**IN THE COURT OF APPEAL OF NIGERIA**
**IN THE KANO JUDICIAL DIVISION**
**HOLDEN AT KANO**

APPEAL NO.: _____
PETITION NO: EPT/KN/GOV/01/2023

**BETWEEN:**

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

**(Appellant)**

**AND**

1. ALL PROGRESSIVES CONGRESS (APC)
2. YUSUF ABBA KABIR
3. NEW NIGERIA PEOPLE'S PARTY (NNPP)

**(Respondents)**


## NOTICE OF APPEAL

**TAKE NOTICE** that the Appellant being dissatisfied with the Judgment delivered by the Governorship Petition Election Tribunal sitting in Kano, *Coram:* **Hon. Justice Oluyemi Akintan-Osabebay (Chairman); Hon. Justice I. Gandu (Member I)** and **Hon. Justice Benson Anya (Member II)** on the 20th day of September, 2023, in **PETITION NO. EPT/KN/GOV/01/2023, Between: ALL PROGRESSIVES CONGRESS (APC) V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & 2 ORS.**, doth hereby appeal to the Court of Appeal, upon the grounds set out in **Paragraph 3** below, and will at the hearing of the appeal, seek the reliefs set out in **Paragraph 4.**

**AND** the Appellants further state that the names and addresses of the persons directly affected by the Appeal are those set out in **Paragraph 5.**



OFFICIAL

## 2. PART OF THE DECISION COMPLAINED OF:

The entire decision (including rulings on interlocutory matters incorporated in the final Judgment except those resolved in favour of the Appellant).

## 3. GROUNDS OF APPEAL:

### GROUND ONE

The trial Tribunal erred in law and misdirected itself when, relying on Sections 177 (c) , 221 of the Constitution and Sections 133 (1) and 136 of the Electoral Act, it dismissed the Appellant's (1st Respondent's) objections, that reliefs 4 and 6 sought by the 1st Respondent (the Petitioner) could not be granted to its candidate who is not a party to the petition and instead held at pages 31 of (as well as Pages 41 to 42) and 221 to 222 of the judgment as follows:

> **"...In effect and what the tribunal is saying, is that for the grounded constitutional and entrenched principle, that the candidate is sponsored by his political party, the argument of counsel to the 1st Respondent and other Respondents in this petition cannot suffice. The authorities cited by counsel to the Respondents are not on all fours with this principle of law. In the light of the foregoing constitutional provision, a political party and the candidate, sponsored by it, for an election, have a joint right or interest in the outcome of the election and both can present an election petition. ....." (page 31)**
>
> **".....In the light of the above stated principle of law, this tribunal has no difficulty in holding that the petitioner's candidate, though not joined as a party in this petition, can still benefit from the outcome of the election petition, whether the outcome is good or**

**bad. We hold that the Petitioner can without her candidate claim the reliefs in the petition. Consequently, the reliefs in paragraph 99 (1, 2, 3, 4, 5, 6, 7, 8 and 9) of the petition and every other alternative reliefs are duly constituted and the Honourable Tribunal has the jurisdiction to determine those reliefs either way, based on the evidence before the Honourable Tribunal and as presented by the parties. This issue is resolved in favour of the Petitioner..." (page 42)**

PARTICULARS

a. *Section 177 (c) and 221 of the 1999 Constitution (As Amended)* confers sole rights on political parties to sponsor and canvass for votes for candidates to an election. The sections do not confer rights to the political parties to be 'returned' as elected or for their candidates returned in *abstentia* in a disputed election.

b. *Section 133 (1) a of the Electoral Act 2022* recognises the right of a political or its candidate to present a petition. It does not confer benefit on a person who is not a party to the petition.

c. NASIRU YUSUF GAWUNA, the candidate of the 1st Respondent, was not a party to the Petition before the trial Tribunal.

d. NASIRU YUSUF GAWUNA, having failed to exercise the right granted to him by *section 133(1)(a) of the Electoral Act 2022* and *section 285(5) of the 1999 Constitution* to present a petition, that right is extinguished and no longer justiciable.

e. *Section 136 (1), (2) and (3) of the Electoral Act, 2022* confer benefits only on a candidate at an election; a political party at the election cannot substitute itself for the candidate.

f. The 1st Respondent's main reliefs in Paragraph 99 (4), (6) and (9) inure only to the benefit of the candidate of a political party who, in the instant Petition, is not party to the Petition.

g. The trial Tribunal lacks the jurisdiction to make orders or grant reliefs in favour of a person who is not a party to the Petition.

h. The tribunal wrongly applied the provisions of ***Section 133 of the Electoral Act 2022*** and the case of ***All Progressive Congress V Peoples Democratic Party 2019 LPELR-49499 CA*** in arriving at the decision that NASIRU YUSUF GAWUNA scored the majority of votes cast.

i. *Section 133 of the Electoral Act 2022* does not give the Tribunal the power to confer benefit on a candidate who did not challenge the outcome of an election in which he participated.

j. The Tribunal failed to consider the definition provision of *'return'* in *Section 152 of the Electoral Act 2022* to the effect that the Appellant can only return a candidate in an election under the *Electoral Act 2022* as the winner of an election and not a political party.

## GROUND TWO

The trial Tribunal erred in law when it failed to uphold the objection in relation to paragraphs 22, 24, 32, 48, 53, 61, 74, 81, 92, 93 and 97 of the Petition for being vague too general and imprecise contrary to the requirement of Paragraph 4(1) of Schedule 1 to the Electoral Act and instead held at Page 61 of the judgment thus:

> **"We have thoroughly read Paragraphs 22, 24, 32, 48, 53, 61, 74, 81, 92 93 and 97 of the Petition and we observe that those Paragraphs are specific. It is only on the consideration of the facts adduced and evidence relied upon at the trial, that this court can determine whether such facts are scanty, vague, or too generalized and not *in limine* at this jurisdictional objection stage. For the aforesaid reason, this ground of objection is hereby dismissed."**

### PARTICULARS

a. *Paragraph 4(1)(d) of the First Schedule to the Electoral Act, 2022* mandates that the facts and the grounds of an election petition shall be clearly stated, leaving no room for conjecture or speculation.

b. Paragraphs 22, 24, 32, 48, 53, 61, 74, 81, 92 93 and 97 of the Petition are vague, imprecise and nebulous, contrary to *Paragraph 4(1) (d) of the First Schedule to the Electoral Act, 2022*.

c. By *Paragraph 4(7) of the First Schedule to the Electoral Act, 2022*, the trial Tribunal has the jurisdiction and the powers to strike out Paragraphs 22, 24, 32, 48, 53, 61, 74, 81, 92 93 and 97 of the Petition *in limine*.

d. In the entirety of its judgment on the merit *vel non* of the Petition, *i.e* after a *"consideration of the facts adduced and evidence relied upon at the trial"*, the trial Tribunal failed to determine whether Paragraphs 22, 24, 32, 48, 53, 61, 74, 81, 92 93 and 97 of the Petition are vague or not.

e. The trial Tribunal refused to follow and be bound by the Supreme Court's decisions in ***BELGORE v. AHMED (2012) 2 LRECN 532; PDP v. INEC (2022) LPELR-9712*** **and** ***OJUKWU v. YAR'ADUA (2009) 12 NWLR (Pt. 1154) 50 at 148-149.***

f. On the doctrine of stare decisis, the lower tribunal is bound to follow decisions of the Supreme Court on the same issues, particularly where such decisions were brought to its attention.

g. In *BELGORE v. AHMED (2012) 2 LRECN 532; PDP v. INEC (2022) LPELR-9712 and OJUKWU v. YAR'ADUA (2009) 12 NWLR (Pt. 1154) 50 at 148-149*, which were brought to the attention of the Tribunal, the Supreme Court held that vague and imprecise pleadings should be struck out.

