IN THE COURT OF APPEAL
HOLDEN AT ABUJA

IN THE MATTER OF THE ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA HELD ON THE 25TH DAY OF FEBRUARY, 2023.

PETITION NO: CA/PEPC/03/2023

BETWEEN

1. **MR. PETER GREGORY OBI**
2. **LABOUR PARTY** } **PETITIONERS**

AND

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

PETITIONERS' FINAL WRITTEN ADDRESS IN RESPONSE TO THE 2ND AND 3RD RESPONDENTS FINAL ADDRESS

.0. INTRODUCTION

.1. This is the Petitioners Reply Address in response to the submissions contained in the 2nd and 3rd Respondents written address dated and filed on 14th July 2023 (2nd and 3rd Respondent's final address). The Petitioner will also in this address, urge Your Lordships, to uphold that the Petitioner's provided substantial in proof of this Petition.

.2. In proof of their case, the Petitioners called 13 witnesses and tendered several documentary evidence. The 1st Respondent called One (1) witness, RW1, whilst the 2nd-3rd Respondents also called a One (1) witness, RW2. The 4th Respondent chose not to call any witness.

.3. A sentence in the 2nd-3rd Respondents' address alarmed the Petitioners and millions of Nigerians. The 2nd-3rd Respondents went too low and abandoned discretion when they claimed as follows: "Our submission is that the Petitioners are inviting anarchy by their ventilation of this issue of non-transmission of results electronically, by INEC." This is a cheap, misguided, and destructive blackmail clearly intended to target the country's judicialism and constitutionalism. It also aims at cannibalizing our democracy. It will also raise the issue of insecurity if the Petitioners emulate the bad example of the 2nd-3rd Respondents. However, that will never happen. When has it become offensive for Petitioners to canvass a ground prescribed for the challenge of an election in section 134(1)(b) of the Electoral Act 2022? Desperation taken too far can be extremely dangerous. Let the 2nd-3rd Respondents know that where the rule of law is trampled upon or truncated, anarchy reigns supreme!

7.0. RELEVANT FACTS

i. Prior to the conduct of the 25th February 2023 Presidential election, the 3rd Respondent had previously been nominated as a Senatorial Candidate of the 4th Respondent for Borno Central Senatorial District, and remained so till 15th July 2022, when he withdrew his said nomination as a Senatorial Candidate of the 4th Respondent for Borno Central Senatorial District on the platform of the 4th Respondent. Whilst the 3rd Respondent was standing nominated as the Senatorial Candidate as aforestated, he was unlawfully nominated as the Vice Presidential candidate of the 4th Respondent on 14th July 2022, thereby, knowingly allowed himself to be nominated as a Candidate in more than one constituency within the meaning and intendment of Section 35 of the Electoral Act.

ii. The Petitioners will argue that the invalid nomination of the 3rd Respondent as the Vice Presidential Candidate, nullified the nomination/election of the 2nd Respondent as the Presidential Candidate of the 4th Respondent, within the meaning of the provision of Section 142 of the 1999 Constitution as amended.

iii. It is common knowledge that the 2nd Respondent was a subject of an Order of Forfeiture made by the United States District Court, Northern District of Illinois, Eastern Division, in **Case No: 93C 4483.** The Order of Forfeiture against the 2nd Respondent was in terms forfeiting the sum of USD $460,000 against him Bola Tinubu, which represents "proceeds of narcotics trafficking" and "money laundry."

The Order for Forfeiture against the 2nd Respondent was a fine within the meaning of Section 137 (1) (d) of the 1999 Constitution for which a person shall not be qualified for election to the office of the President if he is under a sentence of fine for any offence involving dishonest or fraud by whatever name called imposed on him by a Court or Tribunal.

iv. The virus of the statutory and constitutional disqualification of the 2nd and 3rd Respondents as Candidates in Presidential election renders their purported return/declaration as the winners of the election invalid, null and void and liable to be set aside.

v. Pursuant to the mandatory provisions of the Electoral Act 2022, and the subsidiary legislations made thereunder, to wit: Regulations and Guidelines for the Conduct of General Elections 2022 (Regulations and Guidelines), and Manual for Election Officials 2023 (Manual for Election Officials), INEC introduced the use of modern technology for the conduct of the 2023 General Election. By this, INEC represented/provided that it would use Bimodal Voter Accreditation System (BVAS) for the accreditation of voters in the polling units, and the upload/transmission of the result of the election in real time on the day of the election and during the electoral proves to the INEC Result Viewing Portal (IReV).

vi. INEC vigorously campaigned that, the use of technology in the electoral process, including the upload/transmission of the result of the election in real time, using the BVAS from the polling unit to the IReV will ensure the integrity and the credibility of election result in Nigeria.

vii. Contrary to the requirement of the law and in manifest disregard of its own representation, the 1st Respondent abandoned and discarded the much expected upload/transmission of the

result of the election in real time on the day of the election from the polling unit to the IReV, rather, very strangely, blurred, unreadable and inaccessible document/images were uploaded by the 1st Respondent to the IReV, purporting same to be the result of the election in various polling units.

These blurred images and inaccessible documents, which were purported to be the result of the election in the polling unit (Form EC8As). The net result of the upload of the blurred images on the IReV, was that the result of the election could neither be authenticated nor verified, and thus, lacked credibility and transparency.

The 2nd and 3rd Respondents contention/claim that the presiding officers "duly uploaded polling unit results to the IReV, flies in the face of the unchallenged documentary evidence of blurred/unreadable copies of the purported Forms EC8A certified by the 1st Respondent and given to the Petitioners as the result of the election as per the Form EC8As in the polling units.

EXHs PCE1 – PCE4 (four boxes of blurred documents) uploaded on the IReV by the 1st Respondent and falsely represented as Form EC8A, were tendered by PW4. EXHs PBP1-PBP21, PBQ1-PBQ20, PBQ21, PBR1-PBR16, PBS1-PBS19, PBT1-PBT25, PBV1-PBV25, PBW1-PBW17, PBX1-PBX21, PBY1-PBY9, PBZ1-PBZ29, PCA1-PCA24, PCN34-PCN51, are blurred copies of documents certified by the 1st Respondent as purported Forms EC8A, EC8B, EC40G and EC60E, which were given to the Petitioners as certified copies of the original document in possession of the 1st Respondent under Sections 102, 104 and 105 of the Evidence Act.

These certified copies of purported original copies of election results/documents referred to above, where in some cases, blank A4 papers and pictures of unknown persons.

viii. We will show in the ensuing argument that, the 2nd and 3rd Respondent's case as per paragraph 76 of their Reply to the Petition, to the effect "that the results being uploaded on the IReV, are as contained in the respective INEC Forms, and that all the results being uploaded emanated from polling units where elections were conducted", is totally out of sync with the unchallenged documentary evidence before the Honourable Court and identified above.

ix. In response to the Petitioners request and the subpoena issued by the Honourable Court, the 1st Respondent blatantly failed to comply with the requirement of the law, by refusing to provide the Petitioners with certified copies of the "top copies (Electoral Operations' Copies) of the Form EC8A in the polling unit under paragraph 39 of the Regulations and Guidelines.

x. Apart from the blatant refusal to comply with the mandatory requirements of the law, the certified copies of the result of the election given to the Petitioners by the 1st Respondent, manifestly show that the purported Forms EC8As in several polling units, were affected by mutilations, cancellations, alterations and outright swapping of votes in favour of the 2nd to the 4th Respondents and against the Petitioners. These acts of non-compliance are manifest on the certified copies of the Forms EC8A given by the 1st Respondent to the Petitioners,

and are deemed as sufficient proof of the irregularities/non-compliance thereon within the meaning of the provisions of Section 137n of the Electoral Act 2022.

xi. The only excuse invented by the Respondents in their Reply to the Petition was that the refusal to comply with the specific requirement of the law to upload/transmit the result of the election using the BVAS from the polling unit to the IReV, was the occurrence of the alleged technological glitches on the day of the election.

Though the Presidential election was conducted at the same time, on the same day, at the same respective polling units with the National Assembly (Senate/House of Representatives) elections, the results of the National Assembly elections were successfully uploaded/transmitted from the BVAS to the IReV Portal. Strangely, only the result of the Presidential election, equally held in the same polling units, using the same Infrastructure, could not, according to the 1st Respondent, as required by law, be uploaded/transmitted from the polling unit to the IReV.

xii. The Petitioners provided unchallenged evidence that, the failure/neglect to upload/transmit the result of the Presidential election held on 25th February 2023, was a violation of the collation process prescribed under the Electoral Act, and also substantially affected the result of the election.

xiii. From the purported result of the Presidential election announced/declared by the 1st Respondent on 1st March 2023, the 2nd and 3rd Respondents as Candidate of the 4th Respondent did not win one-quarter (25%) votes cast at the election held on the 25th February 2023 in the Federal Capital Territory, as required by the correct meaning and interpretation of the provision of Section 134 (2) (b) of the 1999 Constitution as amended.

5.0. ISSUES FOR DETERMINATION

5.1. The Petitioner respectfully submits that the issue for determination arising from the evidence adduced in support of the relevant facts includes:

a. The Petitioners adopt the issue for determination dated and filed on the 18th of May 2023, and will respectfully urge the Honourable Court, to argue issues A (1) and (2) together, to wit: Whether the 2nd and 3rd Respondents are qualified to contest the Presidential election, by reason of the unchallenged facts and circumstances arising under Section 137 (1) (d) of the 1999 Constitution, Section 35 of the Electoral Act 2022, and Section 134 (2) (b) of the 1999 Constitution.

b. The issue of non-compliance with the provisions of the Electoral Act 2022, and the subsidiary legislation made thereunder, raised as A (3), will be argued as a separate issue in this written address, and the Petitioners will show that documentary evidence before the Honourable Court read/examined together with the unchallenged expert and technical evidence of the Petitioners Witnesses, the Petitioners proved that the non-compliance by the 1st Respondent with the relevant provisions of the Electoral Act, 2022 and the subsidiary legislation made thereunder, substantially affected the outcome of the questioned Presidential Election held on 25th February 2023.

My Noble Lord, the above issue is subsumed under issue number 3 in the Petitioner's issue for determination dated and filed on 18th of May 2023 as ordered by the Honorable Court.

4.0. **CONCISE ARGUMENT:**

NON QUALIFIFCATION OF THE 2ND AND 3RD RESPONDENTS' TO PARTICIPATE IN THE PRESIDENTIAL ELECTION HELD ON 25TH FEBRUARY 2023.

UNCHALLENGED ORDER OF FORFIETURE MADE AGAINST 2ND RESPONDENT BY THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, IN CASE NO: 93C 4483

4.1 The Petitioners submission on this Ground is predicated on the decision of the United States District Court, Northern District of Illinois, Eastern Division, in Case No: 93C 4483, which ordered "that the funds in the amount of $460,000 in account 263226700 held by First Heritage Bank in the name of Bola Tinubu represents the proceeds of narcotics trafficking or were involved in financial transactions in violation of 18 USC §1956 and 1957". The decision encapsulated in the Order is tendered as Exhibit PA5 before this Honourable Court.

The above Order made by the United States District Court, was sequel to a "Settlement Order of Claims to Funds held by Heritage Bank and Citibank" wherein Bola Tinubu (2nd Respondent) and others, claimed ownership of the sums in the accounts. The 2nd Respondent till date has not challenged the Order of Forfeiture made by the US Court as shown above.

4.2 It is important to underscore that the Proceeding in Exhibit PA5 above (Forfeiture Proceedings), the Order was based among under things by the revelation/finding in the Affidavit of Kevin Moss, a Special Agent and investigator on financial crime, money laundering and narcotics trafficking, inter alia that "**interviews with investigators from the US Customs Service disclosed that the address at 7504 S. Stewart Avenue is known as a drop-off point for packages from Nigeria that contain white heroin.....**" and that "in the application to open his account at First Heritage Bank, Illinois, Chicago, "**Tinubu** (2nd Respondent herein) **stated that his address was 7504 South Stewart, Chicago, Illinois."**

It is submitted that one of the provisions of the law the court held was violated was 18 USC $ 1956, which outlaws money laundering. In **GABRIEL DAUDU v FEDERAL REPUBLIC OF NIGERIA** (2018) LPELR-43637 (SC), it was held: "Money laundering is a global scourge that affects countries worldwide, Nigeria not being an exception. It has been described as the washing of illegitimate money in a bid to make it appear clean or legitimate. It involves the process of transforming the proceeds of crime into ostensibly legitimate money or other assets."

This Honourable Court in several other cases including **ORJI UZOR KALU v FEDERAL REPUBLIC OF NIGERIA & ORS** (2012) LPELR-9287 (CA), rightly took a swipe against money laundry, and adopted with approval the definition of the phrase in

the book "MONEY LAUNDERING Butterworths Lexis-Nexis 2003 at page 3 paragraph 1.3, "**varied means used by criminals to conceal the origin of their activities. The term "laundering" is used because these techniques are intended to turn "dirty" money into "clean" money, but laundering is not confined to cash.**" Per **EKO, JCA**

See also **Black's Law Dictionary 11th edition, page 1205,** which defines "**Money-laundering**, as "the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced. **Money-laundering is a federal crime**. 18 USCA 1956."

In **OKEWU v FRN** (2023) 9 NWLR (Pt 1305) 327 at 362 paras C-D, the Court equally upheld that narcotic trafficking and/or dealing in narcotic drugs are prohibited by law.

