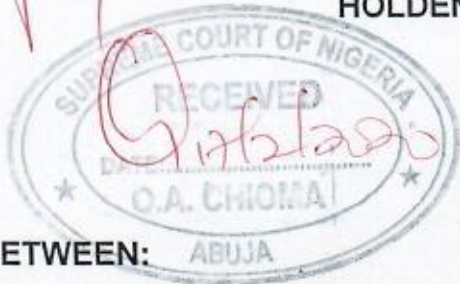


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IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA



MOTION NO. _____

APPEAL NO.: SC.1462/2019

CROSS APPEAL NO.: SC.1470/2019

APPEAL NO.: CA/OW/GOV/05/2019

PETITION NO.: EPT/GOV/IM/08/2019

BETWEEN: ABUJA

1. SENATOR HOPE UZODINMA
2. ALL PROGRESSIVES CONGRESS

} APPELLANTS/RESPONDENTS

AND

1. RT. HON. EMEKA IHEDIOHA
2. PEOPLES DEMOCRATIC PARTY

} RESPONDENTS/APPLICANTS

3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

} RESPONDENT

MOTION ON NOTICE

**BROUGHT PURSUANT TO SECTION 6 (6) OF THE CONSTITUTION
OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED);
SECTION 22 OF THE SUPREME COURT ACT, 2004; AND UNDER THE
INHERENT JURISDICTION OF THIS HONOURABLE COURT.**

TAKE NOTICE that this Honourable Court will be moved on theday of 2020 at the hour of 9 clock in the forenoon or so soon thereafter as the court may be heard on behalf of the Applicants, praying for the following orders:

1. **AN ORDER** setting aside as a nullity the judgment delivered by this Honourable Court on the 14th of January 2020 in Appeal No. SC.1462/2019 and Cross Appeal No. SC.1470/2019.
2. **AND** for such other order(s) as this Honourable Court may deem fit or proper to make in the circumstance.

AND TAKE NOTICE that the grounds upon which this Application is brought are as follows:

1. **THE DECISION OF THE COURT BELOW DISMISSING THE PETITION AS INCOMPETENT CONTINUES TO SUBSIST AS THE APPEAL AGAINST THAT DECISION WAS NOT CONSIDERED BY THIS HONOURABLE COURT.**

- a) At the Tribunal, the 2nd Applicant (as 2nd Respondent) applied to have the petition struck out on the ground that it was incompetent. See pages 2068 – 2080 Vol. 3 of the Record.

- b) The application was heard and dismissed by the Tribunal. See **page 2919 particularly at page 2939 Vol. 4 of the Record.**
- c) The 2nd Applicant appealed to the Court of Appeal by way of Cross Appeal. The Cross Appeal was heard and allowed by the Court below. In other words, the Court below struck out the petition as incompetent. In the words of Adah JCA, who delivered the lead judgment in the Cross Appeal at **page 289 Vol. 5 of the Record:**

"The preliminary objection of the 1st Cross Respondent (sic) at the lower court is allowed and I hold that the appropriate order of the trial tribunal would have been to have petition no EPT/GOV/IM/08/2019 struck out for being incompetent. I therefore order the petition struck out. No cost is awarded."

- d) The 1st and 2nd Respondents appealed against the above order of the Court below in ground 18 of their Notice of Appeal but only to the extent of showing that the 1st Appellant was the 1st Cross Respondent at the Court of Appeal. See **page 424 Vol. 5 of the Record**. The Appellants/Respondents Brief of Argument is **Exhibit KGA 10** hereto.
- e) The order of the Court of Appeal striking out the Petition for being incompetent raised a jurisdictional issue which this Honourable Court ought to have resolved first before delving into the merits of the Appeal. Incidentally, Your Lordships neither considered nor resolved this jurisdictional issue. The failure of the Supreme Court to consider and pronounce on this issue amounts to a failure of jurisdiction and completely erodes the jurisdiction of the Supreme Court to consider the appeal on the merits.
- f) Your Lordships neither set aside the decision of the Court of Appeal striking out the Petition for being incompetent nor made any pronouncement on it.
- g) In the absence of any pronouncement by the Supreme Court on this issue, the judgment of the Court of Appeal striking out the Petition for being incompetent subsists. That being so, Your Lordships had no jurisdiction to countenance the Appellants/Respondents' appeal.

2. THE JUDGMENT IS A NULLITY HAVING BEEN DELIVERED WITHOUT JURISDICTION

- a. The judgment was delivered without jurisdiction having regards to the provisions of the Electoral Act as this Honourable Court had no jurisdiction to declare the 1st Appellant/Respondent as the winner of an election branded and stigmatized by him as invalid.

- b. One of the grounds of the petition was that the election was invalid on account of non-compliance with the provisions of the Electoral Act. If the election was invalid, as contended by the Appellants/Respondents, the power of the Court was limited to annulling it upon that ground succeeding. The Court had no power or authority to declare the 1st Appellant/Respondent as the winner of an election he set out to prove was invalid. Having contended that the election was invalid, the Appellants/Respondents proceeded to claim that they had won majority of votes cast at the election. This rendered the petition speculative and therefore incompetent and the Court had no jurisdiction to entertain it since it could not grant any relief under the circumstances.
- c. This Honourable Court had no jurisdiction to declare the 1st Appellant/Respondent as elected in an election petition which was based on two inconsistent and mutually exclusive grounds, to wit, (i) that the 1st Applicant was not duly elected by majority of lawful votes cast at the election, the implication of which is that the majority of votes cast at the election were valid. **See Page 5 of Vol. 1 of the Record of Appeal;** and (ii) that the election was invalid for non-compliance with the Electoral Act, the implication of which is that the election be annulled. **See Page 28 Vol. 1 of the Record of Appeal.**
- d. There was no proof that the votes ascribed to the 1st Appellant/Respondent met the mandatory geographical spread stipulated in section 179 (2) of the 1999 Constitution (as amended).
- e. This Honourable Court did not have the jurisdiction to declare that the 1st Appellant/Respondent met the constitutional geographical spread without providing in its judgment the reason(s) for that conclusion.

3. **THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY HAVING BEEN OBTAINED BY FRAUD OR DECEPTION IN THAT:**

- a. The Appellants/Respondents misled this court into holding that a total of 213,695 votes were unlawfully excluded from the votes scored by the 1st Appellant/Respondent in the gubernatorial election of 9th March 2019 in Imo State.
- b. The 1st Appellant/Respondent admitted under cross-examination that it was him and not the 3rd Respondent [INEC] or any of its officials, who computed the result that allotted to him the 213,695 votes alleged to have been excluded from his total votes in the election. He said:

"I did the computation in my deposition myself using a calculation from the original result sheets that was brought to me." See Page 2403 Vol. 4 of the Record of Appeal.

- c. The total votes cast as shown in the 1st Appellant/Respondent's computation was more than the total number of voters accredited for the election and in some polling units more than the total number of registered voters.
- d. The result computed by the 1st Appellant/Respondent showed only the votes of the 1st Applicant and the 1st Appellant/Respondent without specifying the votes scored by the other 68 candidates who participated in the election.
- e. Exhibits 63RD1 to 63RD19 (INEC Forms EC40G) show that there were no valid elections in the 388 polling units where the additional 213,695 votes claimed by the 1st Appellant/Respondent were allegedly generated.

4. THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT IT WAS GIVEN PER INCURIAM BY REASON OF THE FACT THAT:

- a. By Exhibit A1 (Form EC8D) the total number of voters accredited for the election was 823,743 while the total valid votes cast was 739,485.
- b. With the inclusion of 213,695 votes for the 1st Appellant/Respondent and 1,903 to the votes of the 1st Applicant, as ordered by this court, the total number of votes cast at the election now stands at 955,083 (i.e. 739,485 + 213,695 + 1,903) making the total number of votes cast at the election to be far in excess of the total number of voters accredited for the election by 131,340 votes.
- c. It amounts to an illegality under our electoral law for the total number of votes cast in an election to exceed the number of accredited voters.
- d. The Appellants/Respondents pleaded in paragraph 39 of their petition that a supplementary election should be conducted in the 388 polling units where the additional votes that created the illegality were alleged to have been cast and that pleading was binding on the Appellants/Respondents and the court.

5. THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT THIS HONOURABLE COURT WAS MISLED TO ENTER THE JUDGMENT BY REASON OF THE FACT THAT:

- a. The 1st Appellant/Respondent alleged that votes from 388 polling units were unlawfully excluded or cancelled and

urged the court to include the alleged votes from those polling units. At the same time the 1st Appellant/Respondent prayed that fresh elections be conducted in the said polling units thus rendering the petition speculative.

- b. The Appellants/Respondents failed to plead the votes scored by all the parties in the 388 affected polling units. Only the votes allegedly scored by the 1st Appellant/Respondent and the 1st Applicant were pleaded – an omission which rendered the petition incompetent.
- c. This Honourable Court was consequently misled into making a vague order directing the inclusion of votes from the 388 polling units without stating or specifying the particular number of votes to be included from those polling units for all the parties.
- d. Without computing the votes for all the parties from the 388 polling units, this Honourable Court was misled into making a declaration that the 1st Appellant/Respondent was the winner of the gubernatorial election in Imo State – an election that the Appellants/Respondents branded or stigmatized as invalid on account of non-compliance.

FURTHER TAKE NOTICE that at the hearing of this application the Applicant shall rely on the record of this Honourable Court and on all processes filed by the parties herein, including the record of appeal used at the hearing of Appeal No. SC.1462/2019 and Cross Appeal No. SC.1470/2019

DATED THIS 17TH DAY OF FEBRUARY 2020.



KANU G. AGABI (CON), SAN
CHRIS UCHE, SAN
S. I. AMEH, SAN
K.C.O. NJEMANZE, SAN
DR. USMAN TETENGI, SAN
EMEKA ETIABA, SAN
CHIEF UMEH KALU, SAN
EMEKA OKPOKO, SAN
DR. J.Y. MUSA, SAN
L. M. ALOZIE, SAN
ESSIEN H. ANDREW, SAN
PAUL HARRIS OGBOLE, SAN
JERRY EGEMBA, ESQ
S. A. ANYALEWECHI, ESQ
A. S. OGUJIOFOR, ESQ
CHARLES NDUKWE, ESQ₅

UCHENNA NJOKU, ESQ
DR. CHUKWUEMEKA NNAWUCHI, ESQ
(Applicants' Counsel)
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Mabushi,
FCT-Abuja.
kanugodwinagabi@nigerianbar.ng
kanugodwinagabi@yahoo.com

FOR SERVICE ON:

1. **The 1st Appellant/Respondent**
Governor's Office
Government House,
Owerri, Imo State.
2. **2nd Appellant/Respondent**
APC National Secretariat
40 Blantyre Street, Off Adetokunbo Ademola Street,
Wuse 2, Abuja, FCT.
3. **The 3rd Respondent**
INEC Headquarters
436 Zambezi Crescent
Maitama, Abuja.

