



IN THE COURT OF APPEAL  
HOLDEN AT LAGOS

APPEAL NO:.....

PETITION NO: EPT/LAG/GOV/01/2023

**BETWEEN:**

- 1] DR. AZEEZ OLAJIDE ADEDIRAN  
2] PEOPLES DEMOCRATIC PARTY (PDP) } APPELLANTS

**AND**

- 1] INDEPENDENT NATIONAL ELECTORAL COMMISSION  
2] MR. SANWO-OLU BABAJIDE OLUSOLA  
3] DR. HAMZAT KADRI OBAFEMI  
4] ALL PROGRESSIVES CONGRESS (APC)  
5] ARCH. RHODES-VIVOUR GBADEBO PATRICK  
6] LABOUR PARTY (LP) } RESPONDENTS



**NOTICE OF APPEAL**

**TAKE NOTICE** that the Appellants being dissatisfied with the decision of the Governorship Election Petition Tribunal, holden in Lagos State contained in the Judgment of **Hon. Justice Arum I. Ashom, Hon. Justice Mukailu Abdullahi and Hon. Justice Igho .P. Braimoh** dated 25<sup>th</sup> of September, 2023 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the appeal seek the reliefs set out in paragraph 4.

**AND THE APPELLANTS** further state that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. **PART OF THE DECISION OF THE LOWER COURT COMPLAINED OF:**

THE WHOLE DECISION

3. **GROUND OF APPEAL**



## GROUND ONE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"In the instant Petition, it has not been alleged that the 5<sup>th</sup> Respondent was the winner of the 18/3/2022 Governorship election in Lagos State or that he is an officer of the 1<sup>st</sup> Respondent at the said election as to bring him within the prescription of section 133 (2) and (3) of the Electoral Act. In fact there are copious facts in the petition showcasing that the 5<sup>th</sup> Respondent came second at the disputed election with a total of 312,329 votes.*

*For the foregoing observations, we are one with the Applicant's Counsel that the 5<sup>th</sup> Respondent ought not to have been made a Respondent in this petition. It is our humble view that the provision of paragraph 40 of the 1<sup>st</sup> schedule to the Electoral Act 2022 is directed at Candidates Respondent who must have won the election and not losers at the election".*

### PARTICULARS OF ERROR

1. The above holding of the Tribunal does not reflect the meaning and spirit of the new Electoral Act, 2022 which provides in Section 49 thereof as follows:

*"Two or more candidates may be made Respondents to the same petition and their case may, for the sake of convenience be heard at the same time but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition against each of the Respondents"*

2. By the nature of the disqualifying grounds in the Petition, the benefits of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents disqualification enures to the 5<sup>th</sup> Respondent. Contrary to the holding of the Tribunal, since the Appellants also alleged that the sponsorship of the 5<sup>th</sup> Respondent, was also invalid, the Tribunal must also invalidate the 5<sup>th</sup> Respondent's candidacy before the Appellants could take benefits of the unpardonable infractions, hence the 5<sup>th</sup> and 6<sup>th</sup> Respondents'

inclusion as parties in the Petition. This is the clear provision of **Section 136(2) of the Electoral Act, 2022** which the Tribunal failed to apply.

3. The provision of **Section 136(2) of the Electoral Act, 2022** was the underlying rationale for the orders sought against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the one hand, and the 5<sup>th</sup> and 6<sup>th</sup> Respondents on the other hand which the Tribunal misconstrued.
4. The decision of the Tribunal holding that the 5<sup>th</sup> Respondent was not a necessary party in the Petition, did not reckon with the factors to be considered before making anyone a necessary party in an action, nay election petition. The law is that everyone against whom an allegation is made, must be made a party in an action. The Tribunal failed to consider the case of **Egolum v. Obasanjo (1999) 7 NWLR (Pt. 611) 355 at page 397 paragraphs B-D** cited to it.
5. In the instant Petition, several allegations of electoral infractions were made against the 5<sup>th</sup> Respondent and orders of Court sought against him.
6. It was surprising that the Tribunal held he was not a necessary party in the Petition.

## GROUND TWO

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*“Counsel added that it is the trite law that everyone against whom an allegation is made, must be made a party to the action. The above submission as brilliant as it may sound, is of no assistance to the case of the petitioners/Respondents. The issue of right to fair hearing of the 5<sup>th</sup> Respondent will not arise unless there has been compliance with section 133(2) of the Electoral Act. The 5<sup>th</sup> Respondent must be shown to be a necessary party to be joined as a party to the petition before the issue of his fair hearing can arise”.*

## PARTICULARS OF ERROR

1. Contrary to the holding of the Tribunal, and in line with the novel provision of Section 136(2) of the Electoral Act, 2022, it was impossible for the Tribunal to have exercised any jurisdiction in entertaining the Appellants Petition without the presence of the 5<sup>th</sup> Respondent.
2. The 5<sup>th</sup> Respondent who came second could not have been disqualified, in the event that the Appellants reliefs of disqualification were sustained against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, if he was not made a party.

## GROUND THREE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*“Accordingly, the name of the 5<sup>th</sup> Respondent is hereby struck out from the petition. Consequently, paragraphs 9, 14, 16, 23(b), 56, 64, 65, 66, 68, 69, 70, 73, 74, 75, 76, 79(c), 79(d) and 79(e) of the Petition, as well the Petitioners’ Reply to the 5<sup>th</sup> Respondent’s Reply to the petition which contain the supposed ‘terrible allegations’ against Arch Rhodes-Vivour Gbadebo Parick are also struck out. The evidence adduced by the petitioners in proof of the allegations in the affected paragraphs of the petition goes to no issue as there is no pleadings to hang on. Also the evidence of RW4 called by the 5<sup>th</sup> Respondent in support of his defence to the petition and Exhibits R51 to R238 tendered by the 5<sup>th</sup> Respondent through PW1 are hereby expunged from the record of this tribunal”.*

## PARTICULARS OF ERROR

1. Paragraphs 9, 14, 16, 23(b), 56, 64, 65, 66, 68, 69, 70, 73, 74, 75, 76, 79(c), 79(d) and 79(e) of the Petition which contain terrible allegations of electoral infractions against the 5<sup>th</sup> Respondent were valid and wrongly struck out by the Tribunal.

2. It was in the interest of the 5<sup>th</sup> Respondent to remain a party to the Election Petition and be bound by the eventual order of this Court.