4.3 It is important to submit that in **ABACHA v FRN** (2014) 6 NWLR (Pt 1402) 43 at 9, it was held that the word "**forfeiture**" means – "the divestiture of property without compensation. The loss of a right, privilege, or **property because of a crime**, breach of obligation, or neglect of duty". It follows that "title in those assets and properties forfeited is instantaneously transferred to another, such as the government". See Black's Law Dictionary, Ninth Edition Page 722."

4.4 My Noble Lords, the provision of Section 137 (1) (d) of the 1999 Constitution, is clear, explicit, unambiguous and clearly provides as follows: "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 whatsoever 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; **or**". (Emphasis supplied).

We respectfully invite Your Lordships to uphold that the above sub-section, by the use of the word "OR" in the several instances envisaged therein envisages a disjunctive meaning and interpretation for those several instances, as such, the ordinary plain meaning of the sub-section is that a person shall not be qualified for the office of the President if among other things; he is under a fine for any offence involving dishonest of fraud (by whatever name called) of any offence imposed on him by any Court or Tribunal. It is submitted that the Order of Forfeiture made against the 2nd Respondent by the US Court as reproduced above, constitutes a fine, and it is in respect of an offence involving dishonest or fraud by a Court.

4.5 With due respect, the submissions on pages 22-25 of the Written Address are incorrect and do not reflect the actual position of the law. It submitted that the misconception of the 2nd and 3rd Respondents to the effect that a conviction must exist before a person will be disqualified from contesting for the office of the President, and which said misconception sterns from their unfortunate, albeit, misguided reliance on Section 137 (1) (e) of the 1999 Constitution. The Petitioners case is not based on Section 137 (1) (e), but rather on the provisions of Section 137 (1) (d) of the 1999 Constitution.

The 2nd and 3rd Respondents further attempt to discredit the evidence of PW1, by stating that he visited the United States once in 2003 is of no moment. Exhibit PA5 is documentary evidence which is certified, sealed, notarized and authenticated by the United States Court which issued it.

4.6 Exhibit PA5 fully complied with the provision of Section 106 (h) (i) of the evidence Act 2011, and it is in conformity with the authoritative pronouncement of this Honourable Court in **MV DELOS v. OCEAN STEAMSHIP (NIG.) LTD. (2004) 17 NWLR (Pt. 901) 88 at 108 – 109H–B (CA),** this Court interpreted a similar provision and held that **"a party who intends to rely on the judgment of a Foreign Court must comply with either of two options, namely: as follows: (a) by sealing the judgment with the seal of the foreign court; or (b) by a copy certified by the legal keeper with a certificate or of a notary public or of a consul or diplomatic agent stating that the copy is duly certified by the officer."** That is all the law requires, My Lords.

4.7 In MVD DELOS supra, the court further held on **pages 108-109** that, "under the Nigerian Evidence Act, if the foreign judgment (Exhibit FA3), but in the instant Petition is Exhibit PA5) had been sealed with the seal of the New York Court or had been certified by it, it would have been admissible in evidence." In this case, the US Court proceedings tendered have been so sealed/certified; hence they are admissible in evidence.

In the instant case, therefor, Your Lordships are urged to uphold that the Exhibit PA5 tendered in this Petition is sealed and certified and there by admissible. It is instructive to also submit that in MVD DELOS supra, the Court went further to hold that a certified copy of foreign Judgment such as Exhibit PA5 is capable of operating as estoppel per rem judicatem once pleaded and tendered in evidence. We urge Your Lordships to disregard the argument of the 2nd and 3rd Respondents to the effect that Exhibit PA5 has not been registered in Nigeria, as according to them, such registration is required by the provisions of Section 3 of the **Reciprocal Enforcement of Foreign Judgments Ordinance and Foreign Judgment (Reciprocal Enforcement) Act.** Respectfully, Exhibit PA5 is neither a Money Judgment nor are the Petitioners by this proceeding, seeking to enforce any Money Judgment against the 2nd Respondent, nor is this Petition intended "for the recovery of a sum payable under a foreign judgment".

Accordingly, Section 3 of the Reciprocal Enforcement of Foreign Judgments Ordinance and Foreign Judgment (Reciprocal Enforcement) Act, heavily relied on by the 2nd and 3rd Respondent are completely inapplicable to the instant Petition.

4.8 The 2nd and 3rd Respondents have also placed reliance on **Article 54(1)(C) of the United Nations Convention Against Corruption,** which talks merely of Member-States providing mutual legal assistance concerning property acquired through or involved in the commission of an offence established "in accordance with this Convention." The question is whether **Exhibit PA5,** tendered by the Petitioners here, has anything to do with mutual assistance. Indeed, the headnote of **Article 54** is this: *Article 54. The mechanism for recovery of property through international cooperation in confiscation*

With very great respect, the above Article 54 of United Nations Convention Against Corruption is very irrelevant in this Petition.

4.9 Respectfully, My Noble Lords, the cardinal question is whether a civil forfeiture under US Law as ordered in Exhibit PA5, can be equated to a fine as used in Section 137 (1) (d) of the 1999 Constitution. The answer, on settled case law in the US and legal literature is in the affirmative.

In the well-known case of **AUSTIN v. UNITED STATES, 509 U.S. 602 (1993)**, the US Supreme Court unanimously held that civil forfeiture ordered in an in-rem civil action is a fine and is a punishment regardless that it did follow from criminal conviction. The Court relied on several authorities and held, among other things, that **"forfeit" is the word Congress used for fine... Dictionaries of the time confirm that "fine" was understood to include "forfeiture" and vice versa. See 1 T. Sheridan, A General Dictionary of the English Language (1780) (unpaginated) (defining "fine" as: "A mulct, a pecuniary punishment; penalty; forfeit, money paid for any exemption or liberty"); J. Walker, A Critical Pronouncing Dictionary (1791) (unpaginated) (same); 1 Sheridan, supra (defining "forfeiture" as: "The act of forfeiting; the thing forfeited, a mulct, a fine"); Walker, supra (same); J. Kersey, A New English Dictionary (1702) (unpaginated) (defining "forfeit" as: "default, fine, or penalty")."** (Underlining ours, for emphasis)

4.10 In the recent case of **Timbs vs. Indiana, Appeal No. 17-1091, decided by the US Supreme Court on 20/2/2019,** the State of Indiana seized Timb's Land Rover SUV. It had filed civil forfeiture proceedings, claiming that the SUV had been used to transport heroin. The question before the US Supreme Court was whether the cost of the vehicle vis-à-vis the fine that would be imposed upon Timb's conviction violated the US Eight Amendment's Excessive Clause provision of the US Constitution. Inevitably, this amounted to equating civil forfeiture to a **fine;** the US Supreme Court said this in express terms. Justice Ginsburg, who delivered the lead opinion of that court (to which there was no single dissent), in quashing the civil forfeiture as being excessive and therefore unconstitutional, held inter alia as follows: *"For a good reason, the protection against fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies, as the Stuarts' critics learned several centuries ago. See Browning-Ferris, 492 US, at 267. Even absent a political motive, **fines may be employed "in a measure out of accord with the penal goals of retribution and deterrence," for "fines are a source of revenue," while other forms of punishment "cost a State money." Harmelin v. Michigan**, 501 US 957, n. 9 (1991) (opinion of Scalia, J.) ("it makes sense to scrutinise governmental action more closely when the State stands to benefit"). This concern is scarcely hypothetical. See Brief for American Civil Liberties Union et al. as Amici Curie 7 ("Perhaps because they are politically easier to impose than generally applicable taxes, state and local governments nationwide increasingly depend heavily on fines and fees as a source of general revenue."). In short, the historical and logical case for concluding that the Fourteenth Amendment incorporates the Excessive Fines Clause is overwhelming. Protection against excessive **punitive economic sanctions** secured by the Clause is, to repeat, both*

"fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition. McDonald, 561 US, at 767 (internal quotation marks omitted; Emphasis deleted)... ***In Austin v. United States, 509 U. S. 602 (1993), however, this court held that civil in rem forfeitures fall within the Clause's protection when they are <u>at least partially punitive</u>.*** *Austin arose in the federal context. But when a Bill of Rights protection is incorporated, the protection applies "identically to both the Federal Government and the States." McDonald, 561 U. S., at 766, n. 14. Accordingly, to prevail, Indiana must persuade us either to overrule our decision in Austin or to hold that, in light of Austin, the Excessive Fines Clause is not incorporated because the Clause's application to civil in rem forfeitures is neither fundamental nor deeply rooted. The first argument is not properly before us, and the second misapprehends the nature of our incorporation inquiry.* [Emphasis supplied]

A civil forfeiture in the US amounts to a **'fine'** or a ***'punitive economic sanction'***, and it is also ***"<u>at least partially punitive</u>"*** against the persons whose property is affected. Why did Timb challenge the forfeiture proceedings if he was not to be personally affected? Can it be honestly argued that the 2nd Respondent herein did not suffer **economic sanction** when he forfeited 460,000 USD to the US Government?

It is submitted that, the decision of the US Supreme Court above, ranks superior to the evidence called by the Respondents and the text written by **TS Greenburg et al,** entitled **A Good Practice Guide for Non-Conviction Based Asset Forfeiture (World Bank 2009) 13,** cited by the 2nd and 3rd Respondents on **pages 24-25 of their Final Written Address.**

4.11 Respectfully, My Lords, under the Nigerian law, the word "fine" used in Section 137 (1) (d) of the 1999 Constitution as amended, also contemplates an Order of Forfeiture made against the 2nd Respondent.

Under the Administration of Criminal Justice Act 2015 (ACJA), the Interpretation Section defines "fine" as "includes any pecuniary forfeiture or pecuniary compensation payable under this act. Penalty includes any pecuniary fine, cost, forfeiture or compensation recoverable under an order.

In **AG BENDEL STATE v. AGBOFODOH (1999) 2NWLR (Pt. 592) 476**, the Supreme Court held inter alia: **"Forfeiture is an action of forfeiting something or being forfeited. It is a penalty, a forfeit, a fine or mulct. It is synonymous with fine, penalty, damage, confiscation, sequestration or amercement."** See also the Judgment of Ogwuegbu JSC at pages 501 to 502 and Iguh JSC at page 507.

A similar interpretation/definition of the word forfeiture was adopted by this Honourable Court in **BASHIR v. FRN (2016) LPELR-40252 (CA) 2829 para C.** In the celebrated case of **ABACHA v. FRN (2014) LPELR-2201 (SC) pages 46-47, paras F-B**, Ariwoola JSC (now CJN), referred to other authorities on the point and rightly concluded **that "these definitions leave no doubt that forfeiture is a sanction, a <u>fine</u> by the Court. It is penal and criminal in nature.** (Underlining ours for emphasis).

4.12 It is submitted that by the express meaning and intendment of Section 137 (1) (d) of the 1999 Constitution, a person who, even though not convicted, have forfeited property on account of criminal conduct should not aspire to or be allowed to occupy the exalted office of President of Nigeria. That is why the word **"or"** is used twice in **section 137(1)(d) of the Constitution,** meaning it carries a disjunctive meaning – to separate persons convicted from persons who, even though not sentenced, are affected by an order of a fine imposed by a Court - like the 2nd Respondent in this Petition. In other words, the affected person (in this case, the 2nd Respondent) needed not have been convicted before the provisions of that paragraph would come into effect.

4.13 The United States District Court, Northern District of Illinois, which made the Order of Fine against the 2nd Respondent, comes within the category of the term 'any court' provided for in section 137 (1) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Within the tenor of the section, where it was intended to apply to Nigerian courts, that was provided for expressly before it proceeded with the disjunctive term by operation of the word 'or' to after that provide for the applicability of any court. The Constitution does not define the term 'court' to justify a restrictive interpretation of the term to the courts provided for under the Constitution of the Federal Republic 1999 (as amended). Therefore, we submit that the reasonable conclusion is that courts are not limited to Nigeria, and section 137 (1) (d) intends to apply to any courts, whether Nigerian or otherwise.

4.14 We submit further that the provisions of section 137 (1) (d) merely require that the candidate is under the fine imposed. In the instant case, the 2nd Respondent's admission to ownership of the bank account brings him under the fine imposed. The action being one in Rem against funds held in his personal account is a lien for which the resulting liability is strictly personal. The contention that the fine was imposed against the bank account alone is puerile and amounts to a moot distinction without a difference. This court settled the location where liability lies in action in Rem, in AW (NIG) LTD v SUPERMARITIME (NIG) (2005) 6 NWLR (Pt 922) page 563 at 587 – 588, paras. H-A (CA), when it held that:

"12. On Foundation of action in Rem: The Foundation of an action in Rem is the lien resulting from the personal liability of the owner of the res."

4.15 Having regard to the foregoing definitions of "**money laundering**", there is no doubt that its nature and character clearly involve dishonesty on the part of the persons who engaged in money laundering, as in the case of the 2nd Respondent.

4.16 In Black's Law Dictionary, 6th edition, page 468, "**Dishonesty**" is defined as "disposition to lie, cheat, deceive, or defraud, untrustworthiness; lack of integrity. Lack of honesty, probity or integrity in principle, lack of fairness and straightforwardness, disposition to defraud, deceive or betray."

4.17 In defence, the 2nd-3rd Respondents relied on RW2. A witness that is already discredited for disowning on oath a part of the document he tendered in evidence. To defend the issue

of the disqualification of the 2nd Respondent to have contested the presidential election, the RW2 testified as a purported expert in American law.