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

MOTION NO. _____

APPEAL NO.: SC.1462/2019

CROSS APPEAL NO.: SC.1470/2019

APPEAL NO.: CA/OW/GOV/05/2019

PETITION NO.: EPT/GOV/IM/08/2019

BETWEEN:

- | | | |
|------------------------------|---|------------------------|
| 1. SENATOR HOPE UZODINMA | } | APPELLANTS/RESPONDENTS |
| 2. ALL PROGRESSIVES CONGRESS | } | |

AND

- | | | |
|---|---|------------------------|
| 1. RT. HON. EMEKA IHEDIOHA | } | RESPONDENTS/APPLICANTS |
| 2. PEOPLES DEMOCRATIC PARTY | } | |
| 3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION | } | RESPONDENT |

AFFIDAVIT IN SUPPORT OF MOTION

I, **Uchenna Njoku, Esq.**, Adult, Male, Nigerian, Christian, a Legal Practitioner, at Trinity House, Mabushi, Abuja, do hereby make oath and solemnly state as follows –

1. I am a Legal Practitioner and one of the counsel for the Applicants herein and I have the authority of the Applicants to depose to this affidavit.
2. By virtue of my aforesaid role, I am conversant with the facts relevant to this application.
3. I am aware that this Honourable Court delivered judgment in Appeal No. SC.1620/2019 and in Cross-Appeal No. SC.1470/2019 on the 14th day of January 2020. Certified true copies of the Judgment of the full panel of this Honourable Court delivered on 14 January 2020 comprising the lead judgment and the concurring judgments are here shown to me and marked as **Exhibits KGA 1, KGA 2, KGA 3, KGA 4, KGA 5, KGA 6 and KGA 7.**
4. After going through the judgment, the Applicants resolved to present this application for an order to set aside the Judgment based on the grounds set out in the motion paper.
5. Further to paragraph 4 supra, I know as a fact by reason of my involvement as counsel in this matter that:

- a) The Appellants/Respondents filed a petition based on two grounds, to wit, (i) that the 1st Applicant was not duly elected by majority of lawful votes cast at the election; and (ii) that the election was invalid by reason of non-compliance with the provisions of the Electoral Act. See **page 5 Vol. 1 of the Record**
- b) Pursuant to the ground that the election was invalid on account of non-compliance with the Electoral Act, the Appellants/Respondents sought reliefs to the effect that the election be nullified; that INEC be compelled to conduct fresh elections in the entire State or as an alternative, that INEC be compelled to conduct supplementary election in the areas where election results were excluded or election cancelled by INEC.
- c) The judgment declaring the 1st Appellant/Respondent as the winner of the election is contrary to the prayers of the 1st Appellant/Respondent that the election be nullified as a whole with fresh elections conducted in the entire State or that INEC be compelled to conduct supplementary elections in the polling units where results were not collated or election cancelled.
- d) The declaration of the 1st Appellant/Respondent as winner of an election he unequivocally vilified, sought its annulment and prayed for a fresh or supplementary election is contrary to the relief attendant on the ground that the election is invalid by reason of non-compliance with the provisions of the Electoral Act and contrary to the 1st Appellant/Respondent's own prayer that the election be annulled.
- e) From the Summary of the election result in INEC Form EC8D, which was tendered at the Tribunal as Exhibit A1, the total number of voters accredited for the Governorship Election was 823,743 while the total valid votes cast was 731,485. The said Form EC8D is here shown to me and marked as **Exhibit KGA 8**
- f) By the judgment of this Honourable Court, 213,695 votes were added to the total votes scored by the 1st Appellant/Respondent and 1,903 votes were added to the total votes scored by the 1st Applicant.
- g) The total number of votes cast at the election after the additional votes ordered by this Honourable Court now stands at 955,083 (i.e. 731,485 + 213,695 + 1,903).
- h) Arising from the judgment of this Honourable Court, the total number of votes cast at the election, which now stands at 955,083 votes, is far in excess of the total number of accredited voters which is 823,743.

- i) The difference between the total number of accredited voters and the votes cast in the Governorship election in Imo State based on the judgment of this Honourable Court is 131,340 votes.
- j) At the Tribunal, the 1st Appellant/Respondent pleaded a table of excluded votes from 388 polling units, and a copy of the table which is at pages 9-27 of Volume 1 of the Record, is here shown to me and marked as **Exhibit KGA 9**
- k) There were 70 candidates who participated in the election, including the 1st Applicant and the 1st Appellant/Respondent but in the table pleaded by the 1st Appellant/Respondent, only the votes scored by the 1st Applicant and the 1st Appellant/Respondent were reflected whereas votes were cast for the other political parties and candidates whose scores were deliberately omitted.
- l) At the Tribunal, the 1st Appellant/Respondent admitted under cross-examination at page 2603 in Volume 4 of the Records that instead of the 3rd Respondent, (INEC), whose duty it was to compute the alleged votes, it was the 1st Appellant/Respondent who computed the alleged votes in the 388 polling units shown in the table at pages 9-27 Vol. 1 of the Record.
- m) The 1st Appellant/Respondent further admitted under cross-examination at pages 2601 to 2603 in Volume 4 of the Record that the number of votes he allocated to himself in the table is in excess of the registered voters in the polling units where he claimed he obtained the votes.
- n) The Appellants/Respondents had themselves prayed that the entire election in Imo State be annulled and in the further alternative an order compelling INEC to conduct supplementary elections in the polling units where they alleged that results were not collated or elections were cancelled.
- o) It was specifically pleaded by the Appellants/Respondents in paragraph 39 of their petition that a supplementary election should be conducted in the 388 polling units where the excess votes were allegedly cast and that pleading was binding on the Appellants/Respondents and the court.
- p) The 1st Appellant/Respondent neither pleaded nor led evidence at the trial showing details or particulars that he met one-quarter of all the votes cast in each of at least two-thirds of the local government areas in the State.
- q) At the Tribunal, the 2nd Applicant (as 2nd Respondent), applied to have the petition struck out on the ground that it was incompetent. See pages 2068 – 2080 Vol. 3 of the Record.

r) The application was heard and dismissed by the Tribunal whereupon the 2nd Applicant appealed to the Court of Appeal by way of Cross Appeal to which the 1st and 2nd Appellants/Respondents replied.

s) The Cross Appeal was heard and allowed by the Court below. In the words of Adah JCA, who delivered the lead judgment in the Cross Appeal at page 289 Volume 5 of the Record:

"The preliminary objection of the 1st Cross Respondent (sic) at the lower court is allowed and I hold that the appropriate order of the trial tribunal would have been to have petition no EPT/GOV/IM/08/2019 struck out for being incompetent. I therefore order the petition struck out. No cost is awarded."

t) The Appellants/Respondents appealed against the above order in ground 18 of their Notice of Appeal (page 424 Volume 5 of the Record) and argued it as Issue No. 6 in their Appellants' Brief of Argument. Now shown to me and exhibited hereto is a copy of Appellants' Brief of Argument dated 13 December 2019 marked **"Exhibit KGA 10"**.

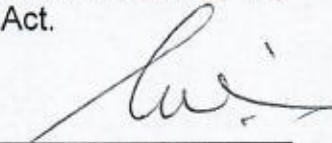
u) The order of the Court of Appeal striking out the Petition for being incompetent raises a jurisdictional issue.

v) In the Judgment subject of this application, this Honourable Court neither considered nor resolved this jurisdictional issue.

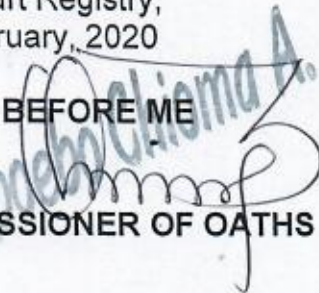
w) This Honourable Court neither set aside the decision of the Court of Appeal striking out the Petition for being incompetent nor made any pronouncement on it.

6. It is in the interest of justice to grant this application.

7. And I swear to this affidavit in good faith believing the facts contained herein to be true and correct to the best of my knowledge and in accordance with the Oaths Act.


DEPONENT

Sworn to at the Supreme Court Registry,
Abuja this of February, 2020


BEFORE ME
COMMISSIONER OF OATHS



IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

MOTION NO. _____
APPEAL NO.: SC.1462/2019
CROSS APPEAL NO.: SC.1470/2019
APPEAL NO.: CA/OW/GOV/05/2019
PETITION NO.: EPT/GOV/IM/08/2019

BETWEEN:

1. SENATOR HOPE UZODINMA 2. ALL PROGRESSIVES CONGRESS	}	APPELLANTS/RESPONDENTS
--	---	------------------------

AND

1. RT. HON. EMEKA IHEDIOHA 2. PEOPLES DEMOCRATIC PARTY	}	RESPONDENTS/APPLICANTS
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION	}	RESPONDENT

APPLICANTS' WRITTEN ADDRESS IN SUPPORT OF MOTION ON NOTICE

1.0. INTRODUCTION

- 1.1 This Motion on Notice is brought pursuant to section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); section 22 of the Supreme Court Act, 2004 and under the inherent jurisdiction of this Honourable Court. The Applicants are praying this Honourable Court to set aside, as a nullity, the judgment delivered by your lordships on the 14th day of January 2020 in Appeal No. SC.1462/2019 and Cross Appeal No. SC.1470/2019.
- 1.2 The application is supported by an affidavit of seven (7) paragraphs to which we have annexed exhibits marked as Exhibits **KGA 1 – KGA 10**. We rely on all the paragraphs of the affidavit, the accompanying exhibits and the Record of Appeal used for the hearing of the said Appeal and Cross Appeal

2.0 BRIEF FACTS AND BACKGROUND

- 2.1 The facts leading to this application are briefly that the 1st Applicant contested the governorship election of Imo State conducted on the 9th day of March 2019 on the platform of the 2nd Applicant. The 1st Appellant/Respondent contested the said election on the platform of the 2nd Appellant/Respondent. Altogether, 70 political parties sponsored candidates for the said election. At the conclusion of the election, the 1st Applicant was declared the winner of the election by the 3rd Respondent, the body charged with responsibility for the conduct of the election. Aggrieved by that declaration, the 1st and 2nd Respondents filed a petition at the Imo State Governorship Election Tribunal. One of the grounds upon which the 1st and 2nd Appellants/Respondents challenged the election was that the election was invalid on account of non-

compliance with the provisions of the Electoral Act. When the ground of non-compliance or corrupt practices succeeds, the power of the court is limited to annulling the election and the court has no authority whatsoever to declare as elected a petitioner who has branded or stigmatized the election as invalid for any reason whatsoever.

- 2.2 In gross contradiction of the ground that the election was invalid the 1st and 2nd Appellants/Respondents proceeded to claim, in effect, that the 1st Appellant/Respondent had scored the majority of lawful votes cast at the election. That ground, as the expression "the majority of lawful votes" indicates, is available to a petitioner who contends that the election was valid but that the votes were wrongly attributed to the person declared as winner. A petitioner relying on the ground of majority of lawful votes is required to urge that he be declared the winner of the election.
- 2.3 The clear implication of this is that it is grossly inconsistent for a petitioner to plead the ground of non-compliance side by side with the ground alleging majority of lawful votes. Such pleading renders the petition incompetent and liable to be struck out. It came as no surprise therefore that the petition was dismissed by the Tribunal. On appeal to the Court of Appeal, the order of the Tribunal dismissing the petition was affirmed whereupon the 1st and 2nd Appellants/Respondents further appealed to this Honourable Court which upheld the appeal and declared the 1st Appellant/Respondent as Governor of Imo State.
- 2.4 At the Tribunal, the Applicants raised a preliminary objection to the effect that the petition was incompetent and should be struck out on that ground. The Tribunal overruled the preliminary objection. The Applicants cross-appealed against that ruling to the Court of Appeal. The Court of Appeal upheld the Cross Appeal and struck out the petition on the ground that it was incompetent. Aggrieved by that decision, the 1st and 2nd Appellants/Respondents appealed to this Honourable Court. Incidentally, this Honourable Court took no decision on that issue with the result that the decision of the Court of Appeal striking out the petition as incompetent continues to subsist. As Your Lordships are well aware, that issue of jurisdiction ought to have been resolved by this Honourable Court before proceeding further. The failure to do so was fatal.
- 2.5 In the light of the subsisting decision of the Court of Appeal striking out the petition as incompetent, the decision of this Honourable Court declaring the 1st Appellant/Respondent as Governor of Imo State is a nullity, having been delivered without jurisdiction. That is why the Applicants have brought this application in the firm conviction that your Lordships will realize what, in our humble opinion, is the error of this Honourable Court and accordingly effect correction by declaring the judgment a nullity.
- 2.6 How could the 1st Appellant/Respondent be declared winner of an election that he had himself branded or stigmatized as invalid? How could this Honourable Court uphold a petition that was clearly speculative contrary to all the established precedents of this Honourable Court? How could this Honourable

Court declare victory in favour of a petitioner that prayed for a rerun election to be conducted in all the polling units where he alleged that election results were withheld or cancelled? How could this Honourable Court award votes and declare victory for the 1st Appellant/Respondent when it had the effect of swelling-up the total number of votes cast to the extent that it far exceeded the total number of accredited voters by 129,304 votes despite the settled principle that accreditation is the bedrock of any valid election? How could this Honourable Court declare victory for the 1st Appellant/Respondent based on his computation which did not at any time and in any way reckon with the votes scored by 68 other candidates that participated in the election? In the past your Lordships had held, and it remains our law, that the failure to plead all the results of an election renders the petition challenging that election incompetent. In the absence of evidence, how could your Lordships come to the conclusion that the 1st Appellant/Respondent's votes met the mandatory geographical spread as decreed by the Constitution?

