

**A CRITICAL ANALYSIS OF THE NUANCES OF THE SUPREME COURT DECISION
IN *HOPE UZODINMA & ANOR V EMEKA IHEDIOHA & ORS. SC/1462/2019* IN ITS
MINUTEST DETAIL**

BY

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UNIVERSITY OF BENIN
BENIN CITY, EDO STATE.**

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**BEING A LONG ESSAY WRITTEN AND SUBMITTED TO THE
FACULTY OF LAW, UNIVERSITY OF BENIN, BENIN CITY, EDO
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THE AWARD OF BACHELOR OF LAW DEGREE (LL.B HONOURS) OF
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JUNE, 2024

CERTIFICATION

I, **Emmanuel Orukpe ODIGIE**, with Matriculation Number **LAW1805983**, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree elsewhere.

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APPROVAL

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I dedicate this work to my Loving mother Mrs Elizabeth Odigie who has been the source of my inspiration and strength that kept me going through out my days in University of Benin.

ACKNOWLEDGEMENT

I wish to sincerely and with the fullness of heart express my deepest gratitude to God Almighty , the source of all wisdom and knowledge for inspiring, guiding and charging me throughout this journey to be faith abiding. Dear Lord, be thou exalted!

To my beloved family, Mr and Mrs Odigie, and my lovely siblings and my ever caring Father, Mentor, Uncle, Teacher, Guardian Honourable Louis Ndukwe who has showed me so much love, who has guided all my steps who has taken good care of me like a father will do to his son, I heartily appreciate you for the support, the energy and courage to continue even when strength failed me. True, God makes man; this He does through men. And to one most important friend who has always help me with my academics and has guided me throughout this work, Nnamdi Clinton I sincerely appreciate your enormous support you always gave me whose expert guidance, patience and insights have been instrumental in shaping this work. Special recognition to my friends Eheri Ogheneruro, Albert Eguonor Ogege, Faith Odion and Ogwuche Maurice, these persons made my years in Uniben a memorable one.

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LIST OF ABBREVIATIONS

AA	Action Alliance
AG.	Attorney General
ANPP	All Nigeria People party
APC	All Progressives Congress
APGA	All Progressive Grand Alliance
FCT	Federal Capital Territory
INEC	Independent National Electoral Commission
J.C.A.	Justice of Court of Appeal
J.S.C	Justice of the Supreme Court
PDP	Peoples' Democratic Party
PVC	Permanent Voter's Card
RT.HON	Right Honorable
SAN	Senior Advocate of Nigeria

ABSTRACT

Nigerian Courts have a constitutional mandate to resolve disputes. In the resolution of disputes, the Courts evaluate issues nominated by the respective parties in light of the facts of the case and extant laws. In reaching its decisions in the case under review, the court considered the legal implication of the evidence of police officers and the tilting of the burden of proof. The Court further considered the quantum and quality of evidence required to meet the standard of proof in civil and criminal proceedings. The court held that the evidence required to discharge the burden of proof in criminal matters is on proof beyond reasonable doubt. However, this does not translate to proving the crime alleged beyond all shades of doubt. In considering these positions of the Supreme Court, this study examines the legal issue of admissibility and validity of completed election result forms given to the police. The study takes the stance that results given to the police are authentic and valid evidence to establish cases of mutilation of scores, over voting and unlawful exclusion of votes. The study finds that exclusion of votes by a Returning Officer is unlawful and an act ultra vires the power of the Returning Officer. The law empowers the Presiding Officer to exclude votes. Any vote excluded by the Returning Officer constitutes unlawful exclusion of votes. The Courts usually countenance votes that were unlawfully excluded; that was the situation in the case under review. The case under review could easily be said to have been fought and won on the law governing burden and standard of proof. The study, in the final analysis, finds that the respondents, especially INEC misconceived the concept and this resulted in the loss of the matter. The respondents did not call witnesses or tender documents to establish their respective positions, even in extreme cases where they raised fundamental issues of law. The decision of the Supreme Court is final. The finality of the decision of the Supreme Court carries with it the effect of infallibility; a status acquired merely by virtue of it

being the final court. The Tuesday, January 14, 2020 decision of the Supreme Court followed with it a gale of criticisms. While some of the concerns shared appears justifiable both in principle and at law, the hastiness of the decision which failed to accommodate obvious circumstances at law leaves so much to be desired. That decision for the umpteenth time terminated the tenure of a sitting governor. Whether that decision was right or wrong, is what this paper seeks to determine in detail. The paper considers the justifiability or otherwise of opinions expressed in reaction to the decision and also seeks to examine the relevance of the decision in the light of the recent amended Electoral Act, 2022.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

On Tuesday, the 14th of January 2020, the Supreme Court of Nigeria handed down a decision in the electoral matter arising from Imo State which involved Emeka Ihedioha of Peoples' Democratic Party (PDP) and three other contestants¹. More than Four candidates contested in the gubernatorial election of 2019 in Imo State. It was that election that culminated in the legal struggle up to the Supreme Court.

The Independent National Electoral Commission (INEC) returned the candidate of the Peoples' Democratic Party, (PDP), Rt. Hon Emeka Ihedioha as the rightful winner of that election. In what appeared to be a legal summersault, the Supreme Court declared void the declaration of Emeka Ihedioha and instead declared Hope Uzodinma of the All Progressives Congress the duly elected Governor of Imo State. What appeared to be the shocker in that Supreme Court decision was not the fact that a Governor was removed, but the fact that the Court declared and returned a candidate who came distant fourth in that election as the Governor of that state.

No doubt, Section 39 of the Constitution² (as amended) gives the Nigerian citizens the latitude to express their opinions as it relates to issues. More so, that Justice Kayode Eso has rightly observed that the decision of the Supreme Court should not be seen as sacred when it gets to the

¹ Vanguard, 'Ihedioha Vs Uzodinma: Full text of Supreme Court's judgment.'<https://www.vanguardngr.com/2020/01/ihedioha-vs-uzodinma-full-text-of-supreme-courts-judgement/amp/> accessed June 10 2024

² Constitution of the Federal Republic of Nigeria, 1999 (as amended)

proper critical forum.³ What therefore, would constitute a proper critical forum is, to our mind, constituent upon the test of a reasonable man and not merely the fact of belonging to the legal profession. By this, a proper critical forum would consist in knowledge of the facts and applicable rules and in the main, a forum that cannot be assailed on grounds of political inclinations, religious and ethnic cleavages and so on. This being the case, the Justices of the Courts have been insistent on the finality of the decision of the Supreme Court despite its human composition. For instance, Kayode Eso declared in the case of *Adigun v. A.G Oyo State*⁴ that the Supreme Court is final. It is final in the sense of real finality, it is final forever, unless there is legislation and it must be legislation ad hominem⁵. In the same vein, Justice Chukwudifu Akunne Oputa declared the law in this regard in the case of *Adegoke Motors Ltd v. Adesanya*⁶ thus:

We are final not because we are infallible rather we are infallible because we are final. Justices of this court are human beings, capable of erring...”In the light of this epoch making declaration from Justices of the Supreme Court, one wonders whether the decision of 14th January, 2020 is one of those decisions of the Supreme Court which manifests the human aspect of the Justices capable of erring.

1.2 Statement of Research Problem

The gale of criticisms that greeted the Supreme Court decision in *Hope Uzodinma v. Emeka Ihedioha*⁷ is such that need not be ignored. While some lawyers hold the view that the defense counsel in that petition did not do so much, some others hold the view that the Supreme Court erred for the obvious reason that the declaration and return of a person who came distant fourth

³ *Adigun v. A.G , of Oyo State (No.2) (1987) 2 NWLR(Pt.56) 197*

⁴ *Supra*

⁵ Lanre, A.A ‘Finality and Conclusiveness of Judgment: Need for Courts to give Priority to Administration of Justice over Issues of Technicality.’ <<https://m.facebook.com/notes/nigerian-political-platform/finality-and-conclusiveness-of-judgement-need-for-courts-to-give-priority-to-adm/330987560296965/>> accessed June 11

⁶ (1989) 3 NWLR (Pt.250) 274-275

⁷ SC/1462/2019.

in an election as the winner of that election cannot be justified at law. Many opine that the decision did not take into account facts that ordinarily would have influenced its judgment otherwise. For instance, the Supreme Court did not consider the effect the additional votes computed in the results of the over 388 polling units would have on the total number of registered voters and those of accredited voters. Again, the Supreme Court did not consider the effect these facts would have on the general allegation of fraud.

As a matter of practice, cases are fought and won on the very peculiar facts and surrounding circumstances giving rise to them. This takes into account the arguments, reliefs and the general conduct of the trial. As a matter of practice, when a petitioner succeeds on the strength of his case, does justice not demand that such a petitioner be provided with a remedy? The courts have consistently maintained that where a plaintiff/petitioner establishes a wrong, the courts must create a remedy to suit the justice of his case. The Supreme Court Justices spoke in one voice in *Amaechi v. INEC*⁸ when they thought that to ask a plaintiff to go empty handed because the deed has been done is not the way of the court in doing justice. Thus, justice must be done even if the heavens fall. The courts are keen to create a remedy even where none existed. This is the equitable jurisdiction of the court. If from the records, it is established that the fourth candidate has established a right, what should the court do then? This is a clear difficult case.

This project seeks to answer these questions logically. It thus addresses these concerns by considering the opinions of both scholars in law and other genuine opinions expressed by concerned Nigerians. It does this by carefully examining in the minutest detail, the intricacies of that decision with a view to finding whether or not it represents good authority in the height of the provinces of electoral laws

⁸ (2008) 5 NWLR (Pt.1080)227

1.3 Aim and Objectives of the Research

This study has the overarching goal of examining critically the Supreme Court decision in *Hope Uzodinma v. Emeka Ihedioha*. This is with the aim of finding justification or otherwise for the conclusions reached by the Supreme Court. Bearing in mind that this case has been subject of review before the Supreme Court on two separate occasions, there lies the genuine need to inquire into the validity of this decision. In one of these review applications filed by Kanu Agabi, SAN, my Lord, Centus Nweze (JSC) of blessed memory found merit in the application. However, in the second application, the Supreme Court described the applicants case as vexatious and concluded that the applicant's lawyer, Chief Mike Ozekhome, SAN must pay the sum of 40 million to the defendants. In view of this, the research's specific goals are:

1. In the light of the Electoral Act 2010, the decision of the Supreme Court was right in returning Hope Uzodinma as the winner of that election and could find justification in the law as existing under that regime. It also seeks to examine the decision in the light of the Electoral Act 2022 in order to determine whether the decision constitutes good authority under the Electoral Act 2022.
2. The study seeks to examine the opinions of scholars in the field of Election Petition in order to determine whether the divergent views of these scholars are legally valid.
3. The study examines the limit and authority of the powers of the Presiding Officers and Returning Officers. It maintains the position that exclusion of votes is the exclusive preserve of Presiding Officers being officers that supervise the election at the polling unit levels.
4. The study undertakes an examination of the claim in some quarters that INEC did not defend its election with the required zest.

5. The study highlights that the respective respondents misplaced the requirement of the law on standard and quality of proof.
6. The study seeks to determine the position of the law where a party in a suit leads credible evidence to establish a fact and whether having lead evidence, the burden of proof shifted on the other side.
7. The study sets to determine the validity of the call for a review of the judgment by the Supreme Court of Nigeria and the overall effect same would have on decision.

1.4 Scope of the Study

This research deals with concepts such as electoral malpractice, allegations of fraud in election petition, standards of proof in election petitions, exclusion of votes: when legal or otherwise. In addition, it considers the peculiarity of the facts of the case under review and highlights the dexterous approach of Hope Uzodinma's legal team. The work examines basic principles governing election petition in Nigeria. The research's approach is to consider the decision in the light of recent amendments of the Electoral Act. It seeks to determine whether that decision remains yet a good authority under the recent amendment of the Act. The importance of this approach is not far-fetched. The decisions of courts remain good laws until overruled or altered by legislative interventions; when the legislature makes a law that has the effect of overruling a judicial decision, that decision for all intent and purposes becomes obsolete. This is the effect of legislative law making power. In view of this, the position of the law on the validity and admissibility of election results given to security agents will be examined especially with regard to the effect of the amendment under the new

Electoral Act. This review serves to justify some of the principles stated in the case **under** review while examining and seeking to put in the right perspective some other principles stated in the case. The study finds that if focus was given to primary indices in the overall computation of scores and the effect thereof, like total number of registered voters, total number of accredited voters, total valid votes, e.t.c, different conclusion would have been reached by the Supreme Court.

