ADELEKE VS. INEC -A SUMMARY OF THE CASE AT THE TRIBUNAL

MEMBERS OF THE TRIBUNAL: HON. JUSTICE MUHAMMED I. SIRAJO
HON. JUSTICE PETER C. OBIORAH
HON. JUSTICE ADEGBOYE A. GBOLAGUNTE

PETITION NO: EPT/05/GOV/1/2018

PARTIES: **1. SENATOR ADEMOLA NURUDEEN ADELEKE**
2. PEOPLES DEMOCRATIC PARTY (PDP)

AND

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
2. **ADEGBOYEGA ISIAKA OYETOLA**
3. **ALL PROGRESSIVE CONGRESS**

1.0 FACTS: An Election into the office of the Governor of the Osun State was conducted by the Independent National Electoral Commission (INEC) on Saturday, the 22nd of September, 2018. Senator Ademola Nurudeen Adeleke ("1st Petitioner") contested the Election under the platform of the Peoples' Democratic Party (2nd Petitioner") while Adegboyega Isiaka Oyetola (2nd Respondent") contested the Election under the platform of the All Progressives Congress (3rd Respondent). At the conclusion of the Election which was also contested by 46 (Forty-Six) other candidates, the 1st Petitioner scored 254,698 votes while 2nd Respondent scored 254,345 votes, INEC thereafter declared the election inconclusive and ordered a supplementary election in seven(7) polling units. The supplementary election was held on Thursday, the 27th of September, 2018. From the combined results of the two elections held on the 22nd and 27th September, 2018, the 1st Petitioner scored 255,023 votes while the 2nd Respondent scored 255,505. INEC thereafter declared the 2nd Respondent winner of the election. The Petitioners being dissatisfied filed a petition challenging the declaration and return of the 2nd Respondent on the grounds that ***the 2nd Respondent was not duly elected by majority of the lawful votes cast at the elections and that there was substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) and corrupt practices during the supplementary election.***

2.0 APPLICATIONS:

2.1 PETITIONERS:

The Petitioners filed a Motion on Notice for an Order striking out all the tables inserted into the 2nd & 3rd Respondents reply to the petition.

2.2 2ND & 3RD RESPONDENTS:

The 2nd & 3rd respondents filed the following Applications:

1. Motion on Notice for an order striking out and/or dismissing the Petition for being incompetent, fundamentally defective and vesting no jurisdiction on the Tribunal;
2. Motion on Notice for an order striking out the Petitioners' reply;
3. An order striking out the witness statement on oath which accompanied the replies of the petitioners.

3.0 SELECTED ARGUMENTS FROM THE APPLICATIONS:

3.1 PETITIONERS

Below are some of the arguments of the Learned Counsel for the Petitioners:

1. Paragraph 12(2) of the first schedule to the Electoral Act (as amended) did not mention or provide for the insertion of tables in the reply of 2nd & 3rd Respondents

2. The express not mention of one thing implies the exclusion of another not mentioned.

3. The tables inserted by the 2nd & 3rd respondents are not backed by the Electoral Act, 2010 (as amended)

4. The tables did not only constitute illegal innovation but they are vague, imprecise, omnibus and generic

3.2 2ND &3RD RESPONDENTS

Below are some arguments of Learned Counsels for the 2nd & 3rd Respondents:

1. The reliefs being claimed by the Petitioners in some of the paragraphs of the Petition are restricted to the election of the 22nd of September, 2018 and are therefore statute barred having not been presented within 21 days from the date of declaration of the result of 22nd September, 2018, i.e 23rd September, 2018;

2. The relief sought in respect of the re-run election of 27th September, 2018 is not rooted in any of the grounds of the petition and which said grounds do not specifically challenge the election of 27th September, 2018;

3. Where a result of an election is being challenged for being invalid by reason of corrupt practices, substantial non-compliance & offences against the electoral Act, such allegations, even if and when proven can only lead to a re-run and not a declaration of the petitioner as the winner;

