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THE DISTORTION AND SUPPRESSION OF EVIDENCE BY THE COURT OF APPEAL ON THE ADAMAWA STATE GOVERNORSHIP CASE
The Facts and the Figures

by
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Table of Contents

Preface

When on Saturday May 29, 1999, civilian rule was ushered in Nigeria with the swearing in of President Olusegun Obasanjo and the 36 State Governors, there was high expectation that this time democracy would take a firm root in Nigeria. This is because the new President, Chief Olusegun Obasanjo, holds an enviable democratic record among his military colleagues of being the first of only two of the Heads of State who successfully organised a transition programme to civilian rule in Nigeria.

Many had expected that President Obasanjo would be the one person who could set, yet another record in Nigeria's democratic history by ensuring that the civilian-civilian transition of 2003 would be quite successful. It was because of this, that some people urged him to play the Mandela role in Nigeria. By so doing, he would have opted out of contesting the 2003 Presidential election to ensure clean, transparent, free and fair elections across the country.

However, the first disappointment came when President Obasanjo jettisoned the Mandela option of one term Presidency. The second disappointment came with the conduct of the 2003 elections. Like its previous civilian-civilian transitions in 1964/65 and 1983, the 2003 elections witnessed widespread election rigging.

In the Presidential election, Chief Obasanjo, the PDP candidate recorded unbelievable increased votes of 5.3 million above his 1999, performance, despite the surmounting economic and political problems facing the country. Thus this civilian-civilian transition in 2003 saw the transformation of the PDP from a majority party to a two-thirds majority party in the National Assembly, the State Houses of Assembly, which they controlled and the number of State Governors rose from 21 in 1999 to 28 in 2003. Thus the 2003 elections became just a snatching game of politics by the PDP. In this vicious game, democracy and the rule of law were thrown out of the widow.

One State, which demonstrated this political snatching game in its most naked form in the 2003 elections, was Adamawa State. Located in the north-eastern part of Nigeria, Adamawa had the fortune of being the home State of the Vice-President of the Federal Republic of Nigeria, in the person of Alhaji Atiku Abubakar. Unfortunately, this advantage turned into a disadvantage because it dragged the State deep into the centre of the political storm as well as the wheeling and dealings of the PDP. The 2003 elections, therefore, became a do, or die game for the PDP, but particularly its leading figure in the State, the Vice-President. To make matters worse, the Vice-President openly, in words and deeds, linked his political fortunes to the capacity of the PDP to secure massive electoral victory in Adamawa State. Thus he saw himself as the personification of the PDP in the State; the party's successes were his successes and its failures equally became his failures.

However, the capacity of the ANPP gubernatorial candidate, Alhaji Adamu Modibbo to meticulously collect, detail information, polling booth by polling booth, on how the PDP rigged the gubernatorial election made the cancellation of the results by any fair minded panel of judges inevitable. This was exactly what happened when his legal team, led by Chief M. I. Ahamba, SAN, defended his case against the PDP candidate, Mr. Boni Haruna before the Adamawa State Election Tribunal chaired by Hon. Justice Kashim Zannah. Given the evidence present, the tribunal had little choice but to cancel the declaration of Mr. Boni Haruna by the Independent National Electoral Commission, INEC, as the winner of the gubernatorial election and called for fresh elections.

This decision of the election tribunal caused panic within the ranks of the PDP. This panic was best reflected by the angry out bust of Vice-President Atiku Abubakar when he addressed the Press in Yola on Friday 26th March 2004. He rained insults and abuses on the judiciary and the person of the chairman of the Adamawa State Election Tribunal, in a manner unbecoming of his status as the Vice-President of the Federal Republic of Nigeria.

Despite this venom, the Adamawa electorate were ecstatic with this judgement, hoping in particular that it would restore their democratic dream of making and unmaking governments. So, when the PDP candidate appealed to the Court of Appeal, the Adamawa electorate expected that with the strong case of rigging presented to the election tribunal, the Appeal Tribunal would also have no choice but to reaffirm the judgement of the lower court.

However, this turned out to be a political hallucination as the Appeal Tribunal, in its judgement delivered in Jos, on Monday 5th July, 2004, distorted, manipulated, misrepresented and suppressed the evidence presented to the Adamawa State Election Tribunal, in order to find justification to declare Mr. Boni Haruna of the PDP as the winner of the gubernatorial election. This was a classical case of perversion of justice carried out by five justices of the Court of Appeal of Nigeria. The lead judgement of the Appeal Tribunal read by Hon. Justice P. O. Aderemi, JCA, represents this serious case of perversion of justice.

This book examines the judgements of the Appeal Tribunal, especially the lead judgement, with the purpose of providing a deeper understanding of how some elements in the Nigerian judiciary have joined hands with some in INEC to become part and parcel of the PDP anti-democratic operation of the election rigging in 2003. It is a duty of all citizens to expose such undemocratic and lawless conduct to the Nigerian public and the international community so that appropriate actions can be taken to safeguard democracy and the rule of law. We must not relent in the struggle to entrench democracy in Nigeria.

Alkasum Abba,
Tuesday, 28th September 2004,
Zaria, Nigeria.

Chapter One
The Significance of the Judgement

The Election Tribunal's Judgement

When the Appeal Tribunal set up by the Court of Appeal sat in Jos on Monday 5th July 2004 to deliver its judgement in the appeal lodged by the Adamawa State, People's Democratic Party , PDP, gubernatorial candidate, Mr. Boni Haruna , against the judgment delivered in favour of the All Nigeria People's Party , ANPP, candidate, Alhaji Adamu Modibbo , there was high public expectation that it would validate the judgement of the Adamawa State Election Tribunal , under the chairmanship of Hon. Justice Kashim Zannah . Other members of this tribunal were: Hon. Justice Akomolafe-Wilson , Hon. Justice I. M. Saulawa , Hon. Justice A. A. Philips and Hon. Justice M. I. Sirajo . This tribunal had on Wednesday 24th March 2004, nullified the declaration of Mr. Boni Haruna by the Independent National Electoral Commission , INEC, as the duly elected Governor of Adamawa State.[1]

The nullification of Mr. Boni Haruna 's election by the Adamawa State E lection Tribunal was based on the presentation of evidence of gross irregularities in the conduct of the gubernatorial election. The election tribunal had established in detail, cases of rigging, intimidation, over-voting and similar irregularities carried out by agents of the PDP gubernatorial candidate, Mr. Boni Haruna.

The situation was so bad that the election tribunal cancelled the gubernatorial election results in fourteen out of the twenty-one local government areas in Adamawa State. In addition, the tribunal cancelled the results in some wards in three other local government areas. In view of the massive irregularities, the tribunal nullified the declaration by INEC , of Mr. Boni Haruna as the duly elected Governor of Adamawa State and ordered for fresh elections in the wards and local government areas affected by the malpractices.[2]

This judgement of the Adamawa State E lection Tribunal delivered by Hon. Justice Kashim Zannah on Wednesday 24th March 2004 was indeed an earthquake from both political and judicial points of view. From the judicial point, it was one of the most important attempts made to declare the independence of the judiciary from the overt and covert manacles, machinations and manipulations of the executive arm of government In fact, this tribunal went into history as the only one that had the audacity to nullify the declaration by INEC of a sitting Governor as the winner of the 2003 gubernatorial election. Prior to this, tribunal after tribunal had used mere technicalities to validate the massive rigging of elections in favour of some State Governors.

From the political point, the judgment delivered by Justice Kashim Zannah demystified those who have been erroneously considering themselves as indispensable in Adamawa State and its politics. These people also think that money politics, the arrogant use of power and the massive intimidation of the electorate could substitute honesty, hard work and dedicated service to the people. This is why the judgement devastated the morale, exposed the arrogance and shattered the ego of the leading members of the Adamawa political establishment who expect that politics, even in the wider Nigerian society should always revolve around their persons, their political ambitions and their corrupt and perverse interests even though they have nothing to offer the country and its people.