1.5 Methodology

This study makes use of the doctrinal method of research. Reliance will thus be placed on local legislations and decided authorities on the positions this work seeks to espouse. Reference will be made to available secondary sources such as articles, online publications, opinions expressed by jurists, scholars and so on. The study shall accommodate in its consideration of the issues concerns expressed by the common and unlearned men with a view to seeking legislative intervention wherever necessary.

1.6 Significance of the Research

This work has a very significant effect on the general aspirations of Nigerians to witnessing a credible electoral process. The concerns of the study relate to the justifiability or otherwise of the applications made to the Supreme Court for a review of the decision. This study will significantly impact on the general functions of the security agents in election matters and the admissibility of their testimonies in the course of settling election related disputes.

When justice is done in a dispute, the litigants and society benefit from it. This underpins the role of the judiciary in upholding democracy and influencing electoral credibility.

CHAPTER TWO

CONCEPTUAL THEORETICAL FRAMEWORKS AND LITERATURE REVIEW

2.1 Definition of Terms

2.1.1 Burden and Standard of Proof

In the context of law of Evidence, burden and standard of proof constitute inseparable topics. Thayer identified in two senses in which the term burden of proof is used¹. According to him, it is “The peculiar duty of him who has the risk of any given proposition on which parties are at issue who will lose the case if he does not make this proposition out, when all has been said and done.” This he referred to as the persuasive burden or burden of proof in the strict sense. The second sense in which Thayer uses the term burden of proof is in “The duty of going forward in argument or in producing evidence, whether at the beginning of a case or at any later moment

¹ Thayer, *Preliminary Treatise on Evidence at Common Law*, 355, referred to in L. Atsegbua, *Law of Evidence* 2nd Edn,(Benin:Justice Jeco Printing & publishing Global,2016)228

throughout the trial or discussion.” Phipson² identified two meanings attached to the phrase burden of proof thus; (1) The burden of proof as a matter of law and pleading and (2) The burden of proof in the sense of adducing evidence. Wigwe³ disagrees that the terms burden of proof and standard of proof should be used interchangeably. According to him, burden of proof is the responsibility placed on a person who alleges the existence of a fact to establish that those facts exist. On the other hand, standard of proof is the quantum and quality of evidence that need to be adduced to establish the existence of a fact in court. There exist generally at law two categories of burden of proof; legal burden of proof and evidential burden of proof. Legal burden of proof refers to the obligation of a party to prove an entire claim, assertion or cause of action. It is that burden of proof which never shifts.⁴ On the other hand, evidential burden of proof is that burden of proof that requires a party to prove a particular fact in issue in the general claim. It is the oscillatory burden of proof which shifts from one party to the other until the facts are established. As a matter of statutory obligation⁵, it is the party who asserts that must prove that which he asserts. Where he succeeds in establishing the fact alleged the evidential burden shifts to the other party to rebut those facts so on until the Court is satisfied as to the existence or otherwise of those facts. In civil cases generally, the burden of proof rests on the plaintiff; it is he who would fail if no evidence is established on either side.⁶ This burden is however discharged on a balance of probability or what is referred to as the preponderance of evidence.⁷ However, in

² Phipson, *On Evidence*, 12th Edit(London: Sweet and Maxwell) 37 referred to in L. Atsegbua *Law of Evidence* 2nd Edit (Benin: Justice Jeco Printing & Publishing Global, 2016) 229

³ C.C Wigwe, *Introduction to Law of Evidence in Nigeria with Evidence Act 2011*(Osu-Accra: Mounterest University Press, 2016)262

⁴ *Omotosho v B.O.N Ltd. (2006) 9 NWLR (Pt.986)573*

⁵ The principle of evidence law that he who asserts must prove is statutorily enshrined in Section 131 (1) of the Evidence Act, Cap E14, Laws of the Federation of Nigeria 2011.

⁶ See section 132 of the Evidence Act, Cap E14, Laws of the Federation of Nigeria 2011

⁷ See section 134 of the Evidence Act, Cap E14, Laws of the Federation of Nigeria 2011.

criminal matters, the quantum or quality of evidence required to establish the case of the prosecution is proof beyond reasonable doubts.⁸The requirement of proof beyond reasonable doubt is not the same as proof beyond all shades of doubt. It is merely a requirement that the guilt of the accused is established to the point that a reasonable man would say of course he committed the crime alleged. There is however, no burden on the accused to prove his innocence. The accused is at law presumed to be innocent until his guilt is established.⁹ He only has a duty to prove reasonable doubt in the evidence of the prosecution. Where there exists the remotest doubt or possibility that the accused did not commit the said offence, such issue is resolved in favor of the accused.

2.1.2 Fraud

Fraud is a broad criminal term that includes falsification.¹⁰ “Fraud is a misleading conduct done by someone, with the objective to get an illegal advantage or to harm someone else’s (victim’s) rights.”¹¹ Examples of fraud include bankruptcy, credit card fraud, wire fraud etc. Falsification of election result is a fraudulent act in that it confers an undue advantage to the fraudulent party. In *Ojukwu v FRN*¹² the Court defined fraud or intentional fraud as “a misrepresentation made recklessly without belief in its truth and intended to induce another person to act.” Allegation of falsification of election results is a criminal allegation under the umbrella term of fraud. In *Uwa v Ememe*¹³ the Court of Appeal established the standard for proof of allegation of falsification of

⁸ See, section 135 of the Evidence Act, Cap E14, Laws of the Federation of Nigeria 2011.

⁹ See section 36 (5) of the 1999 Constitution (as amended)

¹⁰ Investopedia, 'Fraud: Definition, Types, and Consequences of Fraudulent Behaviour.'<https://www.investopedia.com/terms/f/fraud.asp>> accessed June 11 2024

¹¹ The Economics Times 'What is Fraud' <https://m.economictimes.com/definition/fraud/amp>(Accessed February 29 2024)

¹² (2020) 5 NWLR (Pt.1717)356

¹³ (1999) 4 NWLR (Pt.600) 677

election results. The Court in that case held that “allegation of falsification is a criminal offence.¹⁴ To prove falsification there ought to be two results, one which “stigmatises” and the other genuine...” In *Dantiye v Kanya*¹⁵ the Court recognised the standard of proof of allegation of falsification of results as being a fraud and a criminal offence. In that case the Court held thus, “in an election petition which alleges mutilation or falsification of result, the allegation is criminal in nature and the evidence required in proof thereof must be clear and unambiguous.¹⁶In other words, the proof must be beyond reasonable doubt...”

2.1.3 Over Voting

Over voting in any election occurs where the total number of votes cast exceeds the total number of accredited voters. The Electoral Act 2022¹⁷ deals exhaustively with the issue of over voting. Section 51 of the Act provides;

No voter shall vote for more than one candidate or record more than one vote in favour of any candidate at any one election; (2) where the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the Presiding Officer shall cancel the result of the election in that polling unit. Subsection 3 provides that where the result of an election is cancelled in accordance with subsection (2), there shall be no return for the election until another poll has taken place in the affected polling unit. subsection 4 provides “Notwithstanding the provisions of subsections (2) and (3) the Commission may, if satisfied that the result of the election will not substantially be affected by voting in the area where the election is cancelled, direct that a return of the election be made.

¹⁴ See section 467 of the Criminal Code Act

¹⁵ (2009) 4 NWLR(Pt.1130)14

¹⁶ Izimah, K 'Nigeria- Constitutional & Administrative Law- Election Petition - Reinstatement Of A person who Rightfully Won an Election.' <<https://www.mondaq.com/nigeria/constitutional--administrative-law/1431588/election-petition--reinstatement-of-a-person-who-rightfully-won-an-election>> accessed June 11 2024

¹⁷ Act, No.13,2020

The legal consequence of over voting is clear from the wording of Section 51(2) of the Electoral Act 2022. It is that the election in that polling unit or the affected area must be cancelled by the Presiding Officer. However, subsection 4 provides to the effect that where the result of the affected area will not substantially affect the outcome of the election the commission may direct that a return be made. The position will be different where the margin of lead is less than the total number of voters who collected Permanent Voters' Card (PVC's) in the affected area. In such a case the election would be declared inconclusive. This is what is commonly referred to as the margin of lead principle. The margin of lead principle is provided for in paragraph 62 of INEC's Regulations and Guidelines for the conduct of Elections 2022¹⁸. The said Regulations provide

the margin of lead between the two leading candidates in an election is not in excess of the total number of voters who collected their Permanent Voters' Card (PVC's) in polling units where elections are postponed, voided or not held in line with Sections 24 (2&3) 47 (3) and 51 (2) of the Electoral Act 2022, the returning officer shall decline to make a return in the affected polling units and the results collated into the relevant form for Declaration and Return" This is the Margin of Lead and shall apply whenever necessary in making returns for all elections in accordance with these Regulations and Guidelines.

2.1.4 Pleadings

Pleadings refer to "written presentation by a litigant in a lawsuit setting forth the facts upon which he claims legal relief or challenges the claims of his opponent."¹⁹ Pleadings include claims, counter claims, replies, rejoinders, but excluding evidence. In *Abraham v Olorunfunmi*²⁰ the court maintained that the "basic principle of the law of pleadings is that parties are bound by

¹⁸ INEC's Regulations and Guidelines for the conduct of Elections 2022, Paragraph 62

¹⁹ Britannica, 'Pleading' <https://www.britannica.com/topic/pleading> (Accessed February 22 2024)

²⁰ (1991) 1 NWLR (Pt.165)53; *Nyagba v Mbahan* (1996) 9 NWLR (Pt.471)207

their pleadings. They cannot move out of their pleadings. They cannot abandon their pleadings and make a case completely different from their pleadings. They cannot detract from their pleadings at will and in the exercise of the spontaneous dictates of their will”.

2.2 Conceptual Clarification

Election petitions are *sui generis*; they belong in a special class of suits or matters. The law regards election matters as time bound giving rise to the speedy determination of election disputes. Pleadings in election petition follow general methods of pleadings in litigations. Averments are made and denied with respective parties filing briefs of arguments. There is hardly any election not greeted with a foray of election litigations. Even elections into professional associations have in recent time become subject of litigation. This chapter’s purpose is to provide thorough explanations of background facts, key terms and ideas related to the essay, as well as previous studies of learned and other writers relating to the work.

2.3 Theoretical and Historical Foundation

On the 9th of March 2019, general election was conducted in about thirty states across the federation to fill in the almost expiring governorship seats and the thirty –six states of the federation held elections for the legislatures and the presidency. In Imo state particularly, a number of political parties participated in the election and results were announced as follows:

Emeka Ihedioha (PDP)	273, 404 Votes
Uche Nwosu (AA)	190,364 Votes
Ifeanyi Ararume (APGA)	114,676 Votes
Hope Uzodinma (APC)	96,456 Votes

Others	39,433 votes
Total	714,335 Votes
Total Accredited Voters	823,743
Total votes cast	739,485
Voided Votes	25,130
Valid Votes	714,355

2.3.1 Battle through Courts- Tribunal and Court of Appeal

Following the declaration and return of Rt. Hon Emeka Ihedioha by the Independent National Electoral Commission (INEC) as the winner and duly elected candidate, the floodgate of litigation was opened as each of the candidates lodged their respective petitions at the Election Petitions Tribunal stating various issues touching on the infractions allegedly committed during the election. Sen. Hope Uzodinma whose case is of particular interest in the study review contended among others, that scores due to him copies of which he had in 388 polling units were unlawfully excluded by INEC and that the return of Ihedioha violated section 179 of the Constitution²¹ having not been elected by majority of lawful votes cast at the election. According to him, some 213,695 votes accruing from the 388 polling units belonging to him were unlawfully excluded and that if the result was taken into account he would have won the election. He claimed that the total votes of Ihedioha and the PDP from the said polling units were 1,903. Therefore, grand total votes after addition of unlawfully excluded votes are as stated thus;

²¹ 1999 Constitution of the Federal Republic of Nigeria (as amended)

Emeka Ihedioha 260,162 votes

Hope Uzodinma 310,153 votes.