## GROUND THREE

The trial Tribunal erred in law, when it dismissed the Appellant's objection challenging the competence of Paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68, 69, 73, 74, 80, 81, 92, 93 and 94 of the Petition which contain multifarious allegations of corrupt practices.

### PARTICULARS

a. The Petition leading to this appeal was not presented before the lower Tribunal on the ground that the election is invalid by reason of corrupt practices.

b. As rightly found by the trial Tribunal at Page 62 of the judgment, the Petitioner admitted that Paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68, 69, 73, 74, 80, 81, 92, 93 and 94 of the Petition contain sundry allegations of corrupt practices.

c. "Corrupt Practices" is not a ground on which the election is being challenged in the Petition.

d. Facts pleaded in a petition not supported by the ground or grounds on which the petition is predicated, such facts are incompetent and liable to be struck out.

e. The various factual allegations of corrupt practices pleaded in Paragraphs 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 67, 68, 69, 73, 74, 80, 81, 92, 93 and 94 of the Petition are not in support of any ground of the Petition contrary to *Section 134 of the Electoral Act, 2022 and Paragraph 4(1) (d) of the First Schedule to the Electoral Act, 2022.*

f. The principle of substantial justice cited by the Tribunal was wrongly applied in this context.

## GROUND FOUR

The Tribunal erred in law and occasioned a grave miscarriage of justice, when having ruled in relation to the objection on the competence of Ground 2 of the Petition at Page 48 of the judgment that: **"It has been consistently held, that it is only the party (in this case, the 3rd Respondent), that has the prerogative of determining who are its members and the 3rd Respondent, *having sponsored the 2nd Respondent as its candidate for the Governorship Election in Kano State on the 18th of March 2023, the 2nd Respondent has satisfied the requirement of being a member of the 3rd Respondent* as provided for in Section 134(1)(a) of the Electoral Act 2022"**, the Tribunal then turned summersault, entertained the said ground 2 of the Petition and held that the 2nd Respondent is not qualified to contest the election because he is not a member of the 3rd Respondent.

## PARTICULARS

a. The decision of the Tribunal is patently contradictory and conflicting. Having ruled that the 2nd Respondent has satisfied the requirement of membership and sponsorship of his political party, and the matter cannot be contested by the Petitioners, the

Tribunal cannot reopen the matter and reach a different conclusion in the same Judgment.

b. The issue of jurisdiction and locus standi are not matters that the tribunal can consider on the merit when it has decided that it does not possess them in its earlier ruling on the preliminary objection.

c. Having found that the 2nd Respondent satisfied the requirement of being a member of the 3rd Respondent the Tribunal cannot make a contrary finding.

d. The finding that it is the *prerogative of the party to determine who its members are* also precluded the Tribunal from determining that the 2nd Respondent was not a member of the 3rd Respondent.

e. The decision of the trial Tribunal is perverse and same ought to be set aside *ex debito justicae.*

## GROUND FIVE

The Tribunal erred in law and fell into grave error when it failed or neglected to properly evaluate the evidence before it especially evidence elicited during cross examination by the Appellant which had a far-reaching consequence on the resolution of the issues in the Petition thereby occasioning a miscarriage of justice to the Appellant.

### PARTICULARS

a. The Appellant had contended at the trial that the PW1 – PW30 were not the agents of the 1st Respondent in any of the polling units over which they adduced evidence.

b. **Exhibit 2R17 (X)** - the list of agents submitted by the 1st Respondent to the Appellant was tendered to support the contention in (i) above.

c. The PW31, a witness of the 1st Respondent had confirmed in his evidence, the authenticity of **Exhibit 2R17 (X)** as the list of agents sent to the Appellant by the 1st Respondent.

d. The names of the PW1 – PW30 did not appear in **Exhibit 2R17 (X).**

e. The question as regards whether the PW1 – PW30 were the polling agents of the Appellants was fundamental to their competence to adduce evidence at the trial.

f. Without the evidence of these witnesses the tribunal could not have given Judgment to the Appellant.

g. The tribunal in arriving at its decision completely ignored this issue.

h. The Appellant had, in its preliminary objection, challenged the competence of ground 3 in the petition as regards whether a petitioner could present a petition on the ground that the winner of an election did not score a majority of lawful votes where there were more than two candidates in that election.

i. The trial Tribunal refused to resolve this issue one way or the other.

j. The evidence elicited by Appellant and the 2nd – 3rd Respondents under cross – examination of the Petitioners' witnesses was completely ignored by the Tribunal in resolving the issues canvassed at the trial.

k. All Courts/Tribunals are bound to hear as well as demonstrate a full and dispassionate consideration of all the issues properly raised and heard before it irrespective of how stupid the court may think the issues are.

l. The trial Tribunal's failure to consider and determine vital issues raised before them one way or the other and or utilized the evidence adduced before them in resolving such issues has breached the Appellant's right to fair hearing thus, rendering the entire proceedings and judgment of the trial Tribunal a nullity.

## GROUND SIX

The Tribunal erred in law and violated the Appellant's fundamental right by descending into the arena of the case especially by privately examining documents in the recesses of their chambers, carrying out mathematical calculations, making discoveries and investigations and thus arrived at answers that only evidence demonstrated in the open court could have revealed, which in this case was not so demonstrated, thus rendering the entire proceedings a nullity.

### PARTICULARS

a. It was apparent from the Judgment of the Tribunal that it descended into the arena and took steps which it ought not when it stated in the judgment as follows:

   i. (It the tribunal)...."**Painstakingly combed through** the above listed exhibits page by page, especially exhibits P44 – P93, and the other exhibits listed above." (pages 184 of the Judgment)
   ii. "In fact, **this tribunals physical calculation** of the total number of PVC (Collected by voters in the affected polling units Exhibit P44 to P79 and Exhibits P81 to P93 (c) is total of 268, 565 (human errors to be taken into

consideration) This Tribunal, hereby resolves that the number of voters who collected their PVCs (i.e. 231, 848) in the affected polling units using the calculation of the Petitioner, exceed the margin of lead (128, 897) between the Petitioner and the 2nd Respondent" – (page 200 of the Judgment)

iii. "**Upon critical analysis and physical examination of Exhibits P5, P6, P16c, P18 – P34a, this Honourable Tribunal made discoveries. Exhibits P5, P6 – P16, P18 – 34a** were either not signed, not named, dated nor stamped or a combination of all" (page 212 of the Judgment).

b. A trial court cannot privately conduct an investigation or 'painstakingly comb through" or carryout a "calculation" or "physical examination of documents" which was not carried out in open court in order to arrive at its conclusion.

c. A trial is the public demonstration and testing through cross–examination before a court of the cases of the contending parties.

d. Exhibits P44 – P93 are EC40G series in respect of election purportedly cancelled by the Appellant and they were all tendered from the Bar.

e. Exhibits P44 – P93 consists of 50 different exhibits admitted together from the Bar.

f. 32 witnesses gave evidence for the Petitioner at the trial.

g. 30 out of the 32 witnesses were alleged to be polling unit agents.

h. Only one out of the 30 witnesses i.e. - PW22 gave evidence and linked Exhibit P81 – Form EC40G PU to his polling unit.

i. 11 out of the 30 witnesses, (PW. 5, PW8, PW9, PW10, PW11, P13, PW16, PW19, PW20, PW21, P23 who were polling unit agents, merely identified Exhibits P50, P58, P59, P66d, P66a, P44 which are Forms EC40G1, that had no nexus with their polling units.

j. Only 7 out of the 50 exhibits were linked to the 1st Respondents case in open Court.

k. The Court, rather than restrict itself to the exhibits identified in open court decided to examine all the exhibits that were not mentioned and or linked by any of the witnesses in open court to the case of the 1st Respondent and determine the case based on their discovery.

l. The total number of PVCs collected in the polling units where these witnesses gave evidence both in their respective statements on oath and the Forms EC40G is 20, 862 PVCs far less that the number discovered by the Court through its own exercise and ingenuity.