4. In so far as the Petitioners seek to be declared winner of the election to the office of Governor of Osun State solely on the basis of the election of September 22, 2018 declared inconclusive by the 1st Respondent, the petition is incompetent and this Honourable Tribunal has no jurisdiction to entertain it;

5. The Action Democratic Party(ADP) and Social Democratic Party(SDP) who were declared winners in certain affected polling units were not made parties to the petition, the petition itself becoming improperly constituted, thus vesting no jurisdiction in this Honourable Tribunal therein;

6. Neither the Electoral Act nor any other law known to the Nigerian Jurisprudence precluded a party from presenting his case in a manner considered necessary to aid the efficient dispensation of justice by the Court;

7. The petitioners have in their reply raised and introduced new facts which the respondents do not have the opportunity to respond to;

8. The entire reply of the petitioners is incompetent having not been signed by a legal practitioner or petitioners themselves. The name "Edmund Z. Biriomoni" is shown to have signed the reply whereas the NBA seal is that of one "Biriomoni E. Zuonake". It was argued that the two names are totally different;

9. There is no provision for the frontloading of witness depositions through a petitioner's reply;

10. 1st Petitioner does not meet or have minimum constitutional educational qualification to contest the said election, having not been educated to at least certificate level.

4.0 TRIBUNAL'S RULING ON APPLICATIONS FILED BY 2ND & 3RD RESPONDENTS:

I. The Petitioners complied with provisions of Section 138(1),(a),(b),(c) and (d) of the Electoral Act, 2010 (as amended), and paragraph 4(4) of the First Schedule to the Electoral Act, 2010 (as amended);

2. The competence of INEC to make guidelines or guidelines made by INEC being contrary to or in conflict with the Electoral Act or the Constitution is not a matter within the jurisdiction of this Honourable Tribunal;
3. The petitioners' cause of action only crystallized after the announcement of results on 27th September, 2018, that is, after the re-run election ordered by the 1st Respondent. Thus, the time to file an election petition by the Petitioners started to count and run from 27th September, 2018;
4. The Petitioners' case is well set out and there is no vitiating feature contained therein to rob the Petitioners of jurisdiction. It is not statute barred since the result was only announced and declared by the State Returning Officer after the re-run election of 27th September, 2018; from which date the statutory 21 days allowed by the Electoral Act, 2010, as amended, only starts to run;
5. Furthermore, the respondent's submission that because the Petitioners participated in the rerun election of 27th September, 2018, they had waived their right to complain about the rerun election is flawed in that the result of the election had not been announced as at 22nd September, 2018. By law, they can only complain and challenge after announcement of result after 27th September, 2018; when their right to complain and file a petition ripened;
6. Paragraphs 5,6,9 and 12 of the Petitioners Affidavit in support of their Application are struck out for containing legal arguments and conclusions prohibited in an Affidavit by virtue of the provision of section 115 of the Evidence Act;
7. The petitioners did not complain against the election of the SDP or ADP and as such those parties could not have been made respondents in this election petition. To do so would have obfuscated the hearing and determination of this petition unnecessarily;
8. The 2nd & 3rd Respondents Applications are dismissed.

5.0 TRIBUNAL'S RULING ON APPLICATIONS FILED BY PETITIONERS:

In the absence of any provision in the Electoral Act prohibiting the use of tables in the presentation of facts and figures in either a petition or a reply to a petition, and furthermore, in the absence of any provision stating that facts and figures in either a petition or a reply shall only be presented in a prose, poetic or any other specific form, there is no reason to accede to the petitioners' invitation to strike out the facts and figures pleaded in the reply of the 2nd & 3rd respondents replies, simply because they are presented in the form of tables. There is no merit in this application and it is dismissed accordingly.

