v. Akanbi (2019) LPELP - 49178 (CA) 21
Popoola v. Ughaogaranya (2020) LPELR - 50033 (CA) 40
Rebold Industries Ltd v. Magreola (2015) LPELR-24612(SC)
RMAFC v. Onwuekveikpe (2009) 15 NWLR (pt. 1165) 592
SBN Plc. v. Opanubi (2004) LPELR-3023(SC)
Shior v. Lower Benue River Basin Dev. Authority (2021) LPELR-56640(CA)
Skye Bank v. GTB (2020) LPELR - 50529 (CA) 14-15
Soba v. Abdullahi (2013) LPELR 22603 (CA) 26 - 27
Sodipo v. Lemninkainen damp (1986) NWLR (pt.15) 220
Thompson v. Akingbehin (2021) 16 NWLR (pt. 1802) 283 (SC)
Wema Securities & Finance Plc v. Nigeria Agricultural Insurance Corp (2015) LPELR- 24833(SC)

Foreign Referred to in Judgment

Bishop Exp. Langley (1879) 13 Ch. D 110
Cow v. Casey (1949) 1 K.B. 481
Dimes v. Wright (1849) 8 CB 831. (2)
Keene v. Ward (1849) 13 Q.B. 515 CB 831 (2)
Lewis v. Primrose (1844) 6 Q.B. 265
McCullie v. Butler (1961) 2 All ER 554
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Statutes Referred to in Judgment

Evidence Act, 2011, Sections 131-134
Legal Practitioners Act, Cap. L. 11 Laws of the Federation of Nigeria, 2004, Section 16(1), (2) (a) & (b)
Legal Practitioners' Act, Cap 207, Laws of the Federation, 1990, Section 16(1)

Rules Referred to in Judgment

Federal Capital Territory; Abuja High Court Civil Procedure Rules, 2004, Order 21 Rule 3, 4
High Court of Federal Capital Territory, Abuja Civil Procedure Rules, 2018 Considered Order 35, Order 39 Rule 4

Books Referred to in Judgment

Halsbury's Laws England, 4th edn. vol.44 (1) paras. 192-193

Counsel.

Mustapha I. Abubakar Esq with S. Iyange Esq - *For Appellant*

Chikaosolo Ojukwu Esq - *For Respondent.*

A **TUKUR JCA (Delivering the Lead Judgment):** This is an appeal against the judgment of the High Court of the Federal Capital Territory, Abuja in Suit No: FCT /HC/BW /CV /83/2022 delivered on 16th June 2022 by Honourable Justice S. B. Belgore against the Appellant.

The facts of the matter which led to this Appeal is connected to an action instituted by the Respondent before the lower Court via a Writ of Summons brought under the undefended list sealed on 31st March, 2022, claiming the following:

1. The sum of N140, 000, 000. 00 (One Hundred and Forty Million Naira) only being the professional fees owed to the Claimant by the Defendant for the provision of legal services and representing the Defendant's interest in:

   a. Suit No.: FCT/HC/I052/2021; Hon. Suleiman Alhassan *Swagwa v. Hon. Murtala Karshi A 17 Ors;*

   b. Suit No.: FCT/HC/CV/llll/2021: *Abubakar Usman v. APC & 2 Ors.;*

   c. Appeal No.: CA/ABJ/766/2021; *Hon. Suleiman Alhassan Gwagwa v. Hon. Murtala Karsh &17 Ors.*

   d. Cross-Appeal No.: CA/ABJ/766/2021; *Mrs. Stella Okotere & 6 Ors. v. Hon. Suleiman Alhassan Swagwa All Ors.*)

   e. Appeal No: CA/ABJ/CV/15/2022; *Abubakar Usman v. APC & 2 Ors.*

f. Appeal No: SC/1165/2021; *Mrs. Stella Okotere & 6 Ors. v. Hon. Suleiman Alhassan Gwagwa A 11 Ors*.) and

g. Appeal No.: SC/1233/2021; *Mrs. Stella Okotere & 6 Ors. v. Hon. Suleiman Alhassan Gwagwa All ors.*

2. Post Judgment interest on the Judgment sum at an interest rate of 21% until the whole Judgment sum is fully liquidated."

In accordance with the lower Court's rules, the Writ was accompanied by an Affidavit of 22 paragraphs sworn to by the Respondent wherein he deposed that he was variously briefed by the Appellant and that he forwarded separate Bills of Charges of N20,000,000.00 (Twenty Million Naira Only) in respect of each of the instructions to the Appellant. That sequel to the failure of the Appellant to pay him the professional fees contained in the said Bills of Charges amounting in the aggregate to N140,000,000.00 (one hundred and forty million naira only) more than 30 days after its receipt of the Bills of Charges, he instituted the instant Suit against the Appellant for the recovery of the professional fees after serving a final demand notice on it. In response, the Appellant filed a notice of intention to defend and supporting Affidavit.

The learned trial Judgment in a Judgment delivered on 16th June, 2022, held that there are no triable issues raised in the Appellant's Affidavit in support of its notice of intention to defend, that the defence it purported to present was a sham and granted the Respondent's claims.

A Dissatisfied with the above decision of the lower Court, the Appellant appealed the Judgment vide Notice of Appeal dated and filed on 21st June, 2022, with 9 grounds of appeal.

B The Appellant's Brief of Argument is dated 9th August 2022 and filed on 9th August 2022. The Appellant's Reply Brief of Argument is dated and filed on 11th November 2022 but deemed as properly filed on 6th June 2023.

C Appellants' Counsel distilled two issues for determination to wit:

1. Whether the trial Court properly assumed Jurisdiction to enter and hear the Respondent's Suit under the Undefended List or in entertaining the Suit at all. (Grounds 2, 3 & 4)

D

2. Whether on the state of the Affidavit evidence before the trial Court, the Court was right to have entered Judgment for the Respondent against the Appellant for the reliefs claimed in the Suit under the Undefended List or at all. (Grounds 5, 6, 7, 8 & 9)

E

F The Respondent's Brief of Argument is dated September 2022 and filed on 21st September, 2022. Respondent's Counsel adopted the two issues as presented by Appellant's Counsel.

G The issues formulated by the Appellant's Counsel are apt and I therefore adopt them as the issues for determination in this Appeal.

ISSUE ONE

H Whether the trial Court properly assumed Jurisdiction to enter and hear the Respondent's Suit under the Undefended List or in entertaining the Suit at all. (Grounds 2, 3 & 4)

Learned counsel for the Appellant argued that by virtue of the provisions of *Order 35 Rule 1 of the Rules of the trial Court,* the trial Judge can only competently place or enter a Suit for hearing under the Undefended List upon fulfilment of certain conditions duly stated therein and that the suit which led to this Appeal failed to meet with three conditions, that is that: (i). There must be an application to the Court praying for the issuance of a Writ of Summons; (ii). The claim in the Writ must relate to or be in respect of recovery of a debt or liquidated money demand; and that (iii). There must have been an express judicial determination by the trial Court that the claim in the Writ is to recover a debt or liquidated money demand suitable for placement under the Undefended list Counsel stressed that where the trial Court fails to make a prior judicial determination that the Suit is one suitable for placement or hearing under the Undefended List, the Suit will be incompetent thereby depriving the trial Court of Jurisdiction to hear it and enter Judgment thereon under the Undefended List regardless of whether or not the Defendant filed a Notice of Intention to Defend with an Affidavit disclosing a defence on the merit, as failure to do so will amount to placing the burden of proof on the Defendant contrary to the provisions of *Sections 133 - 136 of the Evidence Act, 2011* and amount to a breach of the Defendant's right to fair hearing, which would render any Judgment a nullity.

He relied on: *Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); Enye v. Ogbu* (2003) 10 NWLR (pt. 828) 403 at pages 422- 426 A - B (2002) LPELR-7152 (CA) at pp. 10 - 20; *Akingbade v. African Paints (Nig) Plc* (2008) LPELR - 8655 (CA) at p. 27; and *Maley v. Isah* (2000) 5 NWLR (pt. 658) 651 at pp. 663-666.

Counsel submitted that in the matter that culminated in this Appeal, there is nothing in the records to show that beyond filing his Writ of Summons supported by an Affidavit, the Plaintiff made any formal application before the trial Court to place or enter the Suit for hearing under the Undefended list and that there is nothing to show that that the trial Court made any judicial determination that the claim in the Respondent's Suit is for the recovery of a debt or liquidated money demand suitable for placement or hearing under the Undefended list before the trial Judge marked the Writ of Summons at the top thus, "MARKED AS UNDEFENDED AND THE RETURN DATE IS 12 -05- 2022." Counsel posited again that failure to make this determination meant the lower Court lacked Jurisdiction to hear the matter.

Counsel also submitted that assuming the trial Court made a judicial determination that the suit was suitable for placement or hearing under the Undefended list before marking or placing it for hearing under the Undefended list as stated above, the Court still lacked the Jurisdiction to have heard or determined the Suit under the Undefended list because in reality, the claim in the Suit is not one for the recovery of "a debt or liquidated money demand. He pointed out that on the contrary, the claim in the Suit was for the recovery of professional fees by the Respondent for the provision of legal services and representing the Appellant's interest in seven judicial proceedings which is a claim for "unliquidated demand" or "unliquidated damages" because there was no agreement between the Appellant and the Respondent on the sum to be paid as professional fees for services rendered. Counsel posited that all the Respondent did in each of his seven Bills of Charges, was to merely state the number and title of the Suit or Appeal being handled by him on behalf of the Appellant and stated N20,000,000.00 as the amount for legal representation in the Suit or Appeal without more.

He relied on: *Denton - West v. Muoma* (2009) LPELR - 8371 (CA) at p. 23 - 24; *Muhammed & Anor v. Maglodan (Nig) Ltd* (2017) LPELR - 43191 (CA) at pp. 13 -15; *G.M.O.N. & S.Co LTO. v. Akputa* (2010) 9 NWLR (pt. 1200) 433 at pp. 463 - 464 H - C.

Learned Counsel also argued that was unsuitable for placement and hearing under the Undefended list because the professional fees claimed by the Respondent therein were largely unearned as even by the Respondent's own showing, only one out of the seven cases for which he presented Bills of Charges had been concluded or prosecuted up to Judgment, while virtually all the other cases were still pending or ongoing in various Courts, with Judgment having been allegedly delivered in only one case that is. Suit No: FCT/HC/1052/2021 between *Hon. Suleiman Alhassan Swaswa v. Hon. Murtala Karshi &* 17 Ors.

Counsel posited that the trial Court equally lacked the Jurisdiction to have entertained or determined the Respondent's Suit due to non- compliance by the Respondent with the mandatory provision of *Section 16(1) & (2) of the Legal Practitioners Act, Cap LII LFN, 2004* in that the seven Bills of Charges for professional fees of N20,000,000.00 (twenty million naira only) each amounting in the aggregate to N140,000,000.00 (one hundred and forty million naira only) do not contain particulars of the principal items included in the various Bills or amounting to the said sum of N20,000,000.00 in each Bill.

He relied on: *Oyekanmi v. Nepa* (2000) 15 NWLR (pt.690) 414 at pp. 431 - 432 H- A; *NBA v. Gbenoba* (2015) 15 NWLR (Pt.1483) 585 at pp. 620 -621 C -A; and *Popoola v. Akanbi & Ors* (2019) LPELP - 49178 (CA) at pp. 21.

A On the other hand, learned Counsel for the Respondent argued that the Respondent duly complied with the procedure for bringing an action under the undefended list procedure of the trial Court. Counsel posited that contrary to the arguments of the Appellant,
B *Order 35 Rules 1 & 2 of the High Court of FCT (Civil Procedure) Rules 2018* do not require a formal application seeking leave to commence an action under the undefended list and there is no requirement for a trial Judge to make a formal determination of the suitability of an action for undefended list before marking the
C processes as being for the undefended list.

Learned Counsel submitted that the cases of *Enye v. Ogbu* (2003) 10 NWLP (pt 828) 403 at pg 422-426*; Akingbade v. African*
D *Paints (Nig) Plc* (2008) LPELP- 8655 (CA) at P. 27; and *Maley v. Isam* (2000) 5 NWLP (pt. 658) 651 at pg 663-666, relied upon by the Appellant for its position is distinguishable from the facts of this Appeal because in Enye's case, the Respondent in filing
E his suit did not aver in his Affidavit that the Appellant had no defence to the Claim which was a requirement of the Rules of Anambra High Court applicable in that case; the decision in *Maley v. Isah* was based on an express provision of the Kaduna State
F (Civil Procedure) Rules 1987 mandating a Plaintiff seeking to issue a writ under the undefended list procedure to first bring an application by way of a motion *ex parte* seeking the leave of the Court. Counsel stressed that the Appellant ought not be allowed to import extraneous materials into the rules of the lower Court.
G

He relied on: *Johnson & Ors. v. Mobil Producing (Nig) Unlimited & Ors* (2009) LPELR-8280 (CA); and *Alogu & Ors v. Tura Int'l Ltd Nigeria & Ors* (2017) LPELR-42284 (CA).

H

Learned Counsel also argued that contrary to the Appellant's submissions, the Respondent's suit was for the recovery of a

liquidated money demand, being one for the recovery of a debt owed to the Respondent by the Appellant; the debt in question being the professional fees for the provision of legal services and for representing the Appellant's interest in seven (7) judicial proceedings in various Courts. Counsel submitted that the total amount of N 140,000,000.00 crystallized into a recoverable debt and a liquidated money demand upon the issuance and receipt of the respective bills of charges without any objection, even after a reminder/demand for immediate payment after 30 days but the Appellant further instructed the Respondent to prosecute the Appeals arising from the matters in question. Counsel pointed out that the law is trite that whenever a business letter is not replied to by the recipient, the content of the letter is deemed admitted and that the Appellant who had the opportunity to specifically dispute the Respondent's bills with relevant documents and other materials in the Affidavit in support of its notice of intention of defend, failed to do so, with the purported Affidavit so bereft of any substance that the trial Court rightfully described same as a "sham".

A B C D E

He relied on: *Akinsola & Anor v. Eyinnaya* (2022) LPELR-57284(CA); *Advanced Coating Technology (Nig) Ltd. v. Express International Plant Hire (Nig) Ltd.* (2019) LPELR- 47833(CA); and *Joe Ige v Chief Amakiri* (1976) II (SC) Pg. 1.

F

Counsel specifically referred to the case of *R.M.A.F.C. v. Onwuekveikpe* (2009) 15 NWLR (pt. 1165) 592 for the proposition that failure to respond to the bill of professional charges and letters of demand from the Respondent meant the sum in dispute had become a debt which the Appellant is deemed to have admitted.

G H

He also referred to the cases of: *Denirol International Company Limited v. Guaranty Trust Bank Plc* (2019) LPELR- 48965(CA);

and *Alhaji Isiyaku Yakubu Ent Ltd v. Teru* (2020) 16 NWLR (pt. 1751) 505 (CA).