#### GROUND FOUR

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*“From the foregoing, we are inclined to agree with the submissions of Learned Senior Counsel for the Applicants that the Petitioners’ Reply are in some parts repetitive or rehash of the content of the petition while many parts of it contain new facts that were not contained in the petition, while other parts are mere denials of the averments in the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents’ Reply to the petition. In fact, all the highlighted paragraphs are at riot with the provision of paragraph 16(1) of the 1<sup>st</sup> Schedule to the Electoral Act 2022, therefore liable to be struck out. See **OGBORU & ANOR V. OKOWA & ORS (2016) LPELR 48350 (SC) at 10-15 para A.***

*In light of the foregoing, we resolve the sole issue in favour of the Applicants/Respondents. The impugned paragraphs are hereby struck out. They are paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the Petitioners’ Reply to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents’ Reply to the petition. Consequently the 1<sup>st</sup> Petitioners’ 3<sup>rd</sup> additional witness statement on Oath of 12 May 2023 adopted on the 19/6/2023 which is predicated on the flawed petitioners’ Reply go to new issue. Having no pleading to foist on, the 1<sup>st</sup> petitioners’ 3<sup>rd</sup> additional sworn statement is unavailing and is accordingly struck out”.*

#### PARTICULARS OF ERROR

1. The paragraphs of the Petitioners Reply struck out were in furtherance of the provision of paragraph 16(1) of the First Schedule to the Electoral Act, 2022 and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who raised issues not raised in the Petition should expect that the Appellants would respond to them to set the record straight as done in their Reply. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents could not deny

they did not raise new issues in their Reply and the Tribunal's decision striking out paragraphs of the Appellants' Reply without reckoning with the new issues raised by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, has occasioned a miscarriage of justice. Few examples of the new issues raised would defeat the Tribunal's decision.

2. In paragraph 9 (i), (ii), (iii), (iv) and (v) of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents Reply, they raised issues of previous offices occupied by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as a defence that they were qualified to contest and the Appellants needed to dispel that assertion, hence the response that their previous offices were procured by means of invalid sponsorship. This was not dealt with in the Petition.
3. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents also averred in their Reply that they are Nigerians by birth but the Appellants deserved to respond that the 3<sup>rd</sup> Respondent has acquired the citizenship of United States of America as shown in his Form EC9. This was also not dealt with in the Petition.
4. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents also raised the issues of the 2<sup>nd</sup> Respondent tertiary qualifications which were not raised in the Petition and the Appellants deserved to respond to it as they did that the 2<sup>nd</sup> Respondent's first degree and post graduate degrees were built on false O'Level WAEC Certificate as demonstrated through Exhibits P2-P4 (the printout from WAEC website showing that the 2<sup>nd</sup> Respondent's certificate was not there) and P36, the purported WAEC result submitted to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent. Although, the 2<sup>nd</sup> Respondent denied submitting Exhibit P36, the 1st Respondent's star witness, RW1 however testified at the trial that it was submitted by the 2<sup>nd</sup> Respondent.

## GROUND FIVE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*“On the petitioners/Respondents’ contention that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents/applicants lack the locus standi to complain or protest the joinder of the 5<sup>th</sup> and 6<sup>th</sup> Respondents in this petition, our solemn response is that, Order 10 Rule 14 of the Federal High Court (civil procedure) Rules 2019 applicable to this tribunal by virtue of paragraph 54 of the 1<sup>st</sup> schedule to the Electoral Act, the judge, (in this case the tribunal) may at any state of the proceedings either upon or without the application of either party and on such terms as may appear to the judge (tribunal) to be just, order that the name of any party improperly joined be struck out. Therefore, the petitioners/Respondents cannot be heard to say that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are crying more than the bereaved or that they have no locus standi to present the instant Application”.*

### PARTICULARS OF ERROR

1. The 5<sup>th</sup> and 6<sup>th</sup> Respondents were represented by Counsel in the proceeding and did not brief the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to conduct the case for them. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were meddlesome interlopers in their application.
2. Principal reliefs were sought against the 5<sup>th</sup> and 6<sup>th</sup> Respondents.
3. The Tribunal erroneously applied the provision of Order 10 Rule 14 of the Federal High Court (civil procedure) Rules 2019 to strike out the names of the 5<sup>th</sup> and 6<sup>th</sup> Respondents. This was clearly unjustifiable in view of the principal reliefs sought against them.
4. The provision of Order 10 Rule 14 of the Federal High Court (civil procedure) Rules 2019 bothers on joinder of causes of action and has nothing to do with joinder or misjoinder of parties in an action.

## GROUND SIX

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"Thus, after a second calm look at the petition, we could not but agree with submission of Learned Senior Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that all the facts averred in paragraphs 24-55 in support of the ground of the petition relate to events that took place before the conduct of the questioned election which are within the purview of sections 29 (1) (5), 82 (1) and 84(14) of the Electoral Act, 2022 relating to procedure of political party's primaries and nomination and/or sponsorship of candidates for election.*

*After testing the averments in paragraphs 28, 32, 33, 34, 36, 37, 52 and 53 of the Petition against the established principles handed down by our superior Courts, we need no soothsayer to tell us that the facts as related in the identified paragraphs of the petition fall within the definition of pre-election matters relating to domestic nomination exercise of the 4<sup>th</sup> Respondent".*

### PARTICULARS OF ERROR

1. The jurisdiction of the Tribunal to entertain the Appellants' Petition based on disqualification is donated by Section 134(1) (a) of the Electoral Act, 2022 which provides that an election can be questioned on the ground that the person whose election is challenged, was at the time of the election not qualified to contest.
2. Contrary to the misleading conclusion of the Tribunal, the issue of disqualification of winner of an election, is both a pre and post-election dispute, and it was highly erroneous of the Tribunal to treat it as merely a pre-election issue.
3. It was disheartening that the Tribunal was unable to see that the issues of membership of political parties and sponsorship by such political parties, are constitutional matters that impacted on the Appellants complaints before them.



4. The sponsorship and participation of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the 18<sup>th</sup> March, 2023 Governorship Election in Lagos State violated **Section 177(c)** of the above Constitution which specifically provides that a candidate must be a member of a political party and sponsored by that political party. The candidate must not also violate Section 182 of the Constitution of the Federal Republic of Nigeria, 1999 as amended by submission of false certificate to the 1<sup>st</sup> Respondent as was done in this case.
5. The Tribunal failed to realize that election is a process, and not just one event.
6. Contrary to the conclusion of the Tribunal, membership and sponsorship of a candidate are also as important as the actual voting in an election, and any default on either side, has catastrophic consequence.
7. In the sponsorship of candidates, the Respondents are bound by the provisions of the Electoral Act, 2022 and this Honourable Tribunal cannot countenance the purported electoral victory of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents which violates the provisions of **Section 84(5)(b)(i) of the Electoral Act, 2022** which provides that primary election of every political party must be conducted on a specified date by the National Executive Committee (NEC) of the party.
8. The incontrovertible evidence at the Tribunal, as testified by PW1, in paragraphs 35 and 36 of his Written Deposition is that the sponsorship of the 2<sup>nd</sup> Respondent was invalid as the primary election through which he emerged was organized by the Lagos State Chapter of the 4<sup>th</sup> Respondent which specified the date of the Congress as holding on 26<sup>th</sup> May, 2022 at the specified venue. The evidence was corroborated by PW2 and PW3 in paragraphs 35 and 36 of their respective witness statements on oath.
9. The damning evidence was concretized by the notice of the said election produced by the subpoenaed witness from the 1<sup>st</sup> Respondent and admitted as Exhibit 129 through PW3. This exhibit showed the notice for the primary election was issued by Hon. C.O. Ojelabi, the Lagos State Chairman of the 4<sup>th</sup> Respondent nominating the date and venue of the congress contrary to the clear provision of **Section 84(5)(b) of the Electoral Act, 2022**.