In their argument, the Peoples' Democratic Party (PDP) and Ihedioha denied these averments and further stated that the "petitioners have embarked on a scheme to introduce false result sheets into the result of the election."²² They further stated that the petitioners were thus put to the strictest proof of:

- (a) The origin of the result.
- (b) The existence of the polling units.
- (c) Distribution of election materials to those purported polling units.

It is instructive to point out, for this purpose that the grouse of the petitioner was that the results in contention were duly signed by the presiding officers but were rejected at the ward and local government collation centers the effect which was the undue return of Rt. Hon Emeka Ihedioha. The defendants stoutly challenged the petition in its entirety. The defendants did not only challenge the claim as to exclusion of votes they also fiercely challenged the admissibility and probative value of evidence of PWII who happened to be the petitioner himself and PW54 the Deputy Commissioner of Police with regard to the said results on grounds that they could not have made any reasonable explanation with regard to the authenticity and making of the documents tendered by the Deputy Commissioner of Police by subpoena issued by the trial tribunal. The trial tribunal found that the following issues constituted the grouse of the petitioner "It is to be noted, as per the petition of the petitioners that the main grouse is that the 1st petitioner (sic) was not validly elected by the majority votes cast and that the election is invalid

²² *Uzodinma v Ihedioha (2020) 5 NWLR (Pt.1718) 529*

by reason of non-compliance with the Electoral Act, 2010 (as amended) and by the pleadings of the petitioners the said non-compliance arose as a result of the action of the 3rd respondent by unlawfully excluding polling unit results in the area where the petitioners recorded very high number of votes.” The petitioners called 54 witnesses and tendered forms EC8A, EC8B, EC8D and EC8E series. The 1st defendant also tendered certified true copies of the forms EC8 series and called 4 witnesses. The 2nd defendant called one witness while the 3rd defendant (INEC) called no witness and tendered no documents. The trial tribunal was of the opinion that in order to prove unlawful exclusion of results in the said 388 polling units, it was incumbent upon the petitioner to call the polling unit agents to testify to the fact that elections took place in their respective units. Out of the 54 witnesses that were called by the petitioner, 28 were polling unit agents. The evidence of PW54, Rabiou Hussein, Deputy Commissioner of Police was discountenanced by the tribunal. The tribunal agreed with the defendants that the police officer had no locus to be a witness and that his evidence was worthless as he could not tie his testimony to any of the documents he presented. The tribunal held that the documents were merely dumped by the petitioner without relevant oral evidence and accordingly dismissed the petition. The petitioners appealed to the Court of Appeal. At the Court of Appeal, the appellants, Hope Uzodinma and the APC respectively submitted that the tribunal was in error in dismissing the petition and in particular, in denouncing the evidence of PW54 (Rabiou Hussein) and thus rejected his evidence. The Court of Appeal in a split decision of 4:1 agreed in the majority judgment with the petitioner that PW54 was a competent witness but then reaffirmed the decision of the trial tribunal that his evidence had no probative value and accordingly dismissed the appeal. The minority opinion of Oho JCA, is instructive in this study not because of its conclusiveness on the issues raised but that it became the majority and in fact a unanimous decision of the Supreme

Court. Oho JCA, in his dissenting opinion at page 410 vol.5 of the record, held: “the police copies are particularly relevant and admissible where, as in this case, the respondents raised the issue of the authenticity of the results in their pleadings. The copies given to police are in those circumstances relevant and tenable to test the veracity of the parties contention on the issue of what in fact transpired.” According to Oho JCA, the respondents failed to comply with the provisions of paragraph 12(2) of the First Schedule to the Electoral Act, 2010 (as amended).The section provided that “Where the respondent in an election petition complaining of an undue return and claiming the seat or office for a petitioner intends to prove that the claim is incorrect or false, the respondent in his reply shall set out the facts and figures clearly and distinctly disproving the claim of the petitioners.”

2.3.2 A Consideration of the Supreme Court decision in Imo State

This is the crux of this research and formed the basis upon which this study was conceived. The objective of this consideration is the assessment of the decision with a view to determining whether there were facts and arguments and possibly, positions, if any, the Supreme Court would have taken in arriving at the justice of this case, if at all injustice was occasioned by the referred decision. In this legal expedition regard will not be had to order and chronology and relevant criticisms will be considered along with the various opinions expressed with respect to the decision of the Supreme Court. Reactions trailed this decision of the Supreme Court relieving Ihedioha of his position of Governor barely eight (8) months in office. This decision was very much flogged with opinions including those of reasonable men who wondered aloud and watched with their mouths agape at a seemingly poor mathematical error. This error stemmed from the obvious fact that before the addition of votes done by the Supreme Court, the total number of accredited voters stood at 823,743, total votes cast were 739,485 valid votes were

714,355, voided votes 25,130. After the decision of the Supreme Court the figures skyrocketed as follows:

213,295 votes added to Uzodinma's initial 96,456

Hope Uzodinma (APC) 309,753 Votes

Emeka Ihedioha (PDP) 273,404 Votes

Uche Nwosu (AA) 190,364 Votes

Ifeanyi Ararume (APGA) 114,676 Votes

Total 927,630 Votes

With this addition, total votes now amounted to 927,630 while total number of accredited voters remained 823,743. There was thus a difference of 103,887 between total votes and accredited voters. The difference of 103,887 between the new total votes cast from the accredited voters which ought to have changed and which fell below the standard of a free and fair election has justified the yearning for a rejig in the composition of the bench and a possible re-look at the decision. What on earth could account for this large difference? Total number of votes cast being in excess of total accredited voters? This in itself is evidence of fraud and manipulation. Possibly, those who had Permanent Voters' Card but were not accredited may have voted! Better still, those who did not have Permanent Voters' Card voted!

2.4 Literature Review

The decision of the Supreme Court in the subject matter of this study no doubt generated some controversies. Prof Ananaba²³ defended this decision. According to him this crystal mathematical error could be attributed to constriction of time on the part of the Supreme Court. Kenneth Ikonne²⁴ blamed this judicial mishap on Ihedioha's legal team. For him the failure of the team to challenge these results through a cross petition resulted in this judicial miscalculation. He argued that a cross petition would have presented a most germane opportunity to fiercely challenge the plausibility and genuineness of these results with a view to having them cancelled. One would readily ask, what would have been the utility of a cross petition on this point? Was a cross petition legally necessary? The learned Senior Advocate of Nigeria cited and relied on some authorities in support of his position. He referred to *Idris v ANPP*²⁵ and the 2019 decision in *Abubakar v I.N.E.C*²⁶ where the Court of Appeal again invoked the principle in dismissing Buhari's contention that Atiku Abubakar was born in Cameroun to parents who originally were Camerounians, and thus stood disqualified from contesting the election. Dismissing the contention the Court of Appeal held that the issue was incompetent since Buhari did not file a cross petition. On the question whether a cross Petition was legally necessary, we wish to reproduce a portion of the decision relied on by the learned Senior Counsel. In *Idris v ANPP*²⁷ the court held on when a petitioner is entitled to file a reply to answer an election petition thus, "By virtue of Paragraph 16 of the First Schedule to the Electoral Act, 2006, a petitioner, like a plaintiff in a regular court, can file a reply or a defence to meet fresh issues raised in an answer

²³ The Nigeria Lawyer, 'Paul Ananaba,SAN, The Supreme Court May Have Made Error In Its Calculation; The Supreme Court Ought to take Lesser Cases' <https://thenigerialawyer.com/the-supreme-court-may-have-made-error-in-its-calculation-the-supreme-ought-to-take-lesser-cases-paul-ananaba-san/>(Accessed March 02 2024)

²⁴ ScanNews, 'THE IMO GUBERNATORIAL JUDGEMENT- A PAINFUL BUT LEGALLY CORRECT VERDICT!' <https://m.facebook.com/story.php?story_fbid=pfbid04'(Accessed March 02 2024)

²⁵ (2008) 8 NWLR (Pt.1088) 1

²⁶ (2020) 12 NWLR (Pt.1737)37

²⁷ Supra

to the petition. What the petitioner cannot do is to raise or introduce fresh on new issues, extraneous to those raised in the answer to the petition²⁸.” Paragraph 16 of First Schedule to the Electoral Act 2006 provides:

- (1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the Registry, within Five (5) days from the receipt of the respondent’s reply, a petitioner’s reply in answer to the new issues of fact, so however that-
 - (a) The petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him; and (b) the petitioner’s reply does not run counter to the provisions of subparagraph (1) of paragraph 14 of this schedule. This is apparently a case for a petitioner who intends to answer to the respondent’s reply. Inherent in the said decision is the fact that a respondent in his reply to the petition can raise new issues, so this authority does not constitute a shackle on the ankles of the respondents. It is however good authority where the petitioner in answer to the respondent’s reply nominates a new issue and therefore constitutes a bar on the petitioner as such issue would be deemed incompetent.

One very obvious distinction between the new issue as it was raised in Buhari’s case and the new issue as was raised in the case under review is that while the new issue in Buhari’s case was completely out of touch with the content of the petition, the new issues in Ihedioha’s case was tied to the case before the court hence, it took the form of confessing and avoiding the plaintiff’s averment than the complete introduction of a new issue or a nomination of a fresh issue. In

²⁸ Per Sanusi, Omokri and Owoade, JJCA See also, *Kankia v Maigemu* (2003) 6 NWLR (Pt.817)496; *Iwuoha v NIPOST Ltd.* (2003) 8 NWLR (Pt.822) 308

consideration of the above position the applicable or principle of law would be that of burden of proof because by mere confession and avoidance of the plaintiff's averment, the claimant (respondent in this case), takes the position of proving his case because it is he who would fail if no evidence is adduced.²⁹ It is instructive to mention at this point that even though Uzodinma, based on the issues joined, had tendered documents in support of his case, INEC did not adduce any evidence to rebut this testament. What emerged from this is that while the petitioner led evidence in proof of the issue joined, INEC did not produce documents to counter or rebut the evidence of the petitioner. As observed by Sowemimo, C.J.N, and rightly so, in *Omoboriowo v Ajasin*³⁰, issues joined in the pleadings with no evidence led in support are considered as mere averments and the result of which is a striking out or a dismissal of such averments by either parties. What purpose would a cross petition have served in the event that no evidence was led to substantiate claims in the pleadings of Ihedioha and INEC? At best, the claim of falsification in respect of the contentious results from the 388 polling units would have been dealt with without the need for a cross petition had INEC tendered documents to rebut the claim as to the genuineness of the said results. Abdul Mahmud³¹, considering that the evidence on the record was before the Supreme Court, the best outcome would have been cancellation of the Imo poll as requested by APGA for rigging. He posited that the court should have ordered another election due to circumstances surrounding the exercise. He concluded that "...when battle raged at the tribunal... APC cleverly argued that its votes lawfully declared in polling units were unlawfully excluded at the collation center. It called 54 witnesses, including INEC officials... PDP only called one witness to rebut the testimonies of APC witnesses. INEC did not call a single witness,

²⁹ See, Section 131(1) Evidence Act, 2011 Cap.E14 Laws of the Federation of Nigeria

³⁰ (1984) LPELR-2643(SC)

³¹ BUSINESS247 News Online, 'Supreme Court Should Have Ordered Fresh Election In Imo- Rights Lawyer, Abdul Mahmud' <https://business247news.com/2020/01/15/supreme-court-should-have-ordered-fresh-election-in-imo-rights-lawyer-abdul-mahmud/> (Accessed March 02 2024)

tender a single document on the disputed excluded votes, nor called its collation officers as witnesses... At the tribunal, INEC played a funny game and PDP didn't defend its victory with seriousness..." One point needs to be stressed and it is that the court upheld only APC's appeal and therefore would not have granted APGA's prayers in a petition in which it did not succeed. However, the obligatory question at this point is, was nullification of the entire election part of APC's prayer? Alternatively, could the court have granted what the successful party did not pray it? The dictum of Uwaifo JSC in *AG, Ondo State v A.G, Fed*³² answers the question in the negative. Rotimi Peter³³ argued that the Supreme Court ignored well-established principles of law that had guided its previous decision in similar cases. According to him, it is clear that having regard to decided cases, particularly of the Supreme Court, the petitioners had the burden of proving the conduct of elections in those polling units, the results emanating from them and the impact those results would have on the result of the election as declared. This position took into consideration the fact that paragraph 8(i) of Ihedioha's reply to the petition stated inter alia, that "...petitioners have embarked on a scheme to introduce false result sheets into the result of the election. They are thus put to the strictest proof of the origin of the result, the existence of the polling units as well as the distribution of election materials to those purported polling units."