Counsel also argued that pursuant to Section 16 (1) (2) (a)(b) of the Legal Practitioners Act, a claim for the legal fees of a legal practitioner crystallizes when a signed Bill of Charges has been served personally on the Client and the period of one month beginning from the date of service has expired and not necessarily under an agreement by parties and that the statutory period of one month is a period when a Client who is aggrieved over the bill of charges of the legal practitioner can respond in writing and either reject the bill or request for a review, which the Appellant failed to do. Counsel posited that contrary to the Appellant's argument, all the seven cases in question are pre-election cases and they have all been concluded as none of the cases is pending before any Court of law; that full completion of instruction is not a precondition to payment of legal fees and that having failed to raise the issue of non-completion of instruction at trial, the Appellant cannot properly raise the same on Appeal for the first time.

He relied on the cases of *Oyo v. Mercantile Bank (Nig.) Ltd.* (1989) 3 NWLP (pt. 108) 213; and *Offa L.G. v Oladipo* (2013) 11 WRN 124 at 142.

Counsel also argued that the Appellant's assertions to the effect that the Respondent did not comply with the condition precedents in the Legal Practitioner's Act do not hold water as the Respondent's Bill of Charges contained particulars of the principal items included in the bill and signed by him as required by the Legal Practitioners' Act

He relied on: *Akingbehin v. Thompson* (2007) LPELR-8168(CA); *Thompson v. Akingbehin* (2021) 16 NWLR (pt. 1802)

283 (SC); and *Guinness (Nig.) Plc v. Onegbeoan* (2012) 15 NWLR (pt. 1322) 31.

In the reply brief, learned Counsel for the Appellant made the following submissions:

i. The reasoning of this Court in the cases of *Enye v. Ogbe (Supra)* and *Maley v. Isah (Supra)* is that in Undefended List procedure it is imperative for the trial Court to first discharge the primary duty of determining whether the action is a proper one to be placed on the Undefended list and even where such determination is made by the Court, but the claim in the Suit is not one for recovery of a debt or liquidated money demand, the Court will lack the competence or Jurisdiction to entertain the Suit under the Undefended list regardless of whether or not the Defendant filed a Notice of Intention to defend the Suit together with an Affidavit disclosing a defence on the merit.

ii. That since the Respondent did not respond to the Appellant's argument that the fees were unliquidated damages because there was no agreement as to fees and the Respondent had not laid claim to any such agreement, then the Respondent is deemed to have admitted said arguments. He referred to: *Maersk Line & Anor v. Addide Investments Ltd & Anor* (2002) LPELR-1811 (SC) at pp. 36-37; and *Skye Bank v. GTB* (2020) LPELR - 50529 (CA) at pp. 14-15.

iii. The main rationale behind the decision in *G.M.O.N. & S & Co. Ltd. v. Akpauta* (2010) 9 NWLR (pt. 1200) 433. 463 - 464 was that there was no averment in the said Affidavit in support which showed that

there was an agreement for payment of the sum claimed at any material point in time, which was the same rationale for the decision of this Court in *Soba v. Abdullahi* (2013) LPELR 22603 (CA) at pp. 26 - 27 equally cited in the Appellant's Brief of Argument,

iv. The decisions in the cases cited by the Respondent dealing with admission of a debtor by conduct arising from the debtor's failure to respond to a demand letter from the creditor for the payment of a debt are not applicable to the facts and circumstances of this Appeal as the situation here is lawyer and client, and the general principle of law cited by the Respondent that failure to respond to a business letter which by nature of its content requires a response amounts to an admission is not absolute, with this Appeal falling under the exception due to its nature as argued in the Brief of Argument. He argued that the case of *R.M.A.F.C v. Onwuekweikpe* (2009) 15 NWLR (pt. 1165) 592 relied upon by the Respondent is highly distinguishable from the instant case because the Appellant in that case did not file a Notice of Intention to Defend together with an Affidavit to challenge the facts deposed to in the Affidavit in support of the Writ choosing only to dispute the said facts at the Appeal stage when the trial Court had already acted on them.

RESOLUTION OF ISSUE ONE

The Undefended list procedure as a mode of summary Judgment is *sui generis*, applicable in the Federal Capital Territory Abuja and some other States. It is a simple procedure devoid of complexity of full trial and allows the claimant to obtain justice

without the rigour of having to go through the whole hog of delayed litigation which usually takes much time and resources. Once there is a claim for a liquidated money demand, the claimant is expected to make an application using the undefended list procedure as available in the Rules of the Court. The essence of undefended list is to save the scarce judicial time where the Defendant has no reasonable defence to the claims of the Claimant. The defendant in undefended list is expected to raise a genuine defence and not a sham defence or needless technicality.

The Supreme Court in the case of *Nkwo Market Community Bank (Nig) Ltd v. Obi* (2010) LPELR-2051 (SC) (Pp 29 - 30 Paras G - B), Per, Ikechi Francis Ogbuagu, JSC, reiterated the purpose of the undefended list procedure thus:

> *"... this is also settled that the purpose of the procedure under the Undefended list, is to enable the plaintiff obtain Summary Judgment without trial, where his case, is patently clear and unassailable. See the cases of Cow v. Casey (1949) 1 K.B. 481 and Sodipo v. Lemninkainen damp; ors. (1986) NWLR (pt.15) 220. It is not however, designed to shut out a Defendant who can show that there is a triable issue. See the case of Nishizawa v. Jethwani (1984) 12 S.C. 124/234."*

See: Ataguba & Co. v. Gura (Nig) Ltd (2005) LPELR-584(SC); *Fagbohun v. Ogunleye* (2014) LPELR-22453(CA); and *Madewell Products Ltd & Anor v. Citibank Nig* (2014) LPELR -22421 (CA).

In order to convince the Court to transfer the suit to the General Cause List, the Defendant must, in his Affidavit disclosing a defence, among other things "condescend upon particulars" and

A deal specifically with the Plaintiff's claim by stating clearly and concisely what the defence is and the facts relied upon in support.

In sum, the principal requirements for the application of the above
B is that:

1. The Defendant has no defense; and
2. The Plaintiff is claiming for debt or liquidated money demand.

C

The specific provisions of *Order 35 of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018*, which contains the procedure for undefended list are herein reproduced thus:

D

"1. (1) Where an application in Form 1, as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidated money demand,
E supported by an Affidavit stating the grounds on which the claim is based, and stating that in the Deponent's belief there is no defence to it, the Judge in chambers shall enter the suit for hearing in what shall be called
F the "Undefended list".

(2) A Writ of Summons for a suit in the undefended list shall contain the return date of the writ.

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2. A Claimant shall deliver to a registrar on the issue of the Writ of Summons, as many copies of the supporting Affidavit, as there are parties against whom relief is sought, for service.

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3. (1) Where a party served with the writ delivers to registrar, before 5 days to the day fixed for hearing, a

notice in writing that he intends to defend the suit, together with an Affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.

(2) Where leave to defend Is given under this Rule, the action shall be removed from the Undefended list and placed on the ordinary Cause List; and the Court may order pleadings or proceed to hearing without further pleadings.

4. Where a Defendant neglects to deliver the Notice of Defence and an Affidavit prescribed by Rule 3(1) or is not given leave to defend by the Court the suit shall be heard as an undefended suit and Judgment given accordingly.

5. A Court may call for hearing or require oral evidence where it feels compelled at any stage of the proceedings under Rule 4."

The above procedure is very simple and straightforward, in line with the intention behind the special procedure. It is immediately clear that there is no need for a special application, nor a formal judicial determination, other than what is done in chambers and is evidenced by marking of the writ as "undefended" as was done in the case that culminated in this Appeal.

The Supreme Court in the case of *Bank of Industry Ltd. v. Obeya* (2021) LPELR-56881 (SC) (Pp 23 - 25 Paras E - F) per Helen Moronkeji Ogunwumiju, JSC gave an exposition on what undefended list in FCT, Abuja entails thus:

"In this instant case, the matter is listed under the undefended list. Whenever an application is made to a Court for the issue of a Writ of Summons in respect of a claim to recover a debt or liquidated money demand and the application is supported by an Affidavit stating that in the Deponent's belief there is no defence to the Plaintiff's claim, the Court shall if satisfied that there are good grounds for believing that there is no defence to the claim, enter the suit for hearing in what shall be called the undefended list. By Order 21 Rule 3 of the Federal Capital Territory, Abuja High Court Civil Procedure Rules, 2004, if the party served with the Writ of Summons and Affidavit delivers to the Registrar not less than 5 days before the date fixed for hearing a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just. Hence, where leave to defend is given the action shall be removed from the Undefended list and placed on the Ordinary or General cause list. Thereafter, the Court may order pleadings or proceed to hearing without further pleadings. Where any Defendant neglects to deliver the notice of defence and Affidavit prescribed or is not given leave to defend by the Court, the suit shall be heard as an undefended suit, and Judgment given thereon, without calling upon the Plaintiff to summon witnesses before the Court to prove his case formally. See Order 21 Rule 4 of the Federal Capital Territory; Abuja High Court Civil Procedure Rules, 2004. The Appellant failed to put up any defence before the trial Court but rather filed a Preliminary Objection to the suit neglecting its defence to the claim. This presumes

that the Appellant had no defence. Therefore, when a matter is on the undefended list, there is no need to Summon Witnesses at all. It is basically decided on Affidavit evidence. See *Obaro v. Hassan* (2013) 8 NWLR (pt. 1357) Pg. 425; Massken Nig. Ltd."

See: *Ekaete v. UBN Plc* (2014) LPELR-23111 (CA); *Kingtony Ventures (Nig) Ltd & Anor v. E-Barcs Micro Finance Bank Ltd* (2022) LPELR -57087(CA); and *Ibeto & Anor v. Oguh* (2022) LPELR-56803(CA).

It is indeed true that wherever the law gives a definite procedure to follow before a matter can be deemed to be properly instituted or where a condition precedent to the institution of an action is given, either by law or agreement of the parties, failure to comply with such procedure or condition precedent means that the Court would not have the needed authority (Jurisdiction) to hear the matter, the so called conditions to the proper filing of an action under the undefended list as argued by the Appellant do not exist and as such, cannot inure to invalidate the jurisdiction of the lower Court to hear the matter. What the rules of the lower Court requires is an Affidavit accompanying the writ, not a formal application and the determination as to the suitability or otherwise of a newly filed suit for the undefended list procedure is to be done by the Judge in Chambers.

Having decided that there was no need for a formal application before the lower Court could decide that the matter was suitable for undefended list procedure in the way it did, the next port of call is the question as to whether the claim was for a debt or liquidated money demand as provided for by the rules of the lower Court. A liquidated money demand has been described as an amount of money that could be ascertained by calculation, or fixed by any

A scale, or other positive data or mathematics. When the amount to be recovered depends on circumstances and is fixed by opinion or estimate, it is said not to be liquidated. The Apex Court in the celebrated case of *Maja v. Samouris* (2002) LPELR-1824(SC)
B (Pp 21 - 22 Paras F - C), per Anthony Ikechukwu Iguh, JSC, defined a liquidated money demand thus:

> "A liquidated demand is a debt or other specific
C sum of money usually due and payable and its amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any other or further investigation. Whenever, therefore, the amount to which a
D Plaintiff is entitled can be ascertained by calculation or fixed by any scale of charges or other positive data, it is said to be 'liquidated' or made clear. Again, where the parties to a contract, as part
E of the agreement between them, fix the amount payable on the default of one of them or in the event of breach by way of damages, such sum is classified as liquidated damages where it is in the
F nature of a genuine pre-estimate of the damage which would arise from breach of the contract so long as the agreement is not obnoxious as to constitute a 'penalty' and it is payable by the party in default. The term is also applied to sums expressly
G made payable as liquidated damages under a statute."

The Supreme Court in the case of *Wema Securities & Finance Plc v. Nigeria Agricultural Insurance Corp* (2015) LPELR-
H 24833(SC) (Pp 75 - 75 Paras B- F), per John Afolabi Fabiyi, JSC gave helpful pointers to what would be regarded as liquidated damages thus:

> "It is now clear that the factors for determining a liquidated sum are as follows (a) The sum must be arithmetically ascertainable without further investigation, (b) If it is in reference to a contract, the parties to same must have mutually and unequivocally agreed on a fixed amount payable on breach, (c) The agreed and fixed amount must be known prior to the breach."

See: Onyima Global Resources Investment (Nig) Ltd v. Ecobank (2022) LPELR-57875(CA); *GTI Asset Management & Trust Ltd v Oyo State Government & Anor* (2022) LPELR- 58765(CA); and *Coasterners Integrated (Nig) Ltd & Anor v. Pillar Micro Finance Bank Ltd* (2020) LPELR-52299(CA).

The final question under this issue therefore is whether the Respondent flouted the procedure for bringing an action based on bill of charges as provided in *Section 16(1), (2)(a) & (b) of the Legal Practitioners Act, Cap. L. 11 Laws of the Federation of Nigeria,* 2004 applicable as at the time the bill of charges was sent. The Section provides thus:

> (1) Subject to the provision of this Act, a Legal Practitioner shall be entitled to recover his charges by action in any Court of competent Jurisdiction.
>
> (2) Subject as aforesaid, a legal practitioner shall not be entitled to begin an action to recover his charges unless: (a) a bill for the charges containing particulars of the principal items Included in the bill and signed by him, or on the case of a firm by one of the partners or in the name of the firm, has been served on the client personally or left for him at last

A address as known to the legal practitioner or sent by post address to the client at that address; and (b) the period of one month beginning with the date of delivery of the bill has expired.

B The Supreme Court in *Rebold Industries Ltd v. Magreola & Ors* (2015) LPELR-24612(SC) (Pp 46 - 46 Paras C - F) per Chima Centus Nweze, JSC, reiterated the applicable principle thus:

C "There can be no gainsaying the fact that, pursuant to Section 16(1) of the Legal Practitioners' Act, Cap 207, Laws of the Federation, 1990, [applicable at the material time], a legal practitioner who satisfies the D Trinitarian preconditions, now endorsed in Case Law, could commence an action to recover his fees upon a bill of charges. First, he must prepare a bill of charges or a bill for the charges which should duly particularize E the principal items of his claim; second, he *must* serve his client with the bill; and third, he must allow a period of one month to elapse from the date the bill was served. *Oyekanmi v NEPA* (2000) LPELR -2873 (SC) 12, C-E."