Threats to the Judiciary

This judgment of the Adamawa State Election Tribunal delivered by Honourable Justice Kashim Zannah was so devastating to the PDP and the political establishment in Adamawa State , that its linchpin, the Vice-President , Alhaji Atiku Abubakar, regarded it as an insult by the judiciary to his person and office.

The Vice-President not only lost his temper and exploded violently, his political temperature failed to cool down even two days after, when he gave his public reaction to the judgement Thus in his reaction, the Vice-President did not mince words in displaying his anger and frustration. For he did not stop at denouncing the judgement alone but even went further to explicitly, attack and threaten, the chairman of the election tribunal , Hon. Justice Kashim Zannah . The Vice-President is reported to have even threatened to physically deal with Justice Kashim Zannah . In an interview with journalists on Friday 26th March 2004, Vice President Atiku Abubakar , is reported to have said:

> *"I have seen various judgments in the political history of Nigeria but I have never seen any judgment so designed to disgrace one, exhibit lack of respect and aimed at snatching a mandate in order to award it to another person just like was openly displayed three days ago.*
>
> *The judge that passed this verdict is the presiding judge, prosecutor, the petitioner- Adamu Modibbo- the all in one. That is why I said I have never seen this kind of judgement, which has no respect for the truth, lacks focus, full of cheating and inciting like the one passed three days ago.*
>
> *I know that I am not from a family of judges like that Professor Aminu. Therefore, if the worst comes to* the worst, I *will insult any judge. It may not be only insults, but as well as beating up such a judge.*[3]

Although the aides of the Vice-President later said that he was quoted out of context, the anger, the frustration and indeed, the fear of the consequences of the judgment was very, very profound to every discerning eye.

The Democratic Achievements of the Judiciary

Since the restoration of civilian rule in Nigeria in May 1999, the Judiciary has led the other arms of government in defending and protecting democracy in the country. The higher courts in particular, have been forthright in this direction. Thus, both the Court of Appeal and the Supreme Court did not hesitate when cases, which threaten democracy, were laid before them. These courts openly and unambiguously sided with democracy despite the apparent desire of the PDP controlled Federal Government to the contrary.

For example in a landmark judgement delivered on Friday 26th July 2002, in the case brought before it by leaders of five political parties, under the umbrella of CNPP (Congress of Nigerian Political Parties) who were denied the right by INEC to actively and legally participate in the politics of Nigeria, Hon. Justice Dahiru Musdapher, Hon. Justice Muntaka Coomassie and Hon. Justice Zainab Bulkachuwa of the Court of Appeal ruled in their favour. This ruling by the Court of Appeal

widened the democratic space in the country. It has remained, up till today, one of the most daring and important judgements delivered by the Court of Appeal since the return of civilian rule in Nigeria.[4]

It is not surprising that this landmark ruling by the Court of Appeal did not please quite a number of people in the Federal Government. As a result, the Attorney General of the Federation along with INEC challenged this judgement of the Court of Appeal at the Supreme Court . To their utter dismay and frustration, the apex Court re-affirmed the judgement of the Court of Appeal.

Thus, on Friday 8th November 2002, Justice Muhammad Uwais , the Chief Justice of Nigeria[5] along with Justice Salihu Modibbo Alfa Belgore , Justice Idris Egbo Kutigi , Justice Anthony Ikechukwuiguh , Justice Akinola Olufemi Ejiwunmi , Justice Emmanuel Olayinka Ayoola and Justice Niki Tobi of the Supreme Court of Nigeria ruled against the regimentation of politics and political parties in Nigeria, which the military had imposed on the country.

These two outstanding judgements paved the way for the registration of many political parties against the wishes, particularly of President Olusegun Obasanjo , INEC and even some of the leading figures of the People's Democratic Party, PDP , the All Nigeria People's Party, ANPP and the Alliance for Democracy , AD, the then three registered political parties.[6] The judgements of the Court of Appeal and the Supreme Court defended and protected democracy from those who wanted to muzzle it and deny the people of Nigeria their inalienable right to choose, freely.

Spoiling the Records of the Judiciary

Unfortunately , this good example, which these Hon. Justices of the Court of Appeal and the Supreme Court of Nigeria set, have been shattered by the judgements delivered by the Justices of the Appeal Tribunals with respect to the gubernatorial elections. One of the best examples is the case of the gubernatorial election in Adamawa State , between Mr. Boni Haruna of the PDP and Alhaji Adamu Modibbo of the ANPP . The Appeal Tribunal reversed the judgement of the Adamawa State Election Tribunal , without solid and sound grounds. It therefore, declared Mr. Boni Haruna as the winner of the 2003 gubernatorial election in Adamawa State.

This judgement of the Appeal Tribunal delivered on Monday 5th July 2004 at Jos , has serious implications for the capacity of the Nigerian society to continue the process of building and sustaining democracy especially with respect to the role of the judiciary in cementing this important process of nation building. In addition, the judgement has very serious, long term and profound implications for the judiciary as an institution set up by the Constitution of the Federal Republic of Nigeria to be an impartial umpire between its governmental institutions and its citizens.

The judiciary is often described as the last hope of the common man, but this judgement of the Appeal Tribunal on the Adamawa State gubernatorial election is pointing out the contrary. It is saying that in the current political dispensation, the perverse, the corrupt, the strong, the powerful and the rich, can have their way, despite the record and the standard set earlier by the Court of Appeal and the Supreme Court of the Federal Republic of Nigeria.

This assertion is built on the fact that all the judgements of the election tribunals[7] on the conduct of the 2003 gubernatorial elections have been delivered in favour of the ruling incumbents. That is to say that no sitting Governor, yet, has lost his case before any election tribunal beside that of Adamawa State. No Appeal Tribunal has delivered a single judgment against the declaration by INEC of

any sitting Governor as the winner of the elections even in cases where the evidence of rigging was proved beyond reasonable doubt. In other words, unlike the legislators who have lost their seats at the election tribunals, the Governors seem to have a strong immunity, rigging, or no rigging!

In fact, records show that it is only the sitting legislators who kept on loosing their election cases before the election tribunals, irrespective of their political party affiliations. The implication of this is that the executive arm of government has been having its way, with both INEC and the judiciary, perhaps because it controls the expenditure of billions of naira, while the legislative arm, looses out, possibly because it only approves public expenditure and does not do the actual spending.

Chapter Two
The Distortion of Evidence

Temporary Voter's Cards

Anyone who reads the 59 page lead judgement of the Appeal Tribunal delivered in Jos , on Monday 5th July 2004, by Hon. Justice Pius Olayiwola Aderemi , JCA, which was concurred and agreed upon entirely by his other learned colleagues, Hon. Justice James Ogenyi Ogebe , JCA, Hon. Justice Victor Aimepomo Oyeleye Omage, JCA, Hon. Justice Musa Dattijo Muhammad, JCA, and Hon. Justice Ikechi Francis Ogbuagu, JCA, and compares it with the judgement of the Adamawa State Election Tribunal delivered by Hon. Justice Kashim Zannah will notice very serious contradictions, inconsistencies arising from the judge's deliberate distortion and suppression of the evidence before them.[8]

One of the first things to notice about the lead judgement of the Appeal Tribunal **,** is how Hon. Justice Pius Olayiwola Aderemi , distorted the findings and conclusions of the Adamawa State Election Tribunal in order to manufacture a case for Mr. Boni Haruna . This is evident from his judgement. For example, he claimed in his judgement to have quoted the election tribunal as having said:

> *"That being the case we hold that every voter who went to vote with his Temporary Voters Card that remained with INEC (call it unclaimed, unretrieved unexchanged or whatever) represents a voter that could not have voted."*[9]

On the basis of the above "quotation" Hon. Justice Pius Olayiwola Aderemi of the Court of Appeal went on to condemn the Adamawa State Election Tribunal as follows:

> *"This finding to say the least, is incongruous to the unchallenged pieces of evidence reproduced supra. It is perverse to the extreme."*[10]

Unfortunately, this serious castigation of the lower tribunal by this very senior judge is based on a deliberate distortion of the quoted statement from the judgement delivered by Justice Kashim Zannah . It is, therefore, a conscious misrepresentation by Justice Pius Olayiwola Aderemi of the judgment of the Adamawa State E lection Tribunal and the suppression of the challenging evidence on behalf of the petitioner, the PDP gubernatorial candidate, Mr. Boni Haruna . This is because Justice Aderemi **deliberately and consciously omitted ten keys words** in the statement he quoted on page 41 of his judgment claiming that it was from the judgment of the Adamawa State Election Tribunal without giving a hint that he did so.