6.0 TRIBUNAL'S RULING ON 2ND AND 3RD RESPONDENTS' APPLICATIONS TO STRIKE OUT THE PETITIONERS' REPLIES:

1. The re-arrangement, on the NBA seal, of the names of the counsel who signed the Replies has not changed the fact that the said counsel is a legal practitioner who is entitled to appear before the Honourable Tribunal and conduct proceedings. Accordingly, the objection to the competence of the Replies on the basis of the name on the NBA seal lacks merit.
2. The paragraphs of the petitioners' replies to the 2nd and 3rd Respondents' replies are competent and proper. Therefore the relief sought by 2nd and 3rd Respondents applications aimed at striking out the entire replies of the Petitioners is misconceived. They are dismissed accordingly.
3. As regards the alternative prayer, there is merit in the Applications of the 2nd and 3rd Respondents to strike out some of the paragraphs of the Petitioners' reply to the 2nd and 3rd respondents for introducing new facts which the respondents do not have the opportunity to respond to, they are accordingly struck out.
4. If it is accepted that a reply forms part of the pleading in an election petition and it is accepted that evidence can only be led on pleaded facts by written statements on oath of witnesses, it follows naturally that a reply pleading must have a witness deposition to give life to the facts pleaded in the reply. The Tribunal held that the statements on oath which accompanied the petitioners' replies are proper but was quick to point out that the aspects of the depositions which are based on the paragraphs of the replies already struck out in this ruling are hereby discountenanced.

7.0 MERIT OF THE PETITION:

In proof of their petition, the petitioners called a total of eighty (80) witnesses and tendered 1,012 exhibits from the Bar and through the witnesses called by them, the petitioners also tendered exhibit R106B during cross-examination of RW3, making a total of 1,013 exhibits tendered by them. The 1st respondent did not call any witness but tendered 103 exhibits from the Bar and 13 exhibits through the petitioners' witnesses, making a total of 116 exhibits. On his part, the 2nd respondent called eleven (11) witnesses and tendered a total of 74 exhibits, 3 of which were tendered during cross-examination of the petitioners' witnesses. The 3rd respondent on the other hand led evidence through two witnesses and tendered 2 exhibits. Earlier, the 3rd respondent had tendered 3 exhibits through the petitioners' witnesses, making a total of 5 exhibits.

At the close of the respective cases for all the parties, learned counsels on their behalf, filed and exchanged written addresses.

8.0 SOME ARGUMENTS IN THE WRITTEN ADDRESSES:

8.1 **PETITIONERS**

Below are some the Petitioners' arguments:

1. As a preliminary point, the Petitioners submitted that the 1st Respondent failed to lead evidence in support of her pleadings, the averment in the 1st Respondent's pleading is deemed abandoned as pleadings does not constitute evidence- Reference was made to the cases of ***FCDA vs Naiba (1990) 5 SCNJ 186 at 195-196; Dingyadi vs. Wamako (2008) LPELR-4041.*** The Tribunal was urged to strike out the 1st Respondent's reply having not been supported by evidence.

2. Another preliminary point is on the competence of the final written addresses of the 2nd and 3rd Respondents and learned Counsel urged the Tribunal to hold that said addresses are invalid and incompetent in that the issues formulated therein are outside the issues formulated for this petition by the Tribunal in the pre-trial report.

3. The Petitioners also questioned the competence and validity of the written depositions of the Respondent's witnesses, i.e, RW1-RW13 on two grounds; (a) that the written depositions contain illiterate jurats without the signature of the interpreter, and; (b) that the Yoruba content of the depositions made by RW1-RW13 from which the English statements were made was not presented before the Tribunal. ***Gundiri vs. Nyako (2014) 2 NWLR (Pt. 1391) 211.***

4. Learned counsel in arguing the matter of presumption of regularity, submitted that the petitioners led evidence of polling unit agents who pointed at large anomalies, discrepancies and mutilations which became apparent when compared with the result sheets received by them at the respective polling units. He submitted that a perusal of the pink copies of the result sheets will show entries which were not shown at all in the original copies.