- 2.7 In the light of the above, we humbly and most respectfully appeal to your Lordships to consider this application patiently and dispassionately. Do not be angry with the Applicants. The least that Your Lordships can do is to look with sympathy the plight of those who are aggrieved by the judgments of our courts. However justified we may be or appear to be, we cannot deny litigants the right to vent their grief. This application is brought in good faith. It is better for litigants to bring applications of this sort than to spread lies and rumours and gossips behind the back of the court. Above all, we should bear in mind always that this application is authorised by our law.
- 2.8 Our ancestors decreed that a decision which is final should not be the work of one man. And so they ordained that a number of justices of this court should preside over cases of the type that is the subject of this application. Even then, they considered that the participation by several justices in the decision of a case would not guarantee its correctness. And so, they further ordained that in the event mistakes are made, Your Lordships should have the power and authority to correct yourselves. It is that power that we urge Your Lordships to exercise in this instant application.
- 2.9 The practice of the Supreme Court reversing itself in deserving circumstances is not peculiar to our nation. Other nations of the world adopt and encourage the practice. The United States Supreme Court has, on a number of occasions, reversed itself when it felt the need to do so. See, for instance, **ROSCOE JONES v. CITY OF OPELIKA** 319 U.S. 103 (1943) 63 S.Ct. 890 87 L.Ed 1290.
- 2.10 Let us not say that it has never been done before. The Master of Rolls, Lord Denning in **PARKER V PARKER** (1954) 15 ALL ER @ 22, had this to say when it was contended that it had never been done before:

"What is the argument on the other side? Only this that no case has been found on which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been

done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both."

- 2.11 The judgment that we pray to Your Lordships to set aside, in our humble and respectful view, appears to us to defy all precedents established by this Honourable Court. And if Your Lordships depart from your own well-established precedents without apparent justification, it leaves room for applications of the type now before Your Lordships. Remember always that every case decided by Your Lordships involves your reputations and the fortunes of the nation – both of the present and of future generations.
- 2.12 Public confidence in the courts is important. It is inevitable. The power of the courts is dependent entirely upon public confidence. If public confidence in the courts is lost, the temptation will virtually be irresistible for people to take matters into their own hands. Over the years, your Lordships have established that nothing will drag you from the path of integrity. Therefore, we come before you firmly convinced that you would not abandon your duty. Your strictness and incorruptibility, your unrelenting diligence and your commitment to the cause of truth and justice encourage us to make this application. Above all, over the years, you distinguished yourselves by your great respect for your oaths. That is why the nation continues to describe you as men and women of the old school.
- 2.13 The grounds for this application are briefly that:

A. THE DECISION OF THE COURT BELOW DISMISSING THE PETITION AS INCOMPETENT CONTINUES TO SUBSIST AS THE APPEAL AGAINST THAT DECISION WAS NOT CONSIDERED BY THIS HONOURABLE COURT.

1. At the Tribunal, the 2nd Applicant (as 2nd Respondent) applied to have the petition struck out on the ground that it was incompetent. See pages 2068 – 2080 Vol. 3 of the Record.
2. The application was heard and dismissed by the Tribunal. See page 2919 particularly at page 2939 Vol. 4 of the Record.
3. The 2nd Applicant appealed to the Court of Appeal by way of Cross Appeal. The Cross Appeal was heard and allowed by the Court below. In other words, the Court below struck out the petition as incompetent. In the words of Adah JCA, who delivered the lead judgment in the Cross Appeal at page 289 Vol. 5 of the Record:

"The preliminary objection of the 1st Cross Respondent (sic) at the lower court is allowed and I hold that the appropriate order of the trial tribunal would have been to have petition no EPT/GOV/IM/08/2019 struck out for being incompetent. I therefore order the petition struck out. No cost is awarded."

4. The 1st and 2nd Respondents appealed against the above order of the Court below in ground 18 of their Notice of Appeal but only to the extent of showing that the 1st Appellant was the 1st Cross Respondent at the Court of Appeal. See **page 424 Vol. 5 of the Record**. The Appellants/Respondents Brief of Argument is **Exhibit KGA 10** hereto.
5. The order of the Court of Appeal striking out the Petition for being incompetent raised a jurisdictional issue which this Honourable Court ought to have resolved first before delving into the merits of the Appeal. Incidentally, Your Lordships neither considered nor resolved this jurisdictional issue. The failure of the Supreme Court to consider and pronounce on this issue amounts to a failure of jurisdiction and completely erodes the jurisdiction of the Supreme Court to consider the appeal on the merits.
6. Your Lordships neither set aside the decision of the Court of Appeal striking out the Petition for being incompetent nor made any pronouncement on it.
7. In the absence of any pronouncement by the Supreme Court on this issue, the judgment of the Court of Appeal striking out the Petition for being incompetent subsists. That being so, Your Lordships had no jurisdiction to countenance the Appellants/Respondents' appeal.

B. THE JUDGMENT IS A NULLITY HAVING BEEN DELIVERED WITHOUT JURISDICTION

1. The judgment was delivered without jurisdiction having regard to the Electoral Act as this Honourable Court had no jurisdiction to declare the 1st Appellant/Respondent as the winner of an election branded and stigmatized by him as invalid.
2. One of the grounds of the petition was that the election was invalid on account of non-compliance with the provisions of the Electoral Act. If the election was invalid, as contended by the Appellants/Respondents, the power of the Court was limited to annulling it upon that ground succeeding. The Court had no power or authority to declare the 1st Appellant/Respondent as the winner of an election he set out to prove was invalid. Having contended that the election was invalid, the Appellants/Respondents proceeded to claim that they had won majority of votes cast at the election. This rendered the petition speculative and therefore incompetent and the Court had no jurisdiction to entertain it since it could not grant any relief under the circumstances.
3. This Honourable Court had no jurisdiction to declare the 1st Appellant/Respondent as elected in an election petition which was based on two inconsistent and mutually exclusive grounds, to wit, (i) that the 1st Applicant was not duly elected by majority of lawful votes cast at the election, the implication of which is that the majority of votes cast at the election were valid. See **Page 5 of Vol. 1 of the Record of Appeal**; and (ii)

that the election was invalid for non-compliance with the Electoral Act, the implication of which is that the election be annulled. **See Page 28 Vol. 1 of the Record of Appeal.**

4. There was no proof that the votes ascribed to the 1st Appellant/Respondent met the mandatory geographical spread stipulated in section 179 (2) of the 1999 Constitution (as amended).
5. This Honourable court did not have the jurisdiction to declare that the 1st Appellant/Respondent met the constitutional geographical spread without providing in its judgment the reason(s) for that conclusion.

C. THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY HAVING BEEN OBTAINED BY FRAUD OR DECEPTION IN THAT:

1. The Appellants/Respondents misled this court into holding that a total of 213,695 votes were unlawfully excluded from the votes scored by the 1st Appellant/Respondent in the gubernatorial election of 9th March 2019 in Imo State.
2. The 1st Appellant/Respondent admitted under cross-examination that it was him and not the 3rd Respondent [INEC] or any of its officials, who computed the result that allotted to him the 213,695 votes alleged to have been excluded from his total votes in the election. He said:

"I did the computation in my deposition myself using a calculation from the original result sheets that was brought to me."

See Page 2403 Vol. 4 of the Record of Appeal.

3. The total votes cast as shown in the 1st Appellant/Respondent's computation was more than the total number of voters accredited for the election and in some polling units more than the total number of registered voters.
4. The result computed by the 1st Appellant/Respondent showed only the votes of the 1st Applicant and the 1st Appellant/Respondent without specifying the votes scored by the other 68 candidates who participated in the election.
5. Exhibits 63RD1 to 63RD19 (INEC Forms EC40G) show that there were no valid elections in the 388 polling units where the additional 213,695 votes claimed by the 1st Appellant/Respondent were allegedly generated.

D. THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT IT WAS GIVEN PER INCURIAM BY REASON OF THE FACT THAT:

1. By Exhibit A1 (Form EC8D) the total number of voters accredited for the election was 823,743, while the total valid votes cast was 739,485.
2. With the inclusion of 213,695 votes for the 1st Appellant/ Respondent and 1,903 to the votes of the 1st Applicant, as ordered by this court, the total

number of votes cast at the election now stands at 955,083 (i.e. 739,485 + 213,695 + 1,903) making the total number of votes cast at the election to be far in excess of the total number of voters accredited for the election by 131,340 votes.

3. It amounts to an illegality under our electoral law for the total number of votes cast in an election to exceed the number of accredited voters.
4. The Appellants/Respondents pleaded in paragraph 39 of their petition that a supplementary election should be conducted in the 388 polling units where the additional votes that created the illegality were alleged to have been cast and that pleading was binding on the Appellants/Respondents and the court.

E. THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT THIS HONOURABLE COURT WAS MISLED TO ENTER THE JUDGMENT BY REASON OF THE FACT THAT:

1. The 1st Appellant/Respondent alleged that votes from 388 polling units were unlawfully excluded or cancelled and urged the court to include the alleged votes from those polling units. At the same time, the 1st Appellant/Respondent prayed that fresh elections be conducted in the said polling units thus rendering the petition speculative.
2. The Appellants/Respondents failed to plead the votes scored by all the parties in the 388 affected polling units. Only the votes allegedly scored by the 1st Appellant/Respondent and the 1st Applicant were pleaded – an omission which rendered the petition incompetent.
3. This Honourable Court was consequently misled into making a vague order directing the inclusion of votes from the 388 polling units without stating or specifying the particular number of votes to be included from those polling units for all the parties.
4. Without computing the votes for all the parties from the 388 polling units, this Honourable Court was misled into making a declaration that the 1st Appellant/Respondent was the winner of the gubernatorial election in Imo State – an election that the Appellants/Respondents branded or stigmatized as invalid on account of non-compliance.

3.0 ISSUE FOR DETERMINATION

- 3.1 The Applicants respectfully submit that the sole issue for determination in this application is:

WHETHER HAVING REGARD TO THE GROUNDS UPON WHICH THIS APPLICATION IS PREDICATED, IT IS NOT IN THE INTEREST OF JUSTICE TO SET ASIDE THE JUDGMENT OF THIS HONOURABLE COURT ON THE GROUND THAT THE SAME IS NULL AND VOID.

4.0 **ARGUMENT**

This application is not affected by time limitation

- 4.1 In bringing this application to set aside the judgment of this Honourable Court, we are not unmindful of the provisions of **section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** which provides that:

'An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of the judgment of the Tribunal or Court of Appeal'

- 4.2 Relying on the above provision, this Honourable Court held in **ANPP v. GONI (2012) LPELR-7830(SC)** that the 60 days period limited by the Constitution cannot be extended or enlarged. The implication being that if an election appeal is not heard within the 60-day period, it lapses, as the Court is robbed of jurisdiction after that period.

- 4.3 We submit that the decision in **ANPP v. GONI (supra)**, and other similar decisions on the same point, do not apply, and are not relevant, to the instant application for the following reasons –

- (a) Appeal Nos. SC. 1462/2019 and SC 1470/2019 were both heard and determined within the stipulated period of 60 days, and as such there was no violation of section 285 (7) of CFRN
- (b) The present application is not for the determination of the disposed Appeal Nos. SC. 1462/2019 and SC. 1470/2019; because if that were to be so, it should have been brought and heard within the period of 60 days stipulated by the Constitution.
- (c) The present application is extrinsic and posterior to the determination and disposal of Appeal Nos. SC. 1462/2019 and SC. 1470/2019.
- (d) The present application is seeking to set aside the judgment in Appeal Nos. SC. 1462/2019 and SC.1470/2019 on the basis that even though the appeals were concluded within the 60 days period stipulated by Constitution, the entire proceeding was vitiated by jurisdictional vices which renders same a nullity. Time does not run against nullities.
- (e) Consequently the present application is not subject to the 60 days limitation period in section 285(7) of the Constitution because an application to set aside a null judgment or order is not circumscribed by statutes of limitation, and section 285 (7) of the Constitution is, to all intents and purposes, a statute of limitation.