4.18 Under cross-examination by the 4th Respondent, he stated That he is "an Attorney in the US" He tendered American Bar Association (New York Bar Membership) card as **Exhibit RA28**. Under cross-examination on behalf of the Petitioners, he admitted that he did not tender **"any licence to Practice Law in the State of New York"**. He claimed that he has "a licence to practice Federal Law across the United States." With respect, that is a fictional claim. Under cross-examination on behalf the Petitioners, the RW1 stated that: "The American Court relied on American Law **Section 981** dealing with civil forfeiture." This statement is embarrassing and betrayed his claim of being knowledgeable in American Law. His claim is grossly untrue, ludicrous, and deeply misconceived. He further stated that the USA judgment **"is not money judgment"**. This contradicts the claim in his deposition that the judgment is registrable in Nigeria pursuant to Foreign Judgments (Reciprocal Enforcement) Act! Only money judgments are registrable in Nigeria. See **CONOIL PLC v VITOL S.A** (2011) LPELR-1995(CA).

It is therefore, submitted that, the 2nd Respondent against whom an Order of Forfeiture was made in Exhibit PA5, which said Order of Forfeiture, has been shown to be the same as a fine, is within the meaning and intendment of Section 137 (1) (d) of the 1999 Constitution as amended, not qualified to contest the Presidential election held on 25th February 2023. Your Lordships, are on this ground urged to uphold the Petitioners claims, seeking for the disqualification of the 2nd Respondent.

DISQUALIFICATION OF THE 3RD RESPONDENT

4.19 We submit that the 3rd Respondent was at the time of the Presidential Election held on February, 2023 not qualified to contest the election as the Vice-Presidential Candidate of the 2nd Respondent and same invalidated the qualification of the 2nd of the 2nd Respondent to contest the said election.

4.20 The Constitution of the Federal Republic of Nigeria 1999 (as amended) makes it mandatory that every President Candidate must nominate a valid Vice-Presidential Candidate. Section 142, provides as follows: (1) In any election to which the foregoing provisions of this Part of this Chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President, who is to occupy the office of Vice-President and that candidate shall be deemed to have been duly elected to the office of Vice-President if the candidate for an election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid.
(2) The provisions of this Part of this Chapter relating to qualification for election, tenure of office, disqualification, declaration of assets and liabilities and oaths of President shall apply in relation to the office of Vice-President as if references to President were references to Vice-President.

4.21 The unchallenged facts before this Honourable Court are that the 2nd Respondent in purported compliance with this Constitutional requirement nominated the 3rd Respondent

as his Vice-Presidential Candidate. He made the nomination on July 14, 2022 while the 3rd Respondent was the Senatorial Candidate of the 4th Respondent for Borno Senatorial District. The was clearly in contravention of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the extant provisions of the Electoral Act 2022, its Manuals, Guidelines and Regulations.

4.22 We submit that the Respondents cannot take refuge under the Supreme Court decision in PDP V INEC & Ors (2023) LPELR-60457 (SC). The decision of the apex court is well decided for the facts and evidence before it. We submit that the case turned on whether another political party who is not an aspirant can challenge the nomination of a party in a pre-election matter. We submit that the comments of the court on the date of withdrawal of the 3rd Respondent is not a ratio of the case. We submit that the date of July 6, 2022 on the letter of withdrawal cannot be the effective date. It is not in dispute that the 3rd Respondent signed INEC Senatorial Election Notice of Withdrawal of Candidate Form EC11C on July 15, 2022. Until July 15, 2022, the 3rd Respondent remained in the records of INEC as the Senatorial Candidate of the 4th Respondent for Borno Central Senatorial District. He could not validly accept nomination for the position of Vice-Presidential Candidate of the 2nd Respondent before July 15, 2022. The fact before the Court is that it was on July 14 2022 that the 3rd Respondent signed Form EC11A (Notice of Withdrawal of Candidate pursuant to Section 33 of the Electoral Act 2022) with officials of the 4th Respondent.

4.23 We submit that as at July 14, 2022 when he accepted nomination for the position of Vice-President of the 2nd Respondent, he was still in the records of the 1st Respondents the Senatorial Candidate of the 4th Respondent for Borno Senatorial District. We submit further that these facts distinguish the decision in PDP V INEC & Ors (2023) LPELR-60457 (SC). These facts were not canvassed before the Supreme Court and they make the said decision not a precedent for this Petition.

4.24 The issue of double-nomination as raised by the Petitioner is an issue of qualification that can be ventilated under section 134(1) (a) of the Electoral Act 2022 (formerly section 138(1)(a) of the Electoral Act 2010, as amended), see the recent cases of APC V. CHIMA (2019) LPELR-48878 (CA) AND ACHILONU V. CHIMA (2019) LPELR-48837 (CA) at 6-10 where the Court of Appeal clarified thus: "It is to be noted that section 38 of the Electoral Act, 2006, is now section 37 of the Electoral Act of 2010 (as amended). It would however appear that the current judicial disposition having regard to cases decided by the Supreme Court, is to the effect that a case of double nomination is stricto sensus not one of "party nomination" under section 87(9) of the Electoral Act and can comfortably be brought under the provisions of section 138(1) of the Electoral Act 2010, if properly articulated and a successful challenge in that regard being sufficient to void the votes cast in an election, if proved". (Underlining ours, for emphasis)

4.25 The Supreme Court put the issue beyond argument when it held in **PDP V DEGI-EREMIENYO (2020) LPELR-49734 SC,** as follows: 'The sum total is that the joint ticket of the 1st and 2nd respondents sponsored by the 1st respondent was vitiated by the disqualification of the 1st respondent. Both candidates disqualified are deemed not to be candidates at the governorship election conducted in Bayelsa State. It is hereby ordered that INEC, (the 4th respondent herein) declare as winner of the governorship election in

Bayelsa State, the candidate with the highest number of lawful votes cast with the requisite constitutional (or geographical) spread. The 4th respondent (INEC) is hereby further ordered to forthwith withdraw the certificate of return issued to the 1st and 2nd respondents and issue certificate of return to the candidate who had the highest number of lawful votes cast in the governorship election and who also had the requisite constitutional (or geographical) spread."
Per EKO, JSC (Pp. 8-16, para D)

4.26 **Section 35 of the Electoral Act 2022** provides that where a candidate knowingly allows himself to be nominated by more than One political party or in more than one constituency, his nomination shall be void. The Court of Appeal Ekpeudom v APC & Anor (2022) LPELR-56956 (CA), per Tsamani JCA, put it succinctly that: "This provision of the Electoral Act, 2022 clearly stipulates the invalidity of multiple nominations and by the use of the word "shall" in the statute, it amounts to a command, a must, compulsion or an obligation or mandatory. See Aladejobi V NBA (2013) LPELR - 20940 (SC), Bamaiyi V Attorney General Federation & Ors. (2001) 12 NWLR (Pt. 727) 466 at 497. Thus, the intention of the drafters of this beautiful piece of legislation is to ensure credibility and integrity of the Electoral Process."

4.27 We submit that the candidacy of the 2nd Respondent is invalidated by the vitiated, purported and failed nomination of the 3rd Respondent.

We further submit that, when the 2nd Respondent stood election as the Presidential Candidate of the 4th Respondent, despite his own disqualification by virtue of Section 137 (1) (d) of the 1999 Constitution as shown above. Both the 2nd and 3rd Respondents were affected by the virus of constitutional and statutory disqualification affecting each and both of them.

We urge your lordship to resolve this issue in favour of the Petitioners and invalidate the election of the 2nd and 3rd Respondents.

NON-COMPLIANCE WITH THE ELECTORAL ACT AND THE SUBSIBIARY LEGISTLATIONS MADE THEREUNDER, FOR THE CONDUCT OF THE PRESIDENTIAL ELECTION CONDUCTED ON THE 25TH FEBRUARY 2023.

4.28 My noble lords, the 2nd and 3rd Respondents in their Final address, prefaced their submission with the caption "PREPARATORY NOTE" and therein, took the simplistic view that the instant Petition unlike in previous election challenges, did not complain of such unwholesome acts like ballot box snatching, ballot box stuffing, violence, thuggery etc.

According to the 2nd and 3rd Respondents, the Petitioners main grouse is that, whilst "the Presidential election was peacefully conducted and the results accurately recorded in the various Form EC8As, some unidentified results were not uploaded to the INEC Election Result Viewing (IREV) Portal". With very great respect, the 2nd and 3rd Respondents completely miss the point and their said summation smacks of a deliberate and mischievous misunderstanding of the kernel of the Petitioners' case. The pertinent question is, how can an election result that lacks transparency, violates specific rules and

regulations, palpably compromised, not susceptible to verification by the admitted technological platform introduced as an innovation for a transparent process, and contravenes clear constitutional provisions, be rightly described as "accurate" and or authentic.

4.29 In the ensuing paragraphs, we will show that by the unchallenged evidence before the Honourable Court, the Petitioners established that the 1st Respondent who had the statutory duty to conduct the Presidential election, manifestly threw overboard the mandatory requirements of the Electoral Act, 2022 and the subsidiary legislations made thereunder, for the conduct of the 2023 General election, particularly the questioned Presidential election. The Petitioners will urge the Honourable court, to uphold that non- compliance with the binding statutory provisions in the conduct of the Presidential election, substantially affected the purported declaration and return of the 2nd and 3rd Respondents as the alleged winners of the Presidential election.

4.30 My Noble Lords, it is common ground that, in proof of its case, the Petitioners called as witnesses PW2; Anthony Chinwo, a Cloud Engineer/Architect, PW3; Staff of Channels Television, PW4; A Professor of Mathematics, who produced and tendered expert report of the data analysis on the result of the 25th February 2023 Presidential Election, PW5;Staff of Arise TV, PW6; Staff of AIT, PW7; A Cloud Engineer/Architect and Employee of Amazon Web Services and PW8; the Cyber security and Risk Advisory Consultant among other witnesses. The above identified witnesses gave expert and specialist/technical evidence before the Honourable court.

4.31 It is pertinent to point out that, these expert witnesses filed Witness Statements on Oath which they respectively adopted as their Evidence In-Chief before this Honorable Court. My Noble Lords, it is submitted that despite the vigorous cross-examination of the expert witnesses, their evidence on the particular subject they testified remained unchallenged.

4.32 My Noble Lords, it is common ground that, in preparatory to the conduct of the 2023 General Elections, the 1st Respondent publicly represented that as enjoined by the Electoral Act, 2022, it would use technology for the conduct of the election. By the use of technology, the 1st Respondent assured that it would use the BVAS for both accreditation of voters, upload and transmission of the results of the election on the day of election in real time to the INEC Result viewing portal (IREV).

The upload and transmission of the result of the election from the polling units, using the BVAS to the IREV was a significant feature of the 2023 General Election which the 1st Respondent severally represented and marketed to both the Nigerian public and the international community as a major innovation/introduction that would guarantee transparency in the conduct of the 2023 General Election. This representation, described by the 1st Respondent as a major innovation, was established before the Honourable Court through the evidence of PW3, PW5 and PW6.
From the video recording shown and played in open Court as Exhibits, PBH3, PBH 4, PCH1 and PCG2, the above representation was made locally here in Nigeria, and also, to the International Community at Chattam House London, during which the said 1st Respondent's Chairman reaffirmed that the 1st Respondent was irrevocably committed to

the online real-time transmission of the election results from the polling units to the IREV on the day of the election.

4.33 It is pertinent to underscore that, the word "electronically transmit/transfer" is a technical term which refers to transfer of digital files or data from a device such as BVAS to a server such as the IReV.

By the provisions of Section 60 (5) of the Electoral Act 2022, it is clearly provided that, **"The presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission".**

It is submitted that by Section 60 (6) of the Electoral Act, a contravention of the duties incumbent on the presiding officer as mandated by Section 60 of the Act, is punishable upon conviction with a fine or imprisonment.

It is further submitted that, by the penal nature of the duties under Section 60 (5) of the Act, the requirements for the presiding officer to "transfer the results....in a manner prescribed by the Commission", connotes that the clear intention of the law maker is that any non-compliance with the sub-section, will attract serious consequences.

4.34 Pursuant to its mandate under Section 60 (5) of the Electoral Act referred to above, the 1st Respondent explicitly provided in the Regulations and Guidelines for the Conduct of the Election 2022 (hereinafter simply referred to as Regulations and Guidelines) and the Manual for the Election Officials 2023 (hereinafter simply referred to Manual for the Election of Officials), step by step processes for the collation, uploading and transmission of the result of the election from the Polling unit to the IREV.

4.35 It is respectfully submitted that, the Regulations and Guidelines and the Manual for Election Officials made by the 1st Respondent are subsidiary legislation promulgated by the 1st Respondent in accordance with the provision of Section 148 of the Electoral Act 2022. See; **FAYEMI V. ONI 2009 LPELR 4146 (CA) p. 80-93**.