5. In arguing the issue of lawfulness of the cancellation of election in 7 polling units on 22nd September, 2018, Learned counsel argued that the returning officer does not have the power to cancel results of the 7 polling units, he argued that the only power the returning officer has is to declare and return the candidate with the highest number of votes. ***Yar'Adua & Ors v. Yandoma & Ors (2014) LPELR-24217(SC) 71-72, Ikpeazu v. Otti (2016) LPELR-40055(SC)***

8.2 **1ST RESPONDENT**

Below are some of the 1st Respondent's arguments:

1. Counsel submitted that the combined effect of S68 &139(1) of the Electoral Act and S168(1) of the Evidence Act, is to the effect that there is presumption of regularity, correctness and validity of every election until the contrary is proved. He argued that the burden of proving the contrary rest squarely on the Petitioners and

in the instant case that the Petitioners have not led evidence to rebut the presumption of regularity that is in favour of the return of the 2nd respondent. ***Buhari v. INEC (2008) 19 NWLR (Pt. 1120) 246.***

2. Counsel argued that the reliefs sought by the Petitioners are all declaratory in nature and the onus is on the Petitioners to prove the petition taking into consideration its strength and not the weakness of the defence.

8.3 2ND & 3RD RESPONDENTS

Below are some arguments of 2nd & 3rd Respondents:

1. Learned counsel for the 3rd Respondent submitted on the issue of the 1st Respondent's failure to lead evidence in support of her pleadings, that once a party cross-examines the witness of the adversary, he is taken to have given evidence in the case notwithstanding that he did not call any witness of his own. ***Omisore vs. Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 321H-322A.***

2. Learned Senior counsel for the 2nd respondents submitted that the Tribunal did not decide that parties must willy-nilly adopt the issues formulated at the pre-trial stage for the purpose of their final addresses. He submitted that the difference in issues formulated has never been a basis for a Tribunal to ignore the submissions made by counsel when the said submissions bear relevance to the issues formulated by the Court or Tribunal. He submitted that failure to consider final address constitute a denial of fair hearing. ***DHL International WU Ltd vs. Segun Apata (2011) LPELR-4034(CA)***

3. The 2nd Respondent argued that the absence of the signature of the alleged interpreter signifies abandonment of the jurat clause. He further argued that the existence of Yoruba content of the deposition is a matter of evidence that should have been adduced at the trial.

4. Learned Counsel for the 2nd respondent submitted that there is rebuttable presumption of correctness or regularity of election results as declared by the 1st respondent. ***Ucha & Anor v. Elechi & Ors (2012) 13 NWLR (Pt.1317) 330***

5. Submitted that in every case or petition where the courts or Tribunals have declared petitioners as winners of election in place of the returned candidates , it was the votes scored or recorded that were taken into recognition, summed up, before the courts or Tribunals came to definitive figures as what parties scored before arriving at their decisions. ***Agagu v. Mimiko (2009) 7 NWLR (Pt. 1140) 342***

6. Learned counsel argued that the alleged failure to record columns of the result sheets designed to document the accreditation and ballot accounting, *simpliciter*, is

no-where stipulated as a basis for cancellation of results in a polling unit. He stated that for the allegation to be in any way momentous or impactful in this petition, the petitioners should have gone a step further to plead and give evidence on how the alleged non-compliance substantially affected the conduct of the election.

7. Learned counsel referred to S138 of the Electoral Act which spells out the grounds upon which elections can be challenged and S139 of the Electoral Act which talks about "results" of the election and not the filling of forms or columns. He concluded that a court has no jurisdiction to adjudicate on a non-justiciable cause. Onuoha v. Okafor(1983) 2 SCNLR 244 at 265 and Emenike v. PDP (2012) 12 NWLR (Pt.1315) 556 at 590.