10. The Lagos State Chairman of the 4<sup>th</sup> Respondent lacks the power to give the notification in Exhibit P129 and the sponsorship of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents through the defective process initiated by Exhibit P129, is null and void.
11. At the trial, RW2, Adamu Shetima, the star witness for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, identified Exhibit P129 as the notice of the 4<sup>th</sup> Respondent's Congress that produced the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. He also identified Hon. C.O. Ojelabi as the State Chairman of the 4<sup>th</sup> Respondent in Lagos State.
12. Equally gruesome, is the nature of notice given in the above Exhibit P129 which also violates **Section 82(1) of the Electoral Act, 2022**.
13. In clear violation of the above provision, Exhibit P129 is dated 24<sup>th</sup> May, 2022 while the date of the Party Congress that produced the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, was 26<sup>th</sup> May, 2023; a period of 48 hours. The congress of the 4<sup>th</sup> Respondent held on 26<sup>th</sup> May, 2022 which produced the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents was null and void.
14. **Section 84 (13) of the Electoral Act, 2022** which provides that where a political party fails to comply with its provisions its candidates shall not be fielded in the election, vindicates the ground of the petition that at the time of the disputed election, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, having violated the above provisions of the Electoral Act, 2022 and the Constitution, should not have been allowed to contest the election.
15. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are also bound by the **Section 182(1)(j) of the 1999 Constitution** which prohibits presentation of forged certificate to the 1<sup>st</sup> Respondent.
16. In paragraphs 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 of his Statement on Oath, PW1 clearly testified that the 2<sup>nd</sup> Respondent in Exhibits 28-39 and Exhibit P10 lied on Oath that he attended Secondary School and earned 'O' Level WAEC qualification in 1981. PW2 and PW3 in similar paragraphs of their Statements on Oath, also corroborated the above evidence.

17. In furtherance to the above, the Appellants tendered Exhibits P3 - P4 which clearly showed "RESULT NOT AVAILABLE FOR THIS CANDIDATE IN THE SPECIFIED YEAR AND EXAM DIET". Neither the 2<sup>nd</sup>/3<sup>rd</sup> Respondents nor the 4<sup>th</sup> Respondent cross-examined PW1 on Exhibits P3-P4 and are deemed to have conceded that point. This cannot be otherwise because, though the 4<sup>th</sup> Respondent pleaded a contrary result in paragraph 18 of its Reply which it pleaded it downloaded from WAEC portal, it however did not tender it. **Section 167(d) of the Evidence Act, 2011** on withholding evidence applied here but the Tribunal turned a blind eye. Worst for the 4<sup>th</sup> Respondent, its sole witness RW4, Fuad Ade Oki admitted under cross-examination on 12/7/2023 that there was no slash in Exhibit P3 contrary to paragraph 18 of his witness deposition and he also admitted Exhibit P36 has two names.
18. The Appellants frontally challenged the integrity of the purported result downloaded in paragraph 18 of RW4's witness deposition and subpoenaed WAEC to produce the Master List alongside the original WAEC result of the 2<sup>nd</sup> Respondent. The subpoenaed witness from WAEC, Mr. Adeshile Olaolu Adekanmbi, in partial compliance with the Order of Subpoena, tendered Exhibits P149-P151 but incredibly testified that WAEC neither had the original nor duplicate copy of the WAEC result of the 2<sup>nd</sup> Respondent. He however, capitulated under cross examination by the 5<sup>th</sup> Respondent Counsel that WAEC had duplicate copies of Certificate but did not tender it. He also admitted under cross-examination on 26/6/2023 that WAEC had register of Certificates but he also did not tender it at the trial.
19. However, Exhibits P149-P151 tendered by Mr. Adeshile Olaolu Adekanmbi vindicates the Appellants that the 2<sup>nd</sup> Respondent lied on oath. The names in Exhibit P149-P151 and Exhibit P36 are not the same. The names in Exhibit P36 are two but the ones in Exhibits P149-P151 are three. The Master List produced by WAEC has a complete different name from the statement of WAEC result issued by Ijebu Ife Community Grammar School with the same examination numbers, same year and same exam diet. No further credentials of the 2<sup>nd</sup> Respondent is in harmony with Exhibits P36 which activated the

issue of lying on oath against the 2<sup>nd</sup> Respondent in this proceeding. Exhibits P34, P35 and P37 which were first and second degrees of the 2<sup>nd</sup> Respondent and his NYSC Discharge Certificate are clearly unhelpful. The surname of the 2<sup>nd</sup> Respondent, Sanwo-Olu in those documents is hyphenated but the one in Exhibits P36 and P149-P151, is not. The arrangements of the 2<sup>nd</sup> Respondent's first name, Babajide, in his credentials presented to INEC, Exhibits P34, P35, P37 and P36, differs from Exhibits P149-P151 brought in by WAEC which shows his first name as "Olusola". Worst for the 2<sup>nd</sup> Respondent, Exhibit P149-P151 is a stand-alone document as the names there do not correspond with any other credentials of the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent neither testified at the trial to defend himself nor tendered any Deed Poll to indicate adoption of additional name, change in first name, and or any alteration/amendment to his surname, from Sanwoolu to Sanwo-olu (as hyphenated in his credentials, Exhibit P34, P35 and P37). This was the albatross of the 2<sup>nd</sup> Respondent and the Tribunal had no jurisdiction to speculate or make any assumption than to find against the 2<sup>nd</sup> Respondent contrary to their disappointing decision.

20. The 2<sup>nd</sup> Respondent was bound to personally testify to the truth of the variations in his credentials and be cross-examined, and having failed to do so was bound to suffer the legal consequence contrary to the decision of the Tribunal. See **Ogolo v. Ogolo (1997) 7 NWLR (Pt. 512) 310 at 320 paragraphs G-H** and other cases cited to the Tribunal.
21. Above are the compelling issues in this Petition which the Tribunal trivialized. The allegation of falsity against Exhibit P36 was not refuted, and this effectively disqualified the 2<sup>nd</sup> Respondent. See **Esenowo v. Ukpong (1999) 6 NWLR (Pt. 608) 611 at 617 paragraphs E-G** and **PDP v. Degi-Eremienyo (2021) 9 NWLR (Pt.1781) 274 at 292 paragraphs D-F**.

22. In addition to the above, the 3<sup>rd</sup> Respondent's Form EC9, Exhibits P16-P27 were submitted in violation of Section 29(1) and (2) of the Electoral Act, 2022 which prescribes that candidates for election must verify the truth of their personal particulars on Oath indicating that they have fulfilled all constitutional requirements for the election but the 3<sup>rd</sup> Respondent intentionally did not submit the oath form which vitiated his participation in the election.

### GROUND SEVEN

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"In the instance, the nature of non-compliance with Electoral Act 2-22 alleged in paragraphs 24 to 44 in support of the ground of the petition which are predicated on validity of the 4<sup>th</sup> Respondent's primary election and the alleged late submission of nomination Forms EC9 cannot be situated under Section 177 or 182 of the 1999 Constitution. The question is whether this tribunal has the vires to entertain or inquire into issue of qualification of candidates based on irregular primaries or domestic nomination/sponsorship exercise of a political party".*

### PARTICULARS OF ERROR

1. Contrary to the conclusion of the Tribunal, the sponsorship of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents violated the provision of **Section 177 (c) of the 1999 Constitution**, and no candidate with invalid sponsorship, is qualified to contest election.
2. The Appellants complaint that the 2<sup>nd</sup> Respondent presented a false certificate in Exhibit 36 was a direct affront on the provision of Section 182 of the 1999 Constitution contrary to the decision of the Tribunal.
3. Again, by the provisions of Sections 82(5) and 84(13) of the Electoral Act, 2022, sponsorship of any candidate which violates the provisions of the Electoral Act, shall be null and void.