Below is the correct finding of the Adamawa State Election Tribunal , as recorded in its judgment emphasising the words **deliberately and dishonestly cut out** by Justice Pius Olayiwola Aderemi and his colleagues for reasons best known to them:

> *"And that being the case we hold that every voter who went to vote with his Temporary Voter's Card* ***got it exchanged and so every single valid Voter's Card*** *that remained with INEC (call it unclaimed, unretrieved, unexchanged or whatever) represents a voter that could not have voted."*[11] (my emphasis)

Is this not a very serious dishonest act on the part of the Justices of the Appeal Tribunal ? Does it not raise ethical questions about standards in the Nigerian judiciary? Why were the Justices of the Court of Appeal keen to hide the fact that witnesses testified to the effect that everyone voted with valid voter's cards and that slips were not used for voting?

It took the Adamawa State Election Tribunal about twelve pages, to examine thoroughly the case of each side with respect to the issue of voting with a valid voters' card, or a temporary voter's slip. The tribunal even referred to the Electoral Law and the Election Manual before arriving at its finding and conclusion. Unfortunately, this important finding was deliberately misquoted, distorted and condemned by Justice Aderemi and his colleagues, to justify the declaration of Mr. Boni Haruna as the winner of the 2003 Adamawa State gubernatorial election.

Why did the senior judges hide the fact that if the version of Mr. Boni Haruna's side, which claimed that people voted with temporary voter 's slips, was accepted it would have amounted to accepting that one of the registered voters who died before the election, the late Hon. Alexander Shombi , who was a member of the Adamawa State House of Assembly , also came out from his grave, voted with the slip and returned to his grave? Why? In the light of this, would anyone take the word of the senior judges on any fact without verification?

In the first place, the subject in question was whether the exchange of slips for the voters' cards took place on Election Day, or whether voters used the slip to vote while their cards remained uncollected at the INEC office, as claimed by the witnesses of Mr. Boni Haruna of the PDP . These witnesses were Ambrose Alli Momsunyare (RW4), Japhet H. Pamassa (RW5) and Assaph Zadock (RW6).

Or, that the exchange of the slips (called temporary voters cards) took place even on the day of voting and so, all those who went to vote with their slips exchanged them for the cards and went ahead to vote on the strength of their now acquired voters' cards, as claimed by the witnesses of the petitioner, Alhaji Adamu Modibbo of the ANPP . These witnesses were: Bello Dauda Furo (PW12) and Mohammad Buba Zumo (PW33).

The contention about voting with slips, or voter's cards is very important in establishing the case of rigging the gubernatorial election. This is because several voters' cards have been found lying uncollected at INEC offices with respect to polling units, which recorded very high voter turn out. So the question about what people voted with would help to resolve the knotty problem relating to the allegation of rigging through over-voting in many polling units.

If people actually voted with their slips, then the existence of thousands of voters' cards in INEC offices across Adamawa State could not raise dust, or eyebrow. But, if it is proved that people exchanged their slips at the polling units with voter's cards and that they all voted with these valid voter's cards then there has to be an explanation as to why there were several thousand unclaimed cards at INEC offices, including for areas, which recorded very high voter turn out of between 90% - 100%.

This issue was such a serious problem that when the Adamawa State E lection Tribunal was reviewing the evidence from the two contending parties, it poised the pertinent question:

"So, which version is the truth? What really happened?"[12]

The election tribunal then gave reasons for accepting the version of the petitioner. That is to say that the electorate exchanged their slips with voters' cards and each and every person who voted did so with a valid voters' card. This exercise of examining the evidence from both sides, on this matter, can be found on pages 166 to 178 of the judgment of the Adamawa State Election Tribunal .

However, Justice Aderemi completely suppressed the evidence of the petitioner's witnesses, and went ahead to declare the testimonies of Mr. Boni Haruna 's witnesses as unchallenged. He did not stop here but went further to castigate the Adamawa State E lection Tribunal for not acting on the bias and one-sided evidence that he selected. Thus Justice Pius Olayiwola Aderemi staked his honour and integrity when he made an assertion in his judgment, which he knew very well, was false. He said that:

> *"I have also carefully gone through the two voluminous records, I cannot find any evidence to the contrary of what I have reproduced supra."*[13]

There may be several reasons why Justice Aderemi made the above patently false statement. One of them is definitely aimed at making a concerted effort to discourage readers from looking for the contrary evidence in the judgement of the Adamawa State E lection Tribunal. But we were not discouraged and went ahead to look for it and we easily found it in this judgement delivered by Hon. Justice Kashim Zannah at Yola on 24th March 2004. The tribunal recorded the evidence of Muhammed Buba Zumo (PW.33), the presiding officer of Makama B ward, Sanda Primary School, Unit 010, Yola South Local Government on page 169 and that of Bello Dauda Furo (PW.12) on pages 175-176. The two witnesses testified to the effect that people with temporary voters' slips exchanged them with voters' cards so

long as their names were on the Voters' Register and their cards were available at the polling booths. Therefore, the evidence available clearly indicated that no one voted without a validly issued voter's card.

The Adamawa State Election Tribunal recorded the evidence of an official of INEC, Mallam Muhammed Buba Zumo , the Presiding Officer at Makama B ward, as follows:

> *"…That if a person came with a voters slip and is identified as the person, his name is on the register and his card is there, then the temporary voters slip is withdrawn from him and his Voter's Cardgiven to him. That INEC gave them the voters' cards for that and they returned the retrieved slips to INEC. He held his ground under cross-examination. He reiterated that they went to the units with the unclaimed cards on the day of the elections. He insisted that was their training and there was no second training and INEC did not modify the rules after the training."*[14]

The evidence of another witness, Alhaji Bello Dauda Furo of the ANPP was also recorded as follows:

> *"…The Temporary Voters cards, the voter holding it, when he goes to cast his ballot, the temporary card is retrieved from him and replaced with the Voter's Card which he did not collect before..."*[15]

In view of the above, several questions come to mind. Why would Justices of the Court of Appeal suppress such important evidence and pass a judgment on the claim that it did not exist? Why did they also claim that they had "**carefully** gone through the two voluminous records" and yet remained unaware of "any piece of evidence adduced before the lower tribunal that contradicts" the one they chose to reproduce "in any material respect"? Why?