8. Learned Counsel for the 3rd respondent on his part argued that the correction of error or discrepanies in some Forms EC8A is not of any moment since the Petitioners' witnesses agreed that the alteration did not affect the scores of the parties. He contended that there is no law prohibiting correction of such errors or discrepancies. Basheer v. Same (1992) 4 NWLR (Pt. 236) 491. He also argued that the agents of the Petitioners signed all the Forms which makes them binding on the Petitioners.

9.0 **THE DECISION OF THE TRIBUNAL**

1. The Tribunal held that pleadings of the 1st Respondent was competently before the Tribunal.

2. It is not proper for the 2nd and 3rd Respondents to formulate their own issues, distinct from the issues formulated after the pre-trial conference, which involved both parties. However, the Tribunal was not unmindful of the constitutional right of 2nd and 3rd respondents to render final addresses at the conclusion of trial before the Tribunal delivers its decisions. In the circumstance, therefore, the written addresses of the 2nd and 3rd Respondents cannot be discountenanced, as doing so will be tantamount to denial of fair hearing. ***Mainstreet Bank Limited vs. Bayero (2016) LPELR-41624(CA).*** The addresses of the 2nd and 3rd respondents are therefore valid and competent.

3. The Tribunal found that there was no illiterate jurat in the statement on oath of RW11, Adeosun A. Rasaki. With respect to the written depositions of RW1-RW7, RW10 and RW12, a jurat appears after the signature of the deponent, with respect to RW8 and RW9, their purported interpreters did not sign the jurat, meaning that legally speaking, there was no jurat at all. All the respondents' witnesses testified in English and were cross-examined in English without the aid of an interpreter. This shows that they are not illiterates. Emphatically, RW1 told the Tribunal, while being cross-examined that he did not make his statement in Yoruba. Only RW4 admitted that he relayed his evidence in Yoruba and was written in English and translated to

him. In the circumstance, the Tribunal held that the written depositions of the Respondents' witnesses are valid, save that of RW4, which was expunged.

4. The onus is not on the 1st Petitioner to prove his qualification rather on the respondents who said he is not qualified to prove his non-qualification. The decision of the 1st petitioner not to give evidence cannot also be taken as admitting the allegation of the respondents. This is because there is no law that says that a party must give evidence in his case. ***Ezeanah vs Atta (2004) LPELR-1198(SC).*** The allegations by 2nd and 3rd respondents that the 1st Petitioner has no secondary school educational qualification remained bare and there was no credible oral and documentary evidence to prove same.

5. On the presumption of correctness and regularity, it was evident from looking at the Forms EC8A, that some of them were faint and illegible in some of the writings on them, particularly in the areas of names and signatures of party polling agents. However, the Tribunal was certain that in the areas where the alterations and corrections appeared on the CTCs that such alterations and corrections are not on the pink copies. It was not a matter of being faint and illegible but a clear fact that the alterations did not appear at all on the pink copies. The Tribunal held that the petitioners have successfully rebutted the presumption of regularity attached to the said CTC of the Forms EC8A.

6. On specific allegations made by the Petitioners;

i. ***Deliberately voiding the valid votes of the Petitioners by additional thumb-printing of their valid ballot papers*** ; the tribunal held that the petitioners failed to proof the allegation by not tendering a single ballot paper throughout the trial and in absence of evidence in proof, its deemed abandoned by the Petitioners.

ii. ***Over-voting-recording of valid votes in excess of number of accredited voters in Form EC8A****;* The tribunal held that in an allegation of over-voting, the voters' register is very important, however in the instant case the Petitioners just dumped the voters' register on the Tribunal without any of their witnesses linking the Voters' register to the Form EC8A of their polling units, the Petitioners therefore failed to prove the alleged over-voting as pleaded in the petition.

iii. ***Improper accreditation of voters-non-recording of columns in the result sheet designed to document accreditation and ballot accounting****;* it is the tribunal's opinion that the non-recording of the columns in the result sheets which we regard as the check-list or control columns is an act of non-compliance with the Electoral Act and the Manual for Election Officials and the non-compliance is not only substantial but

has substantially affected the result of the election. ***Yusuf v. Obasanjo (2005) 18 NWLR (Pt. 956) 181***.