F In the celebrated case of *Oyekanmi v NEPA* (2000) LPELR- 2873 (SC) (Pp 24 - 25 Paras D - F) per Samson Odemwingie Uwaifo, JSC the Apex Court give a guide on how a proper bill of charges G should consist of thus:

"A general guideline as to the form, contents and purpose of a bill of charges, in my view, would be: (1) H the bill should be headed to reflect the subject matter. If it is in respect of litigation, the Court, the cause and the parties should be stated: See *Lewis v. Primrose*

(1844) 6 Q.B. 265; *Dimes v. Wright* (1849) 8 CB 831. (2) The bill should contain all the charges, fees and professional disbursements for which the legal practitioner is making a claim: See *McCullie v. Butler* (1961) 2 All ER 554. Professional disbursements include payments which are necessarily made by the legal practitioner in pursuance of his professional duty such as Court fees, witness' fees, cost of production of records etc. if paid by him. (3) charges and fees should be particularised e.g. (a) perusing documents and giving professional advice, (b) conducting necessary (specified) inquiries or using legal agent in another jurisdiction for a particular purpose: See *Re: Bishop Exp. Langley* (1879) 13 Ch. D 110; Re: *Pomeroy and Tanner Solicitors (supra)*, (c) drawing up the writ of summons and statement of claim or defence, (d) number of attendances in Court and the dates, and (e) summarised statement of the work done (in Court), indicating some peculiar difficult nature of the case (if any) so as to give an insight to the client as to what he is being asked to pay for: See Re: A Solicitor (supra) at p.287. (4) It is required to give sufficient information in the bill to enable the client to obtain advice as to its taxation and for the taxing officer to tax it: See *Keene v. Ward* (1849) 13 Q.B. 515; *Slingsby v. Attorney General* (1918) Probate 236. It is necessary therefore to indicate against each of the particulars given in the bill of charges a specific amount, taking into account the status and experience of the Legal Practitioner, and the time and efforts involved. See generally, Halsbury's Laws England, 4th edn. vol. 44(1), paras. 192-193; The Digest, Annotated

A The above was recaptured and restated succinctly by the Supreme Court in the case of *S.B.N. Plc. v. Opanubi* (2004) LPELR-3023(SC) (Pp 23 - 24 Paras F - D) per Samson Odemwingie Uwaifo JSC thus:

B

> "A Legal Practitioner should be able to present a bill of charges which, among other facts, should particularize his fees and charges, e.g. (a) perusing documents and giving professional advice; (b) conducting necessary (specified) inquiries; (c) drawing up the Writ of Summons and Statement of Claim; (d) number of appearances in Court and the dates; (e) summarized statement of the work done in Court, indicating some peculiar difficult nature of the case (if any) so as to give an insight to the client as to what he is being asked to pay for; (f) the standing of Counsel at the bar in terms of years of experience and/or the rank with which he is invested in the profession. It is necessary to indicate amount of fees against each of these item: see *Oyekanmi v. NEPA* (2000) 15 NWLR (pt.690) 414 at 437."

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See: *A-G & Commissioner for Justice & Ors v. Ngavan* (2021) LPELR-56285(CA); *Shior v. Lower Benue River Basin Dev. Authority* (2021) LPELR-56640(CA); and *M.R.S. Oil & Gas Co. Ltd v. Bello & Karibi- Whyte* (2021) LPELR-56842(CA).

G

An application of the above principles to the facts of this Appeal reveals that the Respondent indeed did not comply with the provisions of the extant Legal Practitioner's Act which governed the bill of charges he prepared. Learned Counsel failed to properly itemise and particularise the work he had done for the Appellant and as such is not entitled to bring the action the way he did.

H

The failure to itemise and give particulars of the various heads of works done comes to the fore as shown in the final demand notice sent to the Appellant by the Respondent, dated 21/2/2022 as captured at page 30 of the record.

In paragraph 2, the Respondent gave particulars of works done in the course of handling the matters for which he was engaged but the particulars stated therein was not part of any of the items or particulars rendered in any of the bill of charges. For ease of reference Paragraph 2 of the letter reads;

> "Recall that in most of the Appellate cases, our firm compiled and transmitted Records of Appeal, and in some cases transmitted two separate Records of Appeal. Despite the above and your receipt of the above bills of charges, you have failed and/or neglected to pay even a dime towards the settlement of our fees."

It is thus clear that rather than give particulars of the works done the Respondent merely forwarded a lump sum which do not in my view meet the requirement of Section 16 of Legal Practitioners Act. This issue is partly resolved in favour of the Appellant and partly in favour of the Respondent.

ISSUE TWO

> Whether on the state of the affidavit evidence before the trial Court, the Court was right to have entered judgment for the Respondent against the Appellant for the reliefs claimed in the Suit under the Undefended List or at all. (Grounds 5, 6, 7, 8 & 9)

A Learnd Counsel for the Appellant argued that the facts deposed to by the Respondent in the Affidavit in Support of his Writ of Summons inclusive of the contents of the exhibits attached thereto were grossly insufficient to establish or prove his claim for
B professional fees of N140,000,000.00 together with 21% post judgment interest thereon against the Appellant. Counsel predicated the foregoing on the alleged fact that the Respondent failed to show that he forwarded a formal letter of acceptance of
C each of the letters of instructions to the Appellant as required, thus he failed to establish that there was a binding and enforceable contract between him and the Appellant in respect of the said letters of instruction to entitle him to the fees claimed by him.

D Learned counsel submitted that in the absence of any agreement between the parties in respect of the professional fees charged by the Respondent, the Respondent could only have been entitled to professional fees on quantum meruit basis thus the trial Court
E could only have awarded to the Respondent as fees, what it assessed as reasonable compensation for the services rendered to the Appellant, and that to achieve this, the Respondent would have been required to particularize his Bills of Charges and plead certain
F perimeters including the breakdown of the actual services rendered by him and the cost per sub-head, and lead oral evidence in proof thereof to enable the trial Court to assess what was reasonable in the circumstances. Thus, the Respondent's claim could not have been competently entered and heard under the
G Undefended List.

He relied on: *Section 16(2)(a) of the Legal Practitioners Act Cap* L11 LFN, 2004; *N.M.C.B. (NIg) Ltd v. Obi* (2010) 14 NWLR
H (pt. 1213) 169 at pp, 184 C - G & 185 B - E; *Azuasonogo v. Benue State Government & Anor* (2019) LPELR - 47270 (CA) at pp. 39 - 44; *Soba v. Aboullahi* (2013) LPELR - 22630 (CA) at

pp. 26 - 27; *Popoola v. Ughaogaranya &. Ors* (2020) LPELR - 50033 (CA) at p. 40; and *S.B.N. v. Opanubi* (2004) LPELR - 3023 (SC) at pp. 23 - 24; (2004) 15 NWLR (pt. 896) 437 at p. 458 B - D.

Counsel posited that the post judgment interest granted by the trial Court is unjustified and unsupported by law as the law is settled that post judgment interest can only be awarded as authorized by law or Rules of Court and the rules herein only permitted the lower Court to award interest per annum, which the trial Court did not follow in its decision.

He relied on: Order 39 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018; *Berliet (Nig) Ltd. v. Kachalla* (1995) LPELR - 775 (SC) at p. 44; and *Ekwunife v. Wayne West Africa Ltd.* (1989) LPELR -1104 (SC) at *p.* 33.

Learned counsel asserted that that on the strength of the depositions in the Affidavit in Support of the Appellant's Notice of Intention to Defend, the Appellant disclosed prima facie defence on the merit to the Respondent's claim or raised enough triable issues that should have warranted the trial Court to transfer the Respondent's Suit to the Ordinary Cause List for full blown trial. He argued that the prima facie defence/triable issues raised by the Appellant includes: (i) That some of the lawsuits or matters in which the Respondent represented it were handled by him pro bono; That the Respondent accepted to be bound by the terms of contract contained in the letters of instructions to him which as herein before pointed out included a requirement that the Respondent upon acceptance should forward a formal letter of acceptance to the Appellant's office which he never complied with); (iii) That the letters of instruction alone do not amount to

A contractual agreement capable of vesting rights on the parties; (iv) That the Respondent's claims are manifestly unsupportable and cannot be brought successfully under the Undefended list because the claim is not based on a liquidated
B money demand.

He relied on: *Ataguba & Co. v. Gura (Nig) Ltd.* (2005) LPELR - 584 (SC) at p. 29 - 3D; *Nnechi v. Onioha* (2019) LPELR - 47097 (CA) at p.20; and *N.M.C.B v. Obi (Supra)* at page 184 C - G.
C

On the other hand, learned Counsel for the Respondent argued that the issue of whether the Respondent sent letters of acceptance to the Appellant in respect of the letters of instruction issued to
D him, was never made by the Appellant at the trial Court. The contention is thus belated and a mere afterthought and that the Appellant is estopped from denying the contractual relationship entered into with theRespondent, under the principle of estoppel
E by conduct, because at various times during and after the issuance of the Respondent's bills of charges, the Appellant after benefitting from the Respondent's representation, further briefed and issued other letters of instruction to the Respondent, instructing the
F Respondent to represent the Appellant in respect of other matters. Learned Counsel submitted that there can be no doubt that the Respondent had agreed to carry out the instructions as they were indeed carried out. He referred to the case of *Alfotrin v. A.G. Federation* 9 NWLR (pt. 475) 634.
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Counsel also argued that all the seven cases forming the basis of the Respondent's suit are pre-election cases and they have all been concluded as none of the cases is pending before any Court of
H law and that raising the issue of incomplete work for the first time at this stage is untenable and same ought to be discountenanced.

He relied on: *Azuasonogo v. Benue State Government & Anor* (2019) LPELR - 47270 (CA) at pp. 39-44.

Learned Counsel posited that all the cases relied on by the Appellant in support of their assertion that the fees be calculated on quantum meruit basis are distinguishable from the facts of this appeal because in those cases, it was either the Legal Practitioners that applied to the court for their remunerations based on quantum meruit or the Defendants to the suit at the trial Court clearly contested the bill of charges presented to them.

Counsel argued that the Appellant's notice of intention to defend did not disclose any defense, nor did it present triable issues because the Appellant's Affidavit which ought to have touched upon particulars and specifically dealt with the Respondent's claim and Affidavit, and state clearly what the defense is and what facts and documents are relied in support of such a defense, was bereft of any substance, particulars or documents.

He relied on: *Okoli v. More Cab Finance (Nig.) Ltd.* (2007) 14 NWLR (pt. 1053) 37.

RESOLUTION OF ISSUE TWO

There is no gainsaying the fact that anyone who desires the Court to grant his claims must furnish adequate evidence backing the existence of such claims. Moreso, a person who has brought his claim under the undefended list as provided under the rules of the lower Court must establish that the sum being claimed is either a debt or a liquidated money sum, which is easily ascertainable.

See: Sections 131-134 of the Evidence Act 2011; *Ojo v. FRN* (2023) LPELR -59970(SC); *Agbabiaka v. First Bank* (2019) LPELR-48125(SC); *Akinsola & Anor v. Evi* (2022) LPELR -

57284(CA); and *Peak Merchant Bank Ltd v. Tilao Nig Ltd* (2017) LPELR -50863(CA).

It is indubitable that the fulcrum of Respondent's case is that he is a Legal Practitioner, who has represented the Appellant in various matters and is therefore entitled to his wages. A workman is of course entitled to his wages, but only the wages that were promised him or in the absence of a clear cut promise, the wages that he can show that he worked for. A careful examination of the evidence before the lower Court reveals that there was no clear cut agreement whereby the Appellant categorically promised to pay the Respondent the amount he sued the Appellant for in this matter, which is why the Respondent prepared a bill of charges and sent to the Appellant. Now, if the Respondent had complied with the requirements of a bill of charges, by adequately itemising and particularising the components of what he charged the Appellant for, and the Appellant failed to respond within a month, it could be confidently said that the Respondent could rely on the uncontested bill of charges as clear evidence of his entitlement to the amount sought as professional fees, and this would also entitle the Respondent to successfully bring the matter under the undefended list, because the amount would be a liquidated sum. The evidence at trial however reveals that the bill of charges sent by the Respondent falls short of the standard required by the Legal Practitioners Act and as such cannot be a solid basis for entering a judgment under the undefended list. What constitutes a liquidated money demand was comprehensively dealt with under issue one.

The arguments of the Respondent on the principle of law to the effect that failure to answer formal correspondence/demand would constitute admission is sound but as a general principle would not override or supersede the specific provisions of the Legal Practitioners Act. It was based on a similar reasoning that the

Supreme Court in In *FBN Plc v. Maiwada* (2013) 5 NWLR (pt. 1348) 444 at 497, held that the provisions of the Companies and Allied Matters Act cannot be employed to supplant the legal requirement imposed by the legal practitioners Act in the sense that the Legal Practitioners Act provides specific provision that governed that particular subject mater. This position was adopted by this Court in the case of *Omini & Ors v. Yakurr LGA & Ors* (2019) LPELR-46300(CA).

In the light of the above, this issue is resolved in favour of the Appellant.

Now having held earlier that the Respondent did not comply with the requirements of the provisions of Section 16 of the legal practitioners Act, it follows therefore that the action before the lower Court was incompetent and same should have been struck out.

In the circumstance the suit filed by the Respondent in the Lower Court is hereby struck out.

Parties to bear their respective costs.

WILLIAMS-DAWODU JCA: I have had a preview of the Judgment just delivered by my learned brother, Jamilu Yammama Tukur, JCA. I agree with the reasoning and conclusion contained therein.

I abide by the order made therein and equally strike out the Suit before the Court below.

I make no order as to costs.

A **OGAKWU JCA:** Learned brother, *Jamilu Yammama Tukur, JCA,* made available to me the draft of the leading Judgment which has just been delivered.

B Having read the Records of Appeal and the briefs of argument filed and exchanged by the parties, I am allegiant to the reasoning and conclusion in the leading Judgment that the Appeal has merit.

C Accordingly, I join in allowing the Appeal and on the same terms as set out in the leading Judgment.

Appeal allowed.

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1. **MR. PETER OBI**
2. **LABOUR PARTY**

V.

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
2. **SENATOR BOLA AHMED TINUBU**
3. **SENATOR SHETTIMA KASHIM**
4. **ALL PROGRESSIVES CONGRESS (APC)**

SUPREME COURT OF NIGERIA

JOHN INYANG OKORO JSC (*Presided*)
UWANI MUSA ABBA AJI JSC *(Read the Lead Judgment)*
MOHAMMED LAWAL GARBA JSC
IBRAHIM MUSA MOHAMMED SAULAWA JSC
ADAMU JAURO JSC
TIJJANI ABUBAKAR JSC
EMMANUEL AKOMAYE AGIM JSC

SC/CV/937/2023

THURSDAY, 26TH OCTOBER, 2023

APPEAL- Academic - when a suit is

APPEAL- Preliminary Objection - Purport of – Some grounds in the Appeal - Competence of – Whether appropriate to challenge.

CRIMINAL LAW AND PROCEDURE- Criminal conviction and sentence - Proof of – Prescribed mode of therefor.