In the conduct of the trial, Uzodima called 54 witnesses out of which only 28 were polling unit agents. No ward collation agent was called as a witness. Results were tendered from the bar in bags and sacks; they remained there throughout the trial, except for the few which were specifically mentioned by the 28 polling unit agents. The result sheets did not contain all the scores of the parties which contested the election. The police commissioner admitted, under

³² (2002) 6 SC (Pt.1)1

³³ TheCable 'ICYMI: Imo judgment was based on false grounds, says Ihedioha's lawyers'<https://www.thecable.ng/icymi-scourt-judgment-on-imo-was-based-on-false-grounds-say-ihediohas-lawyers/amp> (Accessed March 02 2024)

cross examination that he did not know the figures they contained or the polling units they were concerned with. The 28 polling agents also admitted that those purported result sheets did not contain any entry to show the number of ballot papers issued to the respective polling units; the number of ballot papers used and unused in those polling units. Many of the sheets did not show the names and signatures of the presiding officers, and the date of issuance. In some of them, the dates written on them were before or after 9th March 2019. PW11 admitted that some of the results he listed showed over voting. The tribunal discountenanced the testimony of PW54 because he did not tie them to the said documents. He had merely dumped the documents in the tribunal.

CHAPTER THREE

AN ANALYSIS OF THE ELECTORAL ACT 2010 IN THE LIGHT OF THE DECISION IN HOPE UZODINMA & ANOR V EMEKA IHEDIOHA & ORS. SC/1462/2019

In consideration and determination of the issues raised by respective parties in the matter the Court had course to analyse some provisions of the Electoral Act 2010. The Electoral Act 2010 contained some provisions which were adequate to regulate electoral processes and procedure of that time¹. Some of the provisions of the Act related to standards of proof required by law to defeat the evidential value attached to election results, burden and standard of proving facts alleged in election petition and issue and cause of action estoppel². The decision of the courts relative to these positions of law remains salient in our legal system despite alterations to the Electoral Act.

3.1 Standard of Proof Required by Law to Defeat the Evidential Value of Election Results.

The appellants made a civil claim at the Supreme Court by alleging that the respondent was not returned by the majority of lawful votes cast at the election and that scores due to him were unlawfully excluded at the collation centre. He tendered documents and called witnesses in support of his claim. He demonstrated that gargantuan votes amounting to 213,695 accruing from the polling units due to him were unlawfully excluded. He further claimed that in the said polling units, the 1st respondent, Emeka Ihedioha polled 1,903 votes. He tendered forms EC8As and EC8Bs and demonstrated clearly that the exclusion affected the result of the election occasioning the undue return of the respondent. Was this position enough to presume regularity

¹ Electoral Act 2010

² Researchgate, 'Burden and Standard of Proof in Election Petitions without Criminal Allegations' <https://www.researchgate.net/publication/335522269_Burden_and_Standard_of_Proof_in_Election_Petitions_without_Criminal_Allegations> accessed June 11 2024

on the documents tendered? Did Uzodinma, in consideration of pertinent authorities in this regard prove the majority of lawful votes he claimed to convince the Supreme Court to attach probative values to the said results? No doubt, exclusion of votes and claims thereof are of civil nature which burden of proof is discharged on the balance of probabilities.³ In *Omoboriowo v Ajasin*⁴, Bello J.S.C declared:

Now, as I stated in *Nwobodo v Onoh* (Supra), there is in law a rebuttable presumption that the result of any election declared by the returning officer is correct and authentic...the burden is on the person who denies the correctness and authenticity of the return to rebut the presumption. Where such denial is based on a mere complaint that the petitioner scored a majority of lawful votes, the rebuttal needs only to be proved within the balance of probability.⁵

It is apropos to ask, did Uzodinma prove that he scored the majority of lawful votes? The law on this point was most cerebrally and adequately enunciated by the Ondo State High Court Election Panel in the case of *Omoboriowo v Ajasin*.⁶ The law was reiterated and adopted by the unanimous Supreme Court panel in the case on appeal to the Supreme Court. It was stated at the High Court thus:

“Ideally, the procedure to prove the total number of votes scored by the candidate is :

- To prove the votes received at each “polling station” by each candidate and then add them all up for each constituency and then for each local government; this is the foundation for any calculation.
- Failing (a) above, to prove the entry of the figures received by each candidate at the “polling station” in some form and their total for each constituency.

³ *Mogaji v Odojin* (1978) 4 S.C 291 @ 306; Section 134 Evidence Act, 2011

⁴ (1984) LPELR-2643 (SC)

⁵ *Nwobodo v Onoh* (1983)CLR 10(c) (SC);(1984) 1 (SCNLR) 1 @ 27-8.

⁶ Supra

- To prove that the addition of all the votes cast for each candidate in all the constituencies in each local government is correct. Mohammed Bello, J.S.C after consideration of these findings held that

practice, it is not practicable in the circumstances to produce the records of the results from each of the polling stations in every local government where issues are joined. In order therefore to ascertain what figures are proved or established, the Court will have to bear in mind the need to relate figures submitted, to the very foundation of the figures and in deciding on what is the true or acceptable figures in the light of the evidence adduced, the Court, will as an accepted principle in civil proceedings decide on the balance of probabilities.

The emphasis placed on polling booths with regard to proving election results is cognizant of the fact that the results from polling units form the foundation of results and the basis for calculation.

It was contended on behalf of the respondents that the petitioner, in seeking to establish the votes claimed, must produce the 388 polling agents of the polling booths from which those results were garnered. This explanation is not entirely supported by the study's findings, but still it is equally and most efficacious to state that to allow this argument would mean to jettison and or derogate from the requirement of the law on the standard of proof in civil claims. Equally imperative at this point, is the fact that the requirement of strict proof by calling witnesses polling unit by polling unit as encapsulated and ably canvassed in the decision of the Supreme Court Per Kekere Ekun Montonmori, J.S.C in *Wike v Peterside*⁷ is only applicable in election matters where commission of crime is directly in issue. This decision was founded on the provisions of Section 135 of the Evidence Act⁸ and has been affirmed in a plethora of cases.⁹ It is enough if the petitioner shows clearly that the results were authentic from the polling units. This

⁷ (2016) 1 NWLR (PT.1492)SC

⁸ Evidence Act, 2011.

⁹ See generally, *Udom Emmanuel v Umana Okon Umana & ors.* (2016) 12 NWLR (Pt.1526) 270 @ 286; *Buhari v INEC* (2008)18 NWLR (Pt.1120)246;*Abubakar v INEC* (2020) All FWLR (Pt.1052) P.898

would be possibly discharged by showing the results of all the candidates from the various polling units and showing clearly the results secured by each candidate and that by adding the results of the polling units, the petitioner gathered the majority of lawful votes. Then the petitioner would have to proceed to show that:

- (a) He won by a majority vote in the polling units.
- (b) That in the form EC8B, that the result was excluded. Production of forms EC8A and EC8B would be to show the contrast evident in the said declaration but the court obviously omitted to require Uzodinma to show how much votes he got from each of the 388 polling units than the wholesale allocation of whooping 213,695 votes. The contention here is that Uzodinma would have been requested to show in all the polling units put together how he came about this wholesome score thus directly relating his evidence to the polling booths which has been described as the pyramid upon which the results of elections are calculated.¹⁰ It is settled law that after counting and collation of votes at the polling units, the presiding officers enter the votes scored by the respective parties in the various forms and the polling agents are required to countersign in confirmation of the genuineness of such results. Thereafter, duplicate copies of the said results are issued to the polling agents of all the parties and to the police.¹¹

Now, in view of the reasoning of the Court in the resolution of the issue that the results given to the police for safekeeping are authentic, would it not have been safe to call the police officers from the various polling units to tender copies of the results in their possession? On the issue of

¹⁰ See *Omaboriowo v Ajasin, Supra*

¹¹ See section 135 of the Evidence Act 2011

admissibility and validity of election result forms given to the police, it was held in *Nnadi v Ezike*¹² as follows:

Election result forms given to the police security men cum observers at the polling booths...constitute an internal and inbuilt control mechanism or measures designed to unravel unlawful cancellations, alterations, mutilations and juggling of figures during elections and such result as produced by the police are the best and tenable available source to test the veracity of the parties' contention on the issue of what in fact were the actual scores made by the contending parties. To jettison the forms given to the police under any guise, as in the instant case, is like throwing discretion to the wind.

On the strength of this authority, Oho, J.C.A opined at page 410 vol.5 of the record that

The police copies are particularly relevant and admissible where, as in this case, the respondents raised the issue of the authenticity of the results in their pleadings. The copies given to the police are in those circumstances relevant and tenable to test the veracity of the parties' contention on the issue of what in fact transpired.

At best the decision should not be construed to mean that the results of over 388 polling units tendered by the Deputy Commissioner of Police (Rabiu Hussein) was conclusive on the issue regard being had to reference to security cum police men at the polling booths as stated in *Nnadi v Ezike*.¹³ On the whole therefore, the Deputy Commissioner of Police cannot constitute himself into an overseer without the results having been tendered by the police officers deployed to the various polling booths in contention.

The standard of proof required to rebut any presumption of regularity of results given to the police would be that required in civil actions that is on the balance of probability. However, had INEC produced any document conflicting with the results tendered by the petitioner the Court

¹² (1999) 10 NWLR (Pt.622) 228 @ 238 C-E (A decision of the Court of Appeal sitting as the final Court at the time)

¹³ supra

would have regarded that of INEC as conclusive on the issue. However INEC failed abysmally to defend its position in the case.

3.2 Burden and Standard of Proving Facts Alleged in Election Petition

Paragraph 12 (2), First Schedule to the Electoral Act 2010¹⁴ provides:

Where the respondent in an election petition, complaining of an undue return and claiming the seat or office for a petitioner intends to prove that the claim is incorrect or false, the respondent in his reply shall set out the facts and figures clearly and distinctly disproving the claim of the petitioner.

Similarly, Paragraph 15 of the First Schedule to the Electoral Act, 2010 provides:¹⁵

When a petitioner claims the seat alleging that he had the highest number of valid votes cast at the election, the party defending the election or return at the election shall set out clearly in his reply particulars of the votes, if any, which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the petitioner is not entitled to succeed.

In *Wallingford v Mutual Society*,¹⁶ Lord Selborne, L.C, said:

With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong be the words in which they are stated, are insufficient even to amount to an averment of fraud, of which any Court ought to take notice.