7. On the issue of lawfulness of the cancellation of election in 7 polling units on 22nd September, 2018, the Tribunal concluded that the State Returning Officer of the 1st respondent, who cancelled the election in 7 polling units during the election of 22nd September, 2018 had no power to do so. The Tribunal held that the cancellation was unlawful and ultra vires. It therefore follows, that the re-run election built on the unlawful and ultra vires cancellation of the election in the 7 polling units cannot stand being a product of illegality. ***Doma v. INEC (2012) 13 NWLR (Pt. 1317) 297 at 328 C-D; Ikpeazu v. Otti (2016) 8 NWLR (Pt. 1513) 38 at 84-85 G-B***

8. On the issue of estoppel raised by the 2nd respondents, contending that the petitioners having participated in the re-run election of 27th September, 2018 have waived their right to challenge the re-run election, the Tribunal held that the petitioners cannot because of participation in the re-run election be stopped from challenging in this petition the legality of the cancellation of the election in some polling units on 22nd September, 2018 or the conduct of the re-run election on 27th September, 2018.

9. On the allegations of various acts of corrupt practices and violence during the rerun election held on the 27th September, 2018; the Tribunal held that there was no credible evidence before it to establish the allegation of corrupt practices and violence during the re-run election on the 27th September, 2018.

10.0 CONCLUSION:

In the final analysis, the Tribunal found that the cancellation of the election in 7 polling units in four Local Government Areas by the State Returning Officer was unlawful. The Tribunal in addition found that the petitioners established a case of non-compliance which substantially affected the result of the election. The Tribunal stated that, the votes affected by the non-compliance are APC **2029** and PDP **1,246** which were nullified accordingly. If the above votes are deducted from the scores of the parties as at the 22nd September, 2018 election, the stand of the parties will be as follows:

APC	**PDP**
254,345	254,698
-2,029	-1,246
252, 316	**253,452**

If per chance, the re-run election is found to be valid and the final scores of the parties as declared after the re-run election of the 27th September, 2018, is allowed to stand, then deducting the votes that are found to be afflicted by non-compliance shall stand the parties with the following scores;

APC	**PDP**

255,505	255,023
-2,029	-1,246
253,476	**253,777**

The Tribunal held that in both situations, it was obvious that the petitioners won the election into the office of Governor of Osun State… In conclusion, based on Tribunal's resolutions of the issues for determination and its findings, The Tribunal declared that there was merit in the petition and made the following final orders:

1. **The 2nd respondents, Adegboyega Isiake Oyetola, was not duly elected and/or returned by a majority of lawful votes cast in the Osun State Governorship election held on Saturday, 22nd September and the Re-run election of Thursday, 27th September, 2018 and therefore his declaration and return as the Governor elect of Osun State is null, void and of no effect whatsoever.**
2. **The petitioners scored the majority of Lawful votes cast at the election to the office of the Governor of Osun State and the 1st Petitioner, Senator Ademola Nurudeen Adeleke , having fulfilled the requirements of section 179(2) (a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, is hereby declared the winner of the said election and returned as the duly elected Governor of Osun State.**
3. **The 1st respondent's decision to order for and conduct a rerun election for the office of the Governor of Osun State in the following seven polling units- Polling unit 012, Adereti Ward 7 and Polling unit 010 in Osi ward 8 of Ife South Local Government; Polling Unit 2 in Oyere 11 Alapata Village ward 10 in Ife North Local Government; Polling Unit 017 in ward 5 in Osogbo Local Government; Polling Units 1 and 4 in Ward 8, Polling Unit 3 in Ward 9 in Orolu Local Government on the 27th September, 2018 is null, void and of no effect whatsoever and consequently the result of the rerun election is hereby nullified.**
4. **The Certificate of Return issued by the 1st Respondent to the 2nd respondent, Adegboyega Isiaka Oyetola, is hereby nullified.**
5. **The 1st Respondent, Independent National Electoral Commission, is hereby ordered to issue Senator Ademola Nurudeen Adeleke a Certificate of Return as duly elected Governor of Osun State of Nigeria forthwith.**
6. **Cost of ₦200,000.00 (Two Hundred Thousand Naira only) is awarded to the petitioners against the 2nd and 3rd respondents**