4. It was sad that the Tribunal did not consider this at all.

### GROUND EIGHT

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"Similarly, it has been held by the Court of Appeal in the case of PDP V. INEC (2011) LPELR 8831 (CA) @ 59-50 that the issue of late or improper nomination of candidate for an election is in the realm of pre-election matters over which the Tribunal has no jurisdiction".*

### PARTICULARS OF ERROR

1. The decision of the Court of Appeal in PDP v. INEC (2011) LPELR-8831 decided in 2011 contradicts the more recent decision of the Apex Court in **PDP v. Degi-Ereuienyo (2021) 9 NWLR (Pt. 1781) 274** cited to the Tribunal that issue of disqualification of candidate is both a pre and post-election matter.
2. By the provision of Section 136(2) of the Electoral Act, 2022, the Election Tribunal has the jurisdiction to nullify the election on account of disqualification.

### GROUND NINE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"It obvious from the above provision that, it is only an aspirant that can complain about non-compliance with the provisions of section 29 (1) and 82 (1) of the Electoral Act and not any busy body like the Petitioners/Respondents".*

## PARTICULARS OF ERROR

1. The Tribunal was misconceived to hold that the Appellants were busy bodies. The 1<sup>st</sup> Appellant was a candidate at the election while the 2<sup>nd</sup> Appellants scandalized is a national political party which sponsored the 1<sup>st</sup> Appellant. The Appellants are sufficiently imbued with locus standi to challenge non-compliance with Sections 29(1) and 82(1) of the Electoral Act, 2022 contrary to the decision of the Tribunal.
2. Sections 29(1) and (2) of the Electoral Act, 2022 contain mandatory provisions which the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents violated and this invalidated their sponsorship.

## GROUND TEN

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"The avalanche of judicial authorities cited above are all united that the appropriate venue to challenge the conduct of primary election and of nomination of candidates for election is the Federal High Court and not an Election Tribunal. The authorities further show that the petitioners who have not shown to be members of the 4<sup>th</sup> Respondent and did not participate in the 4<sup>th</sup> Respondent's primaries held on 26/5/2023 lack the locus standi to challenge same".*

## PARTICULARS OF ERROR

1. Contrary to the decision of the Tribunal, the issue of disqualification of candidate being a pre and post-election matter can be litigated either in the Federal High Court or at the Election Petition Tribunal, as in this case.
2. The Tribunal did not consider other Apex decisions that the issue of qualification and disqualification are appropriate issues before Election Tribunal.

## GROUND ELEVEN

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"Even if the petitioners had the locus standi to present the issues in paragraphs 24-55 of the petition, their right to challenge the qualification of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents based on the issues in the affected paragraphs of the petition has extinguished due to effluxion of time. By the provisions of section 285(9) of the 1999 constitution, all claims based on pre-election matter must be filled within 14 days of the accrual of cause action or occurrence of the event complained of".*

### PARTICULARS OF ERROR

1. The issue of disqualification being a pre and post-election issue, was not caught by Section 285(9) of the 1999 Constitution if raised, not at the Federal High Court but in the Election Petition Tribunal, as was done in this case.
2. The Appellants, contrary to the holding of the Tribunal, could not have filed the Petition till after the election of 18<sup>th</sup> March, 2023. By the provision of the Electoral Act, 2022 and the Constitution, the Appellants had 21 days to file their Petition and this was done within the said timeline.
3. The decision of the Tribunal on time bar, is most ridiculous.

## GROUND TWELVE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"Although the Petitioners/Respondents theoretically claimed that the complaint of non-qualification are predicated upon section 134(1) (a) of the Electoral Act 2022, but the facts pleaded in support of the ground glaringly show that it is actually a complaints relating to of false information in Form EC9, thus making it a pre-election matter regulated by Section 285 (9) (14)*



(a) of the 1999 Constitution as amended and sections 29(5) and 84(14) of the Electoral Act 2022”.

### **PARTICULARS ERROR**

1. Contrary to the decision of the Tribunal, submission of false certificate by the 2<sup>nd</sup> Respondent in Exhibit P36 directly invokes the provision of Section 182 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and was validly placed before the Tribunal for adjudication

### **GROUND THIRTEEN**

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*“The above dictum clearly shows that the ‘person’ whose election is questioned does not include a ‘loser candidate’ at an election. Thus, the 5<sup>th</sup> Respondent who is said to have scored the second highest number of votes at the questioned election cannot be said to be the successful candidate as to bring him within the provision of section 134(1)(a) of the Electoral Act as the person whose election is questioned. As earlier highlighted, Exhibits P137 to P144 were neither listed in the petitioners’ list of Exhibits nor frontloaded along with the petition. They were introduced into the case (tendered) on 21/6/2023. That being the case, the Petitioners cannot use or rely on them in proof of their petition. Consequently, Exhibits P137 to P144 are expunged from the record of the tribunal”.*

### **PARTICULARS OF ERROR**

1. By the nature of the disqualifying factors pleaded against the 5<sup>th</sup> Respondent, he was a competent party to the Petition by the provision of Section 136(2) of the Electoral Act, 2022 having scored the second highest votes at the election.
2. There were sufficient pleading in the Petition that shows that Exhibits P137 – P144 were properly admitted.

3. Exhibits P137 – P144 having been profusely referenced in the Petition did not need to be listed or frontloaded before being admitted. They were most relevant and crucial documents.

#### GROUND FOURTEEN

The Learned Justices of the Election Petition Tribunal erred in law when they held that PW5 was not a competent witness, struck out his Witness Statement on Oath of 26/6/2023 and expunged Exhibits P149- P152 from the records notwithstanding that the Tribunal itself summoned him to testify at the trial by means of a subpoena.

#### PARTICULARS OF ERROR

1. No party raised the issue of PW5 not being a competent witness at the trial. The Tribunal decided to raise it suo motu and did not afford the Appellants opportunity to be heard before deciding on it. The decision of the Tribunal that PW5 was not a competent witness and discountenancing the exhibits he tendered, is a violation of the Appellants right to fair hearing.
2. Contrary to the decision of the Tribunal, PW5 was summoned to the Tribunal on the subpoena issued by the Tribunal and it was incongruous of the Tribunal to summon the appearance of the witness and turned around to disqualify him and reject his evidence.
3. The Appellants had pleaded profusely in their Replies that they will summon WAEC to prove the falsity of Exhibit P36 (submitted to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent) as evidence of his WAEC result.
4. The decision of the Tribunal disqualifying PW5, striking out his Statement on Oath and expunging Exhibits P149 – P152, was a violation of the Appellants fair to hearing.