The Supreme Court per Sowemimo, adopting the principle stated in Wallingford's case stated in the case of *Omoboriowo v Ajasin*¹⁷ that "fraud and crime must be strictly pleaded and details or particulars sufficient to found a proper charge given to warrant the issue being investigated by

¹⁴ Act No 6, 2010

¹⁵ Supra

¹⁶ (1879-90) 5. APP. Cas.687 @ page 697

¹⁷ Supra

the Court¹⁸.” This implicates that the expediency of setting out in details the particulars of fraud and/or falsification with regard to the hotly contested results from the said 388 polling units. There was abysmal failure on the parts of the respondents to comply with these stated principles. Consequent upon this lacuna was the finding by the Supreme Court that the respondents did not comply with the provisions of the Electoral Act, 2010 on respondents reply to petitioners claim to the seat. This finding is unassailable given the abundant and copious authorities in support of this finding. More so, that with regard to the claim of falsification it was the respondent that would fail if no more evidence was adduced in support of the issue.¹⁹

Pleadings and laws, particularly the Evidence Act regulate and determine the party on whom onus of proof lies and the quantum of evidence required in discharge of this legal burden. Elementarily, it is the party who institutes the action that is required to prove his case. This rule is basically applicable to both civil and criminal proceedings.²⁰ This burden, however, shifts from one party to the other upon discharge of the burden by one party to the proceeding. This consistent oscillation continues until the Court is satisfied of the establishment of the facts.²¹ In the case under review, the petitioner averred exclusion of votes due to him which he had copies of. The petitioner thereafter tendered documents and called witnesses to establish his case of exclusion of votes. The respondents in their reply briefs denied the existence of the results tendered by the petitioner and thus put the petitioners to the strictest proof of the existence of the said polling units, among others. Despite the claim by Rotimi Peters that the respondents, particularly INEC denied the existence of those result sheets and tendered documentary evidence

¹⁸ LawNigeria, 'Chief Akin omoboriowo & ORS v. Chief Michael Ajasin.' <<https://judgements.lawnigeria.com/2018/10/05/3plr-chief-akin-omoboriowo-ors-v-chief-michael-adekunle-ajasin/>> accessed June 12 2024

¹⁹ See, Section 136 of Evidence Act 2011, Act No. 18

²⁰ See, Sections 131(1)(2) and 132 of the Evidence Act, 2011, ACT NO.18

²¹ See, Section 133(2) of the Evidence Act, 2011, ACT NO.18

to show that the election did not hold in the 388 polling units, Supreme Court record showed that INEC did not at any stage of the proceedings tender documents neither did it give evidence and / or call witnesses to contradict the averment of the petitioner not even speaking of discrediting documents tendered by the petitioner. In the record, for instance, it was lucidly stated per Kekere Ekun, that at the trial, Rw5 did admit that election materials were delivered to the concerned polling units. In addition to this observation, there is the presumption of election holding in all parts of a state at elections. What other proof on the balance of probability was required of the petitioners having tendered and stated clearly the effect of the exclusion before and after addition thereof. Even though this study admits that the petitioner did not relate his evidence to the polling booths; the foundation of election results, the respondents, particularly INEC would have seized that ample and elephantine opportunity presented by this lacuna in the said suspect results to rebut and/ or discredit the evidence on preponderance of evidence. In the respondents reply, it was averred that the results were false and constituted an act of forgery. Despite this weighty allegation the respondent did not procure document to prove this crime let alone proving same beyond reasonable doubt as required by law. Section 136 (1) of the Evidence Act,²² provides:

“ The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other.” On the standard of proof where allegation as to the commission of a crime is directly in issues, the Evidence Act in Section 135 (1) provides that:

if the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.

²² See, section 136(1) Evidence Act 2022

3.3 A Consideration of the Opinions of Learned Scholars

So many legal scholars have made expressions of divergent reservations as to the soundness or otherwise of the application of this principle in its strictest sense in election petition being a civil case of a sui generis nature. Chukwudi Nwokoye²³ holds the view that “...if we follow the argument that a plaintiff in a civil matter such as election petition should prove electoral fraud beyond reasonable doubt, it then follows that if he is able to discharge that heavy burden, the respondent should be thrown into jail²⁴.” The reason for this position according to him is that, “the said winner of the election is not on a criminal trial. So, if he is not on a criminal trial, why does the applicant need to prove his opponents guilty of election fraud?” Continuing, he argued that “a criminal matter should not be confused with a civil matter. To burden a party in a civil matter with proof beyond reasonable doubt is like asking him to prove proof... It is a voyage of impossibility, he concluded.” Implicit in this stout argument is the agreement by Okoye that the Supreme Court only nullifies elections where the public outcry and demand for justice is such that is overwhelmingly obvious for instance, the *Ngige v Peter Obi*²⁵ case and *INEC v Oshiomhole*²⁶ and others. This clearly shows that nullification of election duly conducted by INEC is not a thing perfectly impossible. Shorn of this legalese and argument, the said section 135(1) of the Evidence Act, 2011 expressly named civil matters as causes for which associated criminal allegation need prove beyond reasonable doubt. What would legally constitute proof

²³ Chukwudi Nwokoye is an Attorney at Maryland, U.S.A and a Correctional Officer at Prince George’s Department of Corrections, Upper Marlboro, Maryland, U.S.A

²⁴ Aphriapub, 'An Appraisal of the Ground and Burden of Proof in Election petition in Nigeria' <<https://journals.aphriapub.com/index.php/SS/article/download/1315/1258/2594>> accessed June 12 2024

²⁵ CA/E/EPT/4A/2010

²⁶ (2009) 4 NWLR (Pt.1132) 607

beyond reasonable doubt was ably expounded by the English Court in the case of *Miller v Minister of Pensions*.²⁷ It is equally germane for this purpose to state categorically that any possible doubt raised in a criminal trial and in a civil matter alleging commission of crime is as a matter of trite law settled in favor of the party defending such allegation.²⁸

In the main, let us consider whether the allegation of falsification constituted an allegation of the commission of a crime to which section 135 of the Evidence Act 2011 applied. According to Eso, in *Nwobodo v. Onoh*²⁹ falsification is not an offence. In his dissenting opinion he stated that the claim of falsification alone cannot raise an allegation of crime neither can it be tied to the offence of forgery. To him, the question would be whether that allegation as contained in the pleadings alleged a crime. In resolving the issue, he stated that “forgery does not consist of falsification only. It must also allege that the falsifier knows the document or writing to be false.” “There is no allegation whatsoever in the pleading that any of the parties to this case knows the document to be false.” His Lordship stated:

I find it difficult to hold a general allegation of wrongdoing to be an indictment for a specific crime as requested by section 137 of the Evidence Act.” His Lordship cited and relied heavily on the cases of *Davy v Garret*³⁰ *Wallingford v Mutual Society*³¹ His Lordship opined that section 137(1) of the Evidence Act, 1982 required that the allegation should be made against a party to the case and “that the commission of the crime shall be directly in issue.

To His Lordship,

²⁷ (1947) 2 All E.R. 372 at 373

²⁸ *FRN v IWeka (2011) 11-12 SC (Pt.1) P.109; 2011 LPELR-9350(SC)* where the Supreme Court held that doubt arising from the failure of the Prosecution to prove a charge against an accused person must as a matter of necessity be resolved in favor of the accused person

²⁹ (1984) All NLR

³⁰ Ch.D. 489

³¹ (1879-80) 5 A.C 685 @701 and 704

it is only then that the crime should be proved beyond reasonable doubt. If the commission of the crime is the sum total of the civil proceedings, that is, the proof of the commission of the crime must be the proof of the case of the plaintiff then the civil case has to be proved beyond reasonable doubt. If however the civil case can be proved, even without proof of the crime, that is, whether the crime has been committed or not the act of the accused is sufficient proof, then the proof is on the balance of probabilities.

For this proposition, His Lordship cited and relied on the case of *Jules v Ajani*³² His Lordship's finding on proof beyond reasonable doubt in an election petition where commission of crime is directly in issue is that the crime must be one that is similar to corrupt practices for the strict proof to apply. His Lordship Uwais, J.S.C, opined that

the averment by the petitioner in paragraph 5 of his petition, which alleges that the 2nd and 3rd respondents or their agents, servants, or privies in most Local Government Areas of Anambra State falsified the results of the governorship election in favor of the 1st respondent, amounts to an imputation of the crime of forgery under the criminal code and an electoral offence under section 105(e) of the Electoral Act 1982. The onus of proving the crime rested upon the petitioner who made the assertion. By section 137(1) of the Evidence Act, the onus is not discharged until the commission of the crime is proved beyond any reasonable doubt.

What emerged from Eso, J.S.C's opinion is that to meet the requirement of proof beyond reasonable doubt in an election petition, the allegation of the commission of a crime and the crime alleged must constitute the sum total of the case. The tenor of sections 134 and 135 of the Evidence Act is that, if an action consists of civil claims, the same can be discharged on the balance of probabilities. But where, however, as in the case of Uzodinma, there is the allegation of the commission of a crime being directly in issue, the particulars of the crime alleged alone and nothing more must be proved beyond reasonable doubt and not the whole case of the

³² (1980) 5 S.C 96

petitioner. Possibly, too, as pontificated in the case of *Omoboriowo v Ajasin*³³ a petitioner may abandon an alleged commission of crime in his case and make a good case with the civil claims in his petition and any such claim as to the commission of a crime shall be deemed abandoned and successfully so without any harm being done to the second limb of the petitioner's claim.

Implicit in the crime of forgery is falsification. The importation of the element of the falsifier being in the know will occasion more hardship than intended, for instance, in the case under review, the allegation of falsification was made by the respondents. If they had tendered documents or shown by valid evidence that there was a result held by them which contradicted those of the petitioners, it would have amounted to making a voyage of impossibility to require them further to prove that the petitioners themselves knew the results they tendered to be false. The mere fact of contradicting the result is evident itself of fraud and manipulation regard being had to (a) the position of INEC as the electoral umpire, which position it enjoys by which of provisions of the Electoral Act and; (b) the inadequacies that replete the said 388 polling unit results. For fear of being profligate with words, it is once again convenient to state that the requirement of proof beyond reasonable doubt tilted towards the respondents by reason of the imputation of the commission of crime in their reply briefs. Given the effect this would have had on the case of the respondent, it became incumbent upon the respondents to prove the particulars of forgery alone beyond reasonable doubt.

At the Supreme Court, the crux of the respondents' case was the effect the decision in *SC.1384/2019: Nwosu v Action Peoples Party (App) & Ors* delivered on 20.12.2019 had on the respondents' defense to the petition³⁴. Notably, that case concerned the nomination of the

³³ Supra

³⁴ *SC.1384/2019*:

appellant therein (Uche Nwosu) as candidate of two political parties which nomination was declared null and void and invalid by the Court for the reason that the said nomination violated section 37 of the Electoral Act, 2010 (As amended).³⁵ The 1st respondent in the instant case contended that the judgment is a judgment in rem and was therefore binding on all parties. According to them, the APC also nominated Hope Uzodinma as its candidate for the same election with the effect that two candidates were projected for the APC in the same election. Apart from the appellant's contention that such issue that raised a question of valid nomination was pre-election matter for which the Supreme Court could not constitute itself into a High Court established for that purpose,³⁶ the Supreme Court found that the issue was a fresh issue raised for the first time in that Court for which leave of Court was required to be sought and obtained failure of which resulted in the declaration of the said issue as incompetent. The sentiment as to the effect the decision in *SC.1384/2019* had on the appellant's case was shared by various commentators and writers. Rotimi Peters³⁷, wrote" the implication of the above judgment is that Uche Nwosu was the nominated candidate of APC in the election, but that his nomination became void because he had secured "double nomination." It followed that if Uche Nwosu was factually the candidate of APC in the election, senator Uzodinma could not have validly, also be the APC candidate in the same election."

3.4 Issue and Cause of Action Estoppel: A Consideration of the Position of the Law in Relation to *HOPE UZODINMA & ANOR V EMEKA IHEDIOHA & ORS. SC/1462/2019*

³⁵ Supra

³⁶ See, Section 87(10) of the Electoral Act, 2010 (As amended)

³⁷ Nasarawa Reporters, "SUPREME COURT JUDGMENT IN SEN UZODINMA & APC V. EMEKA IHEDIOHA & 2 OTHERS: Putting The Record Straight- Rotimi Peters Esq.https://m.facebook.com/story.php?id=Nas/arawaReporters&story_fbid=3189744274388448 (Accessed April 30, 2024).