ELECTION- Presidential candidate - At least $^{2}/_{3}$ of all votes cast in all stated of the federation and ¼ of votes cast in FCT - Whether is required to win to be declared president - Constitution of Federal Republic of Nigeria 1999, Considered. Section 134 (2).

INTERPRETATION OF STATUTE- Constitution provisions - Liberal and purposive interpretation of – Court - Onus on the adopt.

INTERPRETATION OF STATUTE- Constitution of Federal Republic of Nigeria 1999, Section 134 (2)- Presidential candidate - At least 2/3 of all votes cast in all states of the federation and ¼ of votes cast in FCT – Whether required to win to be declared president.

STATUTE- Constitution of Federal Republic of Nigeria 1999, Section 134 (2) - Presidential candidate - At least 2/3 of all votes cast in all states of the federation and ¼ of votes cast in FCT – Whether required to win to be declared president.

Issues:

Whether having regard, to the provisions of Sections 131(c), 137(l)(d.) and 142(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) therein after 1999

Constitution, Sections 31 and 35 of the Electoral Act, 2022 and the evidence before the Court, the learned Justices of the Court of Appeal were right when they held that the 2nd and 3rd Respondents were qualified to contest, the Presidential Election of 25 February 2023. [Grounds 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,43 and 44 of the Notice of Appeal].

Facts:

The Nigerian Presidential Election was held on the 25th of February, 2023 and was contested by the 2nd Appellant's as 1st Appellant's candidate and 2nd Respondent as 4th Respondent's candidate among other candidates. The 2nd Respondent was declared winner of the election, while the 1st Appellant come 3rd. The Appellants were dissatisfied and therefore filed a petition at the Court of Appeal, sitting as the presidential Election petition Tribunal, challenging the return and Declaration of the 2nd Respondent as the winner of the election on grounds that; he was not qualified to contest the election, the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022, and the 2nd Respondent was not duly elected by majority of the lawful votes cast at the election. The Appellants prayed for the following reliefs *inter alia.* Declarations that the 2nd an 3rd Respondent were not qualified to contest the election, the 2nd Respondent having failed to score one-quarters of the votes cast at the presidential election in the FCT, was not entitled to be declared and returned as the winner of the election and the 1st Appellant who scored the majority of the lawful votes cast at the election, with not less than 25% of the votes cast in each of at least 2/3 of the States of the Federation and FCT and satisfied the Constitutional requirements, be declared winner of the election. In the alternative , an order cancelling the election and compelling the 1st Respondent to conduct a fresh election at which the 2nd- 4th Respondent was not duly elected by a majority

of the lawful votes cast and therefore his declaration and return as winner of the election are unlaw and of no effect and that, based on the valid votes cast, the 1st Appellant scored the highest number of votes cast and not less than one quarter of the votes cast in each of at least 2/3 of all states of the federation and FCT and ought to be declared and returned as the winner of the election and order directing the 1st Respondent to issue certificate of return to the 1st Appellant. In the further alternative, a declaration that the presidential election is void on grounds of substantial non-compliance with Constitution of the Federal Republic of Nigeria, 1999 (as amended) Electoral Act,2022 order canceling same and mandating the 1st Respondent to conduct a fresh election. The Tribunal dismissed the petition and aggrieved, the Appellants Appealed to the Supreme Court on grounds that the lower Tribunal wrongly expunged some paragraphs of their petition and held that the 2nd Respondent was duly elected. The 2nd and 3rd Respondents filed a Preliminary Objection to the Appeal.

Held:*(Dismissing the Appeal)*

1. *Purport of Preliminary Objection and whether appropriate to challenge competence of some Grounds in the Appeal.*

   A Preliminary Objection is only raised to the hearing of the Appeal, and not to a few grounds of Appeal. The purport of Preliminary Objection is the termination or truncation of the Appeal in limine. A Preliminary Objection should only be filed against the hearing of an Appeal and not against one or more Grounds of Appeal when there are other grounds to sustaining the Appeal; which purported Preliminary Objection is, therefore, not capable of truncating the hearing of the Appeal.

In such a situation, a Preliminary Objection is not the appropriate procedure to deploy against defective Grounds of Appeal when there are other grounds, not defective, which can sustain the hearing of the Appeal. *Ajuwon v. Governor of Oyo State.* *[P. 156, Paras. A-C]*

2. *When a suit is academic.*

A suit is academic where it is merely theoretical, makes empty sound, and of no practical value to the Plaintiff even if Judgment is given in his favour.

An academic issue or question is one which does not require answer or adjudication by a Court of law because it is not necessary to the case on hand. An academic issue or question could be a hypothetical or moot question. An academic issue or question does not relate to the five issue in the litigation because it is as it will not enure an if right ot- benefit on the successful party.

In the instant case, where the issues in Appellant's Appeal had been determined in a sister Appeal, the Supreme Court held them academic and dismissed same. *Odedo v INEC, Plateau State v A.G Fed, Ogbonna v Pres. FRN, Uchenna v PDP.* *[P. 167, Paras. C-F]*

3. *Prescribed mode of proof of criminal conviction and sentence*

A criminal conviction and sentence must be proved by the CTC of the Judgment of Court delivered or any admissible way of proving

same and the said Judgment must reflect all the ingredients of a valid Judgment to bind the parties concerned.

In the instant case, where the Appellants failed to prove their allegation of 2nd Respondent's conviction in the United States, lower Court rightly dismissed their petition based thereon.

Per Abba Aji JSC; *[Pp....., Paras.....]*

The Appellants' challenge of the qualification of the 2nd Respondent to contest the Presidential Election is that he was *"fined the sum of $460,000.00 (Four Hundred and Sixty Thousand. United States Dollars) for an offence involving dishonesty, namely narcotics trafficking imposed, by th.e United States District Court, Northern District of Illinois, Eastern Division, in case No:93C 4483";* and therefore, disqualified by Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section 137(1)(d). This seems to intersect with the provision of Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section 137(1)(d) providing for *"sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name callled) or any other offence, imposed on him, by any Court or tribunal or substituted, by a competent authority..."*

What matters always in this kind of situation is that there must be proof of such a sentence. This is unfortunately where the Appellants could not proceed Purcner or substantiate the sentence of fine against the 2nd Respondent.

At page 3228 (vol. 5) of the record, PW1 and PW12, who gave evidence on the US proceedings did not dispute the fact that the 2nd Respondent was not at any time, charged before any Court, caused to make a plea, convicted or sentenced for any offence. Similarly, at page 3464 (vol.5) of the record, RW2, a US attorney and an associate of the 2nd Respondent, testified that the 2nd Respondent was never convicted or fined for any criminal offence in the United States. In fact, PW1 confirmed that the proceedings in Exhibit PA5 series are civil proceedings, while equally admitting that he mentioned anything about charge in the proceeding, while equally admitting that he never mentioned anything about charge in the proceedings and that he never had one. By virtue of Section 135 of the Evidence Act, it is beyond peradventure that the proof of this allegation ought to be beyond reasonable doubt. Section 249 of the Evidence Act clearly prescribes the manner of discharging this proof, by the provision of "certificate purporting to be given under the hand of a police officer" from the US, "containing a copy of the sentence or order and the finger prints of the 2nd Respondent or photographs of the finger prints of the said 2nd Respondent, together with evidence that the finger prints of the person so convicted are those of the 2nd Respondent. See *PML (Nig.) Ltd. v. F.R.N*. (2018) 7 NWLR (pt. 1619) 448 at 493. More so, Exhibit RA9 tendered before the lower Court, is a document proceeding from the US

authorities to the Nigerian authorities, upon a thorough combing of the Federal Bureau of Investigation (FBI), National Crime Information Center (NCIC). Therein, it is established that the 2nd Respondent maintains a clean record in the US archives. The said Exhibit further stated that "the NCIC is a centralized information center that maintains the record of every criminal arrest and conviction within the United States and its territories". RW2 corroborated this content in Exhibit RA9.

On the allegation of sentence of fine against the 2nd Respondent, this Honourable Court in *Jonathan v. Federal Republic of Nigeria* (2019) 10 NWLR (pt. 1681) 533, held that "*there is no need to prove any crime in forfeiture of property under Section 17 of the Advanced Fee Fraud & Other Related Offences Act, as civil forfeiture is a unique remedy which rests on the legal fiction that the property, not the owner is the target*". This of course was the basis of the lower Court's finding that the orders made in Exhibit PA5 were not in personam against the 2nd Respondent. There is no prove or preponderance of evidence to allow this arm of the Appellants' issue.

Per Jauro JSC; *[Pp. 159-161, Paras. D-E]*

On the issue of the alleged fine of $460,000.00 supposedly imposed on the Appellant by a Court in the United States of America, the Appellants relied on Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section 137(l)(d) which provides thus:

"(1) A person shall not be qualified for election to the office of President if —

(d) he is under a sentence of death imposed by any competent Court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any Court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a Court or tribunal."

There is no gainsaying that the above provision will only serve to disqualify a person on whom a sentence of fine was imposed after conviction resulting from a criminal trial. The Appellants themselves agree that the case referred to by them only involved a civil forfeiture, without an arraignment or trial. Furthermore, the Appellants have not been able to show that the forfeiture or "fine" as they put it, was a criminal sentence.

From the foregoing, it is clear to all that the disqualifying provision of Section 137(1)(d) of the Constitution cannot apply to disqualify the 2nd Respondent.

Per Agim JSC; *[Pp. 169-170, Paras. H-G]*

"Let me consider the issue of the Order of the United States District Court, Northern District of Illinois that the sum of 406,000 USD in the account of the 2nd Respondent be forfeited to the State. It is not in dispute that this is a non-conviction based forfeiture. There is nothing to show that the forfeiture was a punishment

for the 2nd Respondent's conviction for any offence. There is no evidence of any conviction of any sort. It is a civil forfeiture made because the source of the money could not be explained. It is trite law that a civil forfeiture is a unique remedy that does not require conviction or even a criminal charge against the owner of the money. A civil forfeiture does not qualify as a fine or punishment for any unlawful activity so the argument that it qualifies as a fine for an offence involving dishonesty or fraud is not correct". *[P. 172, Paras. B-E]*

4. *Propriety of there being an end to litigation.*
It is in the interest of Justice that there must be an end of litigation it is also in the interest of the parties and society re litigated by the Appellant was already determined the Supreme Court declined determination of same. *[P. 162, Paras. G-H]*

5. *Whether a presidential candidate is required to win at least $^{2}/_{3}$ of all votes cast in states of the federation and ¼ of votes cast in FCT to be declared president Constitution of the Federal Republic of Nigeria, 1999 Considered. Section 134(2).*

Per Agim JSC; *[Pp. 172-175, Paras. B-G]*

Let me consider the issue of the Order of the United States District Court, Northern District of Illinois that the sum of 406,000 USD in the account of the 2nd Respondent be forfeited to the State. It is not in dispute that this is a non-

conviction based forfeiture. There is nothing to show that the forfeiture was a punishment for the 2nd Respondent's conviction for any offence. There is no evidence of any conviction of any sort. It is a civil forfeiture made because the source of the money could not be explained. It is trite law that a civil forfeiture is a unique remedy that does not require conviction or even a criminal charge against the owner of the money. A civil forfeiture does not qualify as a fine or punishment for any unlawful activity so the argument that it qualifies as a fine for an offence involving dishonesty or fraud is not correct.

Let me also consider the question of whether Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section 134(2) requires that a candidate for an election to the office of President who has the highest number of votes cast at the election and not less than one-quarter of the votes cast at the election in each of at least two thirds of all the 36 states in the Federation must additionally have one-quarter of the votes cast in the election in the Federal Capital Territory, Abuja before he can be deemed to have been duly elected as President.

Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section134(2) provides that-

"A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election.

It is obvious that states of the Federation and the Federal Capital Territory, Abuja were lumped together as a group by Subsection (2)(b) above. What differentiates the constituents of the group is their names and nothing more. One of them is called Federal Capital Territory and the rest called states of the Federation. Subsection(2) (b) clearly refers to two- thirds of all the constituents of the group enumerated therein as the minimum number from each of which a candidate must have one-quarter of the votes cast therein. There is nothing in Subsection (2)(b) that requires or suggests that it will not apply to the areas listed therein as a group. The argument of Learned SAN that the provision by using the word "and" to conclude the listing of the areas to which it applies has created two groups to which it applies differently is, with due respects, a very imaginative and ingenious proposition that the wordings of that provision cannot by any stretch accommodate or reasonably bear. If Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section 134(2) intended that the Federal Capital Territory, Abuja should be distinct from states of the Federation as a distinct group it would not have listed it together with states of the Federation in (b). Also, if Section 134(2) had intended having one-quarter of the votes cast in the Federal Capital Territory Abuja as a separate requirement additional to the ones enumerated therein, it would have clearly stated so in a

separate paragraph numbered (c). It is glaring that

S. 134(2) prescribed two requirements that must be cumulatively satisfied by a Presidential candidate in an election contested by not less than two candidates, before he or she can be deemed duly elected President. It prescribed the first requirement in (a) and the second one in (b). It did not impose a third requirement and so there is no (c) therein.

The Constitutional or statutory requirements to be satisfied for a candidate to be declared elected must be the ones expressly and clearly prescribed in the Constitution or statute as the case may be. A requirement that is not expressly and clearly prescribed cannot be assumed or implied to exist under any guise. Since S.134(2) or any other part of the 1999 Constitution did not expressly and distinctly prescribe that a Presidential candidate must have not less than one-quarter of the votes cast in the Federal Capital Territory, Abuja as a third requirement additional to the two expressly prescribed, before he or she can be deemed duly elected as President, it is not a requirement for election to that office.

The grouping of Federal Capital Territory, Abuja with states of the Federation in Constitution of the Federal Republic of Nigeria, 1999 (as amended) S. 134(2) (b) so that the provision can apply to them equally is consistent with the tenor and principle of the 1999 Constitution treating the Federal Capital

Territory, Abuja as a state of the Federation. This is clearly stated in Constitution of the Federal Republic of Nigeria, 1999 (as amended) S.299 thusly-

"The provisions of this Constitution shall apply to the Federal capital Territory, Abuja as if it were one of the States of the Federation; and accordingly-

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the Courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the Courts which by virtue of the foregoing provisions are Courts established for the Federal Capital Territory, Abuja;

(b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and

(c) the provisions of this Constitution pertaining to the aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section."

Even though words are most often prone to different meanings and even very simple words can be" differently understood, the words of S. 134(2) (b) cannot accommodate or support or bear what Learned SAN for the Appellants proposed as its meaning. Such meaning would

result in a situation where a Presidential candidate that has the highest votes cast in the election and not less than one-quarter of the votes cast in not less than two-thirds of 36 states of the Federation or in all the states of the Federation cannot be deemed duly elected as President because he did not have one-quarter of the votes cast in the Federal Capital Territory, Abuja. This certainly violates the egalitarian principle of equality of persons, votes and the constituent territories of Nigeria, a fundamental principle and purpose of our Constitution. Such a meaning is unconstitutional.