## GROUND FIFTEEN

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"The averments in paragraphs 51 and 52 of the Petition and the evidence of PW1 quoted above situate the Petitioners' complaint within the purview of Section 29(5) of the Electoral Act, 2022 which provides:*

*'I have taken the pain to reproduce the allegations made by the Petitioners in the various paragraphs of their Petition and the relevant sections of the Electoral Act to show that the Petitioners' complaint of non-qualification and disqualification of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is not rooted in Sections 177 or 182 of the 1999 Constitution as amended. Rather, the complaint in the various paragraphs of the Petition in support of the ground of the Petition are pre-election matters relating to the 4<sup>th</sup> Respondent's primary election and nomination exercise which occurred prior to the 18/3/2023 Governorship election in Lagos State".*

## PARTICULARS OF ERROR

1. The above holding of the Tribunal offends several decisions of the Apex Court that the issue of disqualification of a candidate is both a pre and post-election issue and the Tribunal, holding to the contrary, abdicated its sacred judicial duty of adjudication.

## GROUND SIXTEEN

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"The above decision of the Supreme Court represents the current position of the law on the subject matter. The decision has exposed the hopelessness of the Petitioners' case in this Petition. It is clear that the Petitioners, not being members of the 4<sup>th</sup> Respondent, and having not participated in its primaries of 26/5/2022, lack the locus standi to challenge the decisions and activities of*

*the 1<sup>st</sup> Respondent in relation to nomination processes of the 4<sup>th</sup> Respondent. Also, no matter how pained or disgruntled the petitioners are with the way and manner the 4<sup>th</sup> Respondent conducted its affairs concerning its primaries of 26/5/2022 and nomination of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are candidates for the 18/3/2023 Governorship Election in Lagos State, they must keep mum and remain onlookers, for they lack the locus standi to challenge such nomination before this Tribunal or any Court.*

*In any case, even if the Tribunal has the jurisdiction to entertain the pre-election issues presented and the Petitioners have the locus standi to prosecute same, the cause of action being a pre-election matter is statute barred by the dint of Section 285(9) of the 1999 Constitution”.*

#### **PARTICULARS OF ERROR**

1. The Appellants, as candidate and the sponsoring political party at the election, are sufficiently clothed with locus standi to challenge infractions of the Constitution and the Electoral Act, 2022 by the Respondents in the process of running for the office of Governor of Lagos State.
2. The Tribunal holding to the contrary, simply sanctioned impunity in the Electoral process.

#### **GROUND SEVENTEEN**

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*“In instant case, the Petitioners who are not members of the 4<sup>th</sup> Respondent and did not partake in the 4<sup>th</sup> Respondent’s primary lack the locus standi to challenge the falsity of any information in the nomination Forms of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent s submitted to the 1<sup>st</sup> Respondent. Even if they had the locus standi, the action is already statute barred for the same reasons stated in the above cited cases”.*

## PARTICULARS OF ERROR

1. Contrary to the misleading conclusion of the Tribunal, the Appellants case which was proved at the tribunal against the 2<sup>nd</sup> Respondent was that he submitted false certificate in Exhibit P36 to the 1<sup>st</sup> Respondent. This violated the provision of Section 182 of the Constitution of the Federal Republic of Nigeria, 1999 and effectively disqualified the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. This was in addition to their invalid sponsorship which is inconsistent with the provision of Section 177(c) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

## GROUND EIGHTEEN

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*“Also, not grantable are the reliefs in paragraph 79(f) (g) and (h) of the Petition wherein the Petitioners who came distant third at the election with a total of 62,449 votes are praying to the Tribunal to determine that the 1<sup>st</sup> Petitioner is validly qualified to be returned as the winner of the questioned election and be issued a certificate of return”.*

## PARTICULARS OF ERROR

1. By the nature of the disqualifying grounds in the Petition, the benefits of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents disqualification enures to the 5<sup>th</sup> Respondent. Contrary to the holding of the Tribunal, since the Appellants also alleged that the sponsorship of the 5<sup>th</sup> Respondent, was also invalid, the Tribunal must also invalidate the 5<sup>th</sup> Respondent's candidacy before the Appellants could take benefits of the unpardonable infractions, hence the 5<sup>th</sup> and 6<sup>th</sup> Respondents' inclusion as parties in the Petition. This is the clear provision of **Section 136(2) of the Electoral Act, 2022** which the Tribunal failed to apply.

2.

The provision of **Section 136(2) of the Electoral Act, 2022** was the underlying rationale for the orders sought against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the one hand, and the 5<sup>th</sup> and 6<sup>th</sup> Respondents on the other hand which the Tribunal misconstrued.

### GROUND NINETEEN

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"In the instance, the Petitioners who are invoking the provision of Section 136(2) of the Electoral Act, failed to plead and lead evidence to show how the 1<sup>st</sup> Petitioner has satisfied the requirements of Section 179(2) (a) and (b) of the Constitution in the event that 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, and the person with second highest votes at the election are disqualified. The Petitioners did not plead and adduce evidence to enable the tribunal determine 449 votes they garnered at the election to enable the tribunal determine the application of Section 179(2)(a) and (b) of the Constitution in the event they succeed in their Petition".*

### PARTICULARS OF ERROR

1. The pleadings of the Appellants sufficiently demonstrated the disqualifying factors against the Respondents.
2. It was proved at the trial that the sponsorship of the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents violated Section 177(c) of the Constitution while Exhibit P36 was an affront on the provision of Section 182 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and effectively disqualified the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on account of submission of false certificate to the 1<sup>st</sup> Respondent.

3. Contrary to the decision of the Tribunal, lack of pleading in satisfaction of Section 179(2) (a) and (b) of the Constitution, is no defence to the invalid sponsorship of the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents and submission of false certificate to the 1<sup>st</sup> Respondent as prohibited by Section 182 of the 1999 Constitution.
4. The very moment the Tribunal finds violation of the above constitutional provisions by the Respondents, the Tribunal's duty was to disqualify them and return the 1<sup>st</sup> Appellant elected.

### GROUND TWENTY

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"The Petitioners having admitted in paragraphs 6, 7 and 8 of their Petition the fact of the sponsorship of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents by the 4<sup>th</sup> Respondent as its candidate at the election, this Petition fails on the pleadings and not triable on the ground of non-compliance with Section 177 (c) of the 1999 Constitution.*

*It is our humble view that because of the admission of facts in paragraphs 6, 7, 8 and 22 of the Petition, to the effect that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were candidates of the 4<sup>th</sup> Respondent at the Governorship election and were returned elected on the platform of the 4<sup>th</sup> Respondent, and the Petitioners' petition on the ground that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were not qualified for the questioned election because they were not sponsored by the 4<sup>th</sup> Respondent collapsed completely on the pleadings, should not have gone for the trial on this ground".*

### PARTICULARS OF ERROR

1. The Tribunal clearly misconstrued the pleadings of the Appellants, hence its erroneous conclusion on admission against the Appellants.

2. The Appellants' pleadings were consistent that though the 4<sup>th</sup> and 6<sup>th</sup> Respondents sponsored the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents, their sponsorships were invalid for violation of various provisions of the Electoral Act, 2022 and the Constitution of the Federal Republic of Nigeria, 1999 as amended.
3. The Appellants, contrary to the misleading conclusion of the Tribunal, never admitted the validity of the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents' sponsorships.