Ifeanyi Okonkwo contributed to the debate arising from this by asserting that the decision in Uche Nwosu's case constituted an issue and cause of action estoppel. What became manifest in the argument was that being a case that raised the questions on the principle of *per rem judicatem*, the case and judgment in SC. 1384/2019 raised a pertinent question on the jurisdiction of the court for which the requirement of leave should be dispensed with. At this point, it is quite abundantly obvious for this purpose, to consider some of these arguments.

Firstly, what is a judgment in rem? In *PDP v INEC & ORS*³⁸ Bolaji-Yusuff, J.C.A defined judgment in rem as the judgment of a court of competent jurisdiction determining the status of a person or thing as distinct from the particular interest of a party to the litigation. Apart from the application of the term to persons, it must affect the "res" in the way of condemnation, forfeiture, declaration, status or title. Examples are judgment of a court over a will creating the status of administration, Judgment in a divorce by a court of competent jurisdiction dissolving a marriage declaring the nullity or affirming its existence, judgment in an election petition. The feature of a judgment in rem is that it binds all persons whether a party to the proceedings or not. It stops anyone from raising the issues of the status of a person or persons or things, or the rights or title to property litigated before a competent court. It is indeed conclusive against the entire world in whatever it settles as to status of the person or property. All persons whether party to the proceedings or not are stopped from averring that the status of persons is other than the court has by such judgment declared or made it to be.

The Supreme Court differentiated between a judgment in rem and Judgment Inter Parties that is, in *person* a judgment in personam. A judgment is said to be in rem when it is an *am* in the case

³⁸ (2014) AELR 3801(CA)

of *Ikenye Dike & Ors v Obi Nzekali & Ors*.³⁹ It is therefore necessary to have a clear idea of the distinction between a judgment in rem and adjudication pronounced upon the status of some particular thing or subject.

The distinction between an adjudication pronounced upon the status of a specific thing or subject matter by a tribunal having the jurisdiction and competence to pronounce on that status and a judgement in rem must thus be clearly understood." The basis for such a judgement is almost often proceedings brought against or about an object or subject matter the status or condition of which is to be ascertained. As a result, it is a serious statement about the standing of some people or things. Because of this, it binds everyone to the extent that it affects their interest in the asset or individual. Because of this, a judgement rendered in rem is a *contramundum*, meaning that it is binding on all parties and non-parties alike. Conversely, a judgement in personam is based on a completely different basis. Unlike a judgement that declares the status of a person or thing, this one is directed against a specific individual. A judgement inter parties is a better term to use than judgement in personam. Since it establishes the rights of parties interested in, or in the subject matter in dispute—be it land or other tangible property or a liquidated or unliquidated demand—a judgement in personam typically imposes personal obligations on both parties without affecting their respective status with regard to the thing in dispute. For effectual determination of our stance on this issue, it is apt to once again caress the argument of the respondents which was echoed by Rotimi Peters to the effect that the decision in *SC 1384/2019* had the implication of precluding the appellant from being a candidate of the A.P.C By reasonable inference, the APC did not have a candidate in the said election, they contended. On this point we submit that this

³⁹ (1986) LPELR 94 (SC)

cannot properly express the intendment of Section 37 of the Electoral Act, 2010. The said Act provides thus:

Section 37: 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 void⁴⁰.

Could this be construed as jeopardizing the interest of political parties whose nominated candidates knowingly allows himself to be nominated by another political party? Does this situation preclude it from further substituting or nominating another candidate for the said election? At best, the element of *in rem* in the judgment in *SC1384/2019* could only be read to mean that Uche Nwosu had been legally disqualified or precluded from further contesting on another platform and perhaps could never have been a contestant in the Imo gubernatorial election. So the jurisdiction of the court is to the effect that the nomination is void and nothing more.

Admittedly, judgments *in rem* declare the status of a thing or subject matter and bind both parties to it and other person not made parties to it. This could not be made into a wholesale declaration that a party whose nomination was declared void or illegal for reason not due to its failure could not field other candidates to resolve the issue of valid candidacy. Section 38 of the Electoral Act, 2010 allowed for extension of time to secure valid nomination and valid substitution of candidates. The said Section 37 is weighted against the nominated candidate and not the political party nominating. Clearly, if this were a judgment *in rem*, then the only possible conclusion to reach from its declaration on the status of Uche Nwosu as being a candidate whose nomination was void is that he could not have been allowed to vie for any such office on the platform of the two political parties. With regard to the position taken by Ifeanyi Okonkwo to the effect that the

⁴⁰ See, section 37 of the Electoral Act, 2010

issue of the implication of the decision in *SC 1384/2019* constituted an issue or cause of action estoppel which decision invoked the jurisdiction of the Supreme Court for which the requirement of a leave was not a matter of necessity; recourse would be made to the decisions in *Adeniran v Ibrahim*⁴¹ and *Udechukwu Martins v Sunday Ezemuo*.⁴² In *Martin Udechukwu & ors v Sunday Ezemuo*⁴³ Alagoa, J.CA stated the law thus:

For estoppel “per rem judicatem” to be pleaded and relied upon the following conditions must be satisfied-

- (a) That the parties or their privies in the previous and the present suits are the same.
- (b) That the claim and the issue in both cases are the same.
- (c) That the subject matter of litigation in the previous and present suits is identical.
- (d) That the issues in both suits were finally settled in the previous suit.” This position has been maintained in a plethora of cases.⁴⁴

In *Adeniran v Ibrahim*⁴⁵ the Supreme Court Per Mary Ukaego, Peter Odili held as follows:

...the judgment of this court of 1973 which is *Chief Ademola Ogunniyi & Amusa Okeniyi Alawode v. Dr. Funsho Adaramola & Sunmonu Aroyehun* (S.C/171/73) of 10/12/1973 is a judgment in rem against the whole world as it pronounced on the boundary between the two communities which effect is res judicata. I shall refer to the case of *Sosan v. Ademuyiwa* (1989) 3 NWLR (Pt.27) 241 at 251 (Reprint)

Per Oputa J.S.C thus:

the rule of estoppel per rem judicatam may also apply in the case a decision or judgment in rem. In such a case the decision is binding both on parties (or privies) as well as on non parties whether it is used as a foundation of an action or relied upon as a bar this court

⁴¹ (2019) All FWLR Pt. 971

⁴² (2009) All FWLR Pt.489

⁴³ (2008)LPELR-8437(CA)

⁴⁴ See, *Intercity Bank Plc v Faisal Travel Agency Ltd* (2006) 4 NWLR (Pt.971) page 504@525; *Nwaneri v Oriawu* (1959) SCNLR 316; *Oke v Atoloye* (No. 2) (1986) 1 NWLR (Pt.15) pg 241

⁴⁵ (2019) All FWLR Pt.971

quite recently considered the distinction between a judgment in rem and a judgment in personam and held that a judgment is in rem when and where it is a solemn pronouncement upon the status of a particular subject matter. The term judgment in rem is clearly understood in law as a judgment of a court of competent jurisdiction determining the status of a person or thing or the disposition of a thing. The action which ends in such a judgment should be an action filed for the purpose of such determination.

Similarly, in *Ikotun v Oyekanmi*⁴⁶ Chukwuma-Eneh, J.S.C stated the law thus:

...as the judgment as per Exhibits B and D are final decisions given by court of competent jurisdiction, they are conclusive as to the cause of action and all the issues that are germane and decided in directly establishing the cause of action as between the parties or their privies. A party so affected by it is estopped as per rem judicatam from re litigating the matter all over again. The implication of the above assertion vis-à-vis the judgments as per Exhibits B and D is that they are binding as to the cause of action and the issues directly decided in the previous case are called to question as between the same parties or the privies. So that the party is estopped from bringing a fresh suit before any court on the same case and on the same issue already pronounced upon by the court in a previous case.

Clearly, the decision in *SC. 1384/2019* cannot find itself rightly fixed into any of these circumstances illustrated by the courts⁴⁷. And what remain of it than a mere disposal; a consignment into the dustbin of history, in the sense of real elimination. In the final analysis, some schools of thought are of the view that the Supreme Court should have ordered fresh election in Imo State.

⁴⁶ (2008) 4-5 S.C (Pt.1) 1 at 13

⁴⁷ *SC. 1384/2019*

CHAPTER FOUR

AN ANALYSIS OF THE ELECTORAL LEGAL REGIME UNDER THE 2022 AMENDED ACT.

The Electoral Act 2022, Act No.13 2022 intended a paradigm shift from the old electoral order. For instance, the Act provided for real time transmission of election results from the polling units to the INEC Result Viewing Portal (IREV). The Act provided for an electronic scanning of polling unit results using the Bimodal Voters Accreditation System (BVAS) machine and subsequent upload to the IREV¹. These processes accommodated and allayed the fears of voters over the years that election results were always tampered with at the point of manual transmission from the units to the collation centers of the higher levels². The IREV provided a ready platform by which voters monitors and supervises the transmission of their votes to the Central Servers³. Decisions of the Supreme Court on the true essence of this novel election model are trivial⁴. In *Oyetola v INEC*⁵ the Supreme Court of Nigeria devoted a portion of its judgment highlighting the impracticability of a real time transmission of election results to the server. One of such impracticable situation is a case of network glitch. However commendable, the position of the Supreme Court is in highlighting operational deficiencies in using electronic mode of conducting elections, the study finds that a firm statement by the Supreme Court

¹ See The Electoral Act 2022, Act No.13 2022

² Researchgate, 'Local and Global Election Result Collation and Transmission System.'https://www.researchgate.net/publication/324386690_Local_and_global_election_result_collation_transmission_system> accessed June 11 2024

³ Inecnigeria, 'Electronic Transmission of Election Result.'<https://inecnigeria.org/wp-content/uploads/2021/09/ELECTRONIC-TRANSMISSION-OF-RESULT.pdf>> accessed June 11 2024

⁴ See *Oyetola v. INEC*

⁵ (2023) 11 NWLR (Pt.1894)12

mandating the Independent National Electoral Commission to keep up with its commitment to delivering a credible and fair election is long overdue and well desirable.

4.1 The Position of the Electoral Act 2022 on Standard of Proof where Fraud is Alleged

There exist almost two classes of criminal allegations under the Electoral Act 2022. Firstly, under Part VII of the Electoral Act, a class of electoral offences has been prohibited. These classes of offences are tried in a proper Court and not in an election tribunal strictly speaking. The offences recognised under that part of the Electoral Act carry with them criminal convictions and sentences after a finding of guilt following a proper criminal trial⁶. Secondly, there is the category of electoral offences recklessly labeled corrupt practices which affect the outcome of an election⁷. This category of electoral offences do not carry with them criminal conviction even where the act alleged has been proved beyond reasonable doubt. The interest of the law with respect to this category of electoral offences is how much it substantially affects the outcome of the electoral process and not in conviction. However, the demand of the law follows the traditional expectation of every criminal trial which is that a petitioner alleging the commission of a crime must prove same beyond reasonable doubt. Examples of crimes in this category of electoral offences include falsification of information contained in Forms CF001 or EC9, multiple thumb printing, ballot box stuffing and many others. ⁸The Courts in the cases of *Prince Collins Eselomo v Tamarakuro Juliano Obriki & 2 Ors*⁹ and *Jibrin Muhammad Barde & Anor v*

⁶ InecNigeria, 'Electoral Offences and Penalties' <<https://inecnigeria.org/wp-content/uploads/2019/02/ELECTORAL-OFFENCES-AND-PENALTIES-latest-FEBRUARY-2019.pdf>> accessed June 11 2024

⁷ InecNigeria, 'Electoral Offences and Penalties' <<https://inecnigeria.org/wp-content/uploads/2019/02/ELECTORAL-OFFENCES-AND-PENALTIES-latest-FEBRUARY-2019.pdf>> accessed June 11 2024