In **AIR COMMODORE YUSHAU V. INEC (2019) LPELR-49629 (CA),** this Honorable Court was emphatic that **"the manual for the conduct of elections and their guidelines are meant to be obeyed".** See also: **BUHARI v. OBASANJO (2005) 2 NWLR (Pt. 910) 241 at 511; ACTION ALLIANCE V. INEC 2019 LPELR-49364 (CA) at 36**

4.36 In several cases, the Courts have reiterated that, Regulations and Guidelines and Manual for Election Official, issued in accordance with the Act and which embody all steps to comply with in the conduct free, fair and hitch free elections, are subsidiary legislations, and its provisions, must be invoked, applied and enforced. See **CPC v. INEC (2011) 18 NWLR (Pt 1279) 493 at 592 para G-H; FALEKE v. INEC (2016) NWLR (Pt 1543) 61 at 120 para E-G**

4.37 In FALEKE v. INEC supra, page 156 Para D-F, the Supreme Court per Ogunbiyi JSC (as he then was) was emphatic that **"the Manual for Election Official 2015 (updated**

version [which is substantially same as Manual for Lection Officials 2023), issued by INEC are not mere instructions or directions; rather, they are subsidiary legislations which have the force of law. They have their origin from the Constitution and the Electoral Act."

4.38 My Noble Lords, a contravention of the duties incumbent on the presiding officer as mandated by Section 60 of the Act is punishable upon conviction with a fine or imprisonment under Section 60 (6) of the Act. It is submitted that, ordinarily, the use of the word shall in Section 60 (5) of the Act, connotes a mandatory requirement/obligation. However, it is further submitted that with the corresponding penal provision under Section 60 (5) of the Act for non-compliance, the intendment of the law maker is that the requirement/obligation in Section 60 (5) must be strictly followed and will not admit of any deviation.

4.39 My Lords, as provided in Section 60 (5), the Commission (1st Respondent) prescribed the manner for the "**transfer of result including total number of accredited voters and the results of the ballot**" in its Regulations and Guidelines and the Manual for Election Officials.

Paragraph 38 (i) and (ii) of the Regulations and Guidelines specifically provides that: "**on completion of all the Polling Unit voting and results procedures, the Presiding Officer shall:**

i) **Electronically transmit or transfer the result of the polling unit, direct to the collation system as prescribed by the commission.**

ii) **Use the BVAS to upload a scanned copy of the EC8A to the INEC result viewing portal (IReV) as prescribed by the commission.**

Significantly, from a combined reading of the above paragraph 38 (i) & (ii) together with the related provision in paragraph 48 (a) & (b) of the Regulations and Guidelines, the duty to electronically transmit the result of the election directly from the polling unit is further emphasized with the ultimate injunction that, the result electronically transmitted/transferred, shall serve as the benchmark for a proper collation of the result of the election in a polling unit.

4.40 It is further submitted that, the Manual for Election Officials contain detailed provisions on how to use the BVAS for the upload/electronic transmission of the election result from the polling unit to the IReV. See pages 36 to 49 of the Manual for Election officials.

4.41 Indeed, my Noble Lords, in paragraph 2.9.0, at page 36 of the Manual for Election Officials, 1st Respondent under the sub-heading "electronic transmission/upload of election result and publishing to INEC Result Viewing (IReV) Portal", captured the fundamental importance for the requirement of electronic transmission of the result of the election as follows: **"One of the problems noticed in the electoral process is the irregularities that take place between the Polling Units (PUs) after the announcement of results and the point of result collation. Sometimes results are hijacked, exchanged, or even destroyed at the PU, or on the way to the Collation Centers. It**

becomes necessary to apply technology to transmit the data from the Polling Units such that the results are collated up to the point of result declaration.
The real-time publishing of polling unit-level results on IReV Portal and transmission of results using the BVAS demonstrates INEC's commitment to transparency in results management. This commitment is backed by Sections 47 (2), 60 (1, 2, & 5), 64 (4a & 4b) and 64 (5) of the Electoral Act 2022, which confers INEC with the power to transmit election results electronically. The system minimizes human errors and delays in results collation and improves the accuracy, transparency, and credibility of the results collation process".

Furthermore, the 1st Respondent in paragraph 2.9.2 in recognition of the internet challenges that may hamper the transmission of the result of the election as part of the collation process, also provided that "the e-transmission application has been updated to work offline, when and where there is no network. This guide seeks to show the configuration of the e-Transmission application on the BVAS to enable it to perform the offline and online"

4.42 My Lords, it is in furtherance of the above provisions in the Electoral Act, Regulations and Guidelines and the Manual for Election Officials, that the 1st Respondent through several media and press briefings represented/reassured Nigerians and the International Community of its commitment to the compliance of the law by the electronic transmission of the election results from the polling units using the BVAS to the IReV and that this commitment and compliance were not negotiable.

4.43 The appropriate question, my lords, is whether the 1st Respondent having publicly represented/assured that it was irrevocably committed to complying with the law by electronic transmission/upload of election results from the polling units to the IReV Portal as prescribed by the 1st Respondent itself, is 1st Respondent not estopped from reneging from this publicly given assurance/representation?

The law relating to estoppel is now firmly entrenched. In **ACCESS BANK v. NSITF (2022) LPELR-57817 (SC)**, the Supreme Court reiterated: **"instructively, it is trite that plethora of cases reiterated the fundamental principles regarding estoppel. It was aptly posited by this court in Jacob Oyerogba v. Egbewole Olaopa (1998) LPELR-SC 300/1990; estoppel is now more than a rule of practice and it can be rightly be described as a substantive rule of law....thus, by operation of the veritable rule of estoppel, a person ought not to be allowed to blow hot and cold, to affirm at one time and deny at another time, that is to say, to approbate and reprobate.** See also: **AG RIVERS STATE v. AG AKWAIBOM STATE (2011) 8 NWLR (Pt. 1248) 31 at 157 para D-E; ACCORD ENGINEERING LTD v. FAJUKE (2022) LPELR-58074 (CA) at 31 para A.**

4.44 Apart from the press briefing containing the representations/assurances given by the 1st Respondent as stated above, the 1st Respondent also, by a Press release dated November 11, 2022, captioned "alleged plot to abandon the transmission of polling unit result to IReV Portal" and signed by Festus Okoye Esq, National Commission and Chairman Information and Voter Education, re-emphasized that the **"Commission has repeatedly reassured Nigerian that it will transmit result directly from the polling unit....the**

IReV is one of the innovations introduced by the Commission to ensure the integrity and credibility of elections in Nigeria. It is therefore inconceivable that the Commission will turn around and undermine its own innovations."

Strangely, and this is a foretaste of the deliberate mischief contrived and engineered by the 1st Respondent in the conduct of the Presidential election, in response to the Subpoena dated 13th June 2023, issued by this Honourable Court commanding the 1st Respondent to produce the above referenced Press release, the proceedings of the Court for 20th June 2023 will confirm that Morenikeji Fumulayo Tairu, Deputy Director, Legal Drafting Department INEC, on behalf of the 1st Respondent, boldly told the Court that the said Press release dated 11th November 2022, does not exist and not in the records of the 1st Respondent. However, My Noble Lords will recall that, in his evidence before the Honourable Court, PW8, who adopted his written witness statement on oath as his evidence in chief, provided unchallenged expert evidence and testified *inter alia* as follows: **"I am further aware that the INEC website http://wp1.inecnigeria.org contains publicly accessible information of resources/materials published and issued by INEC from 2018 to 2023. Specifically, the uniform resource identifier (URI) http://wp1.inecnigeria.org/wp-content/uploads/2022/11/1-2-500x749.jpeg contains the INEC Press Release dated November 11, 2022 captioned "Alleged Plot to Abandon the Transmission of Polling Unit Results to IReV Portal" and signed by Festus Okoye, Esq. National Commissioner and Chairman Information and Voter Education Committee. A Copy of the above Press Release, which I downloaded from the publicly available URI is attached as Exhibit B."** The above press release dated 11th November 2022, was admitted in evidence by the Honourable Court and marked as Exh **PCK2**

With very great respect, My Lords, a mere click on the above URI (Uniform Resource Identifier) in paragraph 26 of the witness statement of PW9, will automatically open as the above referenced Press release dated 11th November, 2022.

4.45 It is submitted that, when the press release dated 11th November 2022; Exh **PCK2** (which the 1st Respondent's Deputy Director Legal Drafting Department, half-heartedly denied its existence) is examined together with the representation/assurance given by the 1st Respondent as per the evidence of PW3 (Exh. **PBH3 & PBH4);** PW5 (Exh. **PCJ2)** and PW6 (Exh **PCH1**), it follows that the prescribed requirement for the uploading/electronic transmission of the result of the election in real time and during the election, from Polling units using the BVAS to the IReV Portal, is a fundamental and indispensable requirement of the election process under the Electoral Act.

4.46 In the recent case of **OYETOLA & ANOR v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS (2023) LPELR-60392 (SC), at page** the Supreme Court clarified that, while "there is no part of the Electoral Act and INEC Guidelines that require that election result of a polling unit should on the spot during the poll be transmitted to the INEC National Election Register of data base: **"...the Regulations provide for the BVAS to be used to scan the complete result in Form EC8A and transmit or upload the scanned copy of the polling unit result to the Collation System and INEC Result Viewing Portal (IReV)....."** (underlining for emphasis)

The Supreme Court in the **OYETOLA's case (supra)** in very commendable details devoted sufficient attention to review/reproduce the relevant provisions in Section 62 of the Electoral Act 2022, and paragraph 38 of the Regulations and Guidelines, and specifically held: **"As their names depict, the Collation System and the INEC Result Viewing Portal <u>are part of the election process</u> and play particular roles in that process. The Collation System is made of the centres where results are collated at various stages of the election. So the polling units results transmitted to the collation system provides the relevant collation officer the means to verify a polling unit result as the need arises for the purpose of collation. The results transmitted to the Result Viewing Portal is to give the public at large the opportunity to view the polling unit results on the election day. <u>It is clear from the provisions of Regulation 38(i) and (ii) that the Collation System and Result Viewing Portal are different from the National Electronic Register of Election Results. The Collation System and Result Viewing Portal are operational during the election as part of the process, the National Electronic Register of Election Results is a post-election record and is not part of the election process."</u>**

4.47 With very great respect, My Noble Lords, the 2nd and 3rd Respondents at pages 36 to 37 of their written address, referred to the above decision of **OYETOLA v. INEC** supra, and unfortunately, misapprehended the *ratio decidendi* of the Supreme Court Judgment in that case, with respect to electronic uploading and transmission as part of the election process, and erroneously relied on the said decision as one "which covers the field and clinically considered all the issues which the Petitioners are agitating before this Honorable Court."

It is submitted that the decision in **OYETOLA v. INEC** supra, properly read and understood, supports the Petitioners contention that the uploading/electronic transmission of the results of the election in real time or during the election, from the polling units to the IReV, is a mandatory requirement of the electoral process.

It is further submitted that, the delusion under which the Respondents suffer, is the erroneous imagination that electronic transmission in real time or during the election, from the polling units to the IREV, is the same thing and/or is to be confused or juxtaposed with the collation of the result of the election in the National Electronic Register of Election Result provided for by Section 62 (2) and (3) of the Electoral Act.

4.48 The Supreme Court in the case of **OYETOLA** v. **INEC** supra, appreciated the distinction between the National Electronic Register of Election Result and the Collation System of the election results by publishing to the IReV. Whilst the National Electronic Register of Election Result was held as a post-election record and not part of the election process, the Supreme Court emphatically determined that "the collation system and the Result Viewing Portal (IREV) are operational <u>during the election</u> as part of the process.

It is for this reason that the Supreme Court in the **OYETOLA** v. **INEC** supra, held that "the INEC data base or National Electronic Register of Election Result, is not relevant evidence in the determination of whether there was non-accreditation or over voting or not in an election in a polling unit".

4.49 In their written address, the 2nd and 3rd Respondents heavily relied on the authority of the unreported decision of the Federal High Court in Suit No. FHC/ABJ/CS/1454/2022; LABOUR PARTY v. INEC delivered on 23rd January 2023, for the erroneous contention that electronic transmission of polling unit results to the IReV is not mandatory.
My Noble Lords, under the doctrine of stare decisis which is a cardinal feature of our Jurisprudence, the decision of the Supreme Court on a point overrides and is final and superior to any pronouncement by any other lower Court on the same point. Indeed, by the mandatory provision in Section 287 (1) of the 1999 Constitution as amended, all authorities and persons including courts with subordinate jurisdiction below the Supreme Court are bound to enforce and give effect to the decision of the Supreme Court on any point.

It is therefore submitted that, the decision of the Federal High Court in LABOUR PARTY v. INEC, (supra) cannot stand in the face of the subsisting decision of the Supreme Court in **OYETOLA** v. **INEC** supra, and therefore, ought to be discountenanced.

4.50 At pages 20 to 22 of their written address, whilst slavishly clinging to the unsupportable flicker of hope created by the Judgment of the Federal High Court in LABOUR PARTY v. INEC, supra, the 2nd and 3rd Respondents pontificated that, "by instituting this Petition, the Petitioners are not only taunting the Court, but they have demonstrated outright disregard for the institution of the Judiciary. Their Petition is not only abusive but also scandalous.... the Petitioners are inviting anarchy by their ventilation of this issue of non-compliance based on non-transmission of the results electronically by INEC".

With very great respect, all the authorities relied on by the 2nd and 3rd Respondents, including **WADA v. BELLO (2016) 17 NWLR (Pt 1542)374 at 433, SARAKI v. KOTOYE, ARUBO v, AIYLERU, OJUKWU v. GOV. OF LAGOS STATE** and others, are completely irrelevant to the cardinal issue in this Petition, which is the mandatory requirement of upload/electronic transmission of the result of the election from the polling units to the IReV, as part of the election process, which was authoritatively settled by the Supreme Court in its recent decision in **OYETOLA v. INEC** supra.