m. The Court on its own examined and ferreted out extra number of PVC's collected and arrived at 231, 848 when there was no evidence to establish that figure.

n. As regards Exhibits **P5, P6, P16c, P18 – P34a none of the witnesses linked the contents of the exhibits to the respective complaints of the Petitioners in the petition.**

o. **The only thing the PW32 said about these exhibits is: "These are the ballot papers referred to by me."**

p. Under cross – examination, PW32 admitted that there were stamps of INEC, signatures, and dates on the ballot papers – Exhibits P5 – P15, Exhibits P27h, and P27e.

q. The only evidence given by the PW32 (the alleged expert who carried out the analysis of the ballot papers) about Exhibits **P5, P6, P16c, P18 – P34a** was limited to identifying them. The Court's record reads: "witness shown Exhibits P5, P6 to P16c, P18 – P34a "These are the documents I worked on. I was given a letter of engagement. My name is there and has the logo of the Petitioner."

r. The witness (PW32) admitted under cross – examination that the Ballot Papers had the logo and official mark of INEC which answers the trial Court completely ignored.

s. The PW32, by his evidence on oath stated that there were 164, 036 ballot papers that were invalid by reason of non – compliance with the requirement of the Electoral Act as regards the requirement of official stamp, signature and date by Presiding Officers

t. The Court on its own carried out an investigation and arrived at figures far higher than the one mentioned by the witness in his statement on oath (165, 616 ballot papers).

u. The admission by the witnesses (PW31 and PW32) that INEC official mark and logo was present on the ballot paper was completely ignored by the trial Court.

v. The trial Court, by examining documentary evidence on its own and carrying out the mathematics of arriving at answers which only evidence tested under cross – examination could provide had breached the Appellant's right to fair hearing.

w. The entire proceedings are a nullity.

## GROUND SEVEN

The learned trial Judges of the Tribunal erred in law when they held that the 2nd Respondent was not qualified to be nominated to contest the 2023

General Election; they thereby occasioned a miscarriage of justice when they held at Pages 132 and 134 as follows:

> **"...It is the view of this Tribunal, that going by the above Supreme Court authority, every candidate at an election must at all stages of the election and the process, have an existing and unbroken membership of the political party sponsoring him at the election. If the candidate of the political party is shown not to be a member of the political party, at any stage of the electoral process, he would be said to not be in compliance with the requirement of the Constitution and the Electoral Act, thereby rendering his participation as null and void. It must be emphasized with the highest judicial authority that election does not mean "poll". It means the entire electoral process. It goes beyond casting of votes and declaration of winners. It is a process concerning with delimitation of constituency, nomination and accreditation of candidates, voting, counting the collation of votes, culminating in return or declaration of results... The Respondents therefore failed to discharge the burden of proof shifted to them to prove that the 2nd Respondent is a member of the 3rd Respondent at the time of election into the office of Governor of Kano State. In the circumstances, this issue is hereby resolved in the favour of the Petitioner and against the Respondents. On the strength of the foregoing, we hold that the 2nd Respondent was not qualified to be nominated to contest the 2023 General Election, because he was not a member of the 3rd Respondent, and his name is not contained in the register of members submitted by the 3rd Respondent to the 1st Respondent..."**

PARTICULARS

a. *Section 134 (3) of the Electoral Act, 2022* delimits the basis to a claim for disqualification in an election Petition.

b. A claim on alleged disqualification in an election Petition can only be successfully made if evidence is led by a Petitioner in relation to the provisions of *Section 177 and 182 of the Constitution.*

c. Evidence led by the 1st Respondent in relation to the alleged non-qualification of the Appellant is in relation to *Section 77(2) and (3) of the Electoral Act, 2022*.

d. The findings of the lower tribunal on alleged non-qualification of the Appellant are located within the confines of *Section 77(2) and (3) of the Electoral Act, 2022* which the lower tribunal lack jurisdiction to entertain.

e. A candidate for gubernatorial election who is qualified to contest an election under *Sections 177 and 182 of the 1999 Constitution (As Amended)* cannot be disqualified to contest such election under any provision of the Electoral Act, 2022 or any other law in force in Nigeria.

f. There is no constitutional or any statutory requirement that a person must have an "unbroken" membership of a political party from the point of delimitation of constituencies to the final declaration of the winner of the election.

g. The qualification for a governor under *section 177(c) of the 1999 Constitution (As Amended)* is for the 2nd Respondent to be a member of the 3rd Respondent as evidenced in Exhibit 3R1 and P1.

h. The requirement for the name of the 2nd Respondent to be contained in the register of members of the 3rd Respondent is not contemplated within the provisions of *section 177(c) of the 1999 Constitution (As Amended)*.

i. *Section 77 (2) of the Electoral Act, 2022* does not provide for the requirement of membership of a candidate of an election, it only provides that parties shall maintain a register of members with the Appellant.

j. It is the sole prerogative of the 3rd Respondent to determine who its members are and who to sponsor for election under its platform.

k. The 2nd Respondent has satisfied the conditions for membership of the 3rd Respondent and thus fielded as its governorship candidate.

l. The 1st Respondent has no right and vires to question the membership of the 2nd Respondent with the 3rd Respondent.

## GROUND EIGHT

The trial Tribunal erred in law, when it admitted and acted on the evidence of PW32 whose Witness Statement on Oath was not filed and frontloaded along with the Petition.

### PARTICULARS

a. *Paragraph 4(5) of the First Schedule to the Electoral Act, 2022* provides that an Election Petition *shall* be accompanied by Witness Statements on Oath of witnesses whom the Petitioner intends to call at the trial.

b. In the Petition leading to this appeal, the Witness Statement on Oath PW32 (a subpoenaed witness) was not filed and frontloaded along with the Petition.

c. The provision of *Paragraph 4(5) of the First Schedule to the Electoral Act, 2022* is mandatory and commands strict compliance.

d. The Witness Statement on Oath of PW32 is worthless, not having been filed and frontloaded along with the Petition and outside 21 days, contrary to *Section 285(5) of the 1999 Constitution (As Amended)*.

e. The trial Tribunal ought to have discountenanced the entire evidence of Pw32.

## GROUND NINE

The trial Tribunal erred in law, when it countenanced and acted on the evidence of Pw32, including Exhibit P169, which are hearsay and computer-generated evidence unaccompanied by any Certificate of Compliance contrary to Section 84 of the Evidence Act.

### PARTICULARS

a. Pw32 who testified as an expert and tendered Exhibit P169 did not establish his skills and qualification to analyse or impugn the entries in INEC electoral documents used for the election.

b. Exhibit P169 is a computer-generated evidence/document and same was not accompanied by a Certificate of Compliance in violation of the mandatory requirement of Section 84 of Evidence Act.

c. Pw32 who testified as an expert was not present in any Polling Unit in Kano State during the election, on the basis of which he purportedly analysed the Polling Unit Results in INEC Form EC8As and other electoral documents used for the election.

d. The entire evidence of Pw32 including Exhibit P169 are hearsay evidence.

e. The oral testimony of Pw32 as well as Exhibit P169 are inadmissible and ought to have been rejected and/or expunged from the record of the trial Tribunal.