⁸ See, *Jibrin Muhammad Barde & Anor v INEC & Ors*

⁹ Suit No: FHC/ABJ/CS/1120/2022

INEC & Ors categorized these classes of allegations as crimes that must be proved beyond reasonable doubt¹⁰. The mandate that the criminal allegations should be proved beyond reasonable doubt is a legal mandate accommodated under the Evidence Act 2011. The age-long practice in election litigation is that a party who wishes to succeed on a claim of corrupt practices which substantially affected the outcome of the election must prove the allegation beyond reasonable doubt¹¹. Since the *Nwobodo v. Onoh* ruling, this position has remained the law, despite the Evidence Act of 2011 and the Electoral Act of 2022. A petitioner who claimed significant non-compliance was granted what seemed to be a respite, despite the fact that the allegation was unfounded and concerned no corrupt practices is Section 137 of the Electoral Act No. 13 2022 and Section 46(4) of the First Schedule to the Electoral Act, 2022. The combined effect of these provisions is that where the document before the Court establishes manifestly the non-compliance alleged, the petitioner will not need to call oral or documentary evidence to prove his case. However, in *Tanko & Anor v INEC & Ors*¹² and *Chijioko & Anor v INEC & Ors*¹³ the Court of Appeal found that there is need to call the polling unit agents to give evidence in Court and not rely on the provisions of those sections. The Court underscored the fact that there must be a clear manifestation of the alleged substantial non-compliance for reliance to be comfortably placed on Section 137 of the Electoral Act and Paragraph 46(4) of the First Schedule to the Electoral Act. Substantial non-compliance with the Act as a ground under section 134 of the Electoral Act 2022 to contest the result of an election before a tribunal

¹⁰ See, *Prince Collins Eselomo v Tamarakuro Juliano Obriki & 2 Ors*

¹¹ Researchgate, 'Burden and Standard of Proof in Election Petitions without Criminal Allegations' <https://www.researchgate.net/publication/335522269_Burden_and_Standard_of_Proof_in_Election_Petitions_without_Criminal_Allegations> accessed June 11 2024
Allegations' <https://www.researchgate.net/publication/335522269_Burden_and_Standard_of_Proof_in_Election_Petitions_without_Criminal_Allegations> accessed June 11 2024

¹² (2023) LPELR-61184(CA)

¹³ (2023) LPELR-61484 (CA)

includes but is not limited to non-accreditation of voters, improper accreditation and over-voting. To prove these claims, the petitioner is required to use the Bimodal Voter Accreditation System (BVAS), the register of voters and polling unit results in form EC8A series. However, the content of the BVAS prevails over the voters register.¹⁴ The Court has in *Atiku & Anor v INEC*¹⁵ and *Jibrin Muhammad Barde & Anor v INEC & Ors*¹⁶ consistently maintained that a petitioner must in order to be entitled to declaratory and injunctive reliefs on grounds of substantial non-compliance establish that the non-compliance affected the outcome of the election generally.

The terms fraud and corrupt practices are coterminous. Corrupt practices have been defined to mean “certain perfidious in debauched activities which are really felonious in character being redolent in their depravity and want of ethics, they become hallmark of a decayed nature lacking in conscience and principles.”¹⁷ A party alleging corrupt practices must establish the corrupt practices beyond reasonable doubt. The party must in addition establish that the respondent or his agent or privy committed the alleged corrupt practice with full knowledge of the corrupt practice and must as a matter of hard law establish that the corrupt practice affected the outcome of the election¹⁸. Allegation of violence and intimidation of voters provide another turn in a claim in an election petition involving corruption practices, fraud and commission of crime. The law requires the petitioner to establish an inextricable connection between the thugs and the

¹⁴ See, *Oyetola v INEC* supra, see also Section 47 Electoral Act 2022 and Regulations 14(a) and (b), 18 (a) and (b), 19 (b) and (e) of INEC Regulations and Guidelines for the Conduct of Elections, 2023.

¹⁵ SC/CV/935/2023

¹⁶ Supra, See also, Section 135 (1) of the Electoral Act 2022

¹⁷ Effiong, I and Plate S.M, ‘An Appraisal of the Grounds and Burden of Proof in Election Petition in Nigeria’ *Socialscientia Journal of the Social Sciences and Humanities* < <https://journalsaphriapub.com/indexphp/ss/>> accessed May 31 2024

¹⁸ LegalPedia, 'Atiku Abubakar v. INEC.'<https://legalpediaonline.com/atiku-abubakar-anor-v-independent-national-electoral-commission-inec-ors/amp/>> accessed June 11 2024

candidate returned winner of the election¹⁹. This must be done by strict proof; beyond reasonable doubt. The petitioner must again establish that the violence and intimidation substantially affected the outcome of the election. In *Audu v I.N.E.C (No.2)*²⁰ the Court held on the issues of electoral malpractice and fraud that “where a petitioner grounds his petition on noncompliance with the Electoral Act, falsification of results and such other conducts, which in themselves constitute criminal offences, the burden he places on himself is much higher than he otherwise would be called upon to discharge²¹. Such a petitioner’s burden is one to be discharged beyond reasonable doubt.” Examples of acts constituting corrupt practices and fraud include, certificate forgery, falsification of election results, ballot box stuffing, violence and intimidation, inflation of votes and many more. Where any of these facts constitute the grouse of a petition, the petitioner must prove same beyond reasonable doubt.

4.2 The Position of the Electoral Act 2022 on the Admissibility of Election Result Forms given to the Police.

INEC result forms are public documents executed in several parts. A document is deemed as a public document when it is executed and issued by a public officer²². Under Sections 87, 88, 89 and 90 of the Evidence Act, 2011, public documents can be proved either by primary evidence, i.e, the document itself or a certified true copy of the original as secondary evidence. To certify a

¹⁹ ClpLegal, 'Analysing the Election Petition Procedure in Nigeria.'<https://clplegal.com.ng/elementor-8255/> accessed June 11 2024

²⁰ (2010) 13 NWLR (Pt.1212) 456

²¹ EdoJudiciary, 'Audu v. INEC' <https://edojudiciary.gov.ng/wp-content/uploads/2019/09/EPT-27-BALA-ALH-AMINU-A.pdf> accessed June 11 2024

²² Esher and Makarios, 'The Admissibility of the Original Copies of Public Documents.'<https://www.esherandmakarioslaw.com/assets/resources/89f17bd87e980b95de4ada517c55e521.pdf> accessed June 11 2024

public document in order that it becomes admissible in the form of secondary evidence, the court in *Oba Aruna Okiki II & Ors. v Nosiru Jagun & Ors.*²³ identified that:

1. The legal fees must be paid.
2. There must be a certificate at the foot of the document declaring it to be a certified true copy of the original or a part of it.
3. The document must be dated.
4. The officer issuing the document must subscribe the document by writing his name and title of office.
5. Such document must be sealed.

The state of the law appears to be that public documents cannot be obtained and tendered in evidence in their original forms. Such documents are usually tendered as certified true copies of an original being the secondary forms of such documents. This state of the law was emphasized in the case of *Lawson v Afani Continental Company Nigeria Ltd & Anor.*²⁴ However, where the original copies of a document whether public or private are available, it is admissible in those original forms. This is the recent position of the law as represented by the Supreme Court in the case of *Kassim v State.*²⁵

Central to the law of evidence is admissibility of evidence. A piece of evidence is admissible if it is relevant and material to the fact in issue and is competent. As properly stated by the Supreme

²³ (2000) 5 NWLR (Pt.665) p. 19, 26

²⁴ (2001) LPELR-9155 (CA) pp. 27-29, Paras, C-F See also, *Sidi Yero v Union Bank of Nigeria* (2000) 5 NWLR (Pt.657) 470, 478.

²⁵ (2017) LPELR-42586 (SC)

Court in *Jacob v A.G Akwa Ibom State*²⁶ relevant evidence will be admitted. However, the court can exclude a relevant piece of evidence where it is too remote to be material.²⁷

Public documents in private custody must be certified in order for it to be admissible.²⁸

Admissibility of documents is regulated specifically by Sections 83 and 84 of the Evidence Act, 2011. Three conditions exist for the admissibility of documents namely:

1. the document must be pleaded.
2. the document must be relevant.
3. the document must be in admissible form.

The test of relevancy and admissibility are regulated by Section 1 of the Evidence Act, 2011 thus:

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereafter declared to be relevant, and of no others;

Provided that-

- (a) The court may exclude evidence of facts which though relevant or deemed to be relevant to the issue appears to it to be remote to be material in all the circumstances of the case; and
- (b) This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force.

The Electoral Act 2022, like previous Electoral Acts, recognises the role of security agents and the police as part of election officials. The mandate of section 26 of the Electoral Act,

²⁶ (2002) 7 NWLR (Pt.765) 18

²⁷ *Akere v Adesanya* (1993) 4 NWLR (Pt. 484)

²⁸ See, *Buhari v Obasanjo* (2005) 13 NWLR (Pt.941) 1

2022 on oath of neutrality by election officials is clear. Section 26 (1) of the Electoral Act provides,²⁹

all staff, electoral officers, presiding officers, returning officers and security officials taking part in the conduct of an election shall affirm or swear to an oath of loyalty and neutrality as in the Second schedule, indicating that they will not accept bribe or gratification from any person, and shall perform their functions and discharge their duties impartially and in the interest of the Federal Republic of Nigeria without fear or favour.

Security agents and the police are usually parties to sign and counter sign election results. They are subsequently issued with a duplicate of the original of the completed forms. Section 60 (1) – (4) of the Electoral Act, 2022 provides,

(1) The Presiding officer shall, after counting the votes at the polling unit, enter the votes scored by each candidate in a form to be prescribed by the Commission as the case may be. (2) The form shall be signed and stamped by the presiding officer and counter signed by the candidates or their polling agents where available at the polling unit. (3) The presiding officer shall give to the polling agents and the police officer where available a copy each of the completed forms after it has been duly signed as provided under subsection (2). (4) The presiding officer shall count and announce the result at the polling unit.

This commitment was restated in Section 71 of the Electoral Act, 2022, thus,

Every result form completed at the ward, local government, state and national levels in accordance with the provisions of this Act or any guidelines issued by the commission shall be stamped, signed and countersigned by the relevant officers and polling agents at those levels and copies given to the police officers and the polling agents, where available.

In *Nnadi v Ezike*³⁰ the court in considering the status of completed result forms given to the police and its admissibility thereof held that,

²⁹ See, section 26 (1) of the Electoral Act

³⁰ (1999) 10 NWLR (Pt.622) 228

“Counterparts of election results when tendered as exhibits in court constitute primary evidence.”³¹

This declaration of the court affirms the forms given to the police as counterparts of the original result forms and are admissible in that nature as primary evidence. Continuing, the court held that,

Election result forms given to police security men cum observers at the polling booth,...constitute an internal solid inbuilt control mechanism or measures designed to unravel unlawful cancellations, alterations, mutilations and juggling of figures during elections and such results as produced by the police are the best and tenable available source to test the veracity of the parties’ contention on the issue of what infact were the actual scores made by the contending parties. To jettison the forms given to the police under any guise,...is like throwing discretion to the wind.³²

Similarly, in *Uzodinma v Ihedioha*³³ the court stated the law “on the probative value of election result signed by presiding officers and polling unit agents but tendered in evidence by the police” Thus, Under the general principles of the law of evidence, a document tendered in evidence through a witness who is not the maker will not be accorded evidential value. In effect, generally, the maker of a document must be called to testify, otherwise no probative value would be accorded to the document. However, the principle does not apply in election petition cases because they are sui generis and are regulated by the Electoral Act. Thus, section 63 (3) of the Electoral Act, 2010 (as amended) provides

that the presiding officer shall give to the agents and the police officer, where available, a copy of each of the completed forms after it has been duly signed as provided in subsection of the section. And a police officer can present such a form in evidence.

³¹ Ibid, at page 238, para. F.