The 2nd and 3rd Respondent flowery argument of the Petitioners refusal to abide by the Judgment of the Federal High Court and the instant Petition being an abuse of process, flies in the face of the binding judgment of the Supreme Court in **Oyetola's case** above.

4.51 My Noble Lords, it is submitted that, the only reason invented by the 1st Respondent for its manifest non-compliance with the above mandatory prescription for the upload/electronic transmission of the result of the election from the polling unit to the IReV, is alleged occurrence of "technological glitches" on the day of the election.

4.52 According to RW1 (Dr. Lawrence Bayode, Deputy Director ICT INEC), in his evidence before the Court "the use of technology is as prescribed by the 1st Respondent pursuant to the Electoral Act 2022, and Regulations and Guidelines for the Conduct of General Elections 2022; See paragraph 10 of the witness statement on oath of the RW1 which he adopted as his evidence in Chief before the Court.

However, according to RW1, **"Immediately after the election on the 25th of February 2023, polling unit results were uploaded and received by the e-transmission system**

whilst using the BVAS there was a temporary failure of communication between the e-transmission system and the IReV portal for the Presidential election. In this regard, the e-transmission system returned an HTTP 500 error which is an application error such that the transmitted results though received on the e-transmission application hosted on the AWS, the e-transmission could not organize and push the results instantly to the Presidential module on the IReV portal because it could not map the results uploaded for the Presidential election to any State. The AWS CloudTrail logs contain and shows patches deployed to fix the error/technical glitches on the election day." See paragraph 29(viii) of the witness statement of RW1.

However, contrary to the above evidence of alleged temporary failure of communication between the e-transmission system and the IReV Portal, PW7 provided documentary evidence of the Health Status of the Amazon Web Services (AWS) Servers, showing that from the health status of the Server, there was no report of any technological glitch on the day of the election.

1.53 My Noble Lords, it is common ground that the 1st Respondent deployed/utilized the AWS servers for the hosting of its e-transmission Portal as well as the IReV Portal. The Report of the AWS Health Status in the Six Regions where AWS Servers are hosted was admitted in evidence as Exh. PCJ 3 A- F and PCJ 4.

1.54 The 2nd and 3rd Respondents in their written address, devoted much energy aimed at discrediting PW7. Her current employment verification letter/confirmation of her employment with AWS (**Exhibits PCJI & PCJ2**), were vigorously attacked by 2nd and 3rd Respondent as "being unsigned" and "manufactured by her". The authorities of **TSALIBAWA v. HABIBA, NAMMAGI v. AKOTE, ABUBAKAR v. INEC** and **GITTO COSTRUZIONI GENERALI v. JONAH** heavily relied on by the 2nd and 3rd Respondents as relating to the effect of non-signing of document are totally irrelevant and are inapplicable to employment status of PW7.

1.55 With due respect, the 2nd and 3rd Respondent, seem to be unaware of the prevailing technology with respect to employment documents in advanced corporations such as AWS.

Apart from Exh PCJ1 & PCJ2, PW7 annexed a copy of her profile/resume to her witness statement on oath, which shows that she is employed by Amazon Web Services Maryland, USA as a Cloud Infrastructure Engineer/Architect from February 2022 to present. There was no evidence before the Court from the 2nd and 3rd Respondents debunking and/or challenging the impressive resume of PW7, which she attached to her witness statement on oath. See, particularly paragraph 2 of the witness statement of PW7 which she adopted as her evidence in chief.

1.56 In her evidence before the Honourable Court, in response to question under cross examination by the learned Senior Counsel to the 2nd and 3rd Respondent, PW7 maintained that her employment verification letter (Exh. PCJ2) has the name of the corporation and Employee Resource center, and that the employee resource center is the department that handles employment verification and that Exhibit PCJ2 is in the nature of employment verification letters given by AWS to its employees.

4.57 It is important that the PW7's confirmation of employment apart from indicating that it was issued by the Employee Resource Center, Amazon.com. Inc. also contain a further statement **"if you have any questions, please contact us at 888.892.7180".** My lords, neither the 2nd and 3rd Respondents nor anyone whatsoever including their sole witness made any effort to contact Amazon Resource center at the above given number, yet it is being falsely argued that PW7's unchallenged proof of her employment as a staff of Amazon.com Inc. is "manufactured by her". With due respect, this as uncharitable as it is baseless and ought to be rejected.

4.58 In a futile attempt to justify the alleged excuse of technological glitches, RW1 tendered Exh. RA6, which he alleged is the AWS CloudTrail Logs showing the touted technological glitches and the patches deployed to repair same.

RW1 admitted under cross examination that, a CloudTrail Log will contain the following features namely: **"Event time, Event Source, Event name, AWS Region, Source IP Address, I.A.M (Identity Access Management), User Address."**

4.59 In her unchallenged evidence before the Court, PW7 also testified that there is a CloudTrail for every API (Application Programming Interface) action within an AWS account.
It is submitted that, a cursory examination of Exh RA6 will show that, it does not meet the requirements of a CloudTrail Log. The above itemized features of a CloudTrail Log as admitted by RW1, are non-existent in Exh RA6.

4.60 Furthermore, assuming without conceding that there was any technological glitch resulting in a temporary loss of communication between the e-Transmission Portal and the IReV Portal on the day of the election, the Respondents case is that "the said technological glitch was repaired following which the result of the first Presidential election was successfully uploaded on IReV on the 25th of February 2023 (the day of the election)" See paragraph 90 (xi) of 1st Respondents Reply to the Petition, and paragraph 7 of the witness statement of RW1 adopted as his evidence in chief.

4.61 In his evidence before the Honourable Court, RW1 maintained that "the alleged technical glitch did not in any way affect the result of the election. Upon resolution of http 500 error, the result which were delayed in the e-transmission were eventually organized and pushed to the IReV Portal, the results are available as generated in their original from the polling unit using the BVAS. The result of the election as uploaded on the IReV are readable and reflect the lawful scores of all the candidates at the election". See, paragraphs 29 (x), (xi) and 30 of the witness statement of RW1 which he adopted as his evidence in chief.

4.62 It is intriguing that, contrary to the above evidence of RW1, the purported result of the election uploaded/transmitted to the IReV, certified copies of which were issued and given by the 1st Respondent to the Petitioner are made up of blurred/unreadable copies and images, as well inaccessible/blank documents. Even RW1 himself, when shown certified copies of these blurred/unreadable documents, admitted/conceded that he was unable to

decipher the votes recorded for the 4th Respondent on them, as in his own words, "the copies are blurred."

4.63 May we respectfully refer the Honourable Court to the burr copies which were certified by the 1st Respondent and admitted in evidence as Exhibit PCA14, PBS19, PBS21, PBZ9, PCA 25, PCA26, PCA28 AND PCA29. These documents though certified by the 1st Respondent where either manifestly blurred or blank documents, and where purported to be the result of the election in respective polling unit. We also refer to EXHs PCE1 – PCE4 (four boxes of blurred documents) uploaded on the IReV by the 1st Respondent and falsely represented as Form EC8A, were tendered by PW4. EXHs PBP1- PBP21, PBQ1-PBQ20, PBQ21, PBR1-PBR16, PBS1-PBS19, PBT1-PBT25, PBV1-PBV25, PBW1-PBW17, PBX1-PBX21, PBY1-PBY9, PBZ1-PBZ29, PCA1-PCA24, PCN34-PCN51, are blurred copies of documents certified by the 1st Respondent as purported Forms EC8A, EC8B, EC40G and EC60E, which were given to the Petitioners as certified copies of the original document in possession of the 1st Respondent.

It is submitted that, the above blurred copies, cannot by any stretch of imagination be described as the authentic version of the actual Form EC8A containing the records of the figures obtained by the Candidates in the respective polling units, yet INEC certified these blurred copies/images as true copies of what is in their possession. In **DICK v OUR AND OIL CO. LTD** (2018) 14 NWLR (Pt 1638), it was held that: "A certified copy is a copy of a document certified as true by the officer who **has the custody of the original**." In **OKECHUKWU UZOMA v DR VICTOR ADODIKE** (2009) LPELR-8421 (CA), it was held that: "thus, the term '**Certified True Copy**' or '**certified copy**', for short, means **a duplicate of an original** (usually) official document certified as **an exact reproduction** by the officer responsible for issuing or keeping the original. It is termed or called '**attested copy**'; **exemplified copy**; '**verified copy**' etc. See Black's Law Dictionary 8th Edition 2004 at 239 & 360." Per **SAULAWA, JCA** (page 24, paras. A-D).

4.64 It is submitted that the above blurred certified true copies, further debunk the unfounded claim/evidence of RW1 that, the hard of Form EC8A in the possession of the 1st Respondent were used to collate the result of the election. If such hard copies as claimed by the RW1 exist, and are in the 1st Respondents possession, the million-dollar question, is why were they not certified and given to the Petitioners instead of certifying the blank, blurred, unreadable and irrelevant images, purporting same to be the certified true copies of the result of the election. Your Lordships, will rightly invoke the presumption of Section 167 (d) of the Evidence Act in favour of the Petitioners. See: **DANLADI v. DANGIRI 2015 2NWLR Pt. 1442 124 at 159D (SC)** where the Supreme Court held that if an admitted document is incomplete of is edited, the party to be damnified is the one who ought to have produced the proper/correct/the complete document if he failed to produce the said document in its corrects from.

4.65 Though the blurred copies shown to RW1 are Exh. PCA23, your Lordships are respectfully urged to refer to the blurred copies of the purported result of the election in 18,088 polling units admitted as Exh. PCE 1-4 and invoke the Court's duty to draw inference from proven facts. See **DAVID v. INEC (2020) 4 NWLR (Pt. 1713) 188 at 202**

to 203, this Honourable Court, per Tsamani JCA, reiterated the established principle that: **"it is equally true, that in the resolution of issues before it, the Court is entitled to draw inferences from proven facts in order to reach a decision on an issue. In other words, a Court or Judge can draw inferences from oral and documentary evidence tendered before it."**

In the instant Petition, the Respondents neither challenged nor joined issues with the Petitioners on the fact that the result of the election uploaded/transmitted on the IReV in 18,088 polling units were blurred, and this was established by the oral evidence of RWI, confirming the character of Exh PCA 23.

4.66 In his unchallenged expert evidence before the Honourable Court, PW4 (Prof. Eric Uwadiegwu Ofoedu), produced as Appendix E (IReV scores investigation), a spread sheet of the 18,088 polling units with blurred Forms EC8A, and also gave evidence that "from the IReV Portal, 18,088 polling unit results were blurred", and also, that "from IReV Portal scores, on Form EC8As of 39, 546 polling units were inaccessible/contain uploads not connected to the election (which are referred to as invalid, blurred or not uploaded at all)"

4.67 It is respectfully conceded, that though the Court is not bound to accept an expert report, the legal position is also that **"they would appear not to have any choice than to do so as long as the expert evidence is unchallenged and un-contradicted as has been the situation in this case"**. See **UBA PLC v. UNISALES INTL NIG LTD (2014) LPELR-24283 (CA) at 41 para B** and many cases cited therein.

4.68 The 2nd and 3rd Respondents in page 16 of their written address, and submitted inter alia that **"an isolated consideration of two States out of the 36 States of the Federation and the FCT could not ground an empirical analysis of accuracy of the overall results... It is noteworthy that the witness himself admitted under cross examination that the totality of the said polling units both in Rivers and Benue, where he claimed to have considered, would not amount to 18,088 polling units."**

4.69 Respectfully, my Noble Lords, the above submission by the 2nd and 3rd Respondents' further evinces the unfortunate misunderstanding/misapprehension of the real purport of the evidence of PW4, particularly with respect to the unlawful declaration of the 2nd and 3rd Respondents as the winners of the Presidential election. From the purported result of the election in the Form EC8A, it was claimed that the 2nd Respondent as the Candidate of the 4th Respondent, won the Presidential election in both Rivers and Benue States, and thereby, adding those two States (Rivers and Benue States) to the number of States in the Federation wherein the 2nd Respondent as the Candidate of the 4th Respondent met the Constitutional requirement as provided in Section 134 (2) (b) of the 1999 Constitution as amended, of having not less than one-quarter of votes cast in at least two-thirds of all the States in the Federation.

4.70 Clearly, by the unchallenged evidence of PW4 as succinctly explained in the Data Analysis of the Benue State scores and Rivers State scores, the Petitioners lawfully won the election in the two States.

By evidence of PW4 in paragraph 5 (c) a - g (i -iii), 5 (d) a - f (i to iii), and the entirety of the evidence of PW4, which is supported/corroborated by Report of Data Analysis of the Result from February 25th, 2023 Presidential Election for Benue and Rivers State, it is summited that the evidence was neither challenged nor controverted. The executive summary of the Rivers State Scores Report referred to above which is on page 3 of the said Report is specifically referred to. In similar vein, the executive summary of Benue State Scores on page 3 of the said Benue State Report is also referred to. It is further submitted that from a proper understanding of the actual summation of the scores obtained by the Petitioners and the 4th Respondent in Rivers and Benue States, clearly show that the Petitioners won the election in both States.

4.71 In further attempt to discredit PW4, the 2nd and 3rd Respondents contended that "the witness was shown Exh. PCD 2 (with respect to Rivers State), for him to identify a particular polling unit in Degema Local Government Area where he had earlier alleged there was over-voting. Respectfully, this ploy by the 2nd and 3rd Respondents is mischievous.