## GROUND TEN

The trial Tribunal erred in law and misdirected itself by misconstruing Section 137 of the Electoral Act 2022 and paragraph 46 (4) of the First Schedule to the Electoral Act 2022 and reached a conclusion that there are manifest irregularities on the face of heaps and loads of lorry or documents dumped on it by the 1st Respondent and absolved the 1st Respondent from leading oral evidence to demonstrate those irregularities thereby occasioning a grave miscarriage of justice, when it held at Pages 166, 184 and 205 of the judgment as follows:

> **"Let us point out, that the current position of the Electoral Act, 2022 in Nigeria now, is that a party who alleges non-compliance with the provisions of the Electoral Act, 2022 for the conduct of election need not call oral evidence if the originals or certified true copies of election documents used in the conduct of the election manifestly discloses the infraction alleged... This Tribunal, *has painstakingly combed through* the above listed exhibits page by page, especially exhibits P44 to P93, and the other Exhibits listed above... From the evidence before the Honourable Tribunal, we hold that the Petitioner successfully proved that there was substantial non-compliance with the provisions of the Electoral Act in respect to the ground one of her Petition..."**

### PARTICULARS

a. The bundles of documents tendered by the Petitioners from the bar did not manifestly disclose substantial non-compliance with the provisions of the Electoral Act, 2022 and other applicable laws in the conduct of the election.

b. The Petitioners did not call witnesses, particularly the makers of Exhibits P44 to P93 and other bundles of electoral documents tendered from the bar to demonstrate those documents and link them to specific/relevant areas of the Petitioner's case.

c. Exhibits P44 to P93 and other bundles of electoral documents tendered by the Petitioners from the bar were dumped on the trial Tribunal and completely lack probative value.

d. It is not part of the duties of the trial Tribunal to go in the recesses of its Chambers and *"comb through"*, investigate or conduct surgical operation on Exhibits P44 to P93 and other bundles of electoral documents tendered by the Petitioner from the bar, without those documents demonstrated during trial and in the open Tribunal.

e. The facts pleaded in support of the purported ground of non-compliance were an inextricably mixed up with serious criminal allegations, which took the consideration of the case wholly outside the orbit of the provisions of section 137 of the Electoral Act 2022 and Paragraph 46(4) of the First Schedule to the Act.

f. The decision of the lower Tribunal is perverse.

g. *Section 137 of the Electoral Act, 2022* does not relieve the Petitioner of the burden of proof to prove the allegation of non-compliance.

## GROUND ELEVEN

The learned Justices of the trial Tribunal erred in law in holding that the errors alleged by the Petitioners were manifest on the face of the documents tendered without indicating the nature of the errors and how they were manifest.

### PARTICULARS

a. The Report of Presiding Officers containing the details of what transpired at the polling units together with reasons for cancellation of election are the basic evidence to establish that elections were cancelled.

b. The Petitioners did not tender forms EC40G PU or the reports of the Presiding Officers of the Polling units challenged to show that elections were cancelled in those polling units.

c. The Petitioners needed to have called polling units agents or voters to therefore adduce evidence at the trial to show that elections were cancelled at those polling units and the reasons for the cancellation of the elections in those polling units.

d. No such evidence was produced by the petitioners.

e. The Petitioners ought to have produced and demonstrated before the tribunal the number of accredited voters in the BVAS device or a report of inspection of BVAS duly certified by INEC to prove over voting.

f. No such report was produced at the trial and the contents of the BVAS device were not displayed in the open court.

g. Over voting cannot therefore be said to be manifest.

h. Violence cannot also be proved through documents.

## GROUND TWELVE

The learned Justices of the Tribunal erred in law in failing to properly evaluate evidence led by the Appellant in relation to the resolution of issue No. 2 in the substantive judgment, that is whether the election was invalid by reason of non-compliance with the Electoral Act, when after detailed evaluation of evidence and submission of counsel to the 1st Respondents, the Tribunal Held in respect of the Appellant (and other Respondents) held at page 161 of the Judgment, that it has taken judicial notice of the submissions of the Appellant and without reviewing and evaluating the Appellant's submissions and evidence before it, went ahead to enter judgment in favour of the1st Respondent

on the basis of their pleadings and written address thereby occasioning a miscarriage of justice.

PARTICULARS

a. The responsibility of the trial tribunal is not to take judicial notice of submission by parties but to analyze and evaluate the submission along with the evidence.

b. The trial tribunal evaluated the 1st Respondent's submission in arriving at decision, in its favour without considering that of the Appellant.

c. The duty of the trial tribunal is to be impartial in the determination of issues before it.

d. The tribunal breached the fundamental right of the Appellant.

e. It is a fundamental principle of law that decisions reached by any court must be based on the evidence adduced before the court.

f. It is also a trite law that pleading not supported by evidence goes to no issue.

g. The learned justices merely reproduced the pleading of the 1st Respondent and the address filed by it without referring to any specific piece of evidence adduced of it that the court found to be credible and upon which it gave judgment in favour of the 1st Respondent.

h. Pleadings and address of counsel no matter how brilliant cannot take the place of evidence.

i. The Court was wrong to have given judgment in favour of the 1st Respondent when there was no evidence to support the decision of the Court.

## GROUND THIRTEEN

The trial Tribunal erred in law, when it reached the erroneous conclusion that facts of non-compliance and corrupt practices under the Electoral Act alleged by the 1st Respondent are facts within the knowledge of the Appellant, thereby erroneously placing the burden of proof on it when it held thus at page 165 of the Judgment thus;

> **"We have thoroughly examined the pleadings of the Petitioner as well as that of the Respondents. One point that cannot be taken away from the petition, is the fact that the allegation of over voting, disruption, non-accreditation, emergency declaration and violence, non-conduct of elections and disenfranchisement of voters, voters resistance to the use of BVAS or BVAS by pass. General wave of unrest and lawlessness during the conduct of the election are facts within the knowledge of the 1st Respondent and we shall, in the course of the determination of this issue, consider how the 1st Respondent who conducted the election reacted to these allegations raised by the Petitioner in her petition" (*Underlining ours*)**

### PARTICULARS

a. It is trite law that a petitioner who alleges non-compliance with the Electoral Act has the legal burden to establish such non-compliance with cogent and credible evidence and show how the non-compliance substantially affected the result of the election.

b. The burden of proving the grounds and facts in supports of the grounds rest squarely on the 1st Respondent to prove in the affirmative and such burden does not shift until and unless it has been discharged.

c. Unless otherwise established, there is a presumption of regularity of the conduct of elections by the Appellant.

d. There is no known provisions of the law or decided authorities that facts of non-compliance and corrupt practices are matters within the knowledge of the Appellant.

## GROUND FOURTEEN

The trial Tribunal erred in law, when it misconceived and misunderstood the facts and position of the Appellant, in holding that the Appellant conceded and admitted that there was over voting in all the polling units listed by the 1st Respondent in table 5 of the Petition and thereby occasioned a grave miscarriage of justice against the Appellant, particularly when it held at page 195-196 of the Judgment thus;

**".....Since the Petitioner had alleged that there was over voting in the polling unit listed in table 5 and the 1st Respondent is denying, the 1st Respondent is duty bound in law to outline the exact polling unit where the over voting took place as shown in table 5 of the Petition. Having admitted that there was over voting in the polling listed by the Petitioner in table 5 of the petition as contained in pages 50-60 of the Petition, the 1st Respondent ought to have taken the more proactive step by outlining or listing the affected polling unit inflicted by the virus of over voting. Having failed to do that, it is our firm view and we so hold, that the 1st Respondent conceded and admitted there was over voting in all the polling unit listed by the Petitioner in table 5 of the Petitioner's Petition"**

### PARTICULARS

a. The legal burden on the pleadings rested on the 1st Respondent to prove the overvoting alleged in all the polling units listed in table 5 and was not relieved of this burden by the Appellant's Reply.

b. The Appellant had no duty by law to outline any polling unit where overvoting occurred as it was not the petitioner before the Tribunal.

c. Overvoting is not proved by admission or concession in the pleading of the parties, overvoting must be proved by the 1st Respondent with cogent, credible, and compelling evidence as laid out by the Supreme Court in OYETOLA V INEC [2023] 11 NWLR (PT 1894) 125 at 168.

d. A Petitioner who seeks declaratory relief as in the instant case, must prove the same on the strength of its case and based on his own credible evidence.

e. The Appellant's Reply to the Petition read as a whole and within the context of the allegations in the Petition contained no admission or concession at all.

f. The reliefs sought by the Petitioner/1st Respondent being declaratory reliefs cannot be proved by admission or any perceived weakness in the defense of the Respondent.

