

**RECORD OF PROCEEDINGS OF 6<sup>TH</sup> NOVEMBER, 2023**

**1. CA/KN/GOV/34/2023**

**ABBA K. YUSUF V APC & ORS.**

**APPEARANCES:**

Chief Wole Olanipekun SAN for the Appellant, Chief Gideon Kuttu SAN & ors  
Chief Akin Olujimi SAN, Nureni Jimoh SAN & ors for the 1<sup>st</sup> Respondent  
A B Mahmoud SAN, A. M Aliyu SAN & ors for the 2<sup>nd</sup> Respondent  
Asiwaju Adegboyega Awomolo SAN, A. J. Owonikoko SAN, Kehinde  
Ogunwunmiju SAN, Abdulhamid Mohammed SAN, Eytayo Fatogun SAN, B J  
Akomolafe SAN & ors for the 3<sup>rd</sup> Respondent

**Chief Olanipekun SAN:** We as senior counsel put our heads together to assist in hastening the hearing of the appeal, we would be dropping the preliminary objections and go to the main appeal

**Chief Olujimi SAN:** I confirm what counsel to the Appellant said. We seek to withdraw our notice of preliminary objection filed on 31/10/2023 and reply filed on 1/11/2023.

**Chief Olanipekun SAN:** We filed reply to the PO of the 1<sup>st</sup> respondent on 3<sup>rd</sup> November 2023, we seek to withdraw it.

**Mahmoud SAN:** No objection

**Chief Awomolo SAN:** No Objection

**Court:** The 3 processes identified, having been withdrawn, are hereby struck out.

**Chief Olanipekun SAN:** Appellant's notice of appeal was filed on 2.10.23, the brief of argument was filed on 16.10.23. Reply brief filed 25.10.23. list of additional authorities filed 6.11.23. May we adopt the processes in urging your lordships to allow the appellant's appeal and set aside the Judgment of the lower tribunal.

Issues in this appeal has been narrowed:

1. On issue 6: The lower tribunal has created a new jurisprudence which departed from all precedents set by this court and the Supreme Court. This is the first time that a lower tribunal will nullify an election for non-

signing and stamping the back of ballot paper. The tribunal relied on section 71 of the Electoral Act 2022 which referred to stamping of result sheet. In doing that, the lower tribunal erred referring to s71 of the Electoral Act about three times and citing decisions arising from s71. Section 71 relates to signing of result sheets, two different things, no parallel nor meeting point. Counsel to 1<sup>st</sup> Respondent agreed that the Tribunal made an error and that the Tribunal was referring to Regulations. Assuming the Tribunal wanted to say Regulations, the provisions of the Regulations cannot supercede the provisions of the Electoral Act. **Atiku v Tinubu, Obi v Tinubi, Peter Gregory Obi v INEC.**

At Page 4551, vol 6 of the record, where the witness under cross examination confirmed that the ballot paper was `signed and stamped.

On issue 2: Where a political party instituted an action, and the candidate was not joined, can a political party be sworn in under the oath of office? Can a political party deliver a speech to the National Assembly/The law says 'he/she', it relates to a natural human being and not an artificial person. The tribunal coronated and gave to the candidate of the 1<sup>st</sup> Respondent what he did not ask for.

In the 1<sup>st</sup> Respondent's brief of argument, there is an error there. Page 19, paragraph 9.15 (the last 3 lines), we never said the Tribunal lied. We didn't say that.

We urge your Lordships not to allow the Judgment of the lower tribunal to stand.

**Chief Olujimi SAN:** we want to correct the word 'lie' to erred in para 9.15 of the 1<sup>st</sup> Respondent's brief.

The 1<sup>st</sup> Respondent's brief was filed on 20.10.23. we filed additional list of authorities on 30.10.2023, 3.11.23, and 6.11.23. We humbly adopt the brief in urging your Lordships to dismiss this appeal. By way of Adumbration:

On the issue of valid ballot, I refer my Lords to pages 14-19 of our brief of argument where we thoroughly dealt with the issue. Contrary to the contention that the Tribunal created a new jurisprudence, the decisions of this Court right from 2009 has emphatically laid down that the Regulations of INEC made pursuant to provision in the Principal Act. The Regulations are manuals which sets out what presiding officers are to do at the point of casting of votes. It is provided that the back of the ballot paper must be signed and dated. Where there is a failure of the

presiding officer to comply with the law, it is a clear case of non-compliance. We have referred to the authorities in the brief and in the additional list of authorities. We also refer to **Raju Harisu & Anor v Badamosi Ayuba**, No. 1 on the list filed 6/11/2023.