### GROUND TWENTY-ONE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"The erstwhile Exhibit P129 is the document relied upon by the petitioners contending that the notice of 4<sup>th</sup> Respondent's meeting was issued by its Lagos State Chapter. The said Exhibit has been marked rejected by the tribunal on the ground that it was not listed or filed along with the petition. However even if the letter has been admitted in evidence, it would not have assisted the petitioners' case because it has no evidential value".*

### PARTICULARS OF ERROR

1. Exhibit P129 was the 4<sup>th</sup> Respondent's notice of the Primary election issued by its Lagos State Chapter which produced the 2<sup>nd</sup> Respondent as the 4<sup>th</sup> Respondent Gubernatorial candidate in Lagos State.
2. Contrary to the holding of the Tribunal, there were sufficient pleading in the Appellants' Petition and Replies that the notice for the primary election was null and void having been issued by the Lagos State Chapter of the 4<sup>th</sup> Respondent and not also giving appropriate notice.
3. The said notice is a vital document before the Tribunal over which parties testified and witnesses cross-examined. It has indeed, great evidential value.



4. The Appellants pleaded in paragraphs 28, 29, 30 31, 32, 33, 34 and 35 of their Petition, material facts about this Exhibit P129 and it was a travesty of justice for the Tribunal to have ignored it.

### **GROUND TWENTY-TWO**

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"In the instant case, PW4 who tendered the Exhibit P129-P136 admitted under cross examination that he is neither the maker nor did he participate in the making of the document. As such the said Exhibit are nothing but documentary hearsay with no evidential value. The tribunal cannot ascribe any probative value to such a document whose maker was not called to testify".*

### **PARTICULARS OF ERROR**

1. Exhibits P129 – P136 were produced through a subpoena issued by the Tribunal and served on the 1<sup>st</sup> Respondent whose staff tendered them in evidence.
2. The said exhibits were certified true copies of the 1<sup>st</sup> Respondent's documents and PW4 was not allowed under law to add or subtract from the said documentary evidence having earlier adopted his witness deposition where he maintained that the notice for the primary election which produced the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were null and void.
3. The Tribunal simply abdicated its judicial responsibility in rejecting the said Exhibits after witnesses were cross-examined on them.

### **GROUND TWENTY-THREE**

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"Assuming the said document is to be countenanced, it still does not prove that the notice of the 4<sup>th</sup> Respondent's primary election was issued by the state chapter of the 4<sup>th</sup> Respondent having regard to the language used in Exhibit P129 and other Exhibits in this case".*

## PARTICULARS OF ERROR

1. The holding of the Tribunal on Exhibit P129 was highly contradictory and betrayed the Tribunal as making unwarranted case for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, rather than remaining neutral.
2. There was nothing in the language of Exhibit P129 which showed it was issued by the National Executive Committee of the 4<sup>th</sup> Respondent, contrary to the misleading conclusion of the Tribunal.
3. Exhibit P129 was written by the Chairman of the Lagos State Chapter of the 4<sup>th</sup> Respondent specifying the date and venue of the primary election that produced the 2<sup>nd</sup> Respondent, and they will swim or sink with it. There was nothing forwarded as attached in the said Exhibit P129 showing that it was signed either by the National Chairman or the National Secretary of the 4<sup>th</sup> Respondent.
4. It was sad that the Tribunal ignored all these infractions in holding against the Appellants.

## GROUND TWENTY-FOUR

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"The witness tendered Exhibit R16 to 47. Exhibit 24 is a letter written by the 4<sup>th</sup> Respondent to the 1<sup>st</sup> Respondent conveying the names and list of 5man Gubernatorial Primary election committee with the RW2 as the Chairman, thereby corroborating the evidence of the said witness. In Exhibit 26, it is shown that the said Gubernatorial Primary election committee was constituted by the National Working Committee of the party. Exhibit R19-R22 is the Report on the conduct of the APC Gubernatorial Primary Election in Lagos. The Report was endorsed at Exhibit R22 by the Abuja and Lagos Monitoring teams of the 1<sup>st</sup> Respondent Gubernatorial Primary Election committee for Lagos chaired by RW2. And Exhibit R26 to 47 is the Report of the Gubernatorial Election held on 26/5/2022 endorsed by the National*

*Organizing Secretary of the 4<sup>th</sup> Respondent. It is interesting to note that Exhibit R16-47 was never impeached by any of the parties. In the light of the unchallenged evidence assembled above, we are convinced that the Notice of the 4<sup>th</sup> Respondent Gubernatorial election was indeed issued 1<sup>st</sup> Respondent by the National working committee of the party as required by section 84(5) (b) (i) of the Electoral Act, 2022. We are also satisfied that the said primary election was organized the National working committee of the 4<sup>th</sup> Respondent”.*

### **PARTICULARS OF ERROR**

1. The holding of the Tribunal is highly contradictory. The Tribunal had earlier held that Exhibits P129-P136 which were the necessary notices for the holding of the 4<sup>th</sup> Respondent's primary election were null and void. It was therefore surprising how the same Tribunal could subsequently turn around to hold that those notices were regular.
2. The Tribunal did not show the date of the notice and when it was received by the 1<sup>st</sup> Respondent. The Tribunal did not disclose the author of the Notice and whether he was the National Chairman or the Secretary of the 4<sup>th</sup> Respondent.
3. The Tribunal failed to properly evaluate Exhibits P129-P136 or Exhibit P137 and therefore, could not see that the letter which appointed and introduced RW2 as the Chairman of the Primary Election, was also signed by the same Hon. C.O. Ojelabi, the Lagos State Chairman of the 4<sup>th</sup> Respondent as evidenced in Exhibit P137 and not the National Chairman or the National Secretary of the 4<sup>th</sup> Respondent.
4. The decision of the Tribunal was a travesty of justice.

## GROUND TWENTY-FIVE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*“Applying the above principles of law to the present case, it would appear that the petitioners who are not INEC or its staff are just being busy body with no competence to raise any complain about inadequacy of Notice of the 4<sup>th</sup> Respondent primary election. The 1<sup>st</sup> Respondent is the INEC and it has confirmed both in its pleadings and evidence adduced thereon that the Notice of the 4<sup>th</sup> Respondent primary served on it was tandem with the provision of the Electoral Act, this fact has automatically depleted the potency of the Petitioners’ allegation in paragraph 33 of their Petition”.*

### PARTICULARS OF ERROR

1. Contrary to the holding of the Tribunal, the Appellants who were the candidate and political party at the disputed election, were sufficiently clothed with locus standi to challenge infractions of the Electoral Act, 2022 and the Constitution by any of the Respondents.
2. The Appellants’ allegations in paragraph 33 of their Petition on the validity of the notice issued by the Lagos Branch of the 4<sup>th</sup> Respondent, remains very potent.
3. The position of the 1<sup>st</sup> Respondent at the trial was an abuse of court process for saying that the notice in Exhibit P129 which gave a notice of less than 24 hours (instead of 21 days), and also issued by the Lagos State Chairman of the 4<sup>th</sup> Respondent (instead of the National Chairman or Secretary), was regular.  
This is ridiculous!