The Cases of Over - Voting

The problem of over voting was one of the most important evidence of election rigging, which was confronted and addressed by the Adamawa State Election Tribunal . However, in an effort to justify the dismissal of the case of election rigging through over-voting, which led to the nullification of the Adamawa State gubernatorial election results, Justice Pius Olayiwola Aderemi made a bizarre ruling. He said that:

> *"No Voters Register was tendered. Even, if there were over-voting there was no evidence that the imagined figure representing over-voting, if it were removed, the petitioners would have won."*[16]

It would appear as if Justice Aderemi and his colleagues were just trying to create a storm over the issue of tendering in court the Adamawa State Voters' Register. This seemed to be the case because they knew very well that the INEC Senior Logistic Officer, Mr. Ambrose Alli Monsumnyare had reported in his testimony before the Adamawa State Election Tribunal that this document was with the Court of Appeal in Abuja. [17]

In any case, what you need to do to prove over voting is not to limit yourself to the Voters' Register but to look at the statistics of voters per polling booth, or electoral unit, which information is available on the INEC form EC 8A. This information is also available in exhibit P10 in the judgement of the Adamawa State Election Tribunal and was therefore, available to Justice Pius Olayiwola Aderemi and his colleagues . The Electoral Act 2002 is very clear about over-voting and does not condone it. For while Justice Pius Olayiwola Aderemi was talking about deducing the votes that are "over," the Electoral Act said all such votes are illegal and declared them unequivocally as "null and void." Accordingly, Section 44 (2) of the 2002 Electoral Act, stated that:

> *"Where the votes cast at an election in any Constituency or Polling Station exceed the number of registered voters in that Constituency or Polling Station, the election for that Constituency or Polling Station shall be declared null and void by the Commission and another election shall be conducted at a date to be fixed by the Commission."* ***[18]***

Or, is there any other authority, which the Hon. Justices of the Court of Appeal could legally rely upon in this case of over-voting other than the Electoral Act itself? In fact, the Appeal Tribunal had by its statement that "even, if there were over-voting there was no evidence that the imagined figure representing over-voting, if it were removed, the petitioners would have won" amounted to granting an unwarranted concession to Mr. Boni Haruna by requiring his challenger, Alhaji Adamu Modibbo to show that removing the "imagined figure representing over-voting" would give him victory. This assertion by a senior judge has effectively placed Mr. Boni Haruna above the law. It also puts his "election" beyond any challenge, reasonable, or unreasonable, no matter the quality, or quantity of evidence presented.

Chapter Three
The Suppression of Evidence

The Chasing Away of Polling Agents

Perhaps one of the most bizarre statements made in the lead judgement of the Appeal Tribunal read by Hon. Justice Pius Olayiwola Aderemi concerns the evidence of witnesses with regards to the conduct of the gubernatorial election in Adamawa State , as recorded by the election tribunal. Justice Aderemi made effort to suppress the evidence of some key witnesses because as a senior judge, he knows very well that in a court of law, testimonies of credible witnesses are very important

tools of proving a case. Witnesses of the ANPP gubernatorial candidate, Alhaji Adamu Modibbo came forward before the Adamawa State Election Tribunal to testify that they were chased away from polling booths during the gubernatorial election even though they were representing their political party. Yet, for an unknown reason, Hon. Justice Aderemi said that:

> *"The entire proceedings [of the Adamawa State Election Tribunal] are replete with allegations of alterations, over-voting, ballot stuffing and chasing away of agents;* ***no person was brought forward as witness to say he was chased away*** *and that they were recognized party agents."*[19] (my emphasis)

This statement will shock and devastate anyone who followed the proceedings of the Adamawa State Election Tribunal ; particularly those who were either present in court, or had watched its daily telecast by the NTA Yola . In fact, the case of witnesses who came forward to testify that they were chased away from polling booths and election centres by agents of Mr. Boni Haruna of the PDP is documented on pages 419 to 427 of the judgment of the Adamawa State Election Tribunal delivered by Hon. Justice Kashim Zannah . If Justice Aderemi chose not to see it, it does not mean that it did not exist. The following have testified before the election tribunal that they were "chased away" at polling booths and election centres. This is what they said as recorded in the judgment of the Adamawa State Election Tribunal:

> *"PW 9, Umar Duhu, in respect of Madagali Local Government testified to the effect that "To my greatest dismay, I saw all our agents being driven from the polling units" and that he rushed to report to the Divisional Police Officer in Gulak , the Headquarters of the Local Government. That particularly in Duhu/Shuwa ward he saw the agents being driven away by persons wearing PDP T-Shirts and Face-Caps and took a picture of the scene."*[20]

> *" PW 20, Modu Hassan, testified that he was one of six agents sent to Bille in Demsa Local Government. He in particular was assigned to watch the box at the Police Station near the market. That they were beaten by some youths in PDP attire, who were led by Mr Obidah (Obi Wycliff Dah, RW3), then Attorney-General, who gave PW.20 and his team the option of choosing between their candidates and their own lives. They chose their lives and left town as earlier advised by the police and some soldiers."*[21]

> *"PW 21 Yusuf Zira testified that he was the ANPP agent at Hudzukwi polling unit 002, Moda/Dlaka, Michika. He testified to the effect he was over powered by three persons who wore vests bearing slogans indicating support for the 1st respondent who stuffed the box with ballot papers. That at the end he refused to sign the result sheet P.397 (b). But that they forged his signature in front of NDP."*[22]

"PW 23, Abdullahi Anthony, gave evidence of what he personally went through along with others when he was posted to be ANPP agent at Borrong."[23]

"PW 25, Jonathan Waziri , testified that at Dalasu polling unit 002 he saw their agent slapped, he was prevented from voting and the ballot box was stuffed, while both the Presiding Officer and the policeman on duty did nothing. That the Presiding Officer counted those ballot papers. He requested for the ballot papers of that unit (P.664) and showed that those papers could not have been folded and inserted."[24]

As a matter of fact, the Adamawa State Election Tribunal found out that some of the evidence brought on behalf of the PDP gubernatorial candidate, Mr. Boni Haruna , even helped to prove the case of intimidation of political opponents as alleged by his ANPP rival, Alhaji Adamu Modibbo and therefore, concluded that:

"If the situation, as is the respondent's evidence, is that party 'youths' can arrest and hand over the party agents and local apparatchik of their opponents to the police, what more needs be proved?"[25]

In view of the above, one could ask, why did Justice Aderemi and his colleagues claimed that " no person was brought forward as witness to say that he was chased away"? What happened to them when they were reading the above quoted paragraphs in the judgement delivered by Hon. Justice Kashim Zannah ?

Chapter Four
The Fabrication of Evidence

Striking Out Paragraphs on the PDP and the Police

A disturbing feature of the judgment of the Appeal Tribunal on the 2003 Adamawa State gubernatorial election case is that both Justice Ikechi Francis Ogbuagu and Justice Pius Olayiwola Aderemi relied upon certain "facts", which did not exist in the judgment delivered by Hon. Justice Kashim Zannah of the Adamawa State Election Tribunal . The two justices of the Court of Appeal actually fabricated the "facts" and used them to justify their judgements claiming that they came from the judgement of the Adamawa State Election Tribunal. For example in his own judgment, Justice Ogbuagu stated that:

*"**Remarkably, after the tribunal had struck out the names of the Peoples Democratic Party (PDP) and the Commissioner of Police , Adamawa and sixty (60) paragraphs of the petition relating to the same PDP and the Police**, it went ahead and retained and made use of the same paragraphs upon*

which the allegations were made against these two parties and even allowed evidence to be led on the same paragraphs. It did not stop at that, it went ahead and even relied on the evidence led against these two parties whose names have been struck out."[26] (my emphasis)

In his own judgement too, Justice Aderemi also claimed that the lower tribunal had struck out the name and the paragraphs relating to the PDP and the Police. He also went further to express surprise and dismay that evidence was allowed by the lower tribunal against the PDP. This is what Justice Aderemi said in his judgement:

"…One very curious aspect of the trial was that initially the Peoples Democratic Party, the party under whose platform the 1st appellant contested and the Police were made parties to the petition. ***At a point, during the trial, the petitioners voluntarily withdrew against the duo and so their names and all the paragraphs of the petition relating to them were struck out.*** *Yet evidence was allowed to be led on allegations already levied against the P.D.P. and the Police in the pleadings. These pieces of evidence adduced by the witnesses called by the petitioners were made use of by the tribunal and findings were made against the P.D.P. and the Police with adverse effect on the appellants. I have always thought that the law remains static that nobody shall be condemned unless he is given an opportunity to be heard. Having struck out the names of P.D.P. and the Police no evidence incriminating or indicting them should have been entertained let alone used in the judgment. By so doing, the lower tribunal committed a very grave error of law."*[27] (my emphasis)

The lingering question is, therefore, where in the judgement of the Adamawa State Election Tribunal , did Hon. Justices Ogbuagu and Aderemi find out that paragraphs relating to the PDP and the Police in the petition were struck out? For the truth is that the **election tribunal did not strike out any paragraph relating to the PDP and the Police**. This is what the Adamawa State Election Tribunal said in its judgment on the PDP and the Commissioner of Police:

"We should also mention here that the ***PEOPLES DEMOCRATIC PARTY*** *and the* ***COMMISSIONER OF POLICE ADAMAWA STATE*** *who were both sued as the* ***5th and 6th Respondents respectively in Petition No. 10*** *were struck out of both suits, only the former however was sued as the* ***5th Respondent*** *in Petition No. 1. References to them in the petitions shall simply read the Peoples Democratic Party (PDP) and The Police, as per application taken and granted in the course of trial."*[28]

Where then did the Justices of the Court of Appeal get this "fact" that paragraphs relating to the PDP and the Police were struck out? No such fact is on the record of the tribunal. Justices Aderemi, Ogbuagu and their colleagues on the Appeal Tribunal are required to disclose the source of this "fact." Or do we consider this as a case of a conscious fabrication of "facts" by the Justices of the Court of Appeal to

justify the validation of INEC 's declaration of Mr. Boni Haruna as the winner of the gubernatorial election in Adamawa State?

The case of manufacturing facts to justify the judicial support for Mr. Boni Haruna was again made by Justice Aderemi in his lead judgment. In his desperate effort to dismiss the testimonies of credible witnesses who came forward to testify that massive irregularities occurred at Jada , Toungo , Ganye and Mubi North local government areas, which formed the basis of the cancellation of the results in these places, he said that their testimonies "lacked evidential value" because some of the witnesses were "indoors" on the day of the gubernatorial election. This is what he said:

"… Again as to the issue of cancellation of the election in Jada , Toungo , Ganye and Mubi North, I have after reviewing the various pieces of evidence led, held that the testimonies so given lacked evidential value for the reason that ***some of the witnesses who testified never came out of the doors of their respective houses on the day of election; a clear example was P/W4-Kamale who claimed he remained indoors on the day of election*** *and in respect of others, there was no evidence pointedly showing that those others who testified were accredited agents of the petitioners…"*[29] (my emphasis)

This is stranger than fiction because the judgment of the Adamawa State Election Tribunal stated that in the case of one of these witnesses Musa Kamale that he:

"…was arrested in the morning on Election Day. His own arrest and the circumstances surrounding the arrest are therefore established. The evidence is therefore beyond hearsay."[30]

The question is, therefore, where did Hon. Justice P. O. Adereme, JCA get his "fact" that "Kamale remained indoors on the day of election"? Is this not another serious case of fabrication of "facts" by a very senior judge in order to find a justification to declare Mr. Boni Haruna as the winner of the 2003 gubernatorial election in Adamawa State? Is this also not a criminal matter, which must be looked into by the law enforcement agencies, including the judiciary

Chapter Five
The Fear of Charts

The Importance of Charts

In his lead judgment, Justice Aderemi quoted the Adamawa State Election Tribunal 's explanation as to why it illustrated its judgement with charts, but midstream cut out (though indicating it this time) portions, which showed clearly that the purpose of the charts was to ensure transparency on the part of the tribunal.[31] This is another clever way of distorting the judgment of the Adamawa State Election Tribunal to favour Mr. Boni Haruna .

We produce below the one sentence quoted by Justice Aderemi and the omitted portion with emphasis so that people can see the rationale of the Adamawa State Election Tribunal for using charts to illustrate its judgment. It is this rationale, which the Hon. Justices of the Appeal Court were trying, tooth and nail to hide from the public. The Adamawa State Election Tribunal explained that:

> *"We have found it necessary to present our findings on the issues in respect of specific units in tabular format.* ***The sheer volume of specific evidence to be considered makes it necessary to do so if a transparent judgment is to be rendered.***
>
> ***We have also found it reasonable to take account of our own fallibility in deciding on the numerous legal issues raised. By adopting the tabular format, we intend to make possible to detect and sever the consequences of our fallibility and reasonably determine its over all effect on the ultimate outcome."***[32]

On the basis of the above rationale, the Adamawa State Election Tribunal went ahead to construct charts to illustrate its judgement. These charts represent the votes cast in each polling booth, each ward and each local government area whose results have been questioned by the petitioner. What is most impressive about the charts is that each of them bears the number of the exhibit from where it was extracted, which makes crosschecking and verification very easy.

Despite this obvious advantage, Justice Aderemi and his colleagues on the Appeal Tribunal went out of their way to accuse the Adamawa State Election Tribunal of "conjuring" evidence with the charts. Yet, none of the five senior Justices could point out one piece of evidence, or entry in any of the charts, which was not part of the documentary, or oral evidence, validly led at the hearing and rightly admitted by the election tribunal.

Given the significance of the charts to the comprehensive understanding of the judgement of the Adamawa State Election Tribunal it is important to illustrate what happened at the gubernatorial election with the case of two local government areas at the two different ends of Adamawa State . These are Michika , located at the northern part and Guyuk, which is on the southern part of Adamawa State.

The Michika Local Government Area

The first case we would examine here is that of the Michika Local Government Area, LGA. The PDP gubernatorial candidate, Mr. Boni Haruna came from Michika LGA. The local government has 15 wards and 130 polling booths. It registered 67,937 voters for the 2003 elections. Out of this number, 67,283, representing 99% of

the registered voters were recorded to have voted during the gubernatorial election. The PDP candidate, Mr. Boni Haruna was given by INEC a total of 64,376 votes, representing 95.6% of the total votes cast.

The problem is not because Mr. Boni Haruna obtained 95.6% of the votes cast in his own Local Government Area but a cursory look at the charts gives a vivid idea of very serious malpractices. For example two wards recorded 100% voters turn out, 10 out of the 15 wards in the LGA reported above 99% voter turn out and the lowest voter turn out was 93.9%. If you probe further, you could also see that 26 out of the 130 polling booths, representing 20% recorded between 98-99% voter turn out. In addition, 83 out of the 130 polling booths, representing 63.8% of the total number of polling booths in the LGA reported 100% voter turn out. This meant that 109 polling booths, representing 83.8% of the total number of polling booths in the LGA reported between 98-100% voter turn out. This is incredible because such high figures of voter turn out were recorded when 13,949 voters' cards, representing 20.5% of the registered voters, remained uncollected at the INEC office in Michika . In addition, malpractices, including over-voting have been reported and recorded in the charts for every SINGLE polling booth in this local government. All this information is available in the charts for everyone to see, check, crosscheck and verify.[33]

Let us illustrate the significance of the charts with the case of Wamblimi/Tilli ward. What happened in this ward, gives us a glimpse of the case of over-voting in favour of the PDP gubernatorial candidate Mr. Boni Haruna in Michika LGA. The Wamblimi/Tilli ward reported 100% voter turn out in all its 7 polling booths. Mr. Boni Haruna was said to have obtained 3,532 out of the 3,562 votes cast. This gave him 99.1% of the total votes.