*6. Onus on Court to adopt liberal and purposive interpretation of constitutional provisions***.**

Per Agim JSC; *[Pp. 175-177, Paras. D-A]*

Even though words are most often prone to different meanings and even very simple words can be" differently understood, the words of S. 134(2) (b) cannot accommodate or support or bear what Learned SAN for the Appellants proposed as its meaning. Such meaning would result in a situation where a Presidential candidate that has the highest votes cast in the election and not less than one-quarter of the votes cast in not less than two-thirds of 36 states of the Federation or in all the states of the Federation cannot be deemed duly elected as President because he did not have one-quarter of the votes cast in the Federal Capital Territory, Abuja. This certainly violates the

egalitarian principle of equality of persons, votes and the constituent territories of Nigeria, a fundamental principle and purpose of our Constitution. Such a meaning is unconstitutional. I think that his said proposition is the result of reading those provisions in isolated patches instead of reading them as a whole and in relation to other parts of the Constitution. Reading and interpreting the relevant provision as a whole and together with other parts of the Constitution as a whole is an interpretation that best reveals the legislative intention in the relevant provision. Sir Vahe Bairamian (Former Justice of the Supreme Court of Nigeria) in his book Synopsis 2 stated thusly -

"Any document to be rightly understood must be read as whole. According to Lord Coke " It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers and this exposition is ex visceribus actus." (from the bowels of the statute). Reading it through helps also in gathering its object. An effort must be made to understand it as a harmonious whole."

Courts across jurisdictions have, through the cases laid down the conceptual tools that should be used in the application of constitutional provisions and in the process evolved the principled criteria upon which the interpretation of the Constitution must proceed. Just as the criteria for the

interpretation of statutes differ between statutes according to the subject matter of each statute, the criteria for the interpretation of statutes and other documents must be different from those for the interpretation of the Constitution because of its sui generis nature as the fundamental and supreme law of the land, an organic document and a predominantly political document. Therefore it must be interpreted in line with principles suitable to its spirit and character and not necessarily according to the general rules of interpretation of statutes and documents. One of the principles suitable to its sui generis nature is that it must be given a benevolent, broad, liberal and purposive interpretation and a narrow, strict, technical and legalistic interpretation must be avoided to promote its underlying policy and purpose. In interpreting the part of the Constitution providing for elections to public offices in a constitutionally established democratic culture, the Court must do so on the basis of principles that give the provision a meaning that promotes the values that underlie and are inherent characteristics of a democratic society.

Nigerian Cases Referred to in the Judgment.

ACB Plc v. Nwodika (1996) 4 NWLR (pt. 443) 470- 486

Ajuwon v. Governor of Oyo State (2021) LPELR-55339(SC)

CBN v. Ahmed (2001) 11 NWLR (pt. 724) 369 - 409

Dangana v. Usman (2012) LPELR-25012(SC)

Emeka v. State (2014) 13 NWLR (pt. 1425) 614 - 632
Emetuma v. Nwagwu (2022) 9 NWLR (pt. 1828) 71- 96
Fayemi v. Oni (2019) LPELR-49291 (SC) 19-24
Ige v. Olunloyo (1984) 1 SCNLR 162 -182
Jonathan v. Federal Republic of Nigeria (2019) 10 NWLR (pt.1681) 533
Lawson v. Okoronkwo (2019) 3 NWLR (pt. 1658) 66- 78
Nikagbate v. Opuye (2018) 9 NWLR (pt. 1623) 85 - 109
Nwoye v. FAAN (2019) 5 NWLR (pt. 1665) 193
Nyame v. FRN (2021) 6 NWLR (pt. I 772) 4 (SC)
Odedo v. INEC (2008) LPELR - 2204 (SC)
Ogbonna v. President FRN (1997) 5 NWLR (pt. 505) 281
Plateau State v. AG. Federation (2006) 3 NWLR (pt. 976) 346
Okubule v.Oyagbola (1990) 4 NWLR (pt.147) 723 - 744
Osun State INEC v. National Conscience Party (2013) LPELR -20134 (SC) 15
PDP v. INEC (2023) LPELR - 60457 (SC)
Plateau State v. AG. Federation (2006) 3 NWLR (pt. 976) 346
PML (Nig.) Ltd. v. F.R.N. (2018) 7 NWLR (pt. 1619) 448 - 493
Saraki v. Kotoye (1992) 9 NWLR (pt. 264) 155
Umar v. State (2018) LPELR- 23190(SC)
Uzoukwu v. Ezeonu II (1991) 6 NWLR (pt. 200) 708
Uzoukwu v. Idika (2022) 3 NWLR (pt.1818) 403 - 468
Youth Party v. INEC (2023) 7 NWLR (pt. 1883) 249 - 311

Statutes Referred to in Judgment

Constitution of the Federal Republic of Nigeria 1999, Considered. Section 134 (2).

Constitution of the Federal Republic of Nigeria, 1999 (as amended) Sections 17(1), 47(2), 134(2)(b), 285(5) and 299(1)
Electoral Act, 2022, Sections 31, 35, 60, 64, 66, 131, 132(7) , 134
Regulations and Guidelines for the Conduct of Election, 2022 paragraphs 38, 48, 50, 51, 53, 54, 55, 91, 92, 93

Rules Referred to in Judgment

Federal High Court (Civil Procedure) Rules, 2019, Order 13 Rule 4

Counsel.

Dr. Livy Uzochukwu, SAN, with Awa Kalu, SAN, Alex Ejesieme, SAN, Peter Afuba, SAN, and Chike Obi Esq.- *For the Appellant*.

A.B. Mahoud, SAN with Miannaya Essien, SAN, Sir Stephen Adehi SAN, Musa A. Attah, Esq. and Chukwudi Enebeli Esq., - *For the 1st Respondent.*

Chief Wole Olanipekun, SAN, with Yusuf Ali, SAN, Emmanuel Ukala SAN, Prof. Taiwo Osiptan, SAN and Akintola Makinde Esq. - *For the 2nd and 3rd Respondents.*

Chief Akin Olujinmi, SAN, with Charles Uwensuji - Edosomwon, SAN, Chief Adeniyi Akintola, SAN, Chief Afolabi Fashanu, SAN and Olumide Olujinmi Esq. - *For 4th Respondent.*

ABBA-AJI JSC (Delivering the Lead Judgment): I have read the draft Judgment of my learned brother, John, Inyang Okoro, JSC, just delivered. His reasoning and conclusion are concurred to and I will just want to state my own side in this Judgment.

A The Independent National Electoral Commission (INEC), the INEC Respondent herein, conducted the presidential and National Assembly Elections in Nigeria on 25/2/2023. The 1st Appellant, who was sponsored by the 2nd Appellant as its B Presidential candidate, as well as the 2nd and 3rd Respondent who were sponsored by the 4th Respondent as its Presidential and Vice-Presidential candidates, contested the Presidential election, along with other candidates. At the end of the election, the 1st Respondent returned the 2nd Respondent as the duly elected President of the C Federal Republic of Nigeria, with 8,794,726 votes. The 1st Appellant came third with 6,101,533 votes, behind Abubakar Atiku of the People's Democratic Party (PDP), who came second with 6,984,520 votes. Dissatisfied with the result of the election, the D Appellants filed this Petition on the 20th of March, 2023, challenging the outcome of the election on the following three grounds, which are stated in paragraph 20 of the Petition:

E (i) The 2nd Respondent was, at the time of the election, not qualified to contest the election.

(ii) The election of the 2nd Respondent was invalid by reason of corrupt practices or non-compliance with F the provisions of the Electoral Act, 2022.

(iii) The 2nd Respondent was not duly elected, by majority of the lawful votes cast at the election.

G Based on the above grounds, the Petitioners then sought tor the reliefs stated in paragraph 102 of the Petition as follows:

1. First pray as follows:

H

(i) That it be determined that at the time of the Presidential Election held on 25th February,

2023, the 2nd and 3rd Respondents were not qualified, to contest the election.

(ii) That is be determined that all the votes recorded for the 2nd Respondent in the election, are wasted, votes, owing to the non-qualification/ disqualification of the 2nd and 3rd Respondents.

(iii) That it be determined that on the basts of the remaining votes (after discountenancing the voles credited to the 2nd Respondent) the Petitioner scored a majority of the lawful votes cast at the election, and had not less than 25% of the votes cast in each of at least 2/ 3 of the States of the Federation and. the Federal Capital Territory, Abuja., and. satisfied, the constitutional requirements to be declared, the winner of the 25th February,2023 Presidential election.

2. That it be determined that the 2nd Respondent having failed, to score one-quarter of the votes cast, at the Presidential election in the Federal Capital Territory, Abuja, was not entitled to be declared and retuned, as the winner of the Presidential election, held on 25th February, 2023.

IN THE ALTER NATIVE TO 2 ABOVE:

3. An order cancelling the election and compelling the 1st Respondent to conduct a fresh election at which the 2nd 3rd and 4th Respondents shall not participate.

A ***IN THE ALTERNATIVE TO 1, 2 AND 3 ABOVE:***

4. (i) That it may be determined that the 2nd Respondent was not duly elected, by a majority of the lawful
B *votes cast in the election for the office of the President of the Federal Republic of Nigeria held on 25th February, 2023 and therefore, the declaration and return of the 2nd Respondent as*
C *the winner of the Presidential election are unlawful, unconstitutional and of no effect whatsoever.*

D *(ii) That it be determined, that based, on the valid, votes cast at the Presidential election of 25th February 2023, the 1st Petitioner scored, the highest number of votes cast at the election and not less than one quarter of the votes cast at the*
E *election in each of at least two-thirds of all the States of the Federation and the Federal Capital Territory, Abuja, and ought to be declared and returned as the winner of the Presidential*
F *election.*

(iii) An order directing the 1st Respondent to issue Certificate of Return to the 1st Petitioner as the duly
G *elected President of the Federal Republic of Nigeria.*

(iv) That it be determined that the Certificate of
H *Return wrongly issued to the 2nd Respondent by the 1st Respondent is null and void and be set aside.*

IN THE FURTHER ALTERNATIVE TO 1, 2, 3 AND 4 ABOVE:

5. (i) That the Presidential election conducted on 25th February, 2023 is void on the ground that the election was not conducted substantially in accordance with the provisions of the Electoral Act, 2022 and Constitution of the Federal Republic of Nigeria. 1999, as amended.

(ii) An order cancelling the Presidential Election conducted on 25th February, 2023 and mandating the 1st Respondent to conduct a fresh election for the office of President of the Federal Republic of Nigeria.

The Appellants in proving their petition called 13 witnesses and tendered over 19,000 documents from 30/5/2023 when the hearing commenced to 5/7/2023 when the Respondents closed their case. After adoption of final written addresses of parties, the lower Court delivered its Judgment on 6/9/2023, dismissing the Appellants petition. Miffed with the Judgment, the Appellants Appealed before this Court vide Notice of Appeal. The parties filed their respective briefs of argument with the following issues:

APPELLANTS' ISSUES FOR DETERMINATION:

1. Whether upon a community reading of the Appellants' Petition and the applicable law, the learned Justices of the Court of Appeal were right in striking out/expunging some paragraphs of the Petition and the documentary evidence tendered by the Appellants for being vague, generic, imprecise, nebulous and inadmissible. [Grounds 1,2,3,4,5, 16,17 and 50 of the Notice of Appeal]

2. *Whether upon a careful consideration of the Appellants' petition, the Respondents' respective Replies to the Petition and the Appellants' Replies to the Replies of the out some paragraphs of the Appellants' Replies to the Replies of the Respondents to the Petition /Grounds 6 and 20 of the Notice of Appeal].*

3. *Whether having regard to the relevant provisions of the Electoral Act, 2022 as well as the 1st Schedule thereto, the Federal High Court (Civil Procedure) Rules 2019, Evidence Act, 2011 and current judicial pronouncements on the point, the learned Justices of the Court of Appeal, were correct in sustaining the objections of the Respondents to the evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10,PW11 and PW13 and. consequently striking out the evidence of the aforesaid, witnesses and all the documents tendered, and admitted, in evidence through them for failure of the Appellants to file the written statements on oath of the witnesses along with the Petition, Grounds 10,11, 12,13,14 and 15 of the Notice of Appeal].*

4. *Whether having regard, to the provisions of Sections 131(c), 137(l)(d) and 142(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) therein after 1999 Constitution], Sections 31 and 35 of the Electoral Act, 2022 and the evidence before the Court, the learned Justices of the Court of Appeal were right when they held that the 2nd and 3rd Respondents were qualified to contest, the Presidential Election of 25 February 2023. [Grounds 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,43 and 44 of the Notice of Appeal].*

5. *Whether having regard to the evidence adduced, by the parlies, the Learned Justices of the Court of Appeal were right when they held that the Appellants were not able to establish that there was substantial non-compliance with, the provisions of the Electoral Act 2022, which substantially affected the overall result of the election. (Grounds 7,8, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Notice of Appeal].*
6. *Whether having regard to the explicit provisions of Section 134(2) (b) of the 1999 Constitution and the evidence adduced, at the trial, the learned Justices of the Court of Appeal were right in corning to the determination that the 2nd Respondent was duly elected, as the President of the Federal Republic of Nigeria [Grounds 45, 46, 47, 48 and 49 of the Notice of Appeal].*
7. *Whether from the totality of the pleadings and evidence adduced, the Court below was right when it dismissed, the Appellants' case [Ground 51 of the Notice of Appeal].*

1ST RESPONDENT'S ISSUES FOR DETERMINATION:

I. Whether having regard, to the provision of paragraph 4(1)(d) and (7) of the First Schedule to the Electoral Act, 2022, and facts pleaded in the Petition, the Court below was not justified in striking out some offending paragraphs of the Appellants' petition and m rejecting some of the documents tendered by the Appellants? (Distilled from Grounds 1-5, 16, 17 and 50 of the Notice of Appeal).

A

II. Whether in view of the provision of paragraph 16(1) of the First Schedule to the Electoral Act, 2022, and upon a careful consideration of the Appellants' Reply to the 1st Respondent's Reply to the petition, the decision of the Court below striking out paragraphs of the Appellants' Reply which constitute an introduction of new facts and a rehash, of the contents of the petition can be faulted? (Distilled from Ground 6 and 20 of the Notice of Appeal).

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III. Whether the Court below in its decision that the witness statement on oath of Appellants PW's 3, 4, 5, 6, 7,8, 9, 10, 11 and 13 which were all filed outside the 21 incompetent and in consequently expunging their testimonies and documents tendered, through, them from its records? (Distilled from Grounds 10 - 15 of the Notice of Appeal).