## GROUND TWENTY-SIX

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"The scenario graphically captured in the above cited case is what played out in the case at hand. The testimony of PW1, PW2 and PW4 in paragraphs 41 and 42 of their witness depositions is dependent on what they were told by the so-called National Commissioner and Chairman Information and voter education committee and the Petitioners' lawyer. However, none of them was called to testify on the allegation. In the circumstance, we have no option but to categorize and discountenance the evidence as being a hearsay evidence incapable of proving the allegations in paragraphs 37, 38 and of the petition".*

### PARTICULARS OF ERROR

1. Contrary to the holding of the Tribunal, the testimonies of PW1, PW2, PW3 and PW4 were not hearsay evidence. The Appellants' lawyer was an agent of the Appellants and his report of search to the Appellants was not controverted at the trial.
2. None of the Respondents cross-examined PW1, PW2, PW3 and PW4 on this aspect of their testimony and the Tribunal's decision in discountenancing it, is a travesty of justice.

## GROUND TWENTY-SEVEN

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"In the instant case, in the face of the contradictory evidence given by the Petitioners witnesses, this tribunal is obliged not to act on their evidence regarding the alleged late submission of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' Forms EC9 to the 1<sup>st</sup> Respondent".*

## PARTICULARS OF ERROR

1. The evidence of the Appellants' witnesses was not contradictory. PW1, PW2, PW3 and PW4 gave evidence on the invalid sponsorship of the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents and submission of false certificate to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent.
2. This evidence was not refuted by the Respondents and it was surprising that the Tribunal held that the evidence was contradictory.

## GROUND TWENTY-EIGHT

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"In further response, the 4<sup>th</sup> Respondent tendered Exhibits R49 (the alleged omitted declaration page) and R50, (Treasury receipt No. 003960120 for the payment of the declaration/oath). Exhibit R49 has been marked rejected. However, Exhibit R50 clearly shows that the declaration on the 3<sup>rd</sup> Respondent's Form EC9 (Exhibit P16 – 27) was paid for on 5<sup>th</sup> July, 2022 more than 180 days before the 11/3/2023, the earlier appointed date for the Governorship election. The allegations in paragraphs 37 to 41 of the Petition are therefore not proved".*

## PARTICULARS OF ERROR

1. Exhibits R49 was the photocopy of the omitted oath page on Form EC9 of the 3<sup>rd</sup> Respondent which the Tribunal earlier marked rejected. The purported Treasury receipt No. 003960120 for the payment of the said oath was a documentary hearsay not having been tendered by an officer of the High Court of Lagos State, Ikeja Division.

The said Exhibit R49 was no proof of the date Exhibit R49 was submitted to the 1<sup>st</sup> Respondent. The Tribunal continued to make a case for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

## GROUND TWENTY-NINE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"In the instant case, the Petitioner tendered the alleged false document (Exhibit P36) from the bar, the Petitioners could not produce before the Court the original document from which exhibit P36 was counterfeit. The Petitioners did not call evidence from Ijebu Ife Community Grammar School Ijebu Ife that purportedly issued Exhibit P36 to disavow the said statement of result and/or establish that the 2<sup>nd</sup> Respondent did not attend the said school and obtain qualification in Exhibit P36. Also, the Petitioners did not obtain any document in form or disclaimer from the said school disowning Exhibit P36. The Petitioners did not adduce evidence to show how Exhibit P36 was falsified".*

## PARTICULARS OF ERROR

1. Contrary to the holding of the Tribunal, the Appellants tendered Exhibits P2 – P4 to demonstrate that Exhibit P36 was false.
2. The Appellants also subpoenaed WAEC authorities and PW5 produced Exhibits P149 – P152 which proved that the names in Exhibit P36 differs from the name in Exhibits P149-P152.
3. It was in evidence by PW3 that the Principal of Ijebu Ife Community Grammar School Ijebu Ife upon being approached by the Appellants disappeared and never returned to the school.
4. The 2<sup>nd</sup> Respondent denied presenting Exhibit P36 to the 1<sup>st</sup> Respondent but the 1<sup>st</sup> Respondent's star witness testified that the Exhibit was submitted by the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent listed Exhibit P36 as the first document in its list of documents in their reply to the Petition.

Rather than the Appellants, the 4<sup>th</sup> Respondent pleaded in their Reply to the Petition that they will subpoena the Principal of Ijebu Ife Community Grammar School Ijebu Ife to testify on the authenticity of Exhibit P136 but failed to do so at the trial. The said principal was listed as one of the proposed witnesses to be called by the 4<sup>th</sup> Respondent but they failed to call him.

6. This was an appropriate case for the Tribunal to have invoked the provision of Section 169(d) of the Evidence Act, 2011 for withholding evidence against the 2<sup>nd</sup> – 4<sup>th</sup> Respondents but the Tribunal, yet again, looked away.

### GROUND THIRTY

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"When Learned Senior Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent submitted that Exhibits P5-P27 should not be accorded any probative value the Learned Senior Counsel to the Petitioners retorted that the document were tendered from the bar with the agreement of Counsel at the pre-hearing session. Our response is that the fact that Exhibit P36 was tendered from the bar, does not relieve the Petitioners of burden imposed on them of calling the maker to speak to the document without which the document shall not be accorded any probative value".*

### PARTICULARS OF ERROR

1. Contrary to the holding of the Tribunal, the Appellants' witnesses all spoke to Exhibit P36 in their depositions and it was shocking that the Tribunal held to the contrary.
2. The said Exhibit P36 was a major point of cross-examination for PW5, RW2 and RW3. It was surprising that the Tribunal held it had no probative value when it was a purported certificate submitted by the 2<sup>nd</sup> Respondent in fulfilment of constitutional requirement to contest election as Governor of Lagos State.



## GROUND THIRTY-ONE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"Another document relied upon by the Petitioners on this score is Exhibit P2-P4. This exhibit is afflicted with the same vice, if not worse. First of all, we noticed that there is contradiction in the evidence led by the Petitioners regarding making or producer of the said Exhibit".*

### PARTICULARS OF ERROR

1. Contrary to the holding of the Tribunal, there was no contradiction in the evidence led on the production of Exhibits P2-P4. Mr. Adenekan Femi who downloaded the said Exhibit for PW1 was an agent of the 1<sup>st</sup> Appellant, and since the 1<sup>st</sup> Appellant testified as his principal, there was no requirement under our law that Mr. Adenekan Femi, as an agent, will also testify.
2. The Tribunal over-twisted the said Exhibit and continued to make a case for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents while refusing to mention anything about the failure of the 2<sup>nd</sup> – 4<sup>th</sup> Respondents to tender the 2<sup>nd</sup> Respondent's purported result printout from WAEC website.

## GROUND THIRTY-TWO

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"Assuming Mr. Adenekan Femi is the person who downloaded the said document, it will still not be of any help to the case of the Petitioners because he (maker) was not called to testify and be cross-examined. The said document suffers the same fate as Exhibit P36".*

## PARTICULARS OF ERROR

1. Mr. Adenekan Femi who downloaded the said Exhibit for PW1 was an agent of the 1<sup>st</sup> Appellant, and since the 1<sup>st</sup> Appellant testified as his principal, there was no requirement under our law that Mr. Adenekan Femi, as an agent, will also testify.
2. By the provision of the Evidence Act, 2011, he was only entitled to produce certificate of production which was done in this case but the Tribunal, yet again, looked away.