Yet, this ward recorded 951 unclaimed voters' cards, representing 26.6% of the registered voters. Since every voter voted with a voter's card, how could this ward, whose every single polling booth recorded more than 100 uncollected voters' cards could report 100% voter turn out? This information is vividly, clearly and sharply represented on the charts provided in the judgement of the Adamawa State Election Tribunal . A summary of what transpired in all the wards in Michika LGA during the gubernatorial election is reconstructed in Fig 1 below from the charts provided by the Adamawa State Election Tribunal. It gives the picture of the questionable and contentious results of the gubernatorial election in Mr. Boni Haruna's Local Government Area.

Fig. 1: The Figures from the Michika Local Government Area

Ward	Polling Booths	Registered Voters	Votes Cast	% of Votes Cast	PDP Votes	Unclaimed Voters Cards
Bazza Margi	7	4,301	4,240	98.6%	3,785	889
Madzi	6	3,318	3,318	100%	3,270	808
Munkavacita	5	2,442	2,441	99.9%	2,361	386
Wamblimi/Tilli	7	3,562	3,562	100%	3,532	951
Tumbara Ngabili	4	2,213	2,201	99.5%	2,176	490
Futudou/Futules	15	6,985	6,981	99.9%	6,932	1,349
Garta/Ghunchi	9	5,501	5,492	99.8%	5,222	864
Jigalambu	6	3,417	3,400	99.5%	3,241	627
Michika 2	7	4,950	4,935	99.7%	4,898	680
Minkisi/Wuro Ngiki	9	5,468	5,367	98.1%	5,184	1007
Moda/Dlaka /Ghanjuwa	9	3,999	3,992	99.8%	3,930	929
Sina/Kamale	13	5,176	5,160	99.7%	4,498	941
Thukudou/sukufu/zah	14	6,258	6,254	99.9%	6,250	1,547
Tsukumu/Tillijo	11	6,549	6,149	93.9%	5,414	1,375
Vi/Bokka	8	3,798	3,791	99.8%	3,683	1,106
TOTAL	**130**	**67,937**	**67,283**	**-**	**64,376**	**13,949**

Source: Reconstructed from the Judgement of the Adamawa State Election Tribunal, pp. 313-335

The Guyuk Local Government Area

The second case comes from Guyuk LGA. This LGA provides another good example to illustrate the evidence of irregularities in the gubernatorial election as recorded on the charts by the election tribunal This LGA has 7 wards and 56 polling booths with 35,187 registered voters. Out of this number, 34,626 representing 98.4% of the voters were recorded to have voted during the gubernatorial election. INEC had recorded for Mr. Boni Haruna of the PDP a total of 32,349, representing 93% of the total votes cast.

The biggest ward in the local government area, Chikila , reported 95.8% voter turn out in its 17 polling booths. In this ward, Mr. Boni Haruna was said to have scored 9,667 out of the total number of 9,353 people who were recorded to have voted! This meant that the PDP gubernatorial candidate obtained 314 more votes than the total number of votes cast during the gubernatorial election in the ward!

We cannot get the logic of the votes given to Mr. Boni Haruna by INEC unless we look at the charts. It would appear as if when they were compiling the results, the INEC officials were busy looking at the figure of 9,757 registered voters in this ward, and they forgot that out of this number, only 9,353 voters were recorded to have voted. This meant that 404 of the registered voters did not vote. Yet INEC went ahead to award 9,667 votes to Mr. Boni Haruna. All this information is recorded on the charts. Is this one of the reasons making the Hon. Justices of the Appeal Tribunal scared of the charts? Were the senior judges scared because of the detail information, polling booth by polling booth, contained in the charts?

In the course of the sittings of the Adamawa State Election Tribunal , the ballot boxes of Guyuk local government area were brought to the court, opened and the ballot papers were recounted. The outcome was very shocking and revealing. It was found out that 43 out of the 56 polling booths, representing 76.7% recorded 100% voter turn out. Yet 26 of these polling booths, representing 60.4% were found with

cases of over voting when the boxes were open in the court. An examination of the chart on Banjiram ward gives a good example of what happened when the ballot boxes of Guyuk LGA were opened and the ballot papers were recounted in the open court.

The Banjiram ward recorded 100% voter turn out but each of the three polling booths in this ward was found with very serious problems. For example polling booth No. P.11/003 registered 894 voters all of whom were reported to have voted. The PDP candidate, Mr. Boni Haruna was said to have scored 893 out of the 894 votes cast. But when the box of this polling booth was opened, the ANPP candidate Alhaji Adamu Modibbo was found to have scored 4 votes. Therefore, there was a clear case of over voting in this polling booth.

The second polling booth, No. P.12(d)/001 registered 206 voters. Here too, everyone was recorded to have voted during the gubernatorial election. Mr. Boni Haruna of the PDP was given 102 out of the 206 votes cast. However, when this box was opened, it was found out that the votes for the PDP candidate were only 53. How did INEC turn round to record 49 more votes for Mr. Boni Haruna? Does this not raise questions about the conduct of the gubernatorial election in Adamawa State? Is this not a clear evidence of election rigging?

Indeed, the third polling booth too, No. P. 12(F)/006 recorded a similar problem with the second one. It recorded 100% voter turn out and the PDP candidate was said to have scored 602 out of the 629 votes cast. But when this box was opened, it was found out that the ANPP candidate Alhaji Adamu Modibbo scored 35 votes. When this was added to the votes of the PDP candidate, it brought the total votes cast in this polling booth to 637. This meant that there were 8 votes above the number of people who were recorded to have voted in the polling booth No. P. 12(F)/006! Is this not clear evidence that INEC was manufacturing results in favour of the PDP gubernatorial candidate?

As a matter of fact, nearly every polling booth in this local government was found with irregularities. These serious irregularities in Guyuk LGA were summarised in the charts prepared by the election tribunal. Yet, the Appeal Tribunal was very hostile to the chards, despite the fact that they have provided impeccable evidence of rigging during the gubernatorial election. Fig 2 below, gives a summary of what transpired at Guyuk LGA during the gubernatorial election in Adamawa State. It was reconstructed from the charts provided by the Adamawa State Election Tribunal .[34]

Fig 2:The Figures from the Guyuk Local Government Area

Ward	Polling Booths	Registered Voters	Votes Cast	% of Votes Cast	PDP Votes
Banjiram	3	1,729	1,729	100%	1,597
Bodeno	4	2,935	2,919	99.45%	2,086
Chikila	17	9,757	9,353	95.8%	9,667
Dukul	12	7,834	7,809	99.6%	6,967
Kola	10	6,023	5,971	99.1%	5,725
Dumna	7	5,040	4,976	98.7%	4,469
Lokoro	3	1,870	1,869	99.99%	1,838
TOTAL	**56**	**35,187**	**34,626**	**-**	**32,349**

Source: Reconstructed from the Judgement of the Adamawa State Election Tribunal, pp. 211-221

The Reasons for the Fear

One is therefore tempted to raise the issue and pose the question: in view of the significant contribution of the charts to the understanding of the irregularities that took place during the gubernatorial election in Adamawa State, why were the Justices of the Appeal Tribunal afraid of the charts? Why did they condemn and vilify the charts? Why did they refuse to use the charts? There may not be definite answers to these questions, but from all indications, the decision of the Adamawa State Election Tribunal to draw up charts from the evidence presented and its conclusions based on the charts have made it very difficult for the senior judges to turn down its judgement.

The charts have also made it easy for everyone to check for mistakes in the election figures used by the tribunal. In other words, the charts summarised what happened on the Election Day, polling booth by polling booth. But, instead of the Appeal Tribunal using this easy to use and factual evidence to arrive at a decision, they chose to denigrate its evidential value in order to find the justification to declare Mr. Boni Haruna as the winner of the gubernatorial election.