- 4.4 To put it differently, in **ANPP v. GONI (supra)** and other similar cases, the decisions of this Court were on the time within which to hear and determine appeals in an election matter. The decisions were not on the time within which to apply to set aside as null and void any judgment or order made without jurisdiction. We submit that a void act is a non- event. It creates or

yields nothing for *ex nihilo nihil fit*. Consequently it can never be too late to bring an action or an application to declare a void act a nullity and to have it set aside. This point was brought out clearly in the judgment of this Supreme Court in **MUSTAPHER v. GOVERNOR OF LAGOS STATE (1987) 2 NWLR (Pt. 58) 539** where Oputa, JSC held that:

"It can never be too late to admit and give effect to the plea that the judgment or orders was a nullity,"

- 4.5 Again in **R. LAUWERS IMPORT-EXPORT v. JOZEBSON INDUSTRIES CO. LTD. (1988) LPELR-2934(SC)** at 54 paras D-F this Honourable Court held, per Nnamani, JSC, that:

"It is of course settled that if the proceedings were null and void, the question of extension of time to appeal which is now engaging this Court, would not have arisen, since time does not run against an appellant in relation to null judgment"(Emphasis supplied)

- 4.6 The above principle was applied by Your Lordships in a recent judgment delivered on 20th December 2019 in **APPEAL NO. SC 1384/2019: UGWUMBA UCHE NWOSU v. ACTION PEOPLE PARTY (APD) & ORS.** In that judgment this Honourable Court allowed a pre-election matter brought outside the limitation period stipulated in section 285(9) of the Constitution because the proceeding was in respect of an action or a decision which was a nullity. In other words, a limitation period stipulated either in a statute or the Constitution does not apply to bar the hearing and determination of an application to set aside a nullity. This settled principle is applicable to any judgment which is a nullity irrespective of whether it was delivered in an election matter, a pre-election matter, an ordinary civil case or even in a criminal proceeding See **JOHNSON vs. LAWANSON (1971) 7 NSCC 82; KPEMA v. STATE (1986) 1NWLR (Pt 17) 369; and ITEOGU v. LPDC (2018) LPELR 43845**

This Honourable Court has the inherent power to set aside its decision

- 4.7 In bringing this application to set aside the judgment in Appeal Nos. SC. 1462/2019 and SC. 1470/2019, we are not also unmindful of the provision of **section 235 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** which makes the decision of this Honourable Court final. However, it is also the law that this Supreme Court, just as other courts of record, has inherent jurisdiction to set aside its judgment where the grounds for doing so exist. In this regard, the grounds which have been established in decided cases as sufficient to set aside as a nullity the judgment of any court of record include:
- i. Where the judgment was given in the absence of jurisdiction. **Sken Consult Ltd. v. Ukey (1981) 1 SC 6; Citec (International) Estate Ltd v. Francis (2014) LPELR-22314 (SC).**
 - ii. Where the judgment is obtained by fraud: **Ede v Mba (2011) LPELR 8234(SC), Olufunmise v. Falana (1990) 3 NWLR (Pt. 136) 1.**

- iii. Where the judgment was given per incuriam. *Adegoke Motors Ltd. v. Adesanya* (1986) 3 NWLR (Pt. 109) 250; *Buhari v. INEC* (2008) LPELR814(SC)
 - iv. Where the court was misled to enter the judgment: *Alao v. ACB Ltd* (2000) 9 NWLR (Pt. 672) 264, *Ede v. Mba* (2011) LPELR 8234(SC)
 - v. Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication: *Igwe v. Kalu* (2002) 14 NWLR (Pt. 787) 435, *Alao v. ACB Ltd.* (2000) 9 NWLR (Pt. 672) 264.
- 4.8 The rationale behind the inherent power of this Court to set aside its judgments in appropriate cases was graphically and beautifully stated by Oputa JSC in the case of *ADEGOKE MOTORS LTD. v. ADESANYA* (1986) 3 NWLR (Pt. 109) 250 at 274 as follows:

"Justices of this court are human beings capable of erring. It will certainly be short-sighted arrogance not to accept this obvious truth. It is also true that this Court can do inestimable good through its wise decisions. Similarly, the Court can do incalculable harm through its mistakes. When therefore it appears to learned Counsel that any decision of this Court has been given per incuriam, such Counsel should have the boldness and courage to ask that such decision shall be overruled. This Court has the power to overrule itself (and has done so in the past) for it gladly accepts that it is far better to admit an error than to preserve an error."

- 4.9 This Honourable Court further rationalized its inherent power to set aside and overrule its null judgment in *ITEOGU v. LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE* (2018) LPELR 4345(SC) at 9-10 paras D-A where it held that:

'There is no doubt that honourable justices of this court are human beings and therefore not infallible. They can make mistakes or commit errors at any time like any other mortals, this is why the law allows for correction of errors in its judgment when called upon so to do for instance in the slip rule or pencil rule. In other words, in deserved situation or circumstances this court when invited can revisit the judgment it delivered earlier or previously if such judgment is seen not to be in accord with desired justice by setting same aside or by varying same or even overruling such judgment It goes without saying therefore that in the exercise of setting aside its previous judgment this court and indeed every other court must do so only in the interest of justice which is indeed the preoccupation of all courts'

- 4.10 In the instant case, the Applicants have listed five (5) cogent grounds why the judgment delivered by this Honourable court in Appeal No. SC.1462/2019 and

Cross Appeal No. SC.1470/2019 should be set aside as a nullity; and we shall now consider these grounds seriatim.

(1) THE DECISION OF THE COURT BELOW DISMISSING THE PETITION AS INCOMPETENT CONTINUES TO SUBSIST AS THE APPEAL AGAINST THAT DECISION WAS NOT CONSIDERED BY THIS HONOURABLE COURT.

- 4.11 At the Tribunal, the 2nd Applicant (as 2nd Respondent), applied to have the petition struck out on the ground that it was incompetent having regard to the fact that the 1st Petitioner who came fourth did not join the 2nd and 3rd runners up in the Petition. See **Volume 3, pages 2016 – 2034 of the Record.**
- 4.12 The application was heard and dismissed by the Tribunal whereupon the 2nd Applicant appealed to the Court of Appeal by way of Cross Appeal to which the 1st and 2nd Appellants/Respondents replied. See **Volume 4 pages 3072 – 3076 of the Record.**
- 4.13 The cross appeal was heard and allowed by the Court below. In the words of Adah JCA, who delivered the lead judgment in the cross appeal:

“The preliminary objection of the 1st Cross Respondent (sic) at the lower court is allowed and I hold that the appropriate order of the trial tribunal would have been to have petition no EPT/GOV/IM/08/2019 struck out for being incompetent. I therefore order the petition struck out. No cost is awarded.”

See **Volume 5 page 356 of the Record**

- 4.14 The Appellants/Respondents appealed against the above order in ground 18 of their Notice of Appeal but only to the extent of showing that the 1st Appellant/Respondent was the 1st Cross Respondent at the Court of Appeal. See **Volume 5 pages 439 – 440 of the Record.**
- 4.15 The order of the Court of Appeal striking out the Petition for being incompetent raises a jurisdictional issue which the Supreme Court ought to have resolved first before delving into the merits of the Appeal.
- 4.16 In its Judgment, this Honourable Court neither considered nor resolved this jurisdictional issue. The failure to consider and pronounce on this issue amounts to a failure of jurisdiction and completely erodes the jurisdiction of this Honourable Court to consider the appeal on the merits.
- 4.17 Your Lordships did not set aside the decision of the Court of Appeal striking out the Petition as incompetent. In the absence of any pronouncement by your Lordships on this issue, the judgment of the Court of Appeal striking out the Petition as incompetent remains valid and subsisting. Thereafter, there was no jurisdiction in this Honourable Court to make any order declaring the 1st Respondent as the winner of the election. The petition had already been dismissed by the court below.

4.18 In the absence of any specific order of the Supreme Court setting aside the order of the Court of Appeal striking out the Petition, this Honourable Court had no jurisdiction to countenance the Appellants/Respondents' appeal.

4.19 In **IKPEAZU V. OTTI (2016) LPELR- 40055(SC) 1 AT 19**, this Honourable Court held thus:

"Issue 9 is central to this appeal. It has not been resolved. In the absence of not setting aside the judgment of the tribunal to the effect that the diverse criminal allegations in the petition were not proved, then where is the jurisdiction of the power of the court below to set aside the judgment of the trial tribunal summarily?"

4.20 In other words, the position of the law is that an higher court cannot set aside the decision of a lower court if it does not consider and reverse critical findings made by the lower court.

To refuse to decide issues submitted for adjudication is tantamount to a denial of fair hearing.

4.21 As shown in the supporting affidavit to this application, the order of the Court below striking out the Petition for incompetence was one of the issues submitted for adjudication in the appeal. Your Lordships neither considered nor resolved the issue at all. On the authorities handed down by your Lordships, the failure to consider and resolve that issue amounts to a breach of fair hearing. In **ODETAYO v. BAMIDELE (2007) VOL. 35 1 AT 15 LINES 5 – 10**, this Court, per Adeyemi JSC held as follows:

"This court has, on a number of occasions, said that it is trite law that a court or even a judicial tribunal should consider all issues for determination brought before it. To refuse to do so will tantamount to denial of justice or fair hearing particularly when the parties have not been heard on those issues."

Judgment must demonstrate a dispassionate consideration of all issues raised.

4.22 A court judgment must demonstrate in full a dispassionate consideration of all the issues properly raised and must reflect on the result of such exercise. It must show a clear resolution of all the issues that arise for decision in the case and end with an ultimate verdict which flows logically from the facts pleaded and found proved. This was the view of this Honourable Court expressed in **OGUNYADED V OSHUNKEYE (2007) NWLR (PT 1057) PER MUSDAPHER JSC** as follows:

"It is settled law that a judgment of court must demonstrate in full a dispassionate consideration of all issues properly raised and heard and must reflect on the result of such exercise. In other words it must show a clear resolution of all the issues that arise for decision in the case and end up with an ultimate verdict which flows logically from the facts pleaded and found proved."

There are no exceptions to the rule.

- 4.23 There are no exceptions to the rule that the court must treat all the issues presented to it for consideration. This was the view expressed by your Lordships in *F. C. D. A. V SULE* (1994) 3 NWLR (PT 332) per Olatawura JSC held as follows:

"The general rule is that all issues submitted for the consideration of the court should be treated. Non-consideration of the issue submitted by a party may lead to a miscarriage of justice. To this general rule there are no exceptions. The issue of jurisdiction is so fundamental to every adjudication that it must be considered. Where the court lacks jurisdiction it is not necessary to consider other issues." (Emphasis supplied)

Failure to consider a fundamental issue vitiates the judgment.

- 4.24 The effect of failure to consider a fundamental issue placed before the court is to vitiate the judgment of the court. A court is bound and obliged to consider and determine all issues properly raised before it which are not hypothetical. Where the issue is a vital and momentous one to the determination of the questions placed before the court, the failure to resolve it will vitiate the judgment. See *OKOJI V NJOKANMA* (1999) 14 NWLR (PT 638) 250; *A – G FED V AIC LTD* (2000) 10 NWLR (PT 786) 195; *AGU V NNADI* (2002) 18 NWLR (PT 798) 103.

Failure of duty

- 4.25 In respect of those matters over which a court is properly vested with jurisdiction, refusal to exercise that jurisdiction is every bit as objectionable as when a court exercises jurisdiction that it does not possess. In the former case, this Court has described the action of the judge as a failure of duty. In the words of Oguntade JSC in *EDEM V CANON BALLS LTD* (2005) 12 NWLR (PT 938);

"It is the duty of a court whether of first instance or appellate to consider all the issues that have been joined by the parties and raised before it for determination. If the court failed to do so without a valid reason, then it has failed in its duty, for in our judicial system, it is a fundamental principle of administration of justice that every court has a duty to hear, determine and resolve such questions."