## GROUND THIRTY-THREE

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*“Besides, there is nothing on Exhibit P2-P4 that linked the 2<sup>nd</sup> Respondent with the said Exhibit. Neither his name nor any of his particulars in on the document. The examination number on the said exhibit is inconsistent with examination number on the document pleaded by the Petitioners in paragraph 50 of their Petition. The examination number on Exhibit P3 is 17624118, while the examination on the document pleaded in paragraph 50 of the Petition 17624/118. Thus, Exhibit P3 is at variance with the pleaded document in paragraph 50 of the Petition, and therefore goes to no issue”.*

## PARTICULARS OF ERROR

1. Exhibit P3 is in complete harmony and not at variance with the document pleaded in paragraph 50 of the Petition.
2. The examination number in the said Exhibit is the same with the above pleading and it was shocking that the Tribunal made a case for the 2<sup>nd</sup> Respondent without looking at the examination number in Exhibit P36. The examination number in Exhibit P36 is 17624/118 but the examination number in Exhibit P3 is the same with the WAEC result printout frontloaded by the 4<sup>th</sup> Respondent which sadly, they had no courage to tender at the trial.

## GROUND THIRTY-FOUR

The Learned Justices of the Election Petition Tribunal erred in law when they held as follows:

*"Furthermore, we also observed that there is no correlation between Exhibits P2-P3 and Exhibit P36. Exhibit P2-P4 has not been shown to be a disclaimer from Ijebu Ife Community Grammar School Ijebu Ife, the Institution that issued Exhibit P36. It is also not a disclaimer from WAEC. Therefore, Exhibit P2-P4 does not prove the falsity of Exhibit P36 or show that the 2<sup>nd</sup> Respondent did not attend Ijebu Ife Community Grammar School Ijebu Ife and obtained the 'O' Level WAEC qualification he claimed. As such, Exhibit P2-P4 is not of any help to the Petitioners' hypothesis or allegation of presentation of forged certificate and or false information to the 1<sup>st</sup> Respondent".*

### PARTICULARS OF ERROR

1. Contrary to the holding of the Tribunal, Exhibits P2 – P3 proved the falsity of Exhibit P36 because while the former showed no result was available for the named candidate in the examination year and diet, the latter purports that the said result was valid.
2. The 2<sup>nd</sup> Respondent himself denied submitting Exhibit P36 to the 1<sup>st</sup> Respondent but the 1<sup>st</sup> Respondent testified that the said Exhibit was submitted by him.
3. Contrary to the holding of the Tribunal, Exhibits P149 – P152 also proved the falsity of Exhibit P36 as the names in all the exhibits are not the same.
4. The 2<sup>nd</sup> Respondent's purportedly has two names in Exhibit P36 but three names in Exhibits P149 – P152 for the same examination, the same year and examination diet.
5. Unfortunately, the 2<sup>nd</sup> Respondent did not testify at the trial to explain the inconsistencies in the documents he presented.

6. The Tribunal consequently had no jurisdiction to hold that the different names in the different certificates presented by the 2<sup>nd</sup> Respondent belong to one and the same person.

4. **RELIEFS SOUGHT FROM THE COURT OF APPEAL**

- a. **AN ORDER** allowing the appeal
- b. **AN ORDER** setting aside the order of the Election Petition Tribunal which dismissed the Appellants' Petition.
- c. **THAT IT MAY BE DETERMINED AND DECLARED** that at the time of the Governorship Election of Saturday, 18<sup>th</sup> March, 2023, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were not qualified to have contested the said election.
- d. **THAT IT MAY BE DETERMINED AND DECLARED** that all the votes recorded for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents in the said election were wasted votes owing to the non-qualification of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to have participated in that election.
- e. **THAT IT MAY BE DETERMINED AND DECLARED** that at the time of the Governorship Election of Saturday, 18<sup>th</sup> March, 2023, the 5<sup>th</sup> Respondent was not qualified to have contested the said election.
- f. **THAT IT MAY BE DETERMINED AND DECLARED** that all the votes recorded for the 5<sup>th</sup> and 6<sup>th</sup> Respondents in the said election as the second highest number of votes cast at that election, were wasted votes owing to the non-qualification of the 5<sup>th</sup> Respondent to have participated in that election.
- g. **THAT IT MAY BE DETERMINED AND DECLARED** that the 5<sup>th</sup> Respondent having scored the second highest number of votes in the said election, is disqualified from benefiting from the disqualification of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents since the process of his own sponsorship by the

6<sup>th</sup> Respondent for participation in the 18<sup>th</sup> March, 2023 Governorship Election in Lagos State was also invalid, null and void.

- h. **THAT IT MAY BE DETERMINED AND DECLARED** that the Petitioners having scored the third highest number of votes in the 18<sup>th</sup> March, 2023 Governorship Election in Lagos State and having satisfied the provisions of the Electoral Act, 2022, is the validly qualified candidate to be returned as the winner of the said election.
- i. **THAT IT MAY BE DETERMINED AND DECLARED** that the Certificate of Return given/issued by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, as the winner of the Governorship Election of 18<sup>th</sup> March, 2023 in Lagos State, conducted by the 1<sup>st</sup> Respondent is null, void and of no effect whatsoever.
- j. **THAT IT MAY BE DETERMINED AND DECLARED** that the 1<sup>st</sup> Respondent shall forthwith issue the 1<sup>st</sup> Appellant, **DR. AZEEZ OLAJIDE ADEDIRAN**, with a Certificate of Return as the duly elected Governor of Lagos State.

5. **PERSONS DIRECTLY AFFECTED BY THE APPEAL**

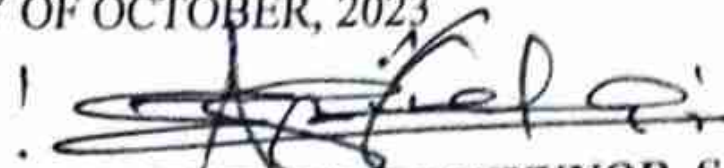
**PARTIES**

**THE APPELLANTS**  
1. **DR. AZEEZ OLAJIDE ADEDIRAN**  
2. **PEOPLES' DEMOCRATIC PARTY (PDP)**

**ADDRESS**

**C/O THEIR SOLICITORS**  
**CLEMENT ONWUENWUNOR, SAN**  
**EDWIN OKONEDO, ESQ.**  
**OLUMIDE AKINIMI, ESQ.**  
**AUSTIN AKPOMRETA, ESQ.**  
**M.I. CHIAHA, ESQ.**  
**FRIDAY OSHOMAGBE, ESQ.**  
**ALAYO AKANBI, ESQ.**  
**BENIGNUS CHUKWU, ESQ.**  
**CLEMENT ONWUENWUNOR & CO.**  
**APPELLANTS' COUNSEL**  
**NO. 6B<sup>1</sup>, REMI FANI KAYODE**  
**STREET,**  
**G.R.A., IKEJA, LAGOS STATE**

DATED THIS 13<sup>th</sup> DAY OF OCTOBER, 2023



CLEMENT ONWUENWUNOR, SAN

EDWIN OKONEDO, ESQ.

OLUMIDE AKINIMI, ESQ.

✓ A. A. AKPOMRETA, ESQ.

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