11.0 DISSENTING JUDGMENT OF HON. JUSTICE MUHAMMAD I. SIRAJO (CHAIRMAN OF THE TRIBUNAL)

The Hon. Judge disagreed with two decisions and conclusions reached by his learned brothers; 1. On the allegation of non-recording of columns of the result sheets designed to document accreditation and ballot accounting, 2. On the lawfulness or validity of the re-run election of 27/09/2018. Other than these two issues, the Hon. Judge adopted the entire majority decision and conclusion of the Tribunal and went ahead to give reasons for dissenting on the two issues.

On the 2nd Issue the Hon. Judge held that the Petitioners failed to proof that the results were cancelled. The Hon. Judge held that by virtue of Paragraph 44(n) of the INEC Guidelines, the Returning officer has the power to declare an election inconclusive and order a

supplementary election. It is in the exercise of that power that the Governorship election in Osun State was declared inconclusive and re-run election ordered, The Hon. Judge held that the re-run election conducted on 27/09/2018 is valid.

On the 1st Issue, the Hon. Judge held that the specie of non-compliance is not substantial as envisaged under S139 of the Electoral Act, and that even if it is substantial, it has not been proved that it substantially affected the result of the Osun State Governorship election held on 22/09/2018 and 27/09/2018. The Hon. Judge concluded by saying that even if this specie of non-compliance is found to be substantial as to affect substantially the result of the election, the Tribunal does not have the vires to subtract the votes affected by the non-compliance from the scores of the candidates and proceed to declare the candidate with the highest number of votes as the winner of the election. This last remark is informed by the provision of S140(2) of the Electoral Act, 2010 (as amended), which gives the Tribunal the power to only order a fresh or re-run election where non-compliance is established. It is the law that where an allegation of non-compliance is proved, the Tribunal is only permitted to nullify the election and order a supplementary election in order not to disenfranchise voters in the affected areas in line with the principles of the Act. The Hon. Judge in conclusion added that an order for fresh or supplementary election referred to in S140(2) quoted above can only be made where it is expressly asked for by a petitioner(s) as the Tribunal is not a charity and held that the petition had no merit and awarded the sum of ₦200,000 cost to each of the 2nd and 3rd respondents.

LEAD COUNSELS FOR PARTIES:

DR. Onyechi Ikpeazu, SAN for Petitioners

L.M Pwahomdi Esq for 1st Respondent

Chief Wole Olanipekun, SAN for 2nd Respondent

Chief Akin Olujinmi, SAN for 3rd Respondent

12.0 OUR POSITION:

Having read carefully the majority decision and the dissenting Judgment delivered in this case, we are more inclined to align our position with the dissenting Judgment of Hon. Justice Muhammed I. Sirajo. We find it difficult to agree that the "*non-recording of columns of the result sheets designed to document accreditation and ballot accounting*" is substantial to invalidate an Election. Yes, we agree it's non-compliance but it is certainly not substantial non-compliance as envisaged in S139 of the Electoral Act, 2010 (as amended) which provides:

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

To hold that the non-recording of the columns of the result sheets is substantial, makes nonsense of the word "Substantial" in itself and means that the Electoral

officials are not allowed to make mistakes, corrections or amendments in the entire electoral process, we strongly doubt if this is intendment of the Act.

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