³² At page 238, Paras. C-E

³³ (2020) 5 NWLR (Pt.1718) 529

In this case, PW54 was statutorily entitled to tender exhibits PPP1-PPP366 in evidence though he was not the maker of the documents...³⁴

The court further maintained that there is a presumption of regularity with respect to documents produced from police custody.³⁵ This position of the Courts is central to the study because the case under review was gravely fought on the evidence of PW54, Rabi Hussein, a Deputy Commissioner of Police who tendered polling unit result forms given to the police officers which document was placed under his custody.

4.3 Powers of Electoral Officers to Exclude Vote under the Electoral Act 2022.

One grouse of the petitioner in the case under review was the unlawful exclusion of polling unit results at the collation levels by the returning officers. The position of the law including the extant law has been that only a presiding officer at the polling booths has lawful authority and capacity to exclude votes. This position can be gleaned from a community reading of Sections 25, 51, 52, 63, 64 and 65 of the Electoral Act 2022. Exclusion and or cancellation of election results are the exclusive preserve of the Presiding officers. Section 51 of the Electoral Act, 2022 provides that “(2) Where the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the presiding officer shall cancel the result of the election in that polling unit.” The provision of section 63 (2) of the Electoral Act, 2022 reinforces the primacy of the role of the presiding officer in rejection, exclusion and cancellation of votes. By that provision, a ballot paper which bears no official mark of the commission but which was countenanced by the presiding officer shall be recorded and declared by the Returning Officer. This role of the presiding officers finds reason in the fact that polling unit results are the

³⁴ At pages 568-569, Paras. E-A; 577-578, Paras. C-B.

³⁵ For this proposition, the court relied on Section 168 (1) of the Evidence Act, 2011.

pyramid upon which election results are determined. It is only reasonable that an officer under whose supervision an election was conducted shall have power to reject, exclude or cancel unlawful votes subject to determination of the validity of such votes by the Court. To prove exclusion of votes the law requires that form EC8A series, the primary evidence of the election must be compared with the results declared.³⁶ Exclusion of votes occurs where there is “the omission of the results of a candidate in an election in the final result without explanation from the person that conducted the election...” In *I.N.E.C v Abubakar*³⁷ the Court answered the question of whether a Returning Officer can cancel or exclude election results in the following terms;

...No power is granted to the returning officer to cancel results of an election and if he purports to cancel any result, it is ultra vires and a nullity...”³⁸ This is the position of the law even under the Electoral Act 2022. Under Sections 63, 64 and 65 of the Electoral Act 2022, the Returning Officer is identified as having several powers and conclusive decisions in several matters pertaining to an election. However, the Returning Officer is nowhere imbued with power to exclude results of polling units.

4.4 Standard of Proof where Fraud is Alleged: A Consideration of the Electoral Act 2022 and the Evidence Act 2011.

Section 134 of the Electoral Act 2022 identifies three grounds under which an election petition can be established. These grounds include; (1) that the respondent was not qualified to contest the election (2) that the election was invalid as a result of corrupt practices or non-compliance with the provisions of the Act (3) that the respondent was not returned by majority of lawful votes cast at the election. Each of these grounds except allegations of corrupt practices

³⁶ *Uzodinma v Ihedioha* (2020) 5 NWLR (Pt.1718) 529

³⁷ (2009) 8 NWLR (Pt.1143) 259

³⁸ Pp289-290, paras G-C

constitutes civil grounds for challenging the return of a candidate in an election. However, there are circumstances under which criminal allegation can arise out of these civil grounds; For instance, where a petitioner alleges that the respondent was not qualified to contest the election as a result of false information submitted in forms CF001 or EC9. Again, a petitioner may allege that the respondent was not elected by majority of lawful votes cast at the election by reason of falsification of election results and or introduction of votes not recorded at the ballots. Each of these allegations constitutes a criminal allegation imputed in a civil claim. Section 135 (1) of the Electoral Act 2022 provides that, “If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.”

³⁹Under Section 135 (3) of the Electoral Act 2022, such allegation is required to be proved beyond reasonable. In *Nyong v State*⁴⁰ the Court stated the law thus, “the prosecution must prove its case beyond reasonable doubt. In other words, every ingredient of an offense must be established to the standard of proof so as to leave no reasonable doubt of the guilt of an accused.” In certain circumstances, where a petitioner maintains a good civil claim in an election petition, he can decide to abandon the criminal ambit of the claim. This is generally regarded as severance of pleadings in election litigation. This is usually the practice where there is a good claim but the petitioner cannot establish a criminal aspect of the petition beyond reasonable doubt. The requirement that the petitioner must prove his allegation beyond reasonable doubt does not require him to prove the allegation beyond all shades of doubt. In *Miller v Minister of Pensions*⁴¹ Lord Denning expressed a stunning opinion on the standard of proof required to meet beyond reasonable doubt in these words,

³⁹ See, section 135 (3) Evidence Act 2022

⁴⁰ (2020) 8 NWLR (Pt. 1727) 511

⁴¹ (1947) 2 All ER 373

The Law will fail to protect the community, if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong as to leave only a remote possibility in his favour which can be dismissed with one sentence of course it is possible but not in the least probable the case is proved beyond reasonable doubt.

It is such as would make a reasonable man say the accused must have committed the crime but not in the least probable.

CHAPTER FIVE

SUMMARY OF FINDING, RECOMMENDATIONS AND CONCLUSION

5.0 Summary of Findings

Through a close analysis of existing literature, examination of available studies and comparisons, this chapter unveils core findings of the study. These findings give a comprehensive insight into the complex issues, arguments and criticisms engulfing the Supreme Court decision in *Ihedioha v Uzodinma*.⁴² This study presents a nuanced understanding of the position of the law under the 2010 Act and the 2022 Electoral regimes. Several criticisms trailed the decision of the Supreme Court under review. Many wondered why a candidate who came distant fourth would be declared winner of an election sidelining other candidates in the order of the declaration of results. While the study accommodates this sentiment, it further buttressed the legal stand point to that position. Every ambit of the issues raised in the case under review have been decided by the Courts. A better approach at dealing with the issues raised would be a close examination of the decision of Courts in those regards. To understand the issue of declaration of Uzodinma as the winner of the election, one would need to consider whether the other candidates succeeded on the strengths of their own cases; if no, can a Court grant any remedy under that circumstance. The beautiful truth is that Uzodinma succeeded on the strength of his case after a finding that there was unlawful exclusion of valid votes due to him. The minority decision of the tribunal which found that there was unlawful exclusion of votes allays the apprehension as to who would have been declared winner of the election. It is an age-long tradition of the Courts that a Court of law is not father Christmas and can only grant to a party that which he asks for⁴³. One would readily inquire whether the other parties to the suit asked to be declared winners of the election.

⁴² (2020) 5 NWLR (Pt.1718) 529

⁴³ DailyNigerian, 'Lawan vs Machina: Ariwoola fumes over Criticism, says 'Court not Father Christmas.'<https://dailynigerian.com/lawan-machina-ariwoola-fumes/> accessed June 12 2024

This is however, besides the fact that the party must have established the facts alleged. To allow a Returning Officer to unilaterally exclude votes of polling units would offend the old legal principle that polling unit results are the pyramid upon which the authenticity of election results are determined⁴⁴. Presiding officers are the officials that supervise the conduct of elections at the polling unit levels. It is only logical that they are the only officials that can exclude and reject election results at that stage. It is in the light of the above that the study finds that:

- (a) exclusion of votes in form EC8A series are within the exclusive preserve of Presiding Officers. In effect, Returning Officers do not have power to exclude votes
- (b) when a respondent answers to the petitioners' claim by introducing fresh claims and allegations, the burden to lead evidence in order to establish those facts alleged rests on them. It is thus erroneous to expect the petitioner to lead evidence on the new claims and allegations of the respondent
- (c) the issue of exclusion of votes is central to a claim that the respondent was not elected by majority of lawful votes cast at an election.
- (d) a claim founded on falsification of election results is a criminal allegation requiring proof beyond reasonable doubt. The petitioner must prove that the alleged falsification substantially affected the outcome of the election. The petitioner must do this by particularising his allegation in line with the Electoral Act.
- (e) Civil claims in election petition can be severed from the overall criminal allegation and have the potential of succeeding on its own terms. A petitioner must therefore be astute in making his claim.

⁴⁴ INEC, 'Regulations and Guideline for the Conduct of Election 2022.'https://inecnigeria.org/wp-content/uploads/2022/06/REGULATIONS-AND-GUIDELINES-FOR-THE-CONDUCT-OF-ELECTIONS-2022_updtd.pdf> accessed June 12 2024

- (f) the decision of the Supreme Court on burden of proof, exclusion of votes and cause of action estoppel are good law and remain the extant position of our law.
- (g) the Independent National Electoral Commission failed abysmally in its duty to defend the petition against it.
- (h) there is a presumption of regularity on elections conducted by INEC. This presumption inuring in favor of INEC enables the commission to defend its position with ease.
- (g) when a respondent fails to lead evidence to rebut petitioners' claims, decision will be made on the evidence available before the Court as proved by the party.

5.1 Recommendations

Decisions of the Supreme Court are not devoid of human frailties. Courts have consistently recognized the infallibility of their own decisions⁴⁵. Subsequent decisions of courts are usually based on previously decided cases exemplifying similar circumstances. The human composition of courts make it impossible to expect an angelic judgment. The best decision is that which is greatly founded on established principles of law. Reducing judicial discretion in decision making requires concerted efforts by the judiciary and legislature. A good law reporting is also necessary.

- (1) it is therefore recommended that judges of the various rungs of the judicial ladder must abide by the doctrine of judicial precedents. Judicial precedents reduces conjectures in judicial decision making.
- (2) the study recommends that constructive criticism of judicial decision is necessary to holding judges up to their duties. However, uninformed criticisms of judgements should not be accommodated and tolerated under the guise of freedom of speech. Right to

⁴⁵ *Adegoke Motors Ltd v Dr Babatunde Adesanya & Anor* (1989) 13 NWLR (Pt. 109) 250 at 275

Freedom of speech is not a right at large. Defamation of persons and offices grants a civil right of action.

- (3) it is therefore recommended that Officials of INEC must be greatly tutored as to the extent and limits of their powers. A situation where an official of INEC performs his duty in excess of the power granted by law is ultra vires and affects the integrity of the commission.

5.2 Conclusion

Election petition is sui generis. In certain circumstances, traditional rules of practice and of evidence do not apply to election litigation. Recourse is usually had to the principal Act, that is, the Electoral Act. When a petitioner lodges a petition in the Election Petition Tribunal, he nominates convenient issues for his case. The respondents usually consist of the returned candidate, his political party and INEC. It is usually difficult to successfully challenge an election conducted by INEC. Wherever possible, the petitioner must have done some diligence. It is thus important for the commission to defend its position with seriousness and requisite commitment. The issue of exclusion of votes is central to the decision in the case under review; whooping 388 polling unit results were excluded by the Returning Officer from the results declared by INEC. Upon a finding by the Court that the Returning Officer did not have the legal power to exclude those votes the court ordered the addition of those votes. Before embarking on this adventure the Court did not conduct due diligence as to finding out the overall effect of those votes to basic electoral indices like total votes cast, total accredited voters and the number of persons who collected PVCs. An election where the total votes cast are higher than total accredited voters leaves so much to be desired. It is this aspect of the decision the study finds erroneous. The aspect of the decision dealing with exclusion of votes is faultless. The law on

exclusion of votes remains that only a Presiding Officer has the power to exclude votes; this rule of law accords with the tenet of fair hearing; an age-long principle of our courts. It is only natural that the one who supervises and witnesses the election should be given power to determine what votes are valid or not. Such is the role of the Presiding Officers who are stationed at every polling unit. When the Court considered that the excluded votes were valid it behooved the respondents to lead evidence to demonstrate the fundamental flaws inherent in those results. Mere confession and avoidance of the petitioners' averment is not enough to establish the weighty allegations of the respondents. The Court rightly considered the issue of oscillation of proof of over voting and exclusion of evidence. Being in the category of civil claim the law requires proof to be on the balance of probabilities and not as the respondents had misconceived.

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