- 4.26 Where parties submit a material issue to a court of law, the court is bound to pronounce on it one way or the other especially if the case of the party is predicated on that issue. The law does not permit a court to shy away from material issues of law and fact submitted to it by parties.
- 4.27 Where a court as in the instant case, the Supreme Court, fails to consider a material issue submitted to it by a party without stating any reason, the court would be guilty of denying such a party his right to fair hearing. In *OVUNWO V. WOKO* (2011) VOL 46 (PART 1) 517 at 540, this Court, per Chukwuma Eneh, JSC stated the correct position of law that:

"Having carefully examined the complaints of the appellants in this matter it is not in doubt that issue 3 (three) raised for determination before the appellate High Court amounts to an attack of the failure of the trial court to evaluate all the evidence adduced by the parties and their witnesses at trial and weighing the same in the imaginary scale to see which outweighs the other. By failing to consider the same at all naturally leads to a miscarriage of justice apart from constituting a breach of the appellants' right to fair hearing" (emphasis supplied)

- 4.28 On the effect of breach of fair hearing, this Court held at page 540 as follows:

"The point must be made that a breach of fair hearing once sustained in a decision afflicts and clearly vitiates the whole decision and not just as to a part of it thereof. Once it is showed as it has been showed here that the decision of the appellate High Court has been vitiated for breaching the appellants' right to fair hearing it follows naturally without more that the lower court's resolution of issue 1 (one) cannot stand and so the whole decision collapses with it as it has no leg on which to stand"

- 4.29 In *UZUDA V. EBIGAH* (2009) ALL FWLR (PT 493) 1224 at 1247, paras B-D, your Lordships held as follows:

"Where a court fails to give full consideration and determination of the case of a party, it is a situation touching on the violation of the party's right to fair hearing. Where there is a breach of a party's constitutional right to fair hearing then the proceedings are vitiated thereby requiring the intervention of an appellate court on a complaint of the affected party. In the instant case, the failure of the court below to consider and determine the appellant's cross-appeal is certainly a breach of the right of fair hearing of the appellants, warranting the setting aside of the judgment of the court below."

- 4.30 In the words of this Honourable Court, the beauty, elegance and romance of our adjudicatory system is that the court should hear all sides, carefully compare the weight of the evidence given, make a proper appraisal before determining preponderance after such painstaking consideration of all issues addressed upon it. See *Adebayo & Ors v. Shogo* (2005) 2-3 SCNJ 60 @67; *WILSON v. OSHIN* (2000) 9 NWLR (Pt 673). The principle of adjudication that is fundamental to the administration of justice is that the court is bound to consider every material aspect of a party's case validly put before it, particularly where the issue is fundamental to the determination of the case.

- 4.31 In *BRAWAL SHIPPING (NIG) L. V.F.I. ONWADIKE CO. LTD* (2000) 11NWLR (pt 678) 387 @403 D-H per Uwaifo JSC, this Court held thus:

"The Supreme Court demands of, and admonishes the lower courts to pronounce, as a general rule on all issues properly placed before them for determination in order, apart from the issue of fair hearing, not to risk the possibility that the only issue or issues decided by them could be faulted on appeal. It has made this clear in its

observations in several cases. Failure to do so may lead to miscarriage of justice and certainly will have that result if the issues not pronounced upon are crucial."

- 4.32 In **CHIABEE BAYOL v. IOKIGHER AHEMBA** (1999) LPELR-SC. III/93 p. 14 paras. B-F per Achike JSC:

"It has been said time without number that the judgment of a court must demonstrate in full a dispassionate consideration of the issues raised and canvassed before it. The duty on the court is imperative otherwise it will be extremely difficult for a party whose case has not been accorded adequate and full consideration to accept that justice has been done to him. Failure to deal with issues raised."

- 4.33 Again in **SAMBA PETROLEUM LTD & ANOR. V. UBA PLC & ORS.** (2010) 6 NWLR 530 AT 531:

"A court has the statutory duty to consider and make pronouncement upon all issues raised by the parties and not to confine itself only to the issues which it considers to dispense of the case."

Denial of fair hearing:

- 4.34 Once a court fails to consider all the issues raised by a party, such failure results in denial of fair hearing to the party complaining and exposes the judgment to the liability of being set aside. This submission finds firm anchorage in the decision of the Supreme Court in the case of **CHIEF BROWN UZUDA & ORS V. MR. EZEKIEL EBIGAH & ORS** (2009) 15 NWLR (PT. 1163) 1 SC (2009), (2009) LPELR-3458 (SC) PP 23-24, PARAS G-B per Mohammed JSC, where it was held that:

"Where a Court fails to give full consideration and determination of the case of a party, it is a situation touching on the violation of the party's right to fair hearing. It is trite that where there is breach of fair hearing, then the proceedings are vitiated thereby requiring the intervention of an Appellate Court on a complaint of the affected party."

See also *Amadi v. Thomas asphin & co. Ltd* (1972) 1all n.l.r (pt. 1) 409, *adigun v. Attorney general, oyo state* (1987) 1 nwlr (pt. 53) 678 and *nwokoro v. Osuma* (1900) 3 nwlr (pt. 136) 22 at 32-33

- 4.35 In the same vein in **OPUIYO V. OMONI WARI** (2007) 6 SCNJ I31 @ I38 PER OGUNTADE JSC, the Supreme court held that:

"As a matter of law, a court has a duty to consider the issues submitted to it for adjudication. Where a court failed to consider and adjudicate on such issues, it is usually an error of law because the omission constitutes a denial to the party complaining of his right of fair hearing as enshrined in the constitution."

- 4.36 In **ADEBAYO v. SHOGO** (2005) 7 NWLR () 480 paras F-H, p.482 para A per Oguntade JSC:

The appellants are arguing that the Court of Appeal was substituting its own views on the issues. It cannot be denied that the high court did not at any time consider the case put forward by the Respondent. Such barefaced injustice masqueraded as adjudication in a democratic society where the rule of law reigns, is galling and utterly invidious. Where lies the justice where the case made by the contending parties are not put in an imaginary scale. Such a judgment is an affront to reason and intelligence and bespeaks of inordinate desire to see nothing good in the Respondent's case.

The case of the defendant is entitled to be considered however weak or frivolous it may seem.

- 4.37 *Olayinka v The State* (2007) LPELR 280(SC), here the Supreme Court was of the opinion that:

"It is a paramount principle of our law that when a defence, however weak, foolish unfounded, improbable, is raised by an accused person charged with a crime, that defence should fairly and impartially be considered by the trial Judge in order not to occasion a miscarriage of justice on the accused. That is the law and that is what we abide by." [per I.T. Muhammad J.S.C]

(2) THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT IT WAS DELIVERED WITHOUT JURISDICTION

- 4.38 The first arm of our contention under this ground is that the petition divested Your Lordships of the jurisdiction to declare the 1st Appellant/Respondent as duly elected given the fact that one of the grounds of the petition was that the election in issue was *"invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended)"*. Obviously, a petitioner cannot be declared as the winner of an election he has vilified or stigmatized or branded as invalid for non-compliance with the Electoral Act. In **REV. WILSON SABIYA v. ALHAJI BAMANGA TUKUR** (1983) LPELR-SC.112/1983 it was held by this Supreme Court that:

"The Petition was based on a catalogue of electoral malpractices, which, in the argument of his counsel, should lead to a nullification of the election. In the same breath, the Petitioner sought to be elected on the same evidence. This is clearly an impossible feat."

- 4.39 This Court is statutorily obligated to order a fresh election instead of declaring the 1st Appellant/Respondent as the winner of an election he alleged was invalid by reason of non-compliance with the Electoral Act. That is, assuming without conceding that the 1st Appellant/Respondent proved that the election was marred by non-compliance as alleged.
- 4.40 It is our further submission that this Honourable Court was also divested of the jurisdiction to declare the 1st Appellant/Respondent as the winner of the

election by the speculative nature of the Appellants/Respondents' Petition which was based on two inconsistent and mutually exclusive grounds, to wit, (i) that the 1st Applicant was not duly elected by majority of lawful votes cast at the election, and (ii) that the election of the 1st Applicant "is invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended)".

- 4.41 We submit that where an election is challenged on the ground of non-compliance the power of the court is limited to annulling the election. But where an election is challenged on the ground that the Respondent did not score a majority of the votes cast at the election the court may declare as elected the person who scored the majority of lawful votes. The two grounds and their consequential reliefs are therefore mutually exclusive. Thus in **paragraph 4(3)(a) of the First Schedule to the Electoral Act 2010** it is provided that an election petition shall:

"Conclude with a prayer or prayers as for instance, that the petitioner or one of the petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast at the election OR that the election may be declared nullified as the case may be."

- 4.42 The word "OR" is used in the above provision to buttress the point that a petitioner cannot seek in the same petition a declaration that he won the election and a finding that the election was void for corrupt practices or non-compliance with the Electoral Act. In other words the Appellants/Respondents' Petition was incompetent *ab initio* due to the pleading of these inconsistent grounds and reliefs. Consequently this Honourable Court did not have the jurisdiction to declare the 1st Appellant/Respondent as elected based on his incompetent petition.

- 4.43 The second arm of our contention that the judgment of this court was delivered without jurisdiction is based on **section 179(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** which stipulates that:

'A candidate for an election to the office of Governor of a State shall be deemed to have been duly elected where, there being two or more candidates -

(a) he has the highest number of votes cast at the election; and
(b) he has not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the State."

- 4.44 In the instant case there was no proof that the votes allegedly scored by the 1st Appellant/Respondent met the mandatory geographical spread stipulated in the Constitution. To establish that fact it was necessary to compute, local government by local government, the percentage of the votes scored by the 1st Appellant/Respondent after the inclusion of the additional 213,695 votes declared for the 1st Appellant/Respondent in the judgment sought to be set aside. But in this case there was no such proof, nevertheless this honourable court proceeded to declare that the 1st Appellant/Respondent won the election and met the constitutional geographical spread.

- 4.45 We submit that the declaration so made, without the necessary proof, infringed and violated the Constitution of the Federal Republic of Nigeria. To that extent the judgment and its consequential order were made without jurisdiction and are liable to be set aside as a nullity.

(3) THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT IT WAS OBTAINED BY FRAUD

- 4.46 We submit that the judgment sought to be set aside was obtained by fraud because the 1st Appellant/Respondent fraudulently misrepresented to this Honourable Court that he had an additional 213,695 votes which were unlawfully excluded from the final result by the 3rd Respondent. To this end, the 1st Appellant/Respondent pleaded a table of excluded votes (Exhibit KGA 9) which are at pages 9-27, Volume 1 of the Records. In that table, the 1st Appellant/Respondent failed to plead the votes scored by all the 70 candidates who participated in the election. He only pleaded his own votes and the votes alleged to have been scored by the 1st Applicant. In **ADAMS v UMAR (2010) All FWLR (Pt 513) 1289 at 1386 - 1387 paras H-B** it was held that:

'While there is no obligation on the petitioner to join any candidate who lost the election as a party, the petitioner has a duty to comply with the provisions of paragraph 4(i) (c) of the First Schedule to the Electoral Act, 2006 by stating among other particulars, the names and scores of ALL the candidates that participated in the election ... The raison d'être for this is that, where in an election petition a petitioner fails to plead the scores of all the candidates at the election, it will be impossible to grant any prayer that the petitioner was the duly elected candidate or that the 1st respondent was not the duly elected candidate.'

- 4.47 Apart from the fatal error of failing to plead the result of all the candidates in his table of excluded votes, the 1st Appellant/Respondent also admitted in his evidence during cross-examination at page 2601-2603 in Volume 4 of the Record that the number of votes he allocated to himself in the table are in excess of the registered voters in the polling units where he claimed he obtained those votes. He further admitted under cross-examination at page 2603 of the Record that instead of INEC – the 3rd Respondent, he was the person who computed the disputed votes tabulated in the petition.
- 4.48 In his private and personal tabulation of the votes (shown at pages 9-27 of Volume 1 of the Records), the 1st Appellant/Respondent stated in column 69 that in Polling Unit 08 in Eziamma/Okpalla Ward he scored 819 votes whereas the total number of registered voters was 462. In column 285 he stated that in Polling Unit 12 in Odudiara Ward he scored 780 votes whereas the total number of registered voters were 449. In column 377, he stated that in Polling Unit 6 in Umuoizu Ward, he scored 367 votes and the 1st Applicant scored 4 votes making a total of 371 votes whereas the total number of registered voters was 367. In column 384 he stated that in Polling Unit 6 in Umunkwo ward he scored 526 votes and the 1st Applicant scored 2 votes making a total of 528 votes whereas the total number of registered voters was 526. These are just a

few examples of the fraudulent results the 1st Appellant/Respondent induced this Honourable Court into accepting as a part of his votes.