As a matter of fact, the Appeal Tribunal could have used the charts to easily trace the mistakes of the lower court and reinstate any result wrongly nullified and then see if the reinstated results affected the final conclusion of the Adamawa State Election Tribunal . But the Appeal Tribunal did not like this act of judicial detachment, transparency and impartiality demonstrated by the lower court. In other words, Justice Aderemi and his colleagues became incensed with the Adamawa State Election Tribunal, for drawing up the charts, which made it impossible for them to over turn its judgment on rational, transparent and judicious grounds. They clearly preferred a generalised and blanket finding that would have justified an equally generalised and blanket reversal.

The Justices of the Court of Appeal have good reasons to be annoyed with the Adamawa State Election Tribunal. This is because by writing a detailed and graphic judgment the election tribunal forced the senior judges to distort the judgment, misrepresent the findings, suppress the evidence, conceal the reasoning and effectively amend the Electoral Act 2002, so as to fish out excuses to declare Mr. Boni Haruna of the PDP as the winner of the Adamawa State gubernatorial election.

The Double Standards about the Charts

But the condemnation of the use of charts in the judgment of the Adamawa State Election Tribunal is even more bizarre because one of the Justices of the Appeal Tribunal who condemned it in a strong language, Hon. Justice Ikechi Francis Ogbuagu had, in an earlier judgment, delivered in the case of Wali v Bafarawa praised the Sokoto State Election Tribunal, where Justice Kashim Zannah was a member, for the illustration of its judgment with charts. This is what he said in his judgment in the case of Wali v Bafarawa:

> *"The schedule which the appellants complained that was not read out, certainly, is not a part of the judgment. Indeed, it is evidence that the tribunal for the avoidance of doubt or speculations, prepared the schedule, from properly admitted exhibits, which schedule, assisted them to ensure that justice was not only done to the petition, but was seen to have been done by them."*[35]

However, in the case of Haruna v Modibbo , the same Hon. Justice Ikechi Francis Ogbuagu went out of his way to ridicule and castigate the Adamawa State Election Tribunal chaired by Hon. Justice Kashim Zannah for using charts to illustrate its judgment. He said, in his own judgment on the Adamawa gubernatorial election case that:

> *"Worse still, the Tribunal on its own, embarked upon and made/prepared a CHART and made some mathematical calculations therefrom. This is just to mention but a few. One word that I may use, with respect, to describe the said judgment, is that it is/was not only PERVERSE BUT BIZARRE!!"* [36]

What a bizarre contradiction!! For in both cases, the charts/schedules were the reproduction of the contents of the same INEC form EC8A that were tendered and admitted in evidence. In fact, in the case of Haruna v Modibbo it was the respondent, Mr. Boni Haruna who produced the election forms, which were admitted without objection. How could a Justice of the Court of Appeal contradict himself within just a couple of months? What has happened to the memory of Hon. Justice Ikechi Francis Ogbuagu?

Chapter Seven

The Truth and the Judiciary

The Supreme Court on Justice Aderemi

The Supreme Court of Nigeria had taken a firm and decisive position on the issue of suppression and misrepresentation of facts by some judges nearly three months before the Appeal Tribunal on the gubernatorial case in Adamawa State delivered its judgment at Jos, on 5th July 2004. What is even most astonishing is that the Supreme Court had overturned the judgment of the same Justice Pius Olayiwola Aderemi on Friday 16th April 2004, in the case between General & Aviation Services Ltd v Thahal. The Supreme Court said emphatically and categorically that:

> *"It cannot be over-emphasised that it is upon known, or at times undisputed facts, or facts as found, and in all cases fully disclosed facts, that a judge seeking to do what is just and equitable may exercise his discretion. No discretion can be regarded as judicially and judiciously exercised upon no factual disclosure or upon partial disclosure, or upon misrepresented or suppressed facts."* [37]

These words of the Supreme Court of the Federal Republic of Nigeria must have fallen on deaf ears. For Justice P. O. Aderemi and his colleagues on the Appeal Tribunal , have decided not only to exercise discretion, but even arrogated to themselves the power of exercising discretion based on "no factual disclosure or upon partial disclosure, or upon misrepresented or suppressed facts."

In view of the above one is compelled to ask: how honest, fair, impartial and just is the judgement delivered by the Appeal Tribunal on Monday 5th July 2004, at Jos in the Adamawa State gubernatorial election case between Mr. Boni Haruna of the PDP and Alhaji Adamu Modibbo of the ANPP ?

Conclusion

Given the inconsistencies, misrepresentations and the distortions of the judgement of the Adamawa State Election Tribunal by the Justices of the Court of Appeal who sat on the Appeal Tribunal to justify the declaration by INEC of Mr. Boni Haruna as the Governor of Adamawa State it is important for every Nigerian who is concerned about the future of democracy, the rule of law and the independence of the judiciary, to read the two judgments along side each other. This would make it possible for people to understand the grievous consequences of this judgment of the Appeal Tribunal, which is basically to undermine the development and sustenance of democracy firmly anchored on the foundations of the rule of law in Nigeria.

This case should not be allowed to end abruptly here. If it does so, it means that we are allowing certain elements in the judiciary to get away with such flagrant disdain for fairness and justice. Such elements in the Nigerian Judiciary would stifle and undermine the development of democratic political culture through the conduct of free and fair elections with the judiciary serving as the impartial umpire. This is why the ANPP as well as the CNPP (Congress of Nigerian Political Parties) should take up this matter to the National Judicial Council and urge it to look into this serious case of miscarriage of justice.

In fact, even PDP members who are really concerned about the future of democracy and the rule of law in Nigeria should join hands together with the opposition parties to get these justices of the Court of Appeal to face justice. The Nigerian Bar Association should also play a crucial role in this case by taking steps to ensure that our courts of law are truly places where justice is dispensed, to all and sundry, irrespective of status and creed. If this is not done, democracy anchored on the foundations of the rule of law is in serious danger.

For it must be recognised that when the will of the people is subverted at the polling booths with such disdainful arrogance and the courts sanction such abuse, then the country is in serious trouble. This is because in this circumstance, democracy becomes a worthless, meaningless and empty concept to the electorate and the wider Nigerian society.

When a situation like this is allowed to develop, no one will blame the people for loosing patience and confidence in the electoral process and the judiciary This would have grave consequences for every one of us because law-abiding citizens would be tempted to take the law into their hands. In the conflicts and chaos that would follow, we shall all; citizens and inhabitants of Nigeria suffer, including the judiciary and the politicians. Democracy and the rule of law shall be completely destroyed and Nigeria will sink into anarchy. Nobody will escape if this happens, as the terrible experience of so many countries in the world today is daily unfolding before our eyes.

APPENDICES

Appendix: 1

Excerpts from the judgement delivered at Yola on Wednesday 24th March 2004 by the Adamawa State Election Tribunal under the Chairmanship of Hon. Justice Kashim Zanna. We have reproduced here the entire section of the judgement on the evaluation of evidence presented before the tribunal, which covers pages 185-208, the section on other allegations, pages 418-422 and the final ruling of the tribunal, pages 432-439.

OVER VIEW OF EVIDENCE

And so the stage is now reached to consider the nature and value of the evidence led by both sides. We already have been forced to consider the purport, but must now consider the import of the evidence led by the Petitioners *Vis a Vis* the counter evidence led by the respondents. To do that we must consider the implications and effects of the incidences of irregularities or non-compliance highlighted by the evidence led in proof of the petition.

Alterations, Cancellations and Mutilations on the Forms EC8A (1)

Several of the witnesses highlighted various incidences of alterations, cancellations and mutilations (at times to the point of illegibility) on the faces of the various Forms EC8A (1) and one copy of the result in respect of Jada Local Government, tendered and admitted.