It is common ground that, over-voting in any polling unit is to be determined by reference to BVAS accreditation data as per the Voters Register, and the number of votes recorded in the polling unit in the Form EC8A. To simply refer to number of votes recorded in Form EC8A for a polling unit and seek to show that by reason of the votes recorded thereon, there was no over-voting is out-rightly misleading and ignorant of the applicable laws/regulations on the point.

From the Report of PW4, the BVAS accreditation for the polling unit in question is zero (0), meaning that there was no accreditation in that polling unit, which by the Regulations and Guidelines is tantamount to there being no valid/lawful election in the polling unit. Thus, the mere recording of purported number of accredited voters on the Form EC8A will not cure the defect of the lack of accreditation/ no election in the polling unit as per the BVAS accreditation record. Accordingly, the purported scores which were more than the 0 number of persons shown on the BVAS accreditation is a product of over-voting without much ado.

In **OYETOLA v. INEC** supra, the Supreme Court acknowledged the potency of BVAS Accreditation Report issued by INEC as a veritable means of proving over-voting in a polling unit.

4.72 My Noble Lords, Appendix F attached to the Report of Report of Data Analysis of the Result from February 25th, 2023 Presidential Election is a Spreadsheet summary of National over-voting count, whilst Appendix G is the Spreadsheet of the polling units affected by over-voting on state by state basis. None of these Data Analysis has been challenged nor controverted by the Respondents in this Petition.

4.73 With specific reference to the 18,088 polling units whose purported result of the election uploaded on the IReV are blurred copies, Appendix E attached/referred to in the evidence in chief of PWA refers to the 18,088 blurred copies of blank/unreadable and irrelevant images.

4.74 My Lords, it is not the case of the Respondents (including the 2nd and 3rd Respondents), that the 18,088 blurred copies do not exist, nor did the 2nd and 3rd Respondents for that matter, proffer any explanation for the blurred copies of the election result uploaded on the IReV and certified by the 1st Respondent as the true copies.

My Lords, it bears to recall the evidence of RW1 in his witness statement on oath (adopted as his evidence in chief), wherein he stated that the result of the election "as generated in the original form from the polling unit using the BVAS" were eventually organized and pushed to the IReV Portal." See paragraph 29 (xi) of RW1 witness statement on oath.

Also, in his evidence under cross examination, RW1 admitted that the contents of Form EC8A uploaded/transmitted from the BVAS in the polling unit to the IReV will not be altered on the IReV. However, contrary to the above state of the pleadings and evidence before the Court, learned Senior Counsel for the 2nd and 3rd Respondents contended at pages 16-17 of the Final written address as follows: **"...premised on our earlier established position of the primary essence of the hardcopy of the Form EC8As, there is nothing before the court to ascertain that the forms purportedly downloaded from the IReV, making a total of 18,088 blurry documents, appear in the same manner in the hardcopy of the Form EC8A, as anything, including the intervention of printers, Toners and the likes, could have accounted for blurriness of a document which had undergone printing."**

4.75 With due respect, My Lords, the above pontification in the 2nd and 3rd Respondents written address, is neither part of the case of the 1st Respondent (who in fact gave certified copies of the blurred documents as the result of the election to the Petitioners) nor is the said contention by the 2nd and 3rd Respondents part of the evidence on record before this Honourable Court. The legal position is settled that the address of counsel, no matter how fanciful or eloquent, cannot be a substitute for the evidence of record. See: **ISHOLA v. AJIBOYE (1998) NWLR (Pt. 532) 71; AYORINDE v. SOGUNRO (2012) 11 NWLR (Pt. 1312) 460 at 501, para D.**

4.76 The 2nd and 3rd Respondents, despite the opportunity they had to cross examine PW4, and perhaps, challenge him on his expert evidence, failed to utilize that opportunity to challenge him about his expert analysis based on the blurred copies of the purported results of the election in the affected polling units. It is settled law that **"where a party fails to cross examine a witness on a particular matter, the implication is that he accepts the truth of that matter as led in evidence....a party who fails to cross examine a witness will not be entitled to invite the court to disbelief the witness on the evidence he gave."** See: **OLUDAMILOLA v. STATE (2010) 8 NWLR (Pt. 1197) 565 at 580 para C-D (SC).**

4.77 In his evidence in chief, PW8, gave unchallenged evidence that, from the publicly available metadata on the IReV Portal, it is evident that 1st Respondent (INEC) had multiple distinct uploads for some polling units. The internet result for the said multiple uploads which was attached to the written statement of PW8 as Exhibit A, was part of his evidence in chief given by him to the Honourable Court. None of the documents attached as Exhibit A to his witness statement on oath was challenged nor controverted during his testimony before the Honourable Court. A specific case in point, is the upload of a letter with a strange picture of a smiling gentleman, and some irrelevant notes purported to be an election result.

As at the date and time of the evidence of PW8 before the Court, there was no evidence of any purported encryption or coding making any part of Exhibit A attached to his witness statement unreadable. The meta file annexed to the witness statement of PW8 is neither encrypted nor unreadable. My Lords, will recall that, PW8 gave evidence that "the meta data is the data/information that describes the actual data." Unfortunately, the 2nd and 3rd Respondents referred to the first page of Exhibit A (though wrongly copied) with respect to the "Id" stated on the said first page of Exhibit A and claimed that same consists of unreadable/encrypted codes.

4.78 My Noble Lords, the ordinary meaning of the technical term "encrypt" means to convert a readable message or data known as "a plain text" into a non-readable data to protect the original message. The encrypted data is known as "cipher text". The publicly available definition of encryption is that in cryptography, encryption is the process of encoding information, this process converts the original representation of the information known as the plain text, into an alternative form known as cipher text. See www.en.m.wikipedia.org.

By encryption, the plain information is converted into a secret code that hides its true meaning. See https://www.techtarget.com

It is respectfully submitted that, the information contained on the first page of Exhibit A attached to the PW8 witness statement, even by the 2nd and 3rd Respondents own showing at page 18 of their written address is not coded, but can be read by anyone, even by the digitally illiterate who understands simple English language. The words shown therein (Polling unit, State Id, LGA Id, Ward Id, State Constituency Id) and other details contained on page 1of exhibit A, cannot by any stretch of imagination be described as encrypted.

The authorities of **OGIDI v INEC** and **ABUBARKA v. INEC** referred to and relied at page 18 of the 2nd and 3rd written address are completely irrelevant.

4.79 However, My Lords, to show the potency of the evidence of PW8, we respectfully invite Your Lordships, to examine the documents attached as Exhibit B to the witness statement of PW8. The said Exhibit B was admitted in evidence as Exh PCK2. Your Lordship will recall that, the Petitioners had on the authority of the subpoena issued by this Honourable Court, requested the 1st Respondent to produce these documents (now Exh. PCK2). RW1 in purported compliance to the subpoena issued by the Honourable Court, denied that this

document exists and not in the INEC record. See the statement of Dr. Lawrence Bayode, Deputy Director, ICT, INEC on 20th June 2023

My Lords, we need not make any heavy weather to emphasize the point that even in their final written address, the 2nd and 3rd Respondents as well as the 1st Respondent in its evidence before the Honourable court has not challenged nor denied the authenticity of Exh. PCK2 referred to above.

4.80 My Lords, with due respect, the above represents the evidence proffered before this Honourable Court by the Petitioners, on the radical issue raised in the Petition, concerning the manifest non-compliance by the 1st Respondent with the mandatory provision of the Electoral Act, the Regulations and Guidelines and the Manual for Election Officials.

4.81 The 2nd and 3rd Respondents only called as their witness in this case, Senator Michael Opeyemi Bamidele, who testified on 5th July 2023. Apart from his resume which was admitted as Exh. RA26 and other documents showing that the 2nd and 3rd Respondent we're qualified to contest the Presidential election, Senator Bamidele as the star witness for the 2nd and 3rd Respondents, gave no evidence in rebuttal, challenging the expert and other evidence adduced by the Petitioners witnesses (PW 2, PW4, PW7 and PW8). Notwithstanding the above state of the evidence before the Honourable Court, the 2nd and 3rd Respondents relied on the authority of the dictum of Udo Udoma JSC in **ELIAS v. OMO-BARE (1982) 5 SC 13 at 22.** It is submitted that the dictum relied upon by the 2nd and 3rd Respondents is very unhelpful to their case.

4.82 Respectfully, the dictum is a perfect fit that captures the dirge on nunc dimittis for the porous defence of the 2nd and 3rd Respondents that show case contradiction, inconsistency, fiction and unreliability in the evidence of their sole witness, the RW2. The witness who disowns his own document, and who admitted that he has never accessed the IReV, and yet, claimed that he knows its contents.

My Noble Lords, the evaluation of the evidence by the Court by placing the case of the parties on the imaginary scale was laid down in the leading case of **MOGAJI v. ODOFIN (1978) 4 SC page 65 at 67**. See also, **OLUFOSOYE V. OLORUNFEMI (1989) LPELR-2615; BAMGBOYE v. UNIVERSITY OF ILORIN (1999) 10 NWLR (Pt. 622) 290.** See also Kayode Eso, JSC (of the very blessed memory) in the case of **STATE v. AIBANGBEE (1988) 3 NWLR (Pt. 64) 548 at 562; 1988 LPELR-3208 (SC),**

My Noble Lords, the duty of Your Lordships, is to put the evidence of the Petitioners' expert/special witnesses (PW2, PW3, PW4, PW5, PW6, PW7, PW8) on one side of the imaginary scale, and that of the 2nd and 3rd Respondents sole witness, SW1 (Senator Bamidele) on the other side of the imaginary scale, and then weigh in your judicial minds, whether the Petitioners case of non-compliance with the mandatory requirements of the Electoral Act, Regulations and Guidelines and the Manual for Election Officials has been established.

SUMMARY OF THE PETITIONERS CASE BASED ON NON -COMPLIANCE.

4.83 It is conceded that by Section 135 (1) of the Electoral Act 2022 **"An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election."**

In **SENATOR JULIUS ALI UCHA & ANOR v CHIEF MARTIN NWANSCHO ELECHI & ORS** (2012) LPELR-7823 (SC), it was held:

"I must point out once again the standard of proof required when a Petitioner brings a petition on the ground that there was non-compliance with provisions of the Electoral Act, 2010 (as amended) in the conduct of the election. By virtue of Section 137(1) and (2) of the Evidence Act 2010 the standard is on preponderance of evidence. that is to say one side position outweighs the other. The Petitioner is to prove that there was non-compliance with provisions of the Electoral Act. He then has an added burden to prove that the non-compliance was substantial, that it affected the results of the election. It is then, the burden shifts to the Respondent to rebut that fact. Evidence led by a Petitioner outweighs that of the Respondent when the Petitioner is able to establish substantial non-compliance and there is only a feeble response or nothing much forthcoming from the Respondent in rebuttal." Per **RHODES-VIVOUR, JSC** (page 38-39, paras. F-C). See also **CHIEF ALEX OLUSOLA OKE & ANOR v DR RAHMAN OLUSEGUN MIMIKO & ORS** (2013) LPELR-21368 (SC), 77 – 78 para F-D.

In the instant case, the Petitioners have provided substantial evidence establishing their case of non-compliance, while the Respondents provided no evidence whatsoever on this point. The 2nd and 3rd Respondents woefully failed to rebut the Petitioners strong claim of non-compliance in the Petition.

4.84 The Electoral Act 2022 made significant innovation for the conduct of the 2023 general elections by introducing the use of modern technology to enhance free, fair, credible and transparent election process in Nigeria. A combined reading of Sections 47 (2), 60 (5), 62 (2), 64 (6) (b) and (d) of the Electoral Act, contain significant recognition for the use of technology in the conduct of election and the electoral process.

4.85 Pursuant to its powers under Section 148 of the Electoral Act 2022, the 1st Respondent issued the Regulations and Guidelines as well as the Manual for Election Officials. The Regulation and Guidelines and the Manual for Election Officials are both subsidiary legislations made pursuant to the Electoral Act, and are binding as such.

4.86 Paragraph 38 (1) and (2) of the Regulations and Guidelines 2022, prescribe the mandatory and primary upload of scanned copy of EC8A to the INEC Result Viewing Porta (IReV). As the base of electoral process, the electronic upload/transmission from the polling unit to the IReV in real time or during the election, signifies a major milestone, requiring strict compliance in the election.

Reference is made to the representations/assurance given by the 1st Respondent as per the evidence of PW3, PW5 and PW6 which is corroborated by the evidence in a permanent form as shown in **Exh. PCK2**

4.87 Exhibit PCK 2 dated 11th November 2022, further assured that the IReV is "one of the innovation introduced by the Commission, to ensure the integrity and credibility of election results in Nigeria. It is therefore inconceivable that the Commission will turn around and undermine its own innovation."

4.88 The 1st Respondent is estopped from refusing to abide with, and comply with its own representation/assurance in the documentary evidence before the Honourable Court, particularly Exhibit PCK2 that formed the basis on which the election was conducted by virtue of the universal doctrine of estoppel.

4.89 By the relevant provisions of Sections 47 (2), 60 (5), 62 (2), 64 (6) (b) and (d) of the Electoral Act, read together with paragraph 38 (i) and (ii), 48 (a) and (b) of the Regulations and Guidelines, and pages 36 to 49 of the Manual for Election Officials (particularly para. 2.9.0 at page 36), the upload and transmission of the result of the election using the BVAS from the polling unit to the IReV in real time on the day of election, is a mandatory requirement intended to ensure/improve accuracy, transparency and credibility of the result collation process.