It is settled law that if a decision is right and the reasons given, that cannot vitiate that decision, instead of section 63, they referred to section 71, that cannot vitiate the decision. That wrong reference to section 71 has nothing to do with the validity of the Judgment.

We have decisions of your Lordships that votes are cast for the party in an election, and that party embraces all its members. So, any decision taken by the party enures to all members of that party. In regard to that 1<sup>st</sup> issue of ballot papers, even INEC admitted that those ballots were invalid. The 2<sup>nd</sup> Respondent (INEC) admitted at page 4766-4770, Volume 4 of the record where INEC admitted that they were invalid. The Tribunal made specific response to their admission in reaching their final decision. I most humbly urge your Lordship to dismiss this appeal.

**Mahmoud SAN:** No did not file a brief in this appeal

**Chief Awomolo SAN:** We did not file a brief in this appeal. We have our own appeal.

**Court:** Judgment is reserved

## 2. CROSS APPEAL

**CA/KN/GOV/34c/2023**

**APC V INEC & ORS**

**APPERANCES:** Chief Akin Olujimi SAN, Dr. Onyechi Ikpeazu SAN, Chief OEB Offiong SAN, Nureni S. Jimoh SAN, Abdul Mohammed Rafindadi SAN & ors for the cross appellant.

A. B. Mahmoud SAN, AM Aliyu SAN & ors for the 1<sup>st</sup> Cross respondent  
W.Olanipekun SAN for the 2<sup>nd</sup> cross respondent. With Chief Gideon Kuttu SAN and others for the 2<sup>nd</sup> cross respondent

Asiwaju Adegboyega Awomolo SAN, AJ Owonikoko SAN., Kehinde Ogunwumiju SAN, Abdulhamid Mohammed SAN, Eytayo Fatogun SAN, BJ Akomolafe and ors for the 3<sup>rd</sup> cross respondent.

**Chief Olujimi SAN:** The Cross appellant filed notice of cross appeal on 9.10.23.

The cross appellant brief of argument was filed 22.10.23. we filed reply briefs on 31.10.23, we most humbly adopt these processes in urging your lordships to allow the cross appeal. The crux of the cross appeal is: the 2<sup>nd</sup> respondent was not a member of the 3<sup>rd</sup> respondent at the time of sponsorship. Under 177c of the CFRN 1999, you must be a member of the political party that sponsored you.

**Mahmoud SAN:** The 1<sup>st</sup> Cross respondent filed its brief on 29.10.23. We adopt the said brief or argument. We urge the Court to dismiss the cross appeal for lacking in merit.

**Chief Olanipekun SAN:** the 2<sup>nd</sup> cross respondent filed a brief of argument on 27.10.23. At pages 2-9 of the brief we argued the PO. We withdraw all the argument. We adopt the brief and urge the court to dismiss the cross appeal. In view of your Lordships Judgment in *Obi v INEC*, the court held that it is a party matter, a party affair. We have cited the case to your Lordship.

**Chief Awomolo SAN:** The 3<sup>rd</sup> Respondent filed brief to the cross appeal on 28.10.23. I adopt the brief of argument and urge the court to dismiss the cross appeal as being academic and striving at straws.

The pleadings of the petitioner is that the candidate was not qualified at the time of the election. They brought evidence of registered members at the time of party primaries. May I rely on a decision. The decision is *PDP V INEC (2023) 13 NWLR (PT. 1900) 89 @ 131*.

**Chief Olujimi SAN:** Based on the withdrawal of the P.O, we humbly apply to withdraw our response to the notices of P.O contained in pages 1-2 of the cross appellant's reply brief to the 1<sup>st</sup> & 2<sup>nd</sup> cross respondent's brief.

**Court:** all the arguments in the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' brief of argument on the Po and the reply having been withdrawn are hereby struck out. Judgment is reserved.