D

E

IV. Whether the Court below was right when it held that the Appellants failed to prove their nullification of the Presidential election held, on the 25th of February 2023? (Distilled from. Grounds 7, 8, 9, 21, 22, 23,24-30 and 31 of the Notice of Appeal).

F

V. Whether having regard, to the provisions of Sections 131 and 137 of the 1999 Constitution, the decision o f the Honourable Court in the case of PDP v. INEC & Ors (2023) LPELR - 60457 (SC), and the totality of the evidence adduced at trial, the Court below was not justified in its decision that the Appellants failed to establish that the 2nd and 3rd Respondents were not qualified to contest the election? (Distilled, from Grounds 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of the Notice of Appeal).

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H

VI. *Whether upon a proper construction of the provision of Section 134(2)(b) of the 1999 Constitution, the Court below was not justified in its decision that in a Presidential election, polling one quarter (25%) of total votes cast in the Federal Capital Terntory, Abuja is not a separate precondition for a candidate to be deemed as duly elected? (Distilled, from Grounds 46, 46, 47, 48 and 49 of the Notice of Appeal).*

VII. *Whether having regard, to the pleadings and evidence led thereon, the decision of the Court below dismissing the Appellants' petition is justifiable and sustainable in law? (Distilled from Ground 51 of the Notice of Appeal).*

2ND AND 3RD RESPONDENTS' JSSUES FOR DETERMINATION:

1. *Having regard, to the Appellants' pleadings before the lower Court, vis-a-vis the provisions of paragraphs 4 (1)(d)(2) and 16 (1)(a) of the First Schedule to the Electoral Act, 2022 and Order 13 Rule 4 of the Federal High Court (Civil Procedure) Rules, 2019, coupled with consistent, judicial authorities on the fundamental nature of pleadings, whether the lower Court did not rightly strike out offensive paragraphs of the petition and petitioners' reply to the Respondents' respective replies. Grounds 1, 2, 3, 4, 5, 6 and 20.*
2. *In view of the clear provisions of Section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 132(7) of the Electoral Act, 2022, paragraph 4(5) of the First Schedule to*

the Electoral Act, 2022 and the settled, line of judicial authorities on the subject, whether the lower Court did not rightly strike out and expunge the witness statements on oath and evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13. Grounds 10, 11, 12, 13 and 14.

3. *Was the lower Court right when it upheld the Respondents objection, to the admissibility of thedocuments tendered, by the Appellants and struck, out the said documents, while discountenancing Appellants objections to relevant and competent documents lendered by the Respondents? Grounds 15, 16, 17, 18, 19 and 50.*
4. *In view of the clear provisions of Sections 131 and 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Sections 131 and 134 of the Electoral Act, 2022 along with binding judicial authorities on the subject, whether the lower Court did not correctly hold that the 2nd Respondent was qualified to contest election into the office of the President of the Federal Republic of Nigeria. Grounds 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44.*
5. *Given the combined provisions of paragraph 15 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) Sections 47(2), 60 and 64 of the Electoral Act, 2022; paragraphs 38, 48, 50, 51, 53, 54, 55, 91, 92, 93 of the Regulations and Guidelines for the Conduct of Election, 2022: the unAppealed Judgment of the Federal High Court in FHC/ABJ/CS/1454/2022-Labour Party v. INEC admitted, by the lower Court as Exhibit XI; the Judgment of the Court of Appeal*

in Appeal No: CA/LAG/CV/332/2023-All Progressives Congress v. Labour Party & 42 Ors., and the preponderance of evidence before the lower Court, whether the lower Court came to a right decision in its interpretation and conclusion regarding the position of the law, vis-a-vis petitioners/Appellants' complaints Grounds 21, 22, 23, 24, 25, 29, 31 and 32.

6. *Considering the clear provision of section 135 Electoral Act, pleadings and the reliefs sought Court, whether the lower Court was not right, in the Appellants' petition. Grounds 7, 8, 9, 26, 27, 28, 30 and 51.*
7. *Upon a combined reading of the Preamble Constitution, of the Federal Republic of Nigeria, 1999 (as amended), sections 17(1), 134(2)(b), 299(1), Section 66 of the Electoral Act, 2022 and other relevant statutes, whether the lower Court was not right in coming to the conclusion that the 2nd Respondent satisfied all constitutional and statutory requirements to be declared winner of the presidential election, held on 25th February, 2023, and returned, as President of the Federal Republic of Nigeria. Grounds 45, 46, 47,48 and 49.*

4TH RESPONDENT'S ISSUES FOR DETERMINATION:

1. *Whether the Court of Appeal was not right in sinking out the paragraphs of the petition filed in violation of paragraph 4(1)(d) of the 1st Schedule to the Electoral Act, 2022 together with the associated witness statements on oath and the documents in support thereof? Grounds 1, 2, 3, 4 and, 5.*

2. *Whether the Court of Appeal was not right in striking out the Replies and/or paragraphs of the Replies of the petitioners/Appellants and the associated, witness statements on oath as well as the documents in support thereof filed in violation of paragraph 16(1) of the 1 schedule to the Electoral Act,2022? Grounds 6 and 20.*

3. *Whether the Court of Appeal was not right to co that the Appellants/petitioners did not prove allegations of non-compliance and how it substantially affected the outcome of the election., having taken into consideration the failure of the Appellants/petitioners to plead and lead qualitative evidence on: (i) particulars of the units complained of;(ii) Tender and demostrate necessary documents; (iii) call relevant and necessary witnesses to testifying support of the allegation(s); and the inadmissibility of Exhibit X2 (the Report of the European Union election Observation Mission in respect of the 2023 presidential election) Grounds 7, 8, 9, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 50 and 51.*

4. *Whether the Court of Appeal discountenanced/ struck out the Appellants/Petitioners' Witness Statements on Oath not filed, along side the petition within the 21 days' constitutional time frame allowed to file petition and also the documents associated, with the incompetent witness statements on oaths as well as evidence of witnesses who were also interested, in the petition? Grounds 10, 11,12, 13, 14 and 15.*

5. *Whether having regard, to the stale of the law and evidence adduced, the Court of Appeal rightly held, that Appellants/petitioners did not prove the allegation of corrupt practices in the petition? Ground 32.*

6. *Whether having regard, to the state of the law, the materials before the Court and the subsisting decision of the Supreme Court in PDP v. INEC (2023) 13 NWLR (pt.1900) 89, the Court of Appeal was not right in holding that 3rd Respondent was validly nominated to run for the Presidential election with the 2nd Respondent and the Appellants/petitioners lacked locus standi, to challenge the nomination, of the 3rd Respondent? Grounds 33, 33 and 35.*

7. *Whether the Court of Appeal having considered the law and the materials placed before it, rightly resolved and dismissed the complaint of the Appellants/petitioners that, 2nd Respondent was not qualified and/or disqualified from contesting the presidential election? Grounds 36, 37, 38, 39, 40, 41, 42, 43 and 44.*

8. *Whether having regard, to the relevant provisions of the Constitution, of the Federal Republic of Nigeria, 1999 (as amended) the Court of Appeal rightly concluded that, 25% of votes cast in the Federal Capital Territory need not be met before a candidate can be declared winner of the presidential election and that petitioners did not prove that they won by a majority of lawful votes cast? Grounds 45, 46, 47, 48 and 49.*

A **PRELIMINARY OBJECTION:**

The 2nd and 3rd Respondents filed a Notice of Preliminary Objection on 7/10/2023, seeking for:

B

1. *AN ORDER of this Honourable Court, striking out the Appellants' Appeal before this Honourable Court.*

C

FURTHER OR IN THE ALTERNATIVE TO RELIEF 1 (SUPRA)

2. *AN ORDER of this Honourable Court striking out*
D *reliefs (b) and (c) sought in the Appellants' Notice of Appeal.*

3. *AN ORDER of this Honourable Court, striking out*
E *grounds 11 and. 27 of the Appellants' Notice of Appeal, for want of competence.*

4. *AN ORDER of this Honourable Court, striking out*
F *issues 3 and 5 of the Appellants' Brief of Argument filed, on 2nrl October, 2023.*

The grounds upon which this objection is brought are as follows:

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i. *Grounds 11 and 27 of the Notice of Appeal are not complaints against the ratio decidendi of the lower Court.*

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ii. *Issues 3 and 5 distilled from,Grounds 11 and 27, which are incompetent Grounds of Appeal, are*

themselves incompetent and liable to be struck out.

iii. The entire Appeal is academic in that:

a. Relief (b) of the Notice of Appeal which limits itself to the "the perverse Judgment of the Court, below" is ungrantable insofar as there is no direct and specific allegation of perverseness against the Judgment of the lower Court.

b. As far as the said relief (b) is concerned, this honourable Court can only consider same upon a prima facie case of perverseness against the Judgment of the lower Court.

c. Relief (c) of the notice of Appeal which prays this honourable Court to grant the reliefs sought in the petition "either in the main or in the alternative" is imprecise, uncertain, and liable to be struck out.

d. Further to (a)-(c) supra, the entire Appeal is of no utilitarian value.

iv. It is in the interest of Justice for his Honourable Court to grant the reliefs sought in this Notice of Preliminary Objection.

The 7-paragraph Affidavit was deposed to by Adoga Moses. The learned senior Counsel formulated this issue for the consideration of the objection:

In view of the circumstances of the Appellants' Appeal before this Honourable Court and the settled position of the law on the subject, whether this Honourable Court will not grant the reliefs sought on the face of this Notice of Preliminary Objection.

The learned silk to the Appellants opposed same with a 7-paragraph Counter Affidavit deposed to by Chukwuebuka David, files on 11/10/2023. In their Written Address, this issue was distilled for determination:

Whether on account of the complaints discernable on the face of Ground 11 and 27 of the Notice of Appeal and the tenor of the claim in Reliefs (b) and (c) of the Notice of Appeal, this Notice of Preliminary Objection ought to be dismissed.

The Objectors' issue shall be used in the determination of this objection:

It was submitted by the learned SAN to the 2nd and 3rd Respondents that relief (b) as contained in the Appellants' Notice of Appeal, prayed the Court to "set aside the perverse Judgment of the Court of Appeal". That reliefs are very sacrosanct to the assumption of Jurisdiction by a Court of law and it is the manner in which the Appellants have presented their reliefs before this Honourable Court, that will determine what the Court will make of the Appeal or proceedings as reliance was made to *Uzoukwu v. Ezeonu II* (1991) 6 NWLR (pt. 200) 708 at 784-85, He therefore argued that this Honourable Court can only grant the reliefs sought by a party and will not do for the party what he has not asked for. He cited in support *Okubule v.Oyagbola* (1990) 4 NWLR (pt.147) 723 at 744, *Ige v. Olunloyo* (1984) 1 SCNLR 162 at 182. Again, that relief (c) is "either in the main or in the alternative", which does not make it clear, specific and umbiguous

as held in *A.C.B. Plc v. Nwodika* (1996) 4 NWLR (pt. 443) 470 at 486. He concluded that the net effect of all of these is that the Appellants have not sought any cognisable relief before this of no utilitarian value. *Lawson v. Okoronkwo* (2019) 3 NWLR (pt. 1658) 66 at 78 was relied on. He prayed that the Notice of Appeal be struck out.

On the incompetence of Grounds 11 and 27 of the Appellants' Notice of Appeal, it was submitted that the said Grounds of Appeal have not appealed against the ratios decidendi of the lower Court, but rather, are mere complaints against *obiter dicta* of the lower Court; and Appeals can only lie against a ratio decidendi and not an o*biter dictum*. He called for support *Uzoukwu v. Idika* (2022) 3 NWLR (pt.1818) 403 at 468, Paras. E -F. He urged that issues 3 and 4 therefrom be struck out.

Contrarily, the learned SAN to the Appellants submitted that a Notice of Preliminary Objection is only competent in an Appeal, where it goes to the root of the Appeal, or challenges all the grounds in a Notice of Appeal. In the instance case, the present objection challenges only two grounds of Appeal out of fifty-one grounds. Furthermore, out of three Reliefs being claimed in the Notice of Appeal, the objection merely challenges two of the grounds. He urged this Honourable Court to strike out the Notice of Preliminary Objection on the grounds that it is incompetent. *Dangana & Anor v. Usman & Ors* (2012) LPELR-25012(SC) (PP 50-50 Parasa B-E) was cited in support.

He argued that *Emeka v. State* (2014) 13 NWLR (pt. 1425) 614 at 632C (SC), this Court defined "perverse" to literally mean unacceptable or unreasonable, implying that its decision is "unacceptable" to them or is "unreasonable" in their perception and understanding of it *vis-a-vis* the facts and the law. On relief

(c) of the notice of Appeal, learned SAN questioned, "did the Appellants not claim main and alternative Reliefs in their Petition, and are Courts of law not allowed to grant alternative Reliefs? Relying on *Nwoye v. FAAN* (2019) 5 NWLR (pt. 1665)193 SC, he submitted that the Supreme Court can giant alternative Reliefs claimed.

He further submitted that ground 11 of the Notice of Appeal complains of an Error in haw and Lack of Jurisdiction to strike out the evidence of 10 out of the 13 witnesses called by the Appellants, while ground 27 of the Notice of Appeal complains against the misapprehension of the lower Court of the submissions of Appellants' Counsel. Further, that ground 27 challenged the interpretation of the lower Court of the Final Written Address settled by the Appellants' Counsel. He relied on *Youth Party v. INEC* (2023) 7 NWLR (pt. 1883) 249 at 311H-312A SC; *Emetuma v. Nwagwu* (2022) 9 NWLR (pt. 1828) 71 at 96H SC; *Nikagbate v. Opuye* (2018) 9 NWLR (pt. 1623) 85 at 109H SC. The Appellants' learned SAN asked for the dismissal of the Preliminary Objection with substantial costs.

RESOLUTION OF PRELIMINARY OBJECTION:

Glaring and obvious is that the 2nd and 3rd Respondents' Preliminary Objection challenges only two grounds, grounds If and 27 of the Notice of Appeal filed by the Appellants, out of fifty-one grounds. Furthermore, out of three Reliefs being claimed in the Notice of Appeal, the objection merely challenges only reliefs (b) and (c). Only issues 3 and 5 are also sought to be struck out, out of the Appellants' seven issues. There is no objection that has asked for a complete and absolute thing to be done that will terminate this Appeal. Hence, a Preliminary Objection is inappropriate, but a motion on notice.

A Preliminary Objection is only raised to the hearing of the Appeal, and not to a few Grounds of Appeal. The purport of Preliminary Objection is the termination or truncation of the Appeal in limine. A Preliminary Objection should only be filed against the hearing of an Appeal and not against one or more Grounds of Appeal when there are other grounds to sustaining the Appeal; which purported Preliminary Objection is, therefore, not capable of truncating the hearing of the Appeal. In such a situation, a Preliminary Objection is not the appropriate procedure to deploy against defective Grounds of Appeal when there are other grounds, not defective, which can sustain the hearing of the Appeal. See Per EKO, JSC, in *Ajuwon & Ors v. Governor of Oyo State & Ors* (2021) LPELR-55339(SC) (PP. 4-5-Paras, D).