4.90 The Data known as 'National Electronic Register of Election Results" under Section 62 (2) of the Electoral Act, is distinct from the Electoral System prescribed in the Electoral Act, which includes; uploading/transmission of the result of the election from the polling unit to the IReV as part of the election process.

4.91 The Supreme Court in the recent case of OYETOLA v. INEC supra, upheld that by law, the BVAS is to be used to scan the complete result in Form EC8A, and transmit or upload the scanned copy of the polling unit result to the collation system and on the INEC Result Viewing Portal, and further clarified that the "provisions of Regulations 38 (i) and (ii)" providing for "collation system and result viewing portal are different from National Electronic Register of Election Results"

4.92 The decision of the Federal High Court in the unreported case of LABOUR PARTY v. INEC with Suit No. FHC/ABJ/CS/1454/2022; delivered on 23rd January 2023, is inferior to and it is deemed to have been overruled/set aside by the superior judgment of the Supreme Court in OYETOLA v. INEC supra.

The evidence of the RW1 (Dr. Lawrence Bayode, Deputy Director ICT, INEC) supports the contention that, the result of the election scanned and uploaded from BVAS to the IReV are meant to be "in the original form from the polling unit" and "will not be altered on the IReV."

4.93 The Petitioners expert evidence/report of the upload of 18,088 polling unit Forms EC8A, purported to be the result of the election (Form EC8A) in the 18,088 polling units, was neither challenged nor controverted. The blurred copies were not readable nor contain any relevant information including scores of Candidates obtained in the polling unit on the day of the election. RW1 admitted that he could not see/read any figures on the blurred copies of the purported Form EC8A shown to him in the open court.

4.94 The Data Analysis for the 18,088 polling units being blurred copies of Form EC8A, show that the total number of accredited voters in these polling units were 2,565,269, and 9,165,191 voters who collected their PVCs in these polling units. The above figure of 2,565,269 votes cast by accredited voters (or 9,165,191 voters who collected their PVCs) in these 18,088 polling units is far more than the purported margin of lead in the INEC announced result of the election, between the 2nd Respondent as the Candidate of the 4th Respondent and the Petitioners, for which the election result purportedly declaring the 2nd and 3rd Respondents as the winners of the election ought to be nullified/invalidated.

The unchallenged Data Analysis further confirm that, the purported result of the election in the polling unit in Form EC8A in 39,546 polling units were inaccessible on the IReV. In these 39,546 polling units, 23,119,298 registered voters collected their PVCs, whilst 5,532,553 voters were accredited to vote in these polling units. Also, the figure of 23,119,298 and/or 5,532,554 referred to above, are far more than the purported margin of lead in the INEC announced return of the election, for which the election itself ought to be declared as inconclusive, invalid and or null and void.

4.95 The self-serving excuse by the 1st Respondent of alleged technological glitch on the day of the election, is not a valid justification for the outright contravention and violation of the Electoral Act, the Regulation and Guidelines, and Manual for Election Officials, all of which prescribe for mandatory upload and transmission of election result in the polling unit, using the BVAS to the IReV, as part of the collation process and to ensure transparent, credible and authentic collation and integrity of the result of the election.

4.96 Evidence of PW7, PW8 and PW9, confirm that, if the 1st Respondent had properly tested its IT Infrastructure deployed for the conduct of the election, in compliance with the applicable Standard and Guidelines for Government Websites, published pursuant to the National Information Technological Development Agency (NITDA) Act. The high vulnerability identified at page 16 para. 7.1 to 7.14 in Exhibit X1 (INEC e-transmission Web Portal Vulnerability Assessment and Penetration Test Report dated 22nd February 2023). The recommended remediation in paragraph 7.15 of the Report (Exhibit X1), was not shown to have been conducted, no other test report was produced before the Honourable Court, and the presumption under Section 167 (d) of the Evidence Act will rightly be invoked by the Honourable Court.

4.97 The unchallenged expert evidence of the Petitioners witnesses, including the documentary evidence before the Court, support the Petitioners case, and sufficiently established that, the non-compliance by the 1st Respondent in the circumstances of the instant Petition were not only substantial, but grievously affect the outcome of the Presidential election.

4.98 A significant highlight of the expert Data Analysis (Data Report), produced by PW4, is that upon a proper and accurate computation of the result of the election in Rivers and Benue State, using the Forms EC8As uploaded on the IReV, and the certified copies of the Forms EC8As given by the 1st Respondent to the Petitioners, is that the Petitioners won the Presidential election held in Rivers and Benue States.

By this unchallenged development, the number of States wherein the Petitioners won the Presidential election will now be Fourteen States and the FCT, whilst the 2nd to 4th Respondents will thereby, have their number of States allegedly announced for them by the 1st Respondent reduced by two States.

5.0 Your Lordships are respectfully urged, to uphold the above submissions and determine that, the non-compliance by the 1st Respondent in the conduct of the Presidential election held on the 25th day of February 2023, substantially affected the result of the Presidential election. Your Lordship may rightly, in the interest of justice, declare the purported return of the 2nd and 3rd Respondents as the winners of the Presidential election invalid and accordingly nullify the Presidential election held on the 25th day of February 2023.

THE RETURN OF THE 2ND AND 3RD RESPONDENTS, VIOLATES THE MANDATORY PROVISION IN SECTION 134 (2) (B) OF THE 1999 CONSTITUTION.

Whether the declaration and returning of the 2nd Respondent by the 1st Respondent as the winner of the Presidential Election held on the 25th February 2023 was not invalid by virtue of the mandatory provisions of section 134 (2) (b) of the constitution of the Federal Republic of Nigeria 1999, as amended.

5.1 A convenient starting point for the argument of the issue is to make reference to paragraph 81 of the Petition, wherein the Petitioners pleaded inter alia that, the 2nd Respondent, besides not scoring the majority of the lawful votes cast at the election, did not obtain at least one quarter of the votes cast in the Federal Capital Territory, Abuja and ought not to have been declared and returned elected.

5.2 It is not in dispute between the parties that from the declaration and return made by the 1st Respondent, the 2nd Respondent did not obtain one-quarter (25%) of the votes cast in FCT.

5.3 In examining Section 134(2)(b), we must consider the provisions of Section 299 of the Constitution. Section 299 of the Constitution states that the provisions of the Constitution shall apply to the FCT, Abuja as if it were one of the States of the Federation and accordingly, the legislative powers, executive powers and judicial powers vested in the State Houses 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 FCT Courts and this vesting shall be read with such modifications and adaptations as may be necessary.

5.4 We submit that to review and give a proper interpretation to these provisions, we must bear in mind that the Constitution is not read and interpreted like any other book, there are rules for interpreting the Constitution and we will now examine same.

RULES FOR INTERPRETATION OF THE CONSTITUTION

5.5 In the 2022 decision of **FRN v Nganjiwa SC/794/2019,** the Supreme Court, while relying on some of its earlier decisions, reiterated the settled position on how to interpret provisions of the Constitution as follows: (a)Where the words of the Constitution are clear

and unambiguous, a literal interpretation will be applied. (b) Where there is ambiguity in a literal interpretation, a holistic interpretation would be resorted to. (c) All sections must be read together and purposively so that no section is rendered redundant or superfluous. (d) If the words remain ambiguous, the intention of the makers of the Constitution must be discovered to determine the mischief sought to be cured. (e) The Court is entitled to consider how the law stood when the statute was passed, what the mischief was for which the old law did not provide and the remedy which has been provided by the new law.

In **Abegunde v. Ondo State House of Assembly & Ors (2015) LPELR-24588 (SC)** The court stated the guidelines to be observed in the interpretation of statutes most especially our constitution are stated by Obaseki JSC in the case of **AG of Bendel State v. AG of the Federation and ors (1981) 10 SC 1 at 132, 134...."** The court also availed itself with the further principles of interpretation of the provisions of the constitutions restated by the court per Iguh JSC in **I.M.B.V. Tinubu (2001) 16 NWLR (Pt. 740) 690...**

5.6 It is important also, that we consider how the Courts have interpreted these provisions of the Constitution, although on dissimilar facts, as this will guide us on how the Courts are likely to interpret these provisions even though on a different set of facts.

LITERAL INTERPRETATION OF SECTION 134 (2) (B) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999, AS AMENDED

It is trite law that the word "and" as used in section 134 (2) (b) of the constitution is conjunctive. The said word "and" has been given judicial interpretation in a litany of cases. See the case of **Abubakar v. Yar' Adua (2008) 19 NWLR (PT1120) AT P.7**

Section 134(2)(b) of the 1999 Constitution (as amended) is clear as crystal, unambiguous, direct and simple.

5.7 The language of the Constitution is clearly to the effect that a candidate to be declared a winner of the Presidential election, that candidate must secure at least one quarter (25%) of votes cast in two-third of the entire 36 States of the Federation (that is in 24 states). Again, that candidate must also secure not less than 25% of the votes cast at the Federal Capital Territory, Abuja.

5.8 My lords, the literal interpretation of this section is that a candidate must secure 1/4th (25%) of votes cast in 2/3rd of the entire 36 States of Nigeria and 1/4th (25%) of votes cast in FCT. The use of the word "and" had been held by the Supreme Court to be conjunctive, which implies that the conditions in Section 134(2)(b) are conjunctive and mandatory.

JUDICIAL DECISIONS ON SECTION 134(2) AND SECTION 299

The Court of Appeal in **Okoyode v FCDA 2005 LPELR 41123 CA** was invited to interpret Section 299 of the Constitution on whether the FCT was a State and in its decision stated that the FCT should be treated as one of the States in the Federal Republic of Nigeria. In essence, the question submitted to the Court was whether the Federal Capital Development Authority (FCDA) was an agency of the Federal Government of Nigeria. The Court in answer stated that the FCDA was an agency of the FCT which is a separate unit from the Federal Government and should rather be seen as a State and a separate administrative unit distinct from the Government of the Federal Republic of Nigeria.

The case of **Panya v President, FRN & Ors 2018 LPELR-44573 CA** is also instructive, the issue submitted in that case was whether the indigene of the FCT are entitled to be appointed as Ministers of the Federation further to the provision of Section 147 which states that Ministers shall be appointed in line with federal character and that all areas and states of the country ought to be evenly represented. The Plaintiff argued that the FCT for the purpose of appointments of the executive is a State and appointment of persons as Ministers ought to reflect federal character which includes appointment of indigene of the FCT. The Court agreed with him to the extent that failure to appoint indigene of the FCT is a violation of the Constitutional rights in Section 147(3) and Section 299 of the Constitution.

Although, all these cases touch only on Section 299 of the Constitution, none of them interpreted Section 299 together with Section 134(2) and they cannot wholly guide our interpretation of the provisions as it is the law that a case is only an authority for what it decides. Also, mention must be made of the decision of the Supreme Court in the case of Awolowo v Shagari where the Court had the opportunity of interpreting the provision of Section 34A(1)(c)(ii) which reads that the winning candidate into the office of the president must have "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". The provision of law interpreted in Awolowo's case is different from the one being considered here as it has an additional requirement for the FCT. The decision is not quite helpful for interpreting Section 134(2) and 299 of the Constitution.

It is submitted that a purposive reading of Section 134(2), Section 299 and the remainder provisions give us the conclusion that obtaining 25% votes in the FCT is an additional stand-alone requirement for election into the office of the president or the FCT is only a State, together with Nigeria's 36 states where the winning candidate must have obtained at least 25% in two-thirds of all States (37 States).

A literal reading of Section 134(2) of the Constitution gives the interpretation that a winning candidate must have 25% of total votes cast in two third of the States in the Federation and the FCT, meaning that a winning candidate must obtain 25% in 24 States and in the FCT. This is more so, as Section 3 and Part II of the second schedule lists the States of the Federation and the FCT is not included as a State.

Going further, the Constitution in Section 299 has an interesting provision, it provides that "The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation...". However, the provision reads further that: "and accordingly 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;"

A holistic reading of Section 299 seems to suggest that the FCT, will be considered a state for the purpose of enjoying the executive, legislative and judicial powers vested in a State. Hence, the FCT is executively administered by the President, the National Assembly legislates the local laws of the FCT and the FCT High Court is the Court with territorial jurisdiction in the FCT. Section 299 cannot be read in isolation of the part that starts with 'and accordingly'. This is because the Constitution must be read together with its

surrounding provisions. In **Iwuchukwu & Anor v. AG Anambra State & Anor 2015 LPELR 24487 CA,** the Court stated that a provision must be read as a whole and must not be read in isolated patches. In fact, the Court in relying on the rule of 'noscitur a socis' in that case stated that the true meaning of a word must be ascertained by the words accompanying it in that provision.

4 It is submitted that, the provisions of Section 299 can be interpreted to mean that the FCT will be regarded as a State to the extent of the exercising and enjoyment of executive, legislative and judicial powers by the President, National Assembly and the High Court of the FCT, on behalf of the FCT and no more.

5 Certainly, reading Section 299 of the Constitution to mean that the FCT exists as a State of the Federation for all purposes renders redundant the wordings of the drafters of the Constitution in Section 134(2)(b) that the winning candidate must obtain 25% in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja. The portion that reads 'and the Federal Capital Territory' becomes of no benefit at all. It also makes no sense of Section 3(1) which enumerates the 36 States and Part II of Schedule 1 which identifies them.