### **3. CA/KN/EP/GOV/34a/2023** **NNPP V APC & ORS**

#### **Appearances:**

Asiwaju Adegboyega Awomolo SAN, A J Owonikoko SAN, Kehinde Ogunwunmiju SAN, Abdulhamid Mohammed SAN, Eyitayo Fatogun SAN, B J Akomolafe SAN & ors for the Appellant

Dr. Onyechi Ikpeazu, SAN, Abdul Mohammed Rafindadi SAN & ors for the 1<sup>st</sup> Respondent

AB Mahmoud SAN, AM Aliyu SAN & ors for the 2<sup>nd</sup> respondent

Chief Olanipekun SAN for the 3<sup>rd</sup> respondent, with Chief Gideon Kutu SAN and others

**Chief Awomolo SAN:** Appellant's Notice of appeal was filed on 2.10.23. It can be found at pages 4828-4862 vol.6. Record of appeal was transmitted on 11.10.23. Appellant brief was filed on 14.10.23. Appellant reply brief to 1<sup>st</sup> respondent's brief was filed on 25.10.23. Additional list of authorities filed 6.11.23.

We adopt the briefs and processes filed and urge your Lordships to allow this appeal, set aside the decision of the Tribunal, dismiss the petition, and affirm the 3<sup>rd</sup> Respondent as the winner of the election.

On issue 5, I refer to paragraph 8.00-8.06, pages 20-26 of the brief of argument.

The 1<sup>st</sup> Respondent in its petitioner list 32 LGA where these ballot papers were alleged to have been used. Three LGAs out of the 32 were repeated with the same figures.

The petitioner isolated only ballot papers cast for the Appellant's candidate. In all the 32 LGAs where the election took place, there were only ballot papers used to cast votes. There is no evidence that different ballot papers were printed for each and all the candidates at the election:

1. The issue of whether the ballot paper is lawful or not was made contentious. I refer my Lord to pages 4551-4553 of Volume 6. PW31 identified 5 ballot papers randomly picked from the 8 bags dumped on the Tribunal by the petitioners.
2. PW31 also admitted that the ballot papers were stamped, dated and signed. The Tribunal construed Section 137 of the Electoral Act 2022 as a game changer that enables it to investigate and do the recounting of the ballot papers. Where they discovered 165,606 magical figures different from what was pleaded and led in evidence is unknown. The 1<sup>st</sup> Respondent in the petition at paragraph 94 of the petition pleaded that it will apply for recounting of the votes in the open court. It is at page 97 vol1. of the records. There was no such application before the Tribunal. The court did a recounting by itself in chambers when there was no application by the petitioners. We rely on **Palm v Jiba, Andrew v INEC** where the Supreme Court said recount can only be done upon

application of the petitioner in the open court, in the presence of Inec who did the original counting and parties. Section 137 of the Electoral Act 2022 is not a game changer, it is only an assistant to the party who relies on it. I urge your Lordship to allow this appeal and dismiss the judgment of the Lower Tribunal.

**Dr Ikpeazu SAN:** 1<sup>st</sup> Respondent's brief was filed on 20.10.2023. We humbly adopt and rely on the brief, in urging my Lords to dismiss the appeal.

It is admitted by the Appellant that there were infractions in the ballot paper and the Tribunal pronounced on the infractions. We are fine with that admission.

The innovation of Section 137 of the Electoral Act and paragraph 46 sub 4 of the 1<sup>st</sup> schedule to the Electoral Act must be appreciated. The latter provision is clear that once a document is tendered, counsel are free to address on them and went further to say that the Tribunal shall scrutinize. That word scrutinize mean that the tribunal can examine the document and pronounce on its probative value. All the tribunal did was to follow the law that empowered it by scrutinizing the document and make a finding. By virtue of Section 134(2) of the Electoral Act, say an act or omission which is not contrary to provisions of the Act, shall not on itself be a ground. In this situation respect to ballot papers, the Electoral Act left it at the discretion of Inec with respect to how the forms for the election should be presented. It is a matter of Regulation which is not contrary to any provisions of the Electoral Act. In respect of the evidence of PW32 where he admitted that 5 ballot papers were perfect, the Tribunal is mandated by law to scrutinize the documents and not to be bound by the evidence of a witness. There were over 200 hundred ballot papers that were in contention which the tribunal must examine, that examination cannot be supported by a statement made by a witness with respect to five ballot papers. What the tribunal did was not to recount and in that case, the case of Palm v Jiba & Co. do not apply. We urge the Court to dismiss the appeal.