I will therefore restrain and recuse myself from entertaining the 2nd and 3rd Respondents' Preliminary Objection and consider the Appeal on the merit.

MAIN APPEAL:

I shall first consider the Appellant's issue four

ISSUE FOUR:

Whether having regard to the provisions of Sections 131(c), 137(1)(d) and 142(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) therein after 1999 Constitution], Sections 31 and 35 of the Electoral Act, 2022 and the evidence before the Court, the learned Justices of the Court of Appeal were right when they held that the 2nd and 3rd Respondents were qualified to contest the Presidential Election of 25 February 2023. [Grounds 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of the Notice of Appeal].

A It was submitted by the learned SAN to the Appellants that at one of the grounds upon which the Appellants challenged the qualification of the 2nd Respondent to contest the Presidential Election is that he was "fined the sum of $460,000.00 (Four
B Hundred and Sixty Thousand United States Dollars) for an offence involving dishonesty, namely narcotics trafficking imposed by the United States District Court, Northern District of Illinois, Eastern Division, in Case No: 93C 4483"; and therefore, disqualified by
C Section 137(1)(d) of the 1999 Constitution (as amended), and the proceedings and decision/order of the US District Court in this connection was tendered and rightly admitted in evidence by the Court below as Exhibit PA5. However, that the lower Court referring to *Umar v. State* (2018) LPELR- 23190(SC) concluded
D that the Appellants failed to show evidence that the 2nd Respondent was indicted or charged, arraigned, tried and convicted, and was sentenced to any term of imprisonment or fine for any particular offence. He don tended that the Court below refused to abide by
E the earlier dictum in *Jonathan v. FRN (supra)* that a "civil forfeiture is a unique remedy which does not require conviction or even a criminal charge against the owner. Again, that the lower Court was wrong to find that the orders made in Exhibit PA5 were
F not in personam against the 2nd Respondent. Furthermore, that the Court below was in error to place reliance on the evidence of RW2 and Exhibits RAS ana KA9 to water down the sting and potency of Exhibit PA5, as against the express pronouncements of the US District Couit, which, is a Court ol law. Similarly, that
G the Court below misdirected itself when, it held that the Appellants' case came under the provisions of Section 137(1)(e) of Constitution, which has placed a 10 year limitation on proof of conviction.

H It was submitted on double-nomination of the 3rd Respondent that Court below was wrong to rely on *PDP v. INEC*

(2023) LPELR-60457 to hold that since the Appellants belong to a different political party, they have no *locus standi* to complain. He contended that the issue of qualification/disqualification can be competently instituted as a post-election matter by a political party/candidate that contested election with the political party/ candidate in default, hence the Appellants have *locus standi.* He cited in support *Dangana v. Usman* (2013) 6 NWLR (pt 1349) 50 SC; *Fayemi v. Oni* (2019) LPELR-49291 (SC) at 19-24 D- A.

Again, that by Section S.1 of the Electoral Act, 2022, the Appellants established that the 3rd Respondent did not withdraw his candidacy. Further, that by Exhibits PA2 and PA3, the 3rd Respondent was the nominated candidate for Borno Central Senatorial District for the 2023 general election. That by the said Exhibits, there was nothing to show that the nomination of the 3rd Respondent as Senatorial Candidate for Borno Central was withdrawn as required by law before he knowingly accepted his nomination as Vice Presidential Candidate. He urged issue be resolved in favour of the Appellants.

The 1st Respondent, 2nd and 3rd Respondents and 4th Respondents respectively submitted contrarily that the evidence of PW1 and PW12, and RW2 on the other hand, who gave evidence on the US proceedings did not dispute the fact that the 2nd Respondent was not at any time, charged before the Court, to make a plea, convicted or sentenced for any offence. Also, that a non-conviction. He relied on *Jonathan v. Federal Republic of Nigeria* (2019) 10 NWLR (pt.1681)533. Further, that Exhibit RA9 tendered before the lower Court established that the 2nd Respondent maintains a clean record in the US archives.

On dual-nomination, it was maintained that this Honourable Court vide Exhibit X2 and. RA23, being certified true

A copies of the Supreme Court unanimous Judgment in SC/CV/501/2023 *PDP v. INEC & 3 Ors* delivered on 6/5/2023, had not only determined that the Petitioners in that case had no locus standi to question the nomination of the 3rd Respondent herein, the Court
B proceeded to determine with finality that there was no double nomination on the part of the 3rd Respondent. In the same vein, that the 3rd Respondent who was ab initio, a senetorial candidate of the 4th Respondent for Borno Central Senatorial District, had earlier on 6th July, 2022, vide a letter delivered to the 4th
C Respondent on the same date (Exhibit RA22), notified the party of his withdrawal from the election as the latters senatorial candidate for the 2023 general election. They asked this Court to resolve this issue in favour of the Respondents.

D

RESOLUTION OF ISSUE FOUR:

The Appellants' challenge of the qualification of the 2nd
E Respondent to contest the Presidential Election is that he was *"fined the sum of $460,000.00 (Four Hundred and Sixty Thousand. United States Dollars) for an offence involving dishonesty, namely narcotics trafficking imposed, by th.e United*
F *States District Court, Northern District of Illinois, Eastern Division, in case No:93C 4483";* and therefore, disqualified by section 137(1)(d) of the 1999 Constitution (as amended). This seems to intersect with the provision of Section 137(1)(d) of the 1999 Constitution (as amended) providing for *"sentence of*
G *imprisonment or fine for any offence involving dishonesty or fraud (by whatever name callled) or any other offence, imposed on him, by any Court or tribunal or substituted, by a competent authority..."*

H

What matters always in this kind of situation is that there must be proof of such a sentence. A criminal conviction and

sentence must be proved by the CTC of the Judgment of Court delivered or any admissible way of proving same and the said Judgment must reflect all the ingredients of a valid Judgment to bind the parties concerned. This is unfortunately where the Appellants could not proceed Purcner or substantiate the sentence of fine against the 2nd Respondent.

At page 3228 (vol. 5) of the record, PW1 and PW12, who gave evidence on the US proceedings did not dispute the fact that the 2ncl Respondent was not at any time, charged before any Court, caused to make a plea, convicted or sentenced for any offence. Similarly, at page 3464 (vol.5) of the record, RW2, a US attorney and an associate of the 2nd Respondent, testified that the 2nd Respondent was never convicted or fined for any criminal offence in the United States. In fact, PW1 confirmed that the proceedings in Exhibit PA5 series are Civil Proceedings, while equally admitting that he mentioned anything about charge in the proceeding, while equally admitting that he never mentioned anything about charge in the proceedings and that he never had one. By virtue of Section 135 of the Evidence Act, it is beyond peradventure that the proof of this allegation ought to be beyond reasonable doubt. Section 249 of the Evidence Act clearly prescribes the manner of discharging this proof, by the provision of "certificate purporting to be given under the hand of a police officer" from the US, "containing a copy of the sentence or order and the finger prints of the 2nd Respondent or photographs of the finger prints of the said 2nd Respondent, together with evidence that the finger prints of the person so convicted are those of the 2nd Respondent. See *PML (Nig.) Ltd. v. F.R.N*. (2018) 7 NWLR (pt. 1619) 448 at 493.

More so, Exhibit RA9 tendered before the lower Court, is a document proceeding from the US authorities to the Nigerian

A authorities, upon a thorough combing of the Federal Bureau of Investigation (FBI), National Crime Information Center (NCIC). Therein, it is established that the 2nd Respondent maintains a clean record in the US archives. The said Exhibit further stated that "the B NCIC is a centralized information center that maintains the record of every criminal arrest and conviction within the United States and its territories". RW2 corroborated this content in Exhibit RA9.

C On the allegation of sentence of fine against the 2nd Respondent, this Honourable Court in *Jonathan v. Federal Republic of Nigeria* (2019) 10 NWLR (pt. 1681) 533, held that *"there is no need to prove any crime in forfeiture of property under section 17 of the Advanced Fee Fraud & Other Related* D *Offences Act, as civil forfeiture is a unique remedy which rests on the legal fiction that the property, not the owner is the target"*. This of course was the basis of the lower Court's finding that the orders made in Exhibit PA5 were not in personam against E the 2nd Respondent. There is no prove or preponderance of evidence to allow this arm of the Appellants' issue.

F On dual or double nomination, there is no need to go on any judicial expedition. This Honourable Court vide Exhibit X2 and RA23, being certified. true copies of the Supreme Court unanimous Judgment Judgment-SC/CV/501/2023- *PDP v. INEC & 3 Ors*, DELIVERED ON 6/5/2023, had not only determined that the Petitioners in that case had no locus standi to question G the nomination of the 3rd Respondent herein, the Court proceeded to determine with finality that there was no double nomination on the part of the 3rd Respondent.

H Evidently, Exhibit RA22 clearly shows that, the 3rd Respondent who was a senatorial candidate of the 4th Respondent for Borno Central Senatorial District, had eai lier on 6/7/2022,

vide a letter delivered to the 4th Respondent on the same date, notified the party of his withdrawal from the election as the letter's senatorial candidate for the 2023 general election.

I have not seen any reason or perverseness to tamper with the lower Court finding on this issue. The issue is therefore resolved against the Appellants.

Issues 1, 2, 3, 5, 6, and 7 in SC/CV/935/2023, which facts and decisions considered therein are in all fours with this Appeal, shall abide this Appeal.

On the whole, this Appeal lacks merit and is hereby dismissed. Parties are to bear their respective costs.

OKORO JSC: In this Appeal, issues 1, 2, 3, 5, 6 and 7 have been resolved in Appeal No. SC/CV/935/2023 - *Abubakar Atiku & anor v INEC & 2 Ors* earlier this morning. Being similar issue is in the sister Appeal; they shall abide the outcome of Atiku's Appeal. They are accordingly resolved against the Appellants.

My Lords, as for issue No. 4 which has to do with double nomination of the 3rd Respondent, Senator Shettima Kashim, which issue was not in the earlier Appeal alluded to above, it is my view that this Court having settled the issue in Appeal No. SC/CV/501/2023, - *PDP v INEC & 3 Ors* delivered on 26th May, 2023, it is unnecessary to relitigate the matter again in this Court. It is in the interest of Justice that there must be an end to litigation. It is also in the interest of the parties and society. Thus, the Appellants are bound by our decision in SC/CV/501/2023 alluded to above.

A On the whole, this Appeal lacks merit and is hereby dismissed. I shall make no order as to costs.

Appeal Dismissed.

B

GARBA JSC: This is a sister Appeal to the Appeal No. SC/CV/935/2023: *Abubakar Atiku & Anor. v. INEC & 2 Ors*, both of which are from the decisions of the Court of Appeal; sitting
C as the Presidential Election Petition trial Court, dismissing the separate Presidential election petitions tiled by the Appellants on ground of failure to prove same as required by the law.

D

The seven (7) issues raised and canvassed by each of the two (2) Appellants in their respective briefs of argument, are not only identical, but materially, substantially and essentially the
E same.

All the issues argued in this Appeal have been comprehensively, totally, effectively and conclusively considered and resolved in the Judgment in the Appeal No. SC/CV/935/2023, such that the
F repetition of the reasonings and conclusions of the Court on the said issues in this Appeal will serve no practical and useful purpose, ft was on that ground and for that reason that at the hearing of the two (2) Appeals, the Court stated that the decision in the Appeal
G No. SC/CV/935/2023 shall bind and this Appeal shall abide by the said decision.

I have read the Lead Judgment written by my Learned Brother, Hon. Justice J. I. Okoro, JSC, in this Appeal and agree, entirely,
H that the issues 1, 2, 3, 5, 6 and 7 in this Appeal, like in the sister Appeal, are devoid of merit and resolved against the Appellant here, for all the reasons set out in that Appeal.

On the issue four (4) of the Appeal, it has been conclusively and decisively determined and pronounced upon with finality by the Court in the Judgment delivered on the 26th of May, 2023 in Appeal No. SC/CV/501/2023; *PDP v. INEC & 3 Ors.*, which is an extant and binding decision on the Appellants in this Appeal. The issue cannot be relitigated before this Court whist the decision subsists. In fact, it is an abuse of the Court process to bring an Appeal on an issue that has been settled by the Court - *Nyame v. FRN* (2021) 6 NWLR (pt. I 772) 4 (SC).

In the above premises, the Appeal stands unmeritorious and I join the Lead Judgment in dismissing same in all the terms set out therein.

SAULAWA JSC: It's trite, that on October 23, when the instant Appeal came up for hearing, the Learned Senior Counsel were accorded the opportunity of addressing the Court and adopting the submissions contained in the respective briefs of argument thereof, thereby warranting the Court to reserve Judgment to today.

Most particularly, the Appellants' brief of Argument, settled by Dr. Livy Uzoukwu, SAN on 02/10/2023 spans a total of 40 pages. At pages 2-4 of that brief, a total of seven issues have been canvassed for determination:

1. *Whether upon a community reading of the Appellants' petition and the applicable law, the learned Justice of the Court of Appeal were right in striking out/expunging some paragraphs of the Petition and the documentary evidence tendered by the Appellants for being vague, generic,*

imprecise, nebulous ami inadmissible. [Grounds 1, 2, 3, 4, 5, 16, 17 and 50 of the Notice of Appeal].

2. *Whether upon a careful consideration of the Appellants' petition, the Respondents' respective Replies of the Petition and the Appetiants' Replies to the Replies of the Respondents, the learned Justices of the Court of Appeal were right when they struck out some paragraphs of the Appellants' Replies to the Replies of the Respondents to the Petition [Grounds 6 and 20 of the Notice of Appeal].*

3. *Whether having regard to the relevant provisions of the Electoral Act, 2022 as, well as the 1st Schedule thereto, the Federal High Court (Civil Procedure) Rules 2019, Evidence Act, 2011 and current judicial pronouncements on the point, the learned Justices of the Cort of Appeal, were correct in sustaining the objectives of the Respondents to the evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 and consequently striking out the evidence of the aforesaid witnesses and all the documents tendered and admitted in evidence through them for failure of the Appellants to file the written statements on oath of the witnesses along with petition. [Grounds 10, 11, 12, 13, 14 and 15 of the Notice of Appeal].*

4. *Whether having regard to the provisions of Section 13©, 137(1)(d) and 142(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) [herein after 1999 Constitution], Section 31 and 35 of the Electoral*

Act, 2022 and the evidence before the Court, the learned Justices of the Court of Appeal were right when they held that the 2nd and 3rd Respondents were qualified to contest the Presidential Election of 25th February, 2023. [Grounds 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 of the Notice, of Appeal].