6 Conversely, an interpretation that Section 299 only countenances the FCT as a State to the extent of conferring executive, legislative and judicial privileges accords and makes sense with Section 3,134(2), Part II of the Second Schedule and the remainder provisions of the Constitution which clearly identify the FCT as distinct from a State and isolated it in the enumeration of the 36 States that make up the Federal Republic of Nigeria. This interpretation also finds basis in the context of how the Courts have in their decisions classified the FCT as a State.

7 Again it is submitted that the specific mention of the Federal Capital Territory, Abuja together with 'two-thirds'of all the states in Federation is intended to mean that Federal Capital Territory, Abuja is one of the places where a candidate must mandatorily obtain one-quarter of the votes cast, by operation of the term 'each', provided in S. 134 (2) (b). We submit that the specific mention of a class, is to provide for the persons specifically mentioned, to the exclusion of all others that are not mentioned. In ***GRAND SYSTEMS PETROLEUM LTD v ACCESS BANK PLC (2015) 3NWLR (Pt. 1446) p. 317 at 346, PARAGRAPHS E – H (CA),*** it was held that the interpretation of statutes or the Constitution, it is a basic principle that specific mention of a thing excludes the general mention of others i.e. when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed.

ANY ABSURDITIES.

8 Section 66 of the Electoral Act 2022, states that the winner of the presidential election will be subjected to the provisions of section 134 of the Nigerian Constitution, and it states that: "In an election to the office of the President or Governor whether or not contested and in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and subjected to the provisions of sections 133, 134 and 179 of the Constitution," the Electoral Act and partly read. The candidate that receives the highest number of votes shall be declared elected by the appropriate returning officer."

My lords, Section 299 (which states that the FCT is to be treated as a State in Nigeria), is a general provision that has no bearing on Section 134. A general provision cannot override a specific provision. Section 134(2) (b) is a specific provision on the conditions for declaration of a candidate and the presidential winner at the polls.

My Noble Lords, it is a trite principle of law that a special provision such as Section 134 (2) (b) of the 1999 Constitution, cannot be derogated from the general provision. The maxim is generalia specialibus non derogant and/or specialia generalibus derogant. See **KRAUS THOMSON ORAGNISATION v. NATIONAL INSTITUTE FOR POLICY AND STRATEGIC STUDIES (2004) LPELR-1714 (SC) at 18 para D-E; MARTINS SCHROEDER & CO V. MAJOR & CO LTD (1989) 2 NWLR (Pt. 101) 1 (SC); KABO A. LIMITED v. DE O. CORPORATION (2022) LPELR-58721 (CA) 9-10 para A-C per Ugo JCA.**

In **Awolowo v Shagari & 2 ORS (1979) FNLR Vol. 2,** the Apex Court considered the identical provision in Section 34A(1)(c)(ii) of the Electoral Decree and in relation to the word "each" and "states in the federation", the Supreme Court per Fatayi Williams JSC, held as follows ***"The word 'each' in the subsection (1) (c)(ii) of Section 34A qualifies a whole State and not a fraction of a State, and to interpret otherwise is to overlook the disharmony between the word 'each' and the fraction 'two-thirds'"***

A dispassionate and meticulous study of the provisions Section 130 (1) and (2) of the 1999 Constitution as cited above and read communally would reveal the dual status of the President under the 1999 Constitution.

By way of generalization, the "land area" of the FCT must be distinguished from the land area of each of the 24 States of the Federation. Flowing from the above, let us now examine Section 299 of the 1999 Constitution. In **Bakari v Ogundipe (Supra),** the Apex Court of the land held: ***"By virtue of section 299(a), (b), of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the provisions of the Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation; and accordingly 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 provisions are courts established for the Federal Capital Territory, Abuja; all the powers referred to in paragraph of the section shall be exercised in accordance with the provisions of the Constitution; and the provisions of the Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of the section. By virtue of the provisions of section 299 of the Constitution, it is so clear that Abuja, the Federal Capital of Nigeria, has the status of a State. It is as if it is one of the States of the Federation." (Pp. 36-37, paras. E-A). See also, with approval, the following authorities; NEPA v Endegero (2002) LPELR-1957(SC); Baba-Panya v President, FRN (2018) 15 NWLR (Pt.1643) 395; (2018) LPELR-44573(CA); Ibori v Ogboru (2005) 6 NWLR (Pt. 920) 102."***

3 There is no issue with the clear position of the courts, as stated above. This is because the Constitution is clear, on the separate and distinct status of the FCT. It is treated as any other State in Nigeria.

4 Further, going into the mischief of the additional requirement of 25% of votes in the FCT, we note that the 1979 constitution was completely silent on this requirement and only stopped short at stating that the winning candidate must have 25% of at least two-third votes cast in all the States of the Federation. Hence, the deliberate amendment of the drafters of the 1999 Constitution, to include the additional requirement of 25% votes in the FCT must not be rendered redundant as it is possible that the drafters intended that the popularity of the winning candidate must extend not only to an appreciable geographical spread but also to the FCT being the capital city and melting pot for all Nigerians and which would truly reflect the will of all Nigerians.

5 The Petitioners contend that the Respondents are wrong in the approach they have taken to the interpretation of the intention of the makers of the Constitution having regard to the provisions of Section 134(2) (b).

6 For the avoidance of doubt, the Court of Appeal, in ***ARCHBISHOP ANTHONY OLUBUNMI OKOGIE & ORS v. ATTORNEY-GENERAL, LAGOS STATE (1981)2 NCLR 337,*** placing reliance on ***GOPALAN v. STATE OF MADRAS, (1950) SCR 88(109)*** held: "That the Constitution is a logical whole, each provision of which is an integral part thereof and it is, therefore, logically proper and indeed imperative, to construe one part in the light of the provisions of the other parts". To that extent, we contend that in order to fathom the constitutional intent in Section 134 (2) aforesaid, we need to focus on other provisions of the Constitution which may throw light thereon.

7 May we respectfully draw the Court's attention to the provisions of section 14 of the Constitution, particularly section 14(2)(a) &(c) thereof. For the avoidance of doubt, section 14 (2)(a) provides as follows: ***"sovereignty belongs to thepeople of Nigeria from whom government through this Constitution derives all its powers and authority".*** Significantly, in section 14(2)(c), the Constitution directs that; ***"the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution".***

8 It is our view that section 134 ought not or indeed cannot be interpreted without recourse to section 14 which arises from the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution.

9 It was argued in the past that the provisions contained in Chapter II of the Constitution, thereof were merely decorative and not enforceable. However, the importance of that chapter was firmly established in the locus classicus, ***ATTORNEY-GENERAL, ONDO STATE v. ATTORNEY GENERAL OF THE FEDERATION & ORS (2002)9 NWLR (772) 222***. In that case, the Supreme Court emphasised that ***"the Constitution is an organic instrument which confers powers and also creates rights and limitations, it is the supreme law in which certain first principles of fundamental nature are established. Once the powers, rights and limitations under the Constitution are identified as having been created, their existence cannot be disputed in a Court of law."*** (See pp 4. 418-419, paras g-a; 462, paras d-e).

Certainly, the Constitution stipulates that ***"Nigeria shall be a Federation consisting of States and a Federal Capital Territory"*** (see section 2(2) of the Constitution). In addition, section 3 provides the number of States that make up the Federation and states thus: ***"There shall be 36 States in Nigeria, that is to say…"*** The Constitution in section 176 thereof provides that there shall be for each State of the Federation, a Governor and it is remarkable that the Constitution does not prescribe an election for the Governor of the Federal Capital Territory. In other words, whilst the people inhabiting each of the 36 States have the right to elect their own Governor, the people of the Federal Capital Territory do not either exercise that privilege or right as the case may be.

Consequently, whilst elections held in different States of the Federation on the 18th of March, 2023, the Federal Capital Territory was an exception. The explanation cannot be fathomed from the words of the Constitution except by recourse to other sections of the Constitution. For example, section 14(1) already referred to is final in its provisions, that ***"the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice"***. Attention must also be drawn to section 14(2)(c), which directs that the participation by the people in their government shall be ensured in accordance with the provisions of the Constitution (Emphasis added). For the avoidance of doubt in each of the 36 States of the Federation, the Constitution makes provision for the election of a State Governor. Again, in section 7 of the Constitution a composition of Local Government Councils is to be democratic means. However, while the 5.34 Constitution directs elections into Area Councils in the Federal Capital Territory, no election to the office of a Governor is provided for because the Federal Capital Territory does not have a Governor but an appointee of the President of the Federal Republic as the Administrator of the Federal Capital Territory who stands in place of a Governor. It is our argument in this brief that the power of the President to appoint a Minister for the day-to-day administration of the Federal Capital Territory stems from the sovereign power of the persons residing in the Federal Capital Territory in the exercise of their sovereign power.

It is our humbly held view that the foregoing provides the rationale for the constitutional calculus entrenched for the emergence of any person as President of the Federal Republic of Nigeria by which the Constitution contemplates that for any presidential candidate to emerge as President the person must satisfy the requirements of Section 134 (2) (b) of the Constitution.

The quagmire which has formed the fulcrum of popular debate lies in resolving the simple question: "What does the Constitution contemplate having regard to the deployment of the word "and" before mentioning the Federal Capital Territory in the context of the Constitutional calculus? In other words, is it within the contemplation of the Constitution that the Federal Capital Territory can be jettisoned in any construction of the words of the Constitution aimed at determining whether the winner of an election into the office of President can win in the States and forfeit the FCT? We think not. At this juncture, we must call in aid the dictum of Udo Udoma JSC of blessed memory, who in ***NAFIU RABIU v. THE STATE (1981)2 NCLR 293***, said, ***"My Lords, it is my view that the approach of this Court to the construction of the Constitution should be and so it has been one of liberalism… I do not conceive it to be the duty of this Court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with***

the words and sense of such provisions will serve to enforce and protect such proper ends." (Emphasis supplied).

Once this purposive construction is employed it would seem obvious in our view that the beneficial construction of the word "and" would be the one that ensures that "and" placed between the States and the Federal Capital Territory in section 134 is construed as conjunctive and not disjunctive. ***BUHARI v. INEC & ORS (2008)LPELR-814(SC), BGL PLC & ORS. v. FBN(2021) LPELR- 54655.***

5.32 The answer to the 25% of FCT matter bothering on Section 134(2) of the 1999 constitution (as amended), is there right in that section. The argument that the States and FCT are taken as one collective of 37 states whereby FCT is treated as a state. But that Section 134 of the Constitution differentiates between on one hand, 'States and FCT', and on the other hand, 'States' only. Please see Section 134(3)(b) of the Constitution where the drafter said ' States' only - not once but twice. Then in Section 134(4)(b) of the Constitution, the drafter said 'States and FCT. An important cannon of interpretation posits that, the express mention of one of two related things excludes that which is not mentioned. Also, using different phrases in one section confirms difference between the two phrases. The drafter using 'State and FCT' in the vexed Section 134(2)(b) of the Constitution, then using only 'States' in Section 134(3)(b) of the Constitution, and reverting back to 'States and FCT' in Section 134(4)(b) of the Constitution, only confirm that the FCT is not a state. The drafter was intentional where he said " AND" FCT.

5.33 Furthermore, the argument that Section 299 of the Constitution (as amended), provides that FCT should be treated as a state, is patently misplaced. Section 299 of the Constitution is contained in Part 1 Chapter VIII of the Constitution which only deals with the allocation legislative and executive powers for the internal administration of the FCT; basically demarcating FCT administration from the federal administration. The Section 134 of the Constitution is in Chapter VI of the Constitution.By Section 3(5) of the Constitution, every provision is Part 1, Chapter VIII of the Constitution, such as Section 299 of the Constitution concerns only matters covered by that part. It is therefore submitted that the provision of Section 134 cannot be interpreted with reference to Section 299 of the Constitution bearing in mind the provision of Section 3 (5) of the Constitution.

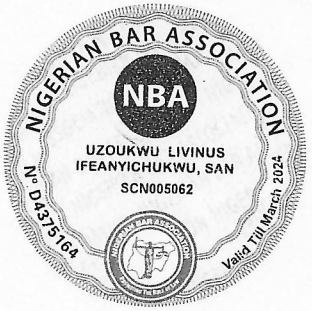
6.0 CONCLUSION

For reasons given above, we respectfully urge Your Lordships to discountenance the 2nd-3rd Respondents' defence as devoid of any scintilla of merit, hold that the Petitioners' case is meritorious and grant them their reliefs.

In conclusion, may we respectfully commend to Your Lordships the words on the marble of the Kenyan Supreme Court in the case of **RAILA ODINGA & ANOR v INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & ORS** (2017) KESC 31 (KLR) para. 399; when in nullifying the election that returned H.E. Uhuru Kenyatta as the winner of the Kenyan presidential election in 2017, *ex-cathedra* said: "13991 what of the argument that this Court should not subvert the will of the people? This Court is one of those to whom that sovereign power has been delegated under Article 1(3)(c) of the same Constitution. All its powers, including that of

invalidating a presidential election is not, self-given nor forcefully taken, but is donated by the people of Kenya. To dishonestly exercise that delegated power and to close our eyes to constitutional violations would be a dereliction of duty and we refuse to accept the invitation to do so, however popular the invitation may seem. Therefore, however burdensome, **let the majesty of the Constitution reverberate across the lengths and breadths of our motherland; let it bubble from our rivers and oceans;** let it boomerang from our hills and mountains; let it serenade our households from the trees; let it sprout from our institutions of learning**; let it toll from our sanctums of prayer; and to those who bear the responsibility of leadership, let it be a constant irritant."**

DATED THIIS 20TH JULY 2023



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