- 4.49 In the tabulation of the votes at pages 9-27 in Volume 1 of the Record, the 1st Appellant/Respondent did not state the number of accredited voters in each of the listed 388 polling units. He stated only the total number of registered voters. We submit that without a record of accredited voters, the votes alleged to have been scored in those polling units were invalid and void because there can be no valid votes without accreditation – **FAYEMI v ONI (2009) All FWLR (Pt 493) 1254 at 1309 paras F-H**. So evidently, the scores in those 388 polling units were allocated arbitrarily. They were not the product of a valid election, and this was corroborated by the evidence of DW5 who tendered INEC Form EC40G as Exhibits 63RD1 to 63RD19 to show that in those polling units, the election was cancelled or did not hold.
- 4.50 Unfortunately this Honourable Court was misled into accepting the fraudulent result tabulated by the 1st Appellant/Respondent and consequently 213,695 votes were added for the 1st Appellant/Respondent and 1,903 votes were added for the 1st Applicant. This brought the total number of votes cast in the election to 955,038, while the total number of voters accredited for the election as shown in Exhibit A1 was 823,743. This is a clear case of fraud and corrupt practice for which the nullification of the election is the only proper order this court can make by virtue of **section 140(2) of the Electoral Act (as amended)**. In effect, the judgment and orders returning the 1st Appellant/Respondent as elected are contrary to law and evidence and is to that extent a nullity.
- 4.51 Where a judgment is obtained fraudulently as in the instant case, we submit that the court, which gave the judgment, is entitled to set it aside upon an application such as this. In **OGBU v URUM (1981) LPELR 2290SC at 20 paras C-E**, this court held that:

“.....a court would also have inherent jurisdiction to set aside its judgment if it could be shown that it was obtained by fraud.”

- 4.52 Also in **EDE v MBA (2011) LPELR 8234SC at 26-28 paras E-A** this Court held that: *‘....this court under section 22 of the Supreme Court Act and Order 6 has the power to set aside in certain circumstances its decision like any other court where the circumstances demand, such as (i) where any of the parties obtained judgment by fraud or deceit (ii) where such a decision is a nullity or (iii) where it is obvious that the court was misled into giving the decision’.*

Unlawful exclusion of the results of all the political parties who contested the election from the results the Appellants/Respondents presented and which this Honourable Court accepted and acted upon.

- 4.53 At Paragraph 23, 27, Vol.1 of the Record the Appellants/Respondents averred that *“the total votes of the Petitioner from the unlawfully excluded polling units*

is 213,695 while the total votes of the 1st Respondent from the same units is 1,903."

- 4.54 At pages 9-27 of the Vol. 1 of the Record, the Appellants/Respondents reproduced the table of the alleged votes for the 1st Appellant/Respondent and the 1st Applicant. As evident from pages 2-3 vol. 1 of the Record, 70 candidates contested the Governorship election of Imo State. The Appellants/Respondents presented before the court a table containing alleged results of only two candidates: the 1st Appellant/Respondent and the 1st Applicant. The deliberate omission of the results of 68 other candidates is fatal. Such an unlawful and fraudulent exclusion ought to vitiate the entire misrepresentation.
- 4.55 Para 4(1) First Schedule to the Electoral Act, 2010 (as amended) provides that an election shall (a) specify the parties interested in the election petition (b) specify the right of the Petitioner to present the election petition and (c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election. This is mandatory. *Neka & Anor V Kunni & Ors (2015) LPELR – 26031*. Thus, for an election result to be valid, it must contain results of all the candidates that contested and not only that of the Petitioner and 1st Respondent. See also, *Adams V Umar (2008) LPELR - 3591 (2010) All FWLR (pt. 513) 1289, 1386-1387*.

Evidence of corrupt practices on the face of the record – total votes presented by the 1st Appellant/Respondent as scored by him added to the overall result, exceeded the total number of accredited voters in the Governorship election.

- 4.56 The number of votes the 1st Appellant/Respondent claimed were excluded against him was 213,695. If that is added to the 1,903 which he attributed to the 1st Applicant and the total votes recorded by the 3rd Respondent being 739,485, the total number of votes becomes 955,083 votes. Form EC8D shows the total number of accredited voters for the Governorship election to be 823,743. This evidently shows that the total number of votes exceeded the total number of accredited voters by 131,340. The process becomes illegal when the total votes purportedly cast exceeded the total number of accredited voters.
- 4.57 **Results presented by the Appellants/Respondents and upheld by the Supreme Court contained obvious frauds and illegalities.**

See for example;

- (i) Vol. 1, page 12 of the Record, item 69 – the Appellants/Respondents stated in their own words that in Umualum Village Square, Ezicama polling unit in Ezicama/Okpala (Registration Ward) with Code No. 8 the total number of registered voters was 462; that the 1st Appellant/Respondent scored 819 votes while the 1st Applicant scored 7 votes. This is obvious illegality on the face of the record before the Supreme Court. Total number of votes scored by the 1st Appellant/Respondent as per their presentation exceeded the total number of registered voters in that polling unit.

- (ii) Vol. 1, page 22 of the Record, item 285 contains another deception. The Appellants/Respondents stated that in Central Assembly Square, Umusa II in Obudi/Aro Registration Area/Ward with Code No. 12, the total number of registered voters was 449; that the 1st Appellant/Respondent scored 780 votes while the 1st Applicant scored 4 votes. The total number of votes the 1st Appellant/Respondent attributed to himself exceeded the total number of registered voters. This is an obvious illegality on the face of the record before the Supreme Court.
- (iii) In Vol. 1 page 26 of the Record, Column 377 Polling Unit 6, Umuozu Ward, the 1st Appellant/Respondent stated that the total number of registered voters is 367; that he scored 367 votes while the 1st Applicant scored 4 votes. On the 1st Appellant/Respondent's own showing, the total votes cast exceeded the total number of registered voters in that polling unit. This is an obvious illegality on the face of the record before the Supreme Court.
- (iv) In Vol. 1 page 27 of the Record at Column 384, the 1st Appellant/Respondent stated that he scored 526 votes while the 1st Applicant scored 2 votes and that the total number of registered voters was 526. This is an obvious fraud on the face of the Records.
- (v) In Vol. 1 page 22 of the Record, Column 282-LA School, Obudi polling unit in (Code 8), Obudi/Aro registration area/ward, the 1st Appellant/Respondent stated that the total number of registered voters was 591; that he scored 586 votes while he allotted 9 votes to the 1st Applicant. This brings the total votes cast for the 1st Appellant/Respondent and the 1st Applicant to be $586+9 = 595$ votes which is already above the total number of registered voters even when the votes scored by the other 68 candidates has not yet been indicated and included. On the face of the Records before the Supreme Court, this is blatant forgery. The total number of votes the 1st Appellant/Respondent stated as what he recorded could not have been more than what he stated as the total number of registered voters in that polling unit.
- (vi) In Vol. 1, page 11 of the Records at Column 60 - Ngor Okpala (Umunozuzu Ward), Okechubechi Tall Polling Unit, the 1st Appellant/Respondent stated that he scored 635 votes while he claimed the 1st Applicant scored 8 votes, yet the certified true copy of Form EC40G duly signed by the INEC Collation Officer, Comr. Nwokeji Uchenna and duly transmitted to the Supreme Court showed that there was no election in that polling unit. In his own result which the Supreme Court accepted, he misrepresented that there were 785 registered voters, yet INEC Form EC40G before the Supreme Court showed there were only 285 registered voters. This is fraud and deceit which misled the Honourable Justices of the Supreme Court.
- (vii) In the same Vol. 1 page 11 of the Records and Column 61, the 1st Appellant/Respondent claimed he scored 1001 votes while he claimed

the 1st Applicant scored 4 votes. But INEC Form EC40G before the Supreme Court showed that there was no election in the polling unit due to violence.

- (viii) In the same Vol. 1 page 1, column 62, the 1st Appellant/Respondent claimed that he scored 250 votes while the 1st Applicant scored 7 votes in Umuokoro Square, Ozuzu ward, yet the certified true copy of INEC Form EC40G duly signed by the INEC collation officer showed that there was no election in the polling unit due to violence.
- (ix) In the same Vol. 1 at page 11 of the Records at Columns 63 and 64 (Secondary School Orishieze) (Code 9) and Secondary School, Orishieze (Code 10) all in Ozuzu ward, the 1st Appellant/Respondent claimed he and the 1st Applicant scored 362 and 3 votes as well as 211 and 3 votes respectively, yet the certified true copy of INEC Form EC40G transmitted to the Supreme Court shows that there was no election in those units due to violence. The claim of scoring votes in those units by the 1st Appellant/Respondent is false and fraudulent.
- (x) In Vol. 1 pages 11-12, the 1st Appellant/Respondent attributed scores of votes to himself as stated in his own words in columns 65-77 containing polling units, yet the certified true copy of INEC Form EC40G duly signed by Maduka, R.C, the INEC collation officer and dated 10th March 2019 showed that there was no election in those units for various reasons including snatching of election materials, violence, etc. The said EC40G was transmitted to the Supreme Court. The claim by the 1st Appellant/Respondent that he scored votes was therefore, a blatant falsehood and forgery on the face of the Records before the court.
- (xi) In the same Vol. 1 page 12 of the Record before the Supreme Court, the 1st Appellant/Respondent stated that he scored votes in the following polling units in Imerienwe registration area/ward which he listed as columns 78-82 to wit, Umuakara Community School, Central School, Umuoye II, Central School, Umuoye, Pioneer Primary school, Amafor, Community Primary School, Umuam (5 polling units). He attributed to himself the following votes: 381, 150, 891, 800 and 600 votes. But INEC Form EC40G duly signed by the INEC collation officer Festus Okoh dated 10th March 2019 and duly transmitted to the Supreme Court shows that election did not hold in those polling units due to violence and snatching of electoral materials.
- (xii) In Vol. 1 page 12 of the Records before the Supreme Court, the 1st Appellant/Respondent claimed concerning Civic Centre Umuaga Nguru polling unit in Nguru/Umuowa which he listed as item 83-992 certified true copy of votes – yet the Form EC40G duly transmitted to the Supreme Court shows that there were snatching of electoral materials and thus, the 1st Appellant/Respondent relied on his own falsehood and forgery. Also, the Form EC40G shows that only 316 voters were accredited, yet, the Appellant misled the Supreme Court

by stating in his own result that 1042 voters were accredited without supporting same with any proof.

- (xiii) In the same Vol. 1 page 12 of the Records before the Supreme Court regarding Central School, Umuoia, Nguru polling unit, the 1st Appellant/Respondent claimed he scored 810 votes. He also claimed there were 945 accredited voters. But INEC Form EC40G transmitted to the Supreme Court clearly shows that there was snatching of electoral materials in that polling unit and thus, he could not have scored 816 votes or any votes at all.
- (xiv) In Vol. 1 page 13 of the Records, the 1st Appellant/Respondent listed as items 85, 86, 87 and 88, the following polling units in Ngor/Ihite/Umukabia Ngor, Umualam Village Swuare, Ngor, Amaeke Village Square, Ngor II, Umuneke Junction Square, Ngor II that he scored 492, 314, 200, 686, votes while he attributed 7, 6, 6 and 4 votes respectively to the 1st Applicant. But INEC Form 40G duly signed by INEC collation officer, Onwuach Chinere C dated 10th March 2019, certified and duly transmitted to the Supreme Court shows that the 1st Appellant/Respondent could not have scored any genuine vote as the election in those units were marred by violence and corrupt practices. Consequently, his claim of scoring votes is false and deceitful.
- (xv) In Vol. 1 page 13 of the Records, the Appellant stated in item or column 89 regarding Primary School, Egbuelu, Umuhu ward that he scored 629 votes against 5 votes he attributed to the 1st Respondent. But INEC Form EC40G transmitted to the Supreme Court and duly certified by INEC showed that there was no election in that unit due to violence. The Appellant's claim is therefore, false. The figures were therefore forged on the face of the record before the Supreme Court.
- (xvi) In the same Vol. 1 page 13 of the Records, the 1st Appellant/Respondent stated that he scored 611 and 780 votes respectively for Primary school, Umueze, Obiangwu and Community Central School, Obiangwu II while attributing 5 and 4 votes to the 1st Applicant but INEC Form EC40G duly signed by the INEC collation officer, Engr. Egole Chijioke Peter and dated 10th March 2019 shows that election in those units were marred by violence and corrupt practices.
- (xvii) In Community Central School, Obiangwu II (item 91 in Vol. 1 p.13 of the record), the 1st Appellant/Respondent stated that the number of registered voters was 896 and he scored 780 votes while the INEC Form EC40G transmitted to the Supreme Court and duly certified by INEC shows the number of registered voters to be 703. Thus, the 1st Appellant/Respondent could not have scored votes higher than the total number of registered voters. The same applies to item 92.
- (xviii) In Vol. 1 page 13 of the Records at items 93 and 94 (Central School, Umuohiagu 1 and Ngali Village Square), the 1st Appellant/Respondent

claimed that he scored 786 and 700 votes while he attributed 6 and 4 votes to the 1st Applicant, yet INEC Form EC40G signed by INEC collation officer, Uhuegbu Augustine Ngozi showed that the poll was marred by malpractices and thus, the 1st Appellant/Respondent's claim to scoring votes was false and deceitful.