5. *Whether having regard to the evidence adduced by the parties, the Learned Justices of the Court of Appeal were right when they held that the Appellants were not able to establish that there was substantial non-compliance with the provisions of the Electoral Act, 2022, which substantially affected the overall result of the election. [Grounds 7, 8, 9, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Notice of Appeal].*

6. *Whether having regard to the provisions of Section 134(2) (b) of the Constitution and the evidence abduced at the trial, the learned Justices of the Court of Appeal were right in coming to the determination that the 2nd Respondent was duly elected as the President of the Federal Republic of Nigeria. [Grounds 45, 46, 47, 48 and 49 of the Notice of Appeal].*

7. *Whether from the totality of the pleadings and evidence adduced, the Court below was right when it dismissed the Appellants' case [Ground 51 of the Notice of Appeal].*

Now, it's important to bear in mind, that the sister Appeal SC/CV/935.2023: *Abubakar Atiku & PDP v. INEC & 2 Ors.* has

just a moment ago been dismissed for lack of merits. Incidentally, the issues 1, 2, 3, 5, 6 and 7 in the instant Appeal are on all fours with the issues 1, 2, 3, 5, 6, and 7 which have been resolved against the Appellants in the said sister Appeal. The six issues inquestion have become rather academic, thus, ought to abide the outcome of the decision in the sister said Appeal. See *Odedo v. INEC* (2008) LPELR - 2204 (SC), wherein this Court aptly held:

> *A suit is academic where it is merely theoretical, makes empty sound, and of no practical value to the Plaintiff even if Judgment is given in his fa vour.*
> *An academic issue or question is one which does not require answer or adjudication by a Court of law because it is not necessary to the case on hand. An academic issue or question could be a hypothetical or moot question. An academic issue or question does not relate to the five issue in the litigation because it is as it will not enure an if right ot- benefit on the successful party.*

Per NIKI TOBI, JSC @ 35 paragrapghs D-H. *Plateau State v. AG. Federation* (2006) 3 NWLR (pt. 976) 346; *Ogbonna v. President FRN* (1997) 5 NWLR (pt. 505) 281; *Hon. Ekebede Uchenna v. PDP & Ors :* SC/CV/148/2023; Judgment delivered on 03/3/2023 (unreported).

What's more, with regards to the issue No. 4 (which has neither been canvassed nor resolved in the said sister Appeal), there is no controversy that the earlier Appeal No. SC/CV/501/2023: *PDP v. INEC & 3 Ors* has settled the issue of the 3rd Respondents' nomination in the Judgment of this Court delivered on 26/05/2023. Thus, it unnecessary and sheer abuse of judicial process to relitigate the issue once again in this Court.

Undoubtedly, the Appellants are undoubtedly bound by the decision of this Court in the said Appeal NO. SC/CV/501/2023. There should be an end to litigation. See *Saraki v. Kotoye* (1992) 9 NWLR (pt. 264) 155; *CBN v. Ahmed* (2001) 11 NWLR (pt. 724) 369 @ 409; *Osun State INEC v. National Conscience Party* (2013) LPELR - 20134 (SC) @15 paragraphs G-F.

In the circumstances, I am in full concurrence with the reasoning and, conclusion reached in the lead Judgment just delivered by my learned brother Okoro, JSC, to the effect that the instant Appeal ought to abide the Judgment in the sister Appeal NO. SC/CV/935/2023: *Atiku Abubakar & PDP v. INEC & 2 Ors* delivered a moment ago.

Appeal Dismissed.

No order as to costs.

JAURO JSC: I had the advantage of reading a draft copy of the Judgment just delivered by my learned brother, John Inyang Okoro, JSC. I entirely agree with the reasoning and conclusion contained therein, that the Appeal is devoid of merit and ought to be dismissed. I also agree that issues 1, 2, 3, 5, 6 and 7 formulated in this Appeal have been resolved in Appeal No. SC/CV/935/2023 between: *Abubakar Atiku & Anor v. Independent National Electoral Commission (INEC) & 2 Ors*, earlier delivered this morning. The issues shall abide the outcome of the said Appeal. For the sake of emphasis, I wish to add this short contribution.

This Appeal is against the Judgment of the Court of Appeal delivered on 6th September, 2023 which dismissed the Appellants' Petition and affirmed the 1st Respondent's declaration of the 2nd

A Respondent as the winner of the Presidential election conducted on 25th February, 2023 and the duly elected President of the Federal Republic of Nigeria. The election was contested by 18 candidates sponsored by their respective political parties. As per
B the results declared by INEC, the 2nd Respondent sponsored by the 4th Respondent won the election by polling 8,794,726 votes; Peoples Democratic Party (PDP) and its candidate, Alhaji Atiku Abubakar came second with 6,984,520 votes; while the Appellants finished third with 6,101,533 votes. The Appellants were
C displeased by the outcome of the election, hence they filed a Petition challenging same before the lower Court.

After hearing the witnesses called by parties to the Petition and
D considering the addresses of their respective counsel, the lower Court dismissed the Petition. The Appellants were miffed with the Judgment of the lower Court and they therefore instituted the instant Appeal via a Notice of Appeal predicated on 51 grounds.

E

One of the complaints of the Appellants in this Appeal, is against the decision of the lower Court to the effect that the 2nd Respondent was qualified to contest the election. Their complaint
F against the qualification of the 2nd Respondent in the Petition had two limbs. Firstly, it was contended that the 2nd Respondent was not qualified to contest, having been "fined" the sum of $460,000 for an offence involving dishonesty, that is trafficking in narcotics. Secondly, they argued that 3rd Respondent was caught by double/
G multipie nomination contrary to Section 35 of the Electoral Act, 2022, which soiled the joint ticket on which the 2nd and 3rd Respondents contested the election.

H On the issue of the alleged fine of $460,000.00 supposedly imposed on the Appellant by a Court in the United States of America, the Appellants relied on Section 137(l)(d) of the

Constitution of the Federal Republic of Nigeria, 1999 (as altered) which provides thus:

> "(1) A person shall not be qualified for election to the office of President if —
>
> (d) he is under a sentence of death imposed by any competent Court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any Court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a Court or tribunal."

There is no gainsaying that the above provision will only serve to disqualify a person on whom a sentence of fine was imposed after conviction resulting from a criminal trial. The Appellants themselves agree that the case referred to by them only involved a civil forfeiture, without an arraignment or trial. Furthermore, the Appellants have not been able to show that the forfeiture or "fine" as they put it, was a criminal sentence.

From the foregoing, it is clear to all that the disqualifying provision of Section 137(1)(d) of the Constitution cannot apply to disqualify the 2nd Respondent.

On the alleged double nomination of the 3rd Respondent, all I have to say is that the issue has been fully, effectively and finally resolved and laid to rest in the decision of this Court now reported as *PDP v INEC & Ors* (2023) LPELR - 60457 (SC). It is not open to this Court to reconsider same.

A Consequent upon the foregoing and the reasons contained in the lead Judgment, which I am fully in agreement with and adopt as mine, the Appeal is hereby dismissed by me. I affirm the Judgment of the lower Court and abide by all consequential orders made in
B the lead Judgment.

ABUBAKAR JSC: My Lord and brother OKORO, JSC, granted
C me the privilege of having a preview of the leading Judgment rendered in this Appeal. I entirely agree that issues 1, 2, 3, 5, 6 and 7 have been dealt with in detail in the leading Judgment in Appeal number SC/CV/935/2023, *Abubakar Atiku & Anor v. Independent National Electoral Commission (INEC) & 2 Ors*,
D delivered by this panel. This is therefore an off shoot of the same Judgment.

I agree that the only issues not fully addressed in that
E Judgment as canvassed by the Appellants in this Appeal is issue number 4 dealing with the nomination of Senator Kashim Shettima as the Vice-Presidential candidate of the 4th Respondent. In my view too, this issue has been dealt with by this Court in *PDP v. INEC & 3 Ors* delivered on the 26th day of May 2023. Appellants
F Appeal on this point amounts to an attempt to relitigate the point on nomination of Senator Shettima, this certainly offends the settled position of the law that there must be an end to litigation, this issue having been fully settled by this Court. The Appellant
G will not be allowed to relitigate this issue, it is therefore needless and totally unnecessary, parties are bound by our decision of 26th May, 2023 in Appeal number SC/CV/501/2023.

H This Appeal therefore lacks merit it is hereby dismissed.

Appeal dismissed.

AGIM JSC: I had a preview of the Judgment delivered by my learned brother, Lord Justice, JOHN INYANG OKORO, JSC. I completely agree with the reasoning, conclusions, decisions and orders therein. Let me however contribute my views on some of the issues.

Let me consider the issue of the Order of the United States District Court, Northern District of Illinois that the sum of 406,000 USD in the account of the 2nd Respondent be forfeited to the State. It is not in dispute that this is a non-conviction based forfeiture. There is nothing to show that the forfeiture was a punishment for the 2nd Respondent's conviction for any offence. There is no evidence of any conviction of any sort. It is a civil forfeiture made because the source of the money could not be explained. It is trite law that a civil forfeiture is a unique remedy that does not require conviction or even a criminal charge against the owner of the money. A civil forfeiture does not qualify as a fine or punishment for any unlawful activity so the argument that it qualifies as a fine for an offence involving dishonesty or fraud is not correct.

Let me also consider the question of whether S. 134(2) of the Constitution of the Federal Republic of Nigeria 1999 (the 1999 Constitution) requires that a candidate for an election to the office of President who has the highest number of votes cast at the election and not less than one-quarter of the votes cast at the election in each of at least two thirds of all the 36 states in the Federation must additionally have one-quarter of the votes cast in the election in the Federal Capital Territory, Abuja before he can be deemed to have been duly elected as President.

S.134(2) of the 1999 Constitution provides that -

A "A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election

B (a) he has the highest number of votes cast at the election, and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the states in the Federation and the Federal Capital Territory, Abuja."

C

It is obvious that states of the Federation and the Federal Capital Territory, Abuja were lumped together as a group by D Subsection (2)(b) above. What differentiates the constituents of the group is their names and nothing more. One of them is called Federal Capital Territory and the rest called states of the Federation. Subsection(2) (b) clearly refers to two- thirds of all E the constituents of the group enumerated therein as the minimum number from each of which a candidate must have one-quarter of the votes cast therein. There is nothing in Subsection (2)(b) that requires or suggests that it will not apply to the areas listed therein F as a group. The argument of Learned SAN that the provision by using the word "and" to conclude the listing of the areas to which it applies has created two groups to which it applies differently is, with due respects, a very imaginative and ingenious proposition that the wordings of that provision cannot by any stretch G accommodate or reasonably bear. If S. 134(2) of the 1999 Constitution intended that the Federal Capital Territory, Abuja should be distinct from states of the Federation as a distinct group it would not have listed it together with states of the Federation in H (b). Also, if S. 134(2) had intended having one-quarter of the votes cast in the Federal Capital Territory Abuja as a separate requirement additional to the ones enumerated therein, it would have clearly

stated so in a separate paragraph numbered (c). It is glaring that S. 134(2) prescribed two requirements that must be cumulatively satisfied by a Presidential candidate in an election contested by not less than two candidates, before he or she can be deemed duly elected President. It prescribed the first requirement in (a) and the second one in (b). It did not impose a third requirement and so there is no (c) therein.

The Constitutional or statutory requirements to be satisfied for a candidate to be declared elected must be the ones expressly and clearly prescribed in the Constitution or statute as the case may be. A requirement that is not expressly and clearly prescribed cannot be assumed or implied to exist under any guise. Since S.134(2) or any other part of the 1999 Constitution did not expressly and distinctly prescribe that a Presidential candidate must have not less than one-quarter of the votes cast in the Federal Capital Territory, Abuja as a third requirement additional to the two expressly prescribed, before he or she can be deemed duly elected as President, it is not a requirement for election to that office.

The grouping of Federal Capital Territory, Abuja with states of the Federation in S. 134(2) (b) of the 1999 Constitution so that the provision can apply to them equally is consistent with the tenor and principle of the 1999 Constitution treating the Federal Capital Territory, Abuja as a state of the Federation. This is clearly stated in S.299 of the 1999 Constitution thusly-

"The provisions of this Constitution shall apply to the Federal capital Territory, Abuja as if it were one of the States of the Federation; and accordingly-

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly,

A the Governor of a State and in the Courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the Courts which by virtue of the foregoing provisions are Courts established for the Federal Capital Territory, Abuja;

B (b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and

C (c) the provisions of this Constitution pertaining to the aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section."

D

Even though words are most often prone to different meanings and even very simple words can be" differently understood, the words of S. 134(2) (b) cannot accommodate or E support or bear what Learned SAN for the Appellants proposed as its meaning. Such meaning would result in a situation where a Presidential candidate that has the highest votes cast in the election and not less than one-quarter of the votes cast in not less F than two-thirds of 36 states of the Federation or in all the states of the Federation cannot be deemed duly elected as President because he did not have one-quarter of the votes cast in the Federal Capital Territory, Abuja. This certainly violates the egalitarian principle of equality of persons, votes and the constituent G territories of Nigeria, a fundamental principle and purpose of our Constitution. Such a meaning is unconstitutional. I think that his said proposition is the result of reading those provisions in isolated patches instead of reading them as a whole and in relation to other H parts of the Constitution. Reading and interpreting the relevant provision as a whole and together with other parts of the Constitution as a whole is an interpretation that best reveals the

legislative intention in the relevant provision. Sir Vahe Bairamian (Former Justice of the Supreme Court of Nigeria) in his book Synopsis 2 stated thusly -

> "Any document to be rightly understood must be read as whole. According to Lord Coke " It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers and this exposition is ex visceribus actus." (from the bowels of the statute). Reading it through helps also in gathering its object. An effort must be made to understand it as a harmonious whole."

Courts across jurisdictions have, through the cases laid down the conceptual tools that should be used in the application of constitutional provisions and in the process evolved the principled criteria upon which the interpretation of the Constitution must proceed. Just as the criteria for the interpretation of statutes differ between statutes according to the subject matter of each statute, the criteria for the interpretation of statutes and other documents must be different from those for the interpretation of the Constitution because of its sui generis nature as the fundamental and supreme law of the land, an organic document and a predominantly political document. Therefore it must be interpreted in line with principles suitable to its spirit and character and not necessarily according to the general rules of interpretation of statutes and documents. One of the principles suitable to its sui generis nature is that it must be given a benevolent, broad, liberal and purposive interpretation and a narrow, strict, technical and legalistic interpretation must be avoided to promote its underlying policy and purpose. In interpreting the part of the Constitution providing for elections to public offices in a constitutionally

established democratic culture, the Court must do so on the basis of principles that give the provision a meaning that promotes the values that underlie and are inherent characteristics of a democratic society.

For the above reasons and the more detailed ones brilliantly stated in the lead Judgment, I dismiss this Appeal.