## GROUND FIFTEEN

The learned Justices of the trial Tribunal erred in law in entering Judgment in favour of the 1st Respondent when its claims are declaratory in nature on the basis of documentary evidence/purported admission by the Appellant.

### PARTICULARS

a. The reliefs sought by the Respondent were declaratory in nature.

b. The burden was therefore on the 1st Respondent to establish its case.

c. In doing this, the 1st Respondent must rely on the strength of his case and not on the weakness of the case of his adversary.

d. The tribunal was wrong to have entered Judgment in favour of the 1st Respondent on the basis of non-existent admission.

e. For averments in the pleadings to amount to an admission such admission must be clear, unambiguous and unequivocal.

f. There was no clear, unambiguous and unequivocal admission of any of the petitioner's pleadings in the Appellants Reply.

g. The tribunal's decision to utilize and treat the Appellant's pleading as admission after holding that the same pleadings have been abandoned was incongruous.

## GROUND SIXTEEN

The lower Tribunal erred in Law when it held at page 198 of the printed Judgment **"... that the facts pleaded by the 1st and 3rd Respondents who did not call any witness in support of the pleaded facts in their replies to the Petition, are deemed abandoned ..."**and thereby occasioned a grave miscarriage of justice against the Appellant.

## PARTICULARS

a. The facts pleaded in the Appellant's Reply were amply supported by evidence elicited during cross examination and the exhibits tendered before the Tribunal, which all carried unrebutted presumption of regularity and correctness.

b. In the circumstances of the 1st Respondent's failure to adduce cogent and credible evidence to rebut the presumption of regularity in favor of all the INEC documents it was incongruous to deem the Appellant's Reply as abandoned.

c. The Appellant had at the trial tendered documentary evidence.

d. The Appellant thoroughly cross – examined the 1st Respondents' witnesses and elicited evidence that supported its pleadings.

e. It was therefore wrong of the learned judges of the trial Tribunal to hold that the Appellant had abandoned its pleadings.

f. The failure by the trial Tribunal to consider the favourable evidence elicited by the Appellant from the witnesses called by the petitioners/1st Respondent has occasioned a miscarriage of justice.

## GROUND SEVENTEEN

The trial Tribunal erred in law, when it embarked on an investigation and descended into the arena of dispute between parties when it held at pages 220-221 of the printed judgments as follows;

> **"... this Honourable Tribunal hereby holds that there is the existence of 165, 616 invalid votes discovered by this Tribunal which figure is over and above the margin of lead between the 2nd Respondent and the Petitioner. By the calculation of this Tribunal garnered from the records of this Court, the invalid votes wrongly credited to the 2nd Respondent is 165,616. The 2nd Respondent was returned wrongly with a vote 1, 019,602. The Petitioner was credited with 890,705 lawful votes. The Justice of this matter now demands, that the invalid votes will be and its hereby deducted from the 1, 019,602 wrongly credited to the 2nd Respondent which mathematically brings the total lawful votes of the 2nd Respondent to 853, 986. In view of the above calculation, this Honorable Tribunal have found as of facts and figures, that the Petitioner who scored 890, 705, is clearly the winner of the Governorship election of Kano State held on the 18th day of Marc, 2023..."** thereby occasioned a grave miscarriage of justice against the Appellant.

## PARTICULARS

a. Having regard to the provisions of *section 63(2) of the Electoral Act 2022* no invalidity of votes is manifest on any of the documents put in evidence by the 1st Respondent.

b. The discovery of invalid votes by the Tribunal was a descent into the arena to unearth evidence that was not demonstrated or demonstrable in open court due to the complete absence of necessary associated INEC Forms EC25B, EC40A and EC40C.

c. None of the allegedly invalid votes of 165, 616 was linked to any polling unit or was shown ***not*** to have been in the book of ballot papers furnished to the Presiding Officers at the Polling units.

d. There was no proof as required by law or at all that there were 165, 616 invalid votes the 2nd and 3rd Respondents declared lawful votes of 1, 019,602.

e. The 2nd and 3rd Respondents were correctly credited by the Appellant with 1,019,602 lawful votes and none of these votes was liable to be invalidated or deducted.

## GROUND EIGHTEEN

The learned Justices of the trial Tribunal erred in law when they invalidated the alleged and speculated 165, 616 ballot papers out of the alleged and speculated 841, 228 unspecified ballot papers in paragraph 93 of the petition which were tendered and admitted as Exhibits P5, P6 – P16C and P18 – P34 (a) by the Petitioners on the grounds that the Ballot Papers were neither signed, stamped nor dated by Presiding Officers when the Electoral Act does not require ballot papers to be stamped signed and dated by the Presiding Officers.

PARTICULARS

a. Section 63 of the Electoral Act which deals with ballot papers does not require the said ballot papers to be signed, stamped or dated by the Presiding Officers rather, what it requires is that such ballot papers must have the official mark of INEC.

b. Both PW31 AND PW32 admitted under cross – examination that the official mark of the Commission is at the top of each of the ballot papers tendered in evidence.

c. Contrary to the admission of the Petitioners' witnesses that the ballot papers tendered in evidence had satisfied the provision of Section 63 of the Electoral Act by carrying the official mark of INEC, the trial tribunal found that the official marks of INEC were not on the ballot papers.

d. In making the findings that ballot papers must be signed, dated and stamped to be valid, the learned justices of the trial Tribunal wrongly relied on the provisions of Section 71 of the Electoral Act which specifically **deals with election result forms and not ballot papers**.

e. *Paragraph 19 (e) (f) (ii) of the Regulations and Guidelines for the Conduct of Elections 2022*, is the only document that requires ballot papers to be stamped, signed and the dated on the back of the ballot papers.

f. Non - compliance with the provision of the Regulation cannot invalidate the election by virtue of *Section 134 (2) of the Electoral Act, 2022*.

g. The trial Tribunal was therefore wrong to have held that non signing, stamping and dating of ballot papers have rendered the ballot papers invalid.

## GROUND NINETEEN

The learned Justices of the trial Tribunal erred in law when they invalidated the alleged and speculated 165, 616 ballot papers out of the alleged and speculated 841, 228 unspecified ballot papers in paragraph 93 of the petition which were tendered and admitted as Exhibits P5, P6 – P16C and P18 – P34 (a) by the Petitioners on the grounds that the Ballot Papers were neither signed, stamped nor dated **when, on the face of the Ballot papers there was substantial compliance with the Regulations and Guidelines for the conduct of election, 2022 as regards the signing and stamping of the ballot papers.**

### PARTICULARS

a. The trial Tribunal found that some of the ballot papers invalidated were actually signed and stamped but not dated.

b. The ballot papers that have the stamp and signatures of the presiding officers have substantially complied with the requirements of the Regulations and Guidelines for the conduct of election, 2022 and ought not to have been invalidated by the court.

c. Invalidating ballot papers that have substantially complied with the requirement of the law has occasioned grave miscarriage of justice.