- (xix) INEC Form 40G(1) duly certified and signed by Prof. C.C. Ibe, the INEC collation officer, clearly showed that there were no results in Nempi primary school, Otulu and Ubulu polling units in Oru West and thus, any claim to scoring votes by the 1st Appellant/Respondent is false.
- (xx) INEC Form EC40G signed by Prof Hugh C.C. Maduka, INEC collation officer and transmitted to the Supreme Court showed that election in polling units 1-12 in page 9 of Vol. 1 of the Records did not hold due to violence. Election results stated by the 1st Appellant/Respondent are therefore false.
- (xxi) INEC Form 40G showed regarding Ehime Mbano, that items 144-152 by the 1st Appellant/Respondent at page 15 Vol. 1 of the record where the Appellant claimed he scored votes are false. The duly certified INEC Form 40G signed by Prof O.T. Ebiriga on 10th March 2019 showed that election did not take place in those units due to violence.
- (xxii) INEC Form EC40G(1) signed by Kate Amake, INEC collation officer showed that the 1st Appellant/Respondent could not have scored any vote in Amaogwe Village Hall where he allotted 453 votes to himself as there was violence.
- (xxiii) INEC Form EC40G showed regarding Ogbaku Ward in Mbaitoli L.G.A (listed at items or columns 231-240 by the 1st Appellant in Vol. 1 pages 19-20 of the record) that the 1st Appellant/Respondent's claim to scoring votes was false as there were disruptions and malpractices and thus, no vote was recorded by INEC for any candidate. The INEC Form EC40G was signed by INEC collation officer, Ogbuoji, S.N.
- (xxiv) INEC Form EC40G also showed regarding Okwu Hall and Ochili Primary school listed as items 22 and 23 in Vol. 1 page 19 of the record by the 1st Appellant/Respondent that there was no result for those units.
- (xxv) INEC Form EC40G signed by INEC collation officer showed that there was no election in the polling units listed as items 224-226 of page 19 Vol. 1 of the record. The 1st Appellant/Respondent's claim to scoring 61, 420 and 580 votes against the 1st Applicant's 7, 6 and 6 votes is false and forged.

4.58 In the table of votes the 1st Appellant/Respondent presented reproduced in Vol. 1 pages 9-27 of the Records, the 1st Appellant/Respondent fraudulently omitted

the record of accredited voters. Without accreditation, all the votes in the 1st Appellant/Respondent's table are void and illegal: *Fayemi V Oni (2009) FWLR (pt 483) 1254, 1309.*

4.59 Section 40(2) Electoral Act (as amended) clearly provides for the implication of the above fraud and corrupt practices by the Appellants/Respondents – nullification of the result;

1. Absence of Jurisdiction – to declare the appellant as elected. However, (the judgment of the S.C breached Section 140(1) and (2) of the Electoral Act (as amended).
2. Petition based on incompetent grounds and reliefs.

(4) THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT IT WAS GIVEN PER INCURIAM

4.60 The Appellants/Respondents tendered at the trial the overall result of the election (Form EC8D) as declared by the 3rd Respondent (INEC) and it was admitted in evidence as Exhibit A1. It is also exhibited to the affidavit in support of this application as Exhibit KGA 8. The exhibit shows that the total number of accredited voters for the election was 823,743, whilst the total votes cast were 739,485. By the judgment sought to be set aside this honourable court ordered the inclusion of an additional 213,695 votes for the 1st Appellant/Respondent and 1,903 for the 1st Applicant. Consequently, the total votes cast at the election now stand at 955,083 (i.e. 739,485 + 213,695 + 1,903), which is in excess of the total number of accredited voters by 131,340 votes. OBVIOUSLY, THE VOTES CAST CANNOT EXCEED THE NUMBER OF ACCREDITED VOTERS. To this extent therefore, the judgment of this Honourable Court sought to be set aside was reached *per incuriam* and it has created an illegality which this court cannot allow to persist. In **BUHARI v INEC (2008) LPELR 814(SC) 84 paras B-C**, this court held that:

“The expression ‘per incuriam’ is one of the Latinism. It generally means through inadvertence. In law, it means the judge is giving a judgment in ignorance or forgetfulness of an enabling statute of some binding authority of the court.”

4.61 The judgment sought to be set aside was reached *per incuriam* for the further reason that it was contrary to the case made by the Appellants/Respondents in their Petition. In paragraph 39 of the Petition they averred as follows:

‘.....the returning officer did not call for polls to be taken in the excluded or wrongly cancelled units before he returned the 1st Respondent [now applicant] as the winner of the election. The 3rd Respondent [INEC] ought to conduct supplementary election where as in this case the number of registered voters in the units where the results were reckoned with or were purportedly cancelled was higher substantially than the difference between the scores of the 1st Respondent and the petitioner who was next to him in the wrong computation upon which the 1st Respondent was declared’

- 4.62 In **OVIawe v. Integrated Rubber Products Nigeria Ltd** (1997) 3 SCNJ 29 at 45 this court held that:

'it is not open to a party to depart from his pleadings nor, equally, is it open to the trial court to depart from the case pleaded by the parties'.

- 4.63 Again in **Pascutto v Adecentro Ltd** (1997) LPELR-2904(SC) at 28 paras A-B this court held that:

'.... parties as I have already stated are bound by their pleadings and judgment must also be confined to the issues raised by the parties. It is incompetent for a court to make a case for either or both of the parties and then proceed to give judgment on the case so formulated contrary to the case of the parties before him'

- 4.64 We submit therefore that the judgment sought to be set aside is incompetent and was reached per incuriam, because instead of ordering a fresh election as pleaded by the petitioners [now Appellants/ Respondents], and as stipulated by the **Electoral Act (as amended)**, i.e. assuming without conceding that the allegation of the 1st Appellant/Respondent was proved, this court returned the 1st Appellant/Respondent erroneously as the winner of the disputed election.

(5) **THE JUDGMENT SOUGHT TO BE SET ASIDE IS A NULLITY IN THAT THE COURT WAS MISLED TO ENTER THE JUDGMENT**

- 4.65 A candidate in an election to the office of a Governor of a State can be returned as elected only if he has satisfied the requirements of section 179 (2) (a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

- 4.66 The requirements are:

*"a.) he has the highest number of votes cast at the election; and
b.) he has not less than one-quarter of all the votes cast in each of the least two-thirds of all the local government areas in the States..."*

- 4.67 Section 69 of the Electoral Act, 2010, as amended, is relevant. It provides:

"69. In an election to the office of the President or Governor, whether or not contested and in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and subject to the provisions of sections 133, 134 and 179 of the Constitution, the candidate that receives the highest number of votes shall be declared elected by the appropriate Returning Officer."

- 4.68 The above provisions are primarily directed to the Independent National Electoral Commission (INEC) whose duty includes to "Organize, undertake and supervise all elections to the offices of the President and Vice President, the Governor and Deputy Governor of a State..." paragraph 15, Part I of

the Third Schedule to the Constitution. Failure of INEC to comply with these provisions would lead to a nullification of any return made by the Commission.

- 4.69 The said provisions are also applicable to the courts, especially the Supreme Court, having regard to the tenor of section 1 (1) of the Constitution which states:

"1 (1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons through the Federal Republic of Nigeria."

- 4.70 It follows that whenever the courts find themselves obliged to make a determination that a candidate is to be returned as Governor of a State, they must make a finding that the candidate has satisfied the requirements of section 179 (2) (a) and (b) of the Constitution. The finding must reflect the **number** of votes which the candidate scored at the election and which shows that he had the highest number of votes cast at the election, amongst all the candidates.
- 4.71 The finding must also show the number of votes that candidate scored in each local government area in the State vis-à-vis **all** the votes cast in that local government area in order to determine that the candidate had one-quarter of **all** the votes cast in the particular local government area.
- 4.72 In the present case, this Honourable Court in its judgment granted the following reliefs/orders:
1. *It is hereby declared that votes due to the Appellants (i.e Sen. Hope Uzodinma & All Progressives Congress) from 388 polling units were wrongly excluded from the score ascribed to them.*
 2. *It is hereby ordered that the Appellants' votes from the 388 polling units unlawfully excluded from the Appellants' score shall be added to the results declared by the 3rd Respondent.*
 3. *It is hereby declared that the 1st Respondent, Rt. Hon. Emeka Ihedioha was not duly elected by a majority of lawful votes cast at the said election. His return as the Elected Governor of Imo State is hereby declared null and void and accordingly set aside.*
 4. *It is hereby declared that the 1st Appellant, Sen. Hope Uzodinma polled a majority of lawful votes cast at the Governorship Election held in Imo State on 9th March, 2019 and satisfied the mandatory constitutional threshold and spread across the State.*
 5. *It is hereby declared that the 1st Appellant, Sen. Hope Uzodinma is the winner of the Governorship Election of Imo State held on 29th March, 2019.*
 6. *The certificate of Return issued to the 1st Respondent Rt. Hon. Emeka Ihedioha is hereby withdrawn.*

7. *It is hereby ordered that a certificate of return shall be issued to the 1st Appellant, Sen. Hope Uzodinma forthwith and he should be sworn in as the Governor of Imo State immediately.*

- 4.73 A calm reading of the above reliefs/orders leads inevitably to an enquiry: what are those votes due to the Appellants from the 388 polling units which were unlawfully excluded and which, when included, would lead to the appellants' majority of lawful votes?
- 4.74 The answer to the enquiry should be found in the body of the judgment which made the determination. The judgment ought to contain a finding in respect of each of the two requirements of section 179 (2) (a) and (b) of the Constitution, particularly as the two lower courts did not make any such finding. Even the majority judgment in the lower court did not also make such finding.
- 4.75 It is submitted that the judgment of this Honourable Court does not contain such a finding. The scant reference to figures in the judgment is in respect of the appellants' pleadings copied therein. That aspect shall be dealt with in due course.
- 4.76 It is further submitted that a declaration or a return of candidate as Governor of a State, without a disclosure of the number of votes scored by the candidate, is an invalid return. So also a declaration or return without specific mention of the local government areas in the State where the candidate had not less than one-quarter of all the votes cast therein. The court's assertion that the 1st appellant had "**satisfied the mandatory constitutional threshold and spread**" does not address the issue.
- 4.77 It is axiomatic that any such declaration or return made by INEC would be nullified by an election tribunal or court as being unconstitutional and null and void.
- 4.78 For the same reason, with due respect, this Honourable Court's declaration or return, in the circumstance, is a nullity which the court has the inherent jurisdiction to set aside. It is so urged.
- 4.79 Assuming, without conceding, that this Honourable Court's failure to specifically show adherence to the constitutional provisions meant that it adopted the averments in paragraph 24 of the petition which read inter alia:
- 24:.....*Grand total votes after addition of unlawfully excluded votes:*
1st Respondent 260,162
1st Petitioner 310,153
- 4.80 It meant that the court did not take into account all the votes cast at the election in the said 388 polling units. It also meant that the total number of votes of the candidates in the election exceeded the number of accredited voters in the election, as shown in Form EC8D tendered by the appellants (Exhibit KGA 8).