Mahmoud SAN: We did not file any brief

Chief Olanipekun SAN: We did not file any brief.

Chief Awomolo SAN: We have answered all the points my learned friend is making. All the arguments of the 1<sup>st</sup> respondent here were presented in Adeleke v Oyetola from the Court of Appeal up to the Supreme Court. The law has been established by this Court and the Supreme Court. We urge your Lordships to be guided by the decision of this Court in Adeleke v Oyetola and affirmed by the Supreme Court.

**Court:** Judgment reserved.

**4. CA/KN/EP/GOV/34B/2023  
INEC V APC & 2 ORS**

AB Mahmoud SAN, AM Aliyu SAN & ors for the Appellant  
Chief OEB Offiong SAN, M N Duru, Lydia Oluwakemi Oyewo (Mrs), Adekunle Taye Falola, Igwebeze Tineto, Adamu Abubakar, John Essiet for the 1<sup>st</sup> Respondent.

Chief Gideon Kuttu SAN, I.G Waru and Ope Muritala for the 2<sup>nd</sup> Respondent.  
Asiwaju Adegboyega Awomolo SAN, A J Owonikoko SAN, Kehinde Ogunwunmiju SAN, Abdulhamid Mohammed SAN, B J Akomolafe SAN & ors for the 3<sup>rd</sup> Respondent

**AB Mahmoud SAN:** The notice of appeal was filed on 3.10.2023. The appellant brief was filed on 18.10.2023. Reply brief was filed 26/10/2023. I seek your lordships' permission to adopt the processes. I urge your Lordship to allow this appeal. By way of adumbration:

I agree with the submission of the learned counsel, Chief Olanipekun, SAN that the election jurisprudence was rewritten in the Judgment of the tribunal, and even turned upside down.

What the court did in terms of recounting and investigating the ballots was completely ultra vires the power of the Tribunal. Section 137 of the electoral act does not permit the Tribunal in recess of its chambers to embark on the scrutiny, recount that was not demonstrated on open court. This is the state of the Jurisprudence, and Dr Ikpeazu SAN in Oyetola v INEC where this issue was well argued, his position was completely to the contrary.

On issue no 4, relates to the treatment of PW32 along with its testimony and exhibits tendered. His evidence was improperly before the court. This point has been well established in this court in the case of ATIKU v INEC as well as Peter Gregory Obi v INEC & Ors. The court has interpreted these provisions of the 1<sup>st</sup> schedule to the Electoral Act which requires all the testimonies of witnesses to be frontloaded. This is the root of fair hearing in election jurisprudence.

Where a party participates in a proceeding, cross examines witnesses and makes submissions through his counsel, the fact that he did not call

evidence does not mean that he has abandoned his case. We urge your Lordship to allow the appeal as it is pre-eminently meritorious and is in line with well-established precedent.

**OFFIONG SAN:** 1<sup>ST</sup> Respondent brief was filed on 23.10.2023. We respectfully adopt the said brief as our argument, urging your Lordships to dismiss the appeal.

We refer to *O. Arabambi v Advance Beverages Industries Ltd* (2005) 19 NWLR (Pt. 959) Page 1 at page 29. Per mukhtar JSC. Once the document has been placed as evidence before the trial court, it is the duty of the trial court to evaluate evidence and can examine that document in chambers, and even in his residence.

**G. KUTTU SAN:** The 2<sup>nd</sup> respondent did not file any process

**ASA SAN:** We did not file any response.

Mahmoud SAN: The case of Arabambi (supra) cited by the 1<sup>st</sup> Respondent counsel is a commercial transaction case where evidence was led and has nothing to do with election petition. The presidential election appeal in *Obi vs Inec* has state the law as to the admissibility of evidence of a subpoenaed witness. The Court is urge to abide by decision. We urge the Court to allow the appeal, set aside the judgment of the lower tribunal and affirm the return made by the Appellant.

**COURT:** Judgment in this appeal is reserved to a date to be communicated to all the parties