## GROUND TWENTY

The learned Justices of the trial Tribunal erred in law in holding that: "The Petitioners proved by documentary evidence and by admission of the 1st Respondent, alleged cancellation of election result for over voting in the poling units contained in table 4 of the petition." (page 205 of the Judgment)

PARTICULARS

a. The petitioners had alleged in paragraph 62 pleaded that the 1st Respondent (now the Appellant) had cancelled election in 129 polling units for over – voting and did not collate the results from those polling units in table 4 of the petition.

b. It was further the case of the petitioners in paragraph 73 of the petition that number of the PVCs collected in the polling units where election did not hold is 231, 848 far exceeding the margin of win between the winner and runner up at the election.

c. The Petitioners also concluded that if the number of PVCs from these polling units are taken into account vis – a vis the margin of win between the 1st and 2nd Respondent, the Appellant ought to have declared the election to be inconclusive and not make a return.

d. In paragraphs 59 of its Reply, the Appellant denied cancelling election in all the polling units mentioned by the Petitioners in paragraph 62 of the petition but admitted cancelling election in the 98 polling units specified in table 1 on pages 13 – 34 of the Appellants' Reply and asserted in paragraph 62 of the Reply that the number of PVCs collected from the 98 admitted polling units were 60, 407 which is far less than the margin of win between the winner and the loser of the election.

e. It was the case of the Appellant that the return of the 2nd Respondent was therefore in order as the number of voters who collected their PVCs in the polling units where elections were cancelled was not enough to affect the outcome of the election.

f. In view of the issue joined in the pleadings, the burden is on the 1st Respondent to show that the number of polling units

where elections were cancelled exceeded the number admitted by the Appellant.

g. The 1st Respondent equally has the burden of establishing that that the number of PVC's collected from those polling units exceeded the margin of win between the 1st Respondent and the 2nd Respondent.

h. The 1st Respondent called only 12 witnesses who gave evidence of election cancellation from 12 out of the 129 polling units.

i. The 1st Respondent tendered only 50 EC40G series which were not linked to any of the polling units pleaded by the 1st Respondent.

j. The 1st Respondent did not adduce any other admissible evidence to warrant the finding by the trial Tribunal that he had established his case.

k. The claim of the 1st Respondent being declaratory in nature, cannot be established on the basis of the purported admission by the Appellant.

## GROUND TWENTY- ONE

The learned Justices of the trial Tribunal erred in law and misdirected themselves in holding that: "The Petitioner proved by documentary evidence and through the admission of the 1st Respondent violence in the polling units listed in table 5."

### PARTICULARS

a. The allegation of the Petitioners in paragraph 65 of their Petition is that there was over voting in the 21 polling units listed in table 5 of the Petition.

b. There was no allegation of violence in the petition as regards the conduct of election in the 21 polling units listed under table 5 of the petition.

c. The Appellant could not have admitted what was not pleaded by the petitioners.

d. The Appellant indeed, in paragraphs 72, 73, and 74 of its Reply denied the averments in paragraph 65 of the petition.

e. Violence cannot be established through documents as alleged by the Honourable Tribunal.

f. There was equally no evidence tendered by the Petitioners in proof of their allegation of over voting in this paragraph.

g. The learned justices of the Tribunal were in manifest error in holding that violence, which was not alleged had been proved through the admission of the Appellant and documents.

## GROUND TWENTY- TWO

The learned Justices of the trial Tribunal erred in law in holding that: "The Petitioner proved by documentary evidence and through the admission of the 1st Respondent of failure of the 1st Respondent to hold election in the poling units listed in table 6 of the petition. The petitioner also proved by documentary evidence and through the admission of the 1st Respondent, the disenfranchisement of the voters in the poling units listed in tables 7 and 8 of the petition."

### PARTICULARS

a. The allegation of the petitioners under paragraph 69 and 71 of the petition, is that elections were not conducted and or cancelled at the polling units listed in table 6, 7 and 8 of the petition.

b. The only means of proving that elections in a polling unit was cancelled is by tendering the report of the Presiding Officers.

c. Further, the only means of proving that voters were disenfranchised is by calling the evidence of voters who were prevented from voting to adduce evidence in polling unit by polling unit and ward by ward.

d. No witness was called from any of the polling units listed in those tables to adduce evidence of his inability to vote by reason of disenfranchisement.

e. The Petitioners did not tender in evidence any report of a presiding officer to show that election was cancelled in any of the polling units listed in the table as alleged by the Petitioners.

f. The Appellant denied all the allegations in paragraphs 69 and 71 of the petition in paragraphs 84 and 87 of its Reply.

## GROUND TWENTY-THREE

The learned justices of the Tribunal misdirected themselves in law when they construed paragraphs 63, 64, 78, 79, 85, 88, 90, 97 and 104 of the Appellant's Reply to the petition as open admissions to the alleged heavy allegations of over voting, disruption, non-accreditation, emergency declaration and violence, non-conduct of elections and disenfranchisement of voters, voters resistance to the use of BVAS or BVAS bye-pass, killing of innocent Nigerians on the election day, general waves of unrest and lawlessness during the conduct of the election.

## PARTICULARS

a. Before a court can rely on an admission, the admission must be full, clear unambiguous and freely made by a party.

b. This is true whether the admission is oral or is contained in a document.

c. Apart from making a blanket finding that Appellant's averments in the paragraphs of the Appellant's Amended Reply listed in the judgment constitute open admissions to the 1st Respondent's allegations, the learned justices of the tribunal failed to set out seriatim the pleadings in the petition that Appellant allegedly admitted.

d. There is nothing in the paragraphs of the Appellant's Reply to the petition that the Tribunal construed as admissions that suggests an open, full, clear, unambiguous and freely made admission on the parts of the Appellant.

e. This has occasioned a miscarriage of justice.

## GROUND TWENTY-FOUR

The trial Tribunal erred in law and occasioned a grave miscarriage of Justice when it countenanced and acted on the entire documents dumped on the Tribunal by the Petitioner/1st Respondent.

### PARTICULARS

a. At the hearing of the Petition, the Petitioner/1st Respondent dumped on the Tribunal "lorry loads" of document.

b. The Tribunal at page 167 of the Judgment qualified the said documents as **"...bundle of documents tendered as INEC CTC..."**, while at 171 of the same Judgment the Tribunal also qualified the documents as **"... heaps of bags of exhibits..."**.

c. The Petitioner/1st Respondent failed to call the required witnesses, particularly the makers of the said documents described by Tribunal as **"lorry loads"**, **"bundle of documents"** and **"heaps of bags of exhibits"., to lead oral evidence linking the documents to their case or explaining their purport.**

d. Documents described by Tribunal as **"lorry loads", "bundle of documents"** and **"heaps of bags of exhibits"**, cannot manifestly disclose non-compliance to warrant the Tribunal dispensing with oral evidence.

e. Any examination of unexplained documents described by Tribunal as **"lorry loads", "bundle of documents"** and **"heaps of bags of exhibits".,** a descent into the arena of conflicts between parties.

f. Similarly, the tribunal wrongly gave credence to exhibits P5, P6-P16c, P18-P34a dumped on it by the 1st Respondent and condoned the 1st Respondent's refusal to subpoena presiding officer in the affected polling units to speak to the ballot papers the tribunal considered invalid ballot papers.

## GROUND TWENTY- FIVE

The trial Tribunal erred in law and occasioned a grave miscarriage of justice, when it countenanced and acted on the evidence of Pw19, particularly the English version of his Written Statement on Oath, the content of which is different from the Hausa version of his Written Statement on Oath/evidence.

### PARTICULARS

a. The trial Tribunal rightly found and agreed with the Appellant that the English version of the Written Statement on Oath/evidence of Pw19 is completely different from the Hausa version of his Written Statement on Oath/evidence.

b. Where a witness gives evidence in a language other than the language of the Court which is the English language, such evidence shall be translated in English language and both the evidence of the said witness in the language other than the

language of the Court and his evidence as translated in English language must be produced before the Court/Tribunal.

c. Having found that the Hausa version of the evidence of Pw19 is completely different from the English version of his evidence before the Tribunal, the trial Tribunal ought to have discountenanced the evidence of Pw19 in toto, including the Hausa version and the English version of his evidence.

d. The trial Tribunal lacks the vires to pick and choose which of the two irreconcilably conflicting versions of the evidence of Pw19 to act on.

e. The trial Tribunal was wrong to have countenanced or ascribed any probative value to the English version of the evidence of Pw19.

## GROUND TWENTY-SIX

The trial Tribunal erred in law, when it relied on the purported admissions in the Reply of the Appellant to hold at Pages 185 to 196 and 205 to 206 of the judgment that the 1st Respondent proved that the election was conducted in substantial non-compliance with the provisions of the Electoral Act, 2022.