- 4.81 It is trite law that no valid result or return can emanate from an election in which the number of votes cast exceeds the number of voters accredited for the election.
- 4.82 It is significant that, apart from the number of accredited voters in Form EC8D, the Appellants/Respondents did not plead any other number of accredited voters, either in the 388 polling units or elsewhere, in the petition. This Honourable Court and the parties to the appeal are, therefore, bound by the pleadings. There was no evidence on record of any other number of accredited voters in the election.
- 4.83 On the assumption that this Honourable Court relied on the Appellants/Respondents' pleadings for its declaration/return, it is submitted that the Appellants/Respondents did not plead the local government areas in Imo State where they met the constitutional requirements on the geographical spread and the Honourable Court made no reference to any.
- 4.84 In the absence of compliance with the constitutional requirements set out in section 179 (2) (a) and (b) of the Constitution, it is submitted that the Applicants have made out a good case for the exercise of the Court's inherent jurisdiction to set aside the invalid judgment delivered on 14/1/2020.
- 4.85 The 4th relief sought in the Appellants/Respondents' Petition was "**a declaration that the 1st Petitioner polled majority of lawful votes cast at the Governorship election of 9th day of March, 2019, and satisfied the mandatory constitutional threshold and spread across the state and ought to be returned as elected**". The 5th relief was for an order declaring the 1st Petitioner the winner of the said election. Since these reliefs 4 and 5 were declaratory in nature, the law is that the petitioners can only succeed on the strength of their case and not on the weakness of the defence. They cannot succeed even on an admission made by the Respondents. See *Mohammed v. Wammako* (2018) 7 NWLR (P1619) 573, *CPC vs. INEC* (2012) 13 NWLR (Pt 1317) 260, *Emenike v. PDP* (2012) 12 NWLR (Pt. 1315) 556 @ 589-590, *Paras H-B, Dumez Nig. Ltd. vs. Nwakoba* (2008) 18 NWLR (Pt 1119) 361, *Faleke vs. INEC* (2016) 18 NWLR (Pt 1542) 61 @ 149 – 150, *Para H-A, Okereke v. Umahi* (2016) 11 NWLR (Pt 1524) 438 @ 489 Para B- D, *CPC v. INEC* (2012) 1 NWLR (pt 1280) 106 @ 131 (Pt. 1522) para F-G; and *Ogboni v. Okowa* (2016) 11 NWLR (Pt. 1522) 84.
- 4.86 The claim that the 1st Appellant/Respondent met the mandatory geographical spread of one quarter of the votes in two thirds of the 27 Local Government Areas in Imo State was strictly a matter of facts. It was not open or amenable to any legal presumption. In effect, the 1st Appellant/ Respondent had to lead evidence to show the total votes cast in each Local Government Area after the addition of the 213,095 votes he said were omitted. He had to give that evidence in pyramidal detail, from the polling unit results in INEC Form EC8A to the local government results in INEC Form EC8C, for all the 27 local government areas in Imo State. In the absence of such evidence it was impossible to compute the percentage of the votes scored by the 1st Appellant/Respondent in each local government area for the purpose

determining whether he met the mandatory constitutional spread of one quarter (25%) of the votes in two thirds of the Local Government Areas. At the trial, the Appellants /Respondents concentrated all their efforts on proving that the 1st Applicant did not meet the geographical spread, without making any effort to prove how they have met on their own part the required geographical spread stipulated in the Constitution.

- 4.87 Nevertheless in the judgment sought to be set aside, Your Lordships held that the 1st Appellant/Respondent met the required geographical spread but did not state how that conclusion was arrived at. This Honourable Court did not state how the 213,095 additional votes credited to the 1st Appellant/Respondent were distributed in the 27 Local Government Areas of Imo State. In effect, there is nothing on record to justify the conclusion reached in the judgment sought to be set aside that the 1st Appellant/Respondent has met the constitutional spread of one quarter of the votes in two-thirds of the Local Government Areas in the State.
- 4.88 We submit that that declaration is unconstitutional, because in the absence of any proof that the 1st Appellant/Respondent met the mandatory constitutional spread the declaration of the 1st Appellant/ Respondent as the winner of the election was in contravention of the clear provisions of **section 179 (2) of the Constitution of the Federal Republic of Nigeria as amended**. In **UKPO v. IMOKE (2009) 1NWLR (Pt. 1121) 90** it was held as follows:

'The emergence of a winner in an election is predicated upon his having satisfied the provisions of S179(2) CFRN 1999, to the effect that in making the declaration, the returning officer must show that the declared winner had the majority of the lawful votes cast at the election and that he had not less than ¼ (25%) of all votes cast in each of at least 2/3 of the LGAs in the state. All the relevant statistics must be clearly set out after which a sealed Certificate of Return would be issued in accordance with S76(1) of the Electoral Act.

- 4.89 In our instant case, an order was made for the issuance of a certificate of return without the relevant statistics. We submit that the only way this Honourable Court could have shown in its judgment that the 1st Appellant/Respondent was the winner of the election with not less than one-quarter (25%) of the lawful votes cast in at least two thirds (18) of the 27 Local Government Areas in Imo State was for this court to set out in the judgment now sought to be set aside all the relevant statistics in raw figures (scores). But this was not done and to that extent the judgment was unconstitutional and vague. See **UZAMERE vs. URHOGHIDE (2009) LPELR 5082 54-56 para B** and **HDP vs. OBI 2011 LPELR 9095**.

5.0 CONCLUSION

- 5.1 There is no denying that this is a time of crises in our country. At this, of all times, our Supreme Court has been afforded this unique opportunity of allaying the fears of those who cast aspersions on the credibility of our courts. Those

who mean well for the nation will agree that we have here an opportunity for the Supreme Court to mitigate public misgiving of our courts and to rehabilitate her reputation and restore the good name of the judiciary by setting aside this judgment which seems to us to be a nullity. We may be quite wrong. In that case, please, forgive us. Your verdict in this matter should match the solemn oath you have taken. Remember that every decision of this honourable court involves the good name of the judiciary. Prove to the world that this court is sacred. Let your verdict help to retain the good graces of our people.

- 5.2 It is owed to the work of this Supreme Court that the nation continues to survive. It is that work that give us the confidence to present this application. That you are willing to reconsider your decision gives you honour and glory. We come before you firmly convinced that you will act in aid of the cause of justice. In this application we appeal to you, we urge you, we beg you to preserve the glorious reputation of this court. We appeal to you to prove wrong all those who have an evil opinion of our judiciary. Here is a great opportunity for your Lordships to act. Free the judiciary from suspicion. Give no one cause to despise our courts. Prove to the world that you are the equals of the courts of other nations. Remember always that as you sit in judgment over us, so the nation sits in judgment over you. And you should worry, not just over the judgment of this generation, but also the judgment of generations to come when none of us will be alive to defend our actions.
- 5.3 There is no doubting the fact that your Lordships, being human, will from time to time fall into error. Prove to the world that when that happens you will not lack the courage to correct yourselves. That is the unique opportunity that this case offers you.
- 5.4 The nation thinks well of your lordships. Prove to the nation that our good thoughts of you are justified and are well deserved. There is not upon this bench a single judge who has been disloyal to his oath or who has a bad reputation. Stand up for the judiciary and for yourselves. Stand up for truth. Stand up for justice. Stand up for strict and honest interpretation of the laws. Take that stand for which the nation can praise you and commend you.
- 5.5 The position that you hold demands that you do so. It is the great precedents that your Lordships have established that we appeal to you to follow. The nation expects you to deliver an honest verdict, a correct verdict. Prove to the nation that here in this Supreme Court a man or woman who has lost his rights will be given the opportunity to bewail it. What is at stake in this case is not only the right that the Applicants have lost but the good name of the judiciary as well. What we call upon you to do is nothing new. It is something that you have done times without number in the past. Those occasions that you reversed yourselves in the past were not more urgent than it is now. Never in the history of this court have your Lordships delivered a judgment which evoked the protest of the public. This one has. Therefore, we urge you, we appeal to you to take a second look at it.

- 5.6 Those who in their wisdom established this court made it supreme thus expressing their determination that litigation should come to an end. And so this court is supreme, as you have yourselves said, not because you are infallible but because your decisions are final. Whatever you say the law is that is what it shall be. And that is why your Lordships are ever so careful to ensure that your decisions stand the test of time and are not open to any justifiable condemnation or suspicion.
- 5.7 The just decisions of this Supreme Court immortalize your Lordships who deliver them. It is important therefore that you commit nothing to writing that generations to come, long after we are all dead and gone, will examine and criticize and condemn as unjust and unjustifiable. That has been the lot of the Athenian jury which condemned Socrates. That has been the lot of Pontius Pilate who, having found no guilt in our Lord and Saviour Jesus Christ, nevertheless ordered that he be crucified. It is precisely to save judges from that kind of predicament that the law allows them in appropriate cases to correct their own mistakes or set aside altogether decisions that are a nullity. It is that opportunity that we urge your lordships to take in this case and re-examine the judgment which we urge you to set aside on the ground that if you re-examine it dispassionately you will find reason to set it aside and thereby demonstrate to the world that you have courage to correct yourselves when you find that you have erred.
- 5.8 In this case a man who himself branded the election in which he participated as invalid has been adjudged by your Lordships as the winner of the same election. That is in the face of past and innumerable decisions by your Lordships that if such a ground succeeded it should lead to the nullification of the election. In this case, the man you declared as winner of the election specifically prayed that your Lordships should nullify the result of elections in the entire State and that your Lordships order that a fresh election be conducted.
- 5.9 Your Lordships also declared as winner a man who prayed your Lordships to order a re-run election in all the 388 polling units where elections and results were cancelled or not declared.
- 5.10 Your Lordships ordered victory for a man who admitted under cross examination that in polling unit after polling unit, he awarded to himself more votes than the total number of registered voters in those polling units.
- 5.11 Your Lordships accepted votes from 388 polling units presented by the 1st Respondent which had the consequence of swelling-up the total number of votes scored in the election way beyond the total number of accredited voters. The excess votes between the total votes scored and the total accredited voters are 131,340 votes – a clearly impossible situation and brazen illegality under our electoral law. (Underlining supplied)
- 5.12 Your Lordships declared the 1st Respondent as winner of the election when your Lordships did not satisfy yourselves that the 1st Respondent scored enough votes across the various local government areas of Imo State to satisfy the geographical spread as decreed by the Constitution.

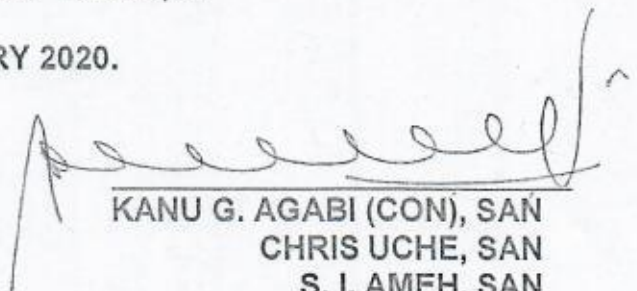
5.13 Based on the foregoing, we submit that the judgment delivered by this Honourable Court on 14th January 2020 in Appeal No. SC.1462/2019 and Cross Appeal No. SC.1470/2019 is a nullity because:

- (a) The judgment was given without jurisdiction as the judgment of the Court of Appeal striking out the petition as incompetent was never set aside and in the light of the petition having been struck out, no valid appeal could have arisen from an incompetent petition to be considered on the merits by this Honourable Court.
- (b) The judgment was delivered without jurisdiction in that the court declared the 1st Respondent as the winner of the election contrary to the Electoral Act (as amended)
- (c) The judgment is unconstitutional in that it declared the 1st Respondent the winner of the election without proof that the votes accredited to him met the geographical spread stipulated in **section 179 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**
- (d) The judgment was obtained by fraud in that the votes upon which the 1st Respondent was declared as the winner of the election were in excess of the number of voters accredited for the election.
- (e) The judgment was given *per incuriam* as your lordships by this judgment unwittingly sanctioned that total votes cast at an election can be in excess of the total number of accredited voters, as in this case, the total votes exceeded the total accredited voters by 131,340 votes.
- (f) Furthermore, the judgment was given *per incuriam* in view of the 1st Respondent's contention that the election was invalid by reason of non-compliance with the provisions of the Electoral Act 2010 (as amended) whereupon he prayed that a supplementary election should be held in the 388 disputed polling units where he claimed his votes were cancelled.

5.14 We respectfully urge your Lordships therefore to set aside the judgment in Appeal No. SC.1462/2019 and Cross Appeal No. SC.1470/2019 as prayed in our motion paper because as this Honourable Court rightly noted in **ADEGOKE MOTORS v. ADESANYA** (*supra*) "it is far better to admit an error than to preserve an error". May it so please your Lordships!

DATED THIS 17TH DAY OF FEBRUARY 2020.




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