## PARTICULARS

a. In its Reply to the Petition filed in the trial Tribunal, the Appellant—specifically traversed/denied every material allegation of facts averred in the Petition.

b. In the Petition leading to this appeal, the Petitioner sought several declaratory reliefs against the Appellant and the 2nd and 3rd Respondents.

c. Where a Petitioner seeks declaratory reliefs, the burden rests exclusively on him to prove on preponderance of evidence,

his entitlement to the declaratory reliefs sought, and neither him nor the Tribunal can rely on the weakness or admission of the Respondent.

d. The trial Tribunal did not properly evaluate the oral and documentary evidence placed before it, and thereby arrived at a wrong conclusion.

e. The reliance placed by the trial Tribunal on the admission of the Appellant to hold that the Petitioner proved substantial non-compliance with the Electoral Act in the conduct of the election is perverse.

## GROUND TWENTY-SEVEN

The learned Justices of the trial Tribunal misdirected themselves in law when they wrongly misplaced the burden of proof on the Appellant rather than the 1st Respondent by holding on pages 195 – 196 of the Judgment that: **"Furthermore, the 1st Respondent failed to furnish this Honourable Tribunal with the exact particulars of the so called "few instances of clear case of over voting" having regard to paragraph 76 of the 1st Respondent's amended Reply to the petition. Since the petitioner had alleged that there was over voting in the polling units listed in table 5 and the 1st Respondent is denying it, the 1st Respondent is duty bound in law to outline the exact polling units where the over voting took place as shown in table 5 of the petition as contained in pages 50 - 56 of the petition, the 1st Respondent ought to have taken the more proactive step by outlining or listing the affected polling units inflicted by the virus of over voting. Having failed to do that, it is our firm view and we so hold, that the 1st Respondent conceded and admitted there was over voting in all the polling units listed by the petitioner in table 5 of the Petitioner's petition."**

And at pages 196 – 197 of the Judgment that:

**"It should also be pointed out here, that the burden of proving that some of the polling units and wards (listed by the petitioner in table 6 of the petition) do not exist, lies solely on the 1st Respondent who made such an averment. See paragraph 80 of the 1st Respondent Reply to the petition... Since the**

**petitioner is asserting the negative and the 1st Respondent in asserting the positive, the position of the law therefore is that the burden of proof is on the person asserting the positive (the 1st Respondent) and not on the person (petitioner) asserting the negative."**

## PARTICULARS

a. The Petitioners had pleaded in paragraph 65 of the Petition that there was over – voting in the 10 polling units listed in table 5 appearing under the said paragraph 65.

b. The Appellant had, in paragraph 72, 73 and 74 of its Reply vehemently denied the existence of overvoting in any of the polling units listed under table 5 of the petition.

c. The Appellant, having joined issues with the petitioner on the existence of over voting or otherwise, the burden of proving over voting lies squarely on the petitioner.

d. The mode and manner of proving over voting in an election has been spelt out by the Supreme Court in **OYETOLA V. INEC (2023) 11 NWLR (PT. 1894) 125** and the Petitioner/ 1st Respondent did not present even the minimal proof required to prove over – voting at the trial.

e. Further, the Petitioners had pleaded in paragraph 67 of the petition that the Appellant had postponed election in the **221 polling units listed in table 6 of the petition** owing to emergency declaration, disruption or violence.

f. The 1st Respondent, in paragraphs 77 and 78 of its Reply denied the averments in paragraph 67 of the petition and proceeded to plead that it conducted election in the polling units mentioned therein though some results were cancelled by reason of willful obstruction to deployment of materials and voters' resistance to the use of BVAS.

g. The Appellant, having denied postponing the election in those polling units, the primary burden of proving that election did not hold in those polling units was on the Petitioner to call evidence to prove such postponement before the burden will shift to the Appellant.

h. No evidence whatsoever was called by the Petitioner in proof of the averment in paragraph 67 of the Petition.

i. There was no burden whatsoever on the Appellant, who had no cross – petition to prove anything.

j. The 1st Respondent must succeed on the strength of its petition and cannot rely on the weakness of the case of the Appellant.

k. The 1st Respondent can only succeed on the strength of its case on cogent and credible evidence. It is only when the 1st Respondent had successfully led cogent evidence in proof of his petition that it can attack the Appellant and pick holes in its case.

l. The evidence before the tribunal as highlighted in the Judgment, the 1st Respondent did not lead evidence to support this preposition.

m. The tribunal wrongly placed the principle regarding the evidential burden on the Appellant without calling on the 1st Respondent to discharge the burden the law places on it.

n. The learned justices of the trial Tribunal therefore misdirected themselves by wrongly placing the burden of proof on the Appellant.

o. Misplacing the burden of proof on the wrong party has a grave, radical and devastating effect on any decision arrived at which must be set aside.

## GROUND TWENTY-EIGHT

The trial tribunal erred in law and misdirected itself in relying on and applying the provisions of Sections 71 and 63 of the Electoral Act 2022 in the

determination of the validity of the ballot papers by which 165, 616 votes were deducted from the vote of the 2nd Respondent thereby occasioning a great miscarriage of justice to the Appellant.

PARTICULARS

a. Section 71 of the Electoral Act 2022 relied on by the tribunal relates to results and does not relate to ballot papers.

b. The trial tribunal mixed up the provisions of Section 71 and 63 of the Electoral Act 2022 and imported erroneous issues to the provisions. The issue placed before the tribunal by the petitioner was on signature, date and stamp and not official mark.

c. The decision and reasoning in ADIHIWE V. NWOGU relied upon by the Tribunal relates to result and report of cancellation of results and not ballot papers.

d. The Tribunal in applying the provisions of Section 71 of the Electoral Act 2022 wrongly extended the application to ballot papers.

e. The limited interpretation of the provision of section 71 of the Electoral Act is as it relates to what is contained therein and does not entertain erroneous interpretation.

f. The question which the tribunal was determining at that point was a question as regard the validity or otherwise of the ballot papers (Exhibits Exhibits P5, P6-P16c, P18- P34a.)

g. Exhibit 4 which was determined in *Daudu Vs Abiodun Appeal No. CA/A/EPT/625/2011 (Unreported)* relied upon by the trial tribunal was a result sheet.

h. The tribunal failed to consider the provision of *section 63 (2) of the Electoral Act, 2022* which supposes a presumption of regularity that the ballot papers are from the book of the

Appellant, and it is upon the 1st Respondent who alleges the invalidity of the ballot paper in part of the poling units where election held to call the presiding officers in those poling units to explain.

## GROUND TWENTY-NINE

The trial Tribunal erred in law, when it held that where a Presiding Officer fails to sign, stamp or date a Polling Unit result, the result becomes invalid for lack of authenticity and non-compliance with the provisions of the Electoral Act; the lower Tribunal thereby occasioned a miscarriage of justice when it held at Pages 217 and 218 of the judgment as follows:

> **"...Against this background, this Tribunal, without any hesitation, is of the firm view that the votes on Exhibits P5, P6-P16c, P18 – P34a in the aforementioned Local Governments totalling 165, 616 votes are invalid, by virtue of not having the names, signature, date and stamp of the officials of the 1st Respondent. The failure of the Presiding Officer to sign, stamp and affix his name on the result is a major vitiating factor in the light of Section 63 of the Evidence Act, 2022... It is trite law, that where a Presiding Officer failed to sign, stamp or date a polling unit result, the result becomes invalid for lack of authenticity and non-compliance with the provisions of the Electoral Act..."**

### PARTICULARS

a. The 1st Respondent did not adduce sufficient evidence before the lower tribunal in proof of its claim that the ballot papers used in the Local Governments Areas listed in Paragraph 93 of the Petition (Exhibits P5, P6-P16c, P18 –P34a) are invalid.

b. Under Cross Examination of PW 31, the few ballot papers shown to him out of the dumped ballot papers, the witness confirmed that the said ballots papers were stamped, signed and dated.

c. Assuming, but without conceding that the Presiding Officer did not date, sign, stamp or affix/endorse his name on Exhibits P5, P6-P16c, P18 –P34a, the Electoral Act, 2022 empowers the returning officer to count the ballot papers in the absence of such official marks.

d. The Petitioner did not plead nor did she lead or evidence to show that the ballot papers were not from a book of ballot papers furnished to the Presiding officers of the respective polling units.

e. The 1st Respondent did not subpoena any presiding officer of the Appellant to explain if there are irregularities on exhibits P5, P6-P16c, P18-P34a

f. The ballot papers having been duly certified by the Appellant raised a presumption of regularity, genuineness, and correctness, which was not rebutted by any cogent credible or compelling evidence.

g. The examination, scrutiny or investigation by the Tribunal of the ballot papers is not a substitute for evidence, which ought to have been led but was not led in rebuttal which inured in favor of the certified true copies of exhibits P5, P6-P16c, P18 –P34a

h. The votes cast for the Appellants in the Local Government Areas listed in Paragraph 93 of the Petition are lawful votes and were not tainted by unlawful ballot papers.

## GROUND THIRTY

The trial Tribunal erred in law and directed itself after holding at Page 205 of the judgment thus:

**"...from the evidence before this Honourable Tribunal, we hold that the Petitioner successfully proved that there was substantial non-compliance with the provisions of the Electoral Act in respect to ground one of her petition, having regard to the case of over voting, disruption, non-accreditation, emergency declaration, violence, non-conduct of election, disenfranchisement of voters, voters resistance to the use of BVAS or**

**BVAS by pass, general wave of unrest and lawlessness and killing of innocent Nigerians."**

**Now went ahead to return the 1st Respondent candidate, Nasiru Yusuf Gawuna as the winner of the election without ordering for rerun.**

PARTICULARS

a. The 1st Respondent did not adduce the type of evidence required by law before the trial Tribunal to prove that there was substantial non-compliance with the provisions of the Electoral Act, 2022 in the Kano State Governorship Election of 18th March 2023.

b. The Tribunal wrongly relied on purported admissions and concession allegedly in the Appellant's Reply to the petition, which it held was abandoned, to come to the perverse finding that the 1st Respondent proved substantial non-compliance with the provisions of the Electoral Act 2022.

c. The 1st Respondent woefully failed to prove that there was substantial non-compliance with the provisions of the Act, which failure drove the Tribunal to seek for admissions and concessions in the Replies of the Appellant and the 2nd and 3rd Respondents to prop up the case of the 1st Respondent.

d. The finding of the trial Tribunal was not based on any specific or credible evidence adduced by the Petitioners.

e. There was no evidence emanating from the Petitioners of any emergency declaration.

f. There was no evidence from any voter or agents of the petitioner that election could not hold due to violence.

g. There was no evidence emanating from the Petitioners of unrest or lawlessness and killing of innocent Nigerians.

h. The decision of the trial Tribunal was based on conjectures and mere assumption in the absence of any evidence/credible evidence.

## GROUND THIRTY-ONE

The trial Tribunal erred in law when it held at Page 221 of the judgment thus:

**"... in view of the above calculation, this Honourable Tribunal have found as of fact and figures, that the Petitioner who scored 890, 705, is clearly the winner of the Governorship election of Kano State held on the 18th day of March 2023. The Petitioner having satisfied the mandatory provision of Section 179(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 136(2) of the Electoral Act, 2022 is hereby declared to be the candidate who scored the majority of lawful votes cast..."**

### PARTICULAR

a. There was no credible, cogent or any evidence to warrant any calculation based on any facts and figure before the Tribunal.

b. There was no cogent, credible, or any evidence that the 1st Respondent was the winner of the Governorship election of Kano State held on the 18th day of March 2023.

c. The 1st Respondent did not satisfy the mandatory provision of section 179(2) of the Constitution of the Federal Republic of Nigeria (as amended) or Section 136(2) of the Electoral Act 2022.

d. The 1st Respondent's score of 890, 705 was less than the 1,019,602 lawful votes scored by the 2nd and 3rd Respondents.

e. The declaration of the 1st Respondent as the winner of the election was inconsistent with the earlier finding of the Tribunal that the election was marred with substantial non-compliance which affected the result of the election.

f. The finding by the Tribunal of substantial non-compliance wholly precluded it from declaring the 1st Respondent as the winner of the election.

g. The appropriate order for the trial Tribunal to make, assuming, but denying that the Tribunal rightly found that the Kano State Gubernatorial Election was marred by irregularities and substantial non-compliance which affected the outcome of the election, is an order for a fresh election and not declaration of a new winner.

## GROUNDS THIRTY-TWO

The learned Trial Justices of the Tribunal misdirected themselves on the facts when they held that: **"Where from the duplicates or pink copies given to party agents at polling stations or units/booths and collations centres, the petitioner scored the highest number of the valid votes cast and satisfies the requirements of the Constitution, the Tribunal under Section 136(3) of the Electoral Act, 2022 is to declare the petitioner as duly elected."**

### PARTICULARS

a. The 1st Respondent did not tender duplicates copies or pink copies of the result given to its party agents.
b. There was no evidence whatsoever on duplicates or pink copies of election results.

c. Part of the decision in the judgment quoted above was not borne out of the evidence on the printed record of the Tribunal.

d. The decision was perverse.

## GROUND THIRTY-THREE

The learned chairman and members of the tribunal erred in Law when they admitted and failed to strike out the 1st Respondent's PW31's written deposition deposed to on 13th May 2023 containing new and fresh issues which does not arise from the Appellant's reply.

PARTICULARS

a. *Paragraph 4, and paragraph 16(1) of the 1st schedule to the Electoral Act 2022*, does not allow new or fresh issues by a petitioner tending to amend or add to its petition.

b. Election petition is 'sui generis' and the provisions of the Electoral Act, 2022 are construed strictly.

c. The 1st Respondent's PW31's written statement deposed to on 13th May 2023 are the new facts tending to add and or amend the 1st Respondent petition.

d. The tribunal deliberately refused to consider the argument of the Appellant that it will not be able to respond to the new and fresh issues raised by the 1st Respondent in the deposition on oath of 13th May 2023.

e. The Appellant Fundamental Right to fair hearing has been breached blatantly by the decision of the tribunal which forecloses it the opportunity of responding to the new issues having considered the deposition.

f. The tribunal in view of the recent decisions in the Presidential Election Petition involving PDP V. INEC and LP V. INEC, (CA/PEPC/03/2023 and CA/PEPC/05/2023) failed to apply the principles in these cases that a petitioner is not at liberty in a reply to bring a new fact or facts tending to add or amend his petition provided the fact does not arise from the Respondent's reply.

## 5. RELIEFS SOUGHT FROM THE COURT OF APPEAL.

1. **AN ORDER** allowing this Appeal and setting aside the Judgment of the trial Tribunal as well as the Orders made therein delivered on 20/09/2023, in **PETITION NO. EPT/KN/GOV/01/2023, Between: ALL PROGRESSIVES CONGRESS (APC) V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & 2 ORS.**

2. **AN ORDER** dismissing **PETITION NO. EPT/KN/GOV/01/2023, Between: ALL PROGRESSIVES CONGRESS (APC) V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) & 2 ORS.**

3. **AN ORDER** affirming the declaration and return of the 2nd Respondent as the duly elected Governor of Kano State.

4. **AND** for such Order or further Orders as this Honourable Court may deem fit to make in the circumstances of this case.

## 6. PERSONS DIRECTLY AFFECTED BY THE APPEAL:

1. **APPELLANT**
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**ADREESS WITHIN JURISDICTION:**
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2. **1ST RESPONDENT**
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OR

c/o ITS COUNSEL
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3. **2ND RESPONDENT**
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4. **3RD RESPONDENT**
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c/o its Counsel,
Chief Adegboyega Solomon Awomolo, SAN
NNPP Kano Office
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Kano State

Dated this 3rd day of October, 2023


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