Counsel for the respondents have submitted that there is a presumption of regularity attaching to these results by virtue of section149(c) of the Evidence Act. We agree with counsel. Alterations and cancellations or mutilations do not in themselves constitute evidence of irregularities. They are presumed to have been regularly done for innocuous reasons. Unless there is evidence to the contrary, extrinsic or on the face the Forms, direct or circumstantial.

So in considering the evidence led, we refrained from reading any but a favourable motive to the alterations etc. Indeed we sought to, and in a few cases discerned clear innocuous explanations for them. These shall be seen on the charts that will be utilised in the course of the judgement

However, in quite a few others they were inexplicable and incongruous. Even then, the presumption weighed in on their side. Such instances abound on the chart to be produced.

But in yet other instances they revealed clear cases of results being worked to fit predetermined ends. These instances too abound on the charts.

We have accorded the presumption of regularity pride of place in our considerations. But the maxim *omnia presumptur rite esse acta* as expresses in the Evidence Act, section 149(c), clearly reveals the basis of the presumption, that:

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case, and in particular may presume:

And then listed the circumstances, one of which is (c): “that the common course of business has been followed in particular cases”

It is a common sense rooted rebuttable presumption. And we understand that the rebutting evidence may even be intrinsic, on the face of a document, hence the statement in *Yiola Maskala v Dimbriwe Silli* [2002] 52 WRN 77 incidentally a case that originated from Shelleng in this state and ended up in the Supreme Court . On the issue of the regularity in the constitution of an Area Court, per Belgore , J.S.C. at 86-87,

There is nothing to indicate, in the printed record, that Shelleng Civil Area Court that heard this case at the beginning was not properly constituted; the presumption of regularity applies that it was properly constituted.

So the rebutting evidence may be on the face of the document initially accorded the presumption.

So where results show that 150 people cast their votes using total supplied ballot papers that number only 100, clearly, a Court of law or Tribunal "may" **not** presume regularity.

Or where the alterations, in the absence of any explanation, beyond reasonable doubt, reveal the purpose, like a whimsical reduction of tallied numbers to avoid recording votes above registered number of voters or to avoid exceeding the number of issued ballot papers, a reasonable tribunal "may" **not** presume regularity in the absence of manifest evidence to the contrary.

Furthermore, the Forms and all they contain are in evidence before us. *Kingibe v Maina* (unreported) cited by Chief Ahamba reaffirms a long standing line of authorities. We shall however be referring to it as now reported at [2004] F.W.L.R. (Pt.191) 1555.

The Forms and their contents being evidence led by the petitioner and admitted without objection, we are duty bound to, as any other piece of evidence analyse, evaluate and draw all reasonable inferences from the facts disclosed thereon. Subject of course, to any extrinsic fact or evidence.

We believe the approach as enumerated above captures the position of the law as enunciated in the case of *Kingibe v Maina* (supra). We have to quote extensively from this *locus classicus*. Per Bulkachuwa , J.C.A. at page1603 E-H:

The Tribunal made a finding at pg.210 of the record that "exhibits 5-38 contain alteration, cancellations, wrong entries etc, on the face of some of the forms" but still held that they were not substantial to affect the result of the election.

We are of the view that the trial tribunal was wrong for non-compliance is said to become substantial;

"If the nature of non-compliance is such as to give obvious advantage on one of the parties to the election. Such non-compliance is substantial and unless there is evidence to the contrary, has affected the result of the election in favour of the party who enjoyed the advantage and against the party who suffered a disadvantage". Per Maidama, J.C.A. at 86 in *Mahuta* (1992)9 NWLR (Pt.263) 85 at 104, Per Tobi JCA (as he then was).

In the case at hand, the appellant has suffered a disadvantage for it is the total number of the votes scored by the 1st respondent at the said polling units that gave him an advantage over the appellant.

The trial tribunal should have held so and examined the evidence as adduced by the respondent as the burden of proving that there were no electoral irregularities now shifts on them.

Finally on these and other incidences, we have endeavoured to consider each alleged irregularity or non-compliance as distinctly as possible, but without completely ignoring the fact that each unit's result and each incident is also a part of the matrix of isolated facts and results that built up to be the return being challenged and defended. Presiding Officers were trained, instructed and controlled by Supervisory Presiding Officers and Electoral Officers. Our study of the Forms shows (discounting the odd non-compliant or stubborn one), distinct noticeable traits from ward to ward and Local Government to Local Government. Thus in Jada1 Ward, ballot papers were supplied to all units just below the number of registered voters. There cannot therefore be over voting In Tsukumu/Tillijo even of Michika , each Presiding Officer returns a token number of unused ballot papers (Exh.P.430 (a-k)). Ditto Wula Ward of Madagali Local Government (P.456 (a-f)). In Yelli Ward of Jada all ballot papers are used (Exh.P.168 (a-m)). In Michika the rule for most wards appears to be that all registered voters must vote. In Binyeri Ward of Mayo Belwa ballot papers are all used with a few recorded as rejected ballot papers (P.243(a-f)), i.e., issued to a voter and cast by him but invalidly, it therefore reflects in computing voter turnout. In Bakari Guso Ward of Ganye Local Government the few ballot papers that are not validly cast are "spoiled" ballots (P.289 (a-g)), i.e. not cast but wasted and so do not reflect on turnout. Same for Gamu ward of the Local Government (P.285 (a-f)).

The above are distinct and noticeable footprints of individual Supervisory Presiding Officers and Electoral Officers, noticeable from the results entered and filed in by individual Presiding Officers. With extreme caution, we note them as part of the inescapable observations on the evidence before us.

All the foregoing reflects our dutiful attempts at assessing, evaluating and drawing appropriate inferences on evidence before us. Due consideration is of necessity accorded evidence on both sides where proffered. The resultant conclusions shall be seen in the course of the judgment.

Failure by Presiding Officers to sign, stamp and disclose their names on the Form.

This is also one of the irregularities complained of and highlighted by several witnesses. Mr Jegede not so forcefully submits that the Forms are not stamped because they are copies. That does not explain the absence of stamps on 'original' ones produced by them and tendered and admitted: exhibits P.320 (a) and P.352 (h).

Neither does it explain the presence of stamps on some obvious copies: P.239 (e) and P252 (a) are examples.

The point really is that it is a requirement of the law. Page 28 Step 7 of the Manual for Election Officials (Exh.9) made to give effect to the Electoral Act mandates that the completed Forms shall be signed and stamped by the Presiding Officer before giving copies to the polling Agents and police. Indeed, section 54(1) of the Electoral Act provides that the form shall be as prescribed by the Commission. And the Commission accordingly prescribed it in the Manual at page 1: indicating that the Presiding Officer shall **certify** the result, by stating his name and signing and stamping the Form.

So a Form on which these are missing is not certified, and is at best an irregular one. We have taken the view that where the Form only lacks a stamp but is otherwise regular and suffers no other defect, the result therein stands and is not invalidated because only of that one irregularity. Notwithstanding the fact that the Presiding Officer, who is a party to the petition, has chosen to be silent and proffer no explanation.

Failure to Sign and Stamp Ballot Papers

The Manual at page 24 Step 1. provides that the Presiding Officer shall " on seeing the voter 's stamped and signed voter's card, prepare the ballot paper(s) by stamping and signing the back of each ballot paper" before issuing the "endorsed paper(s) to the voter".

Clearly, as counsel to petitioner points out, this is a safeguard provision that cannot be taken lightly. Any ballot paper that is not stamped and signed is not in compliance with the Act, to give effect to the principles of which the Manual was issued on its authority. Such non-compliance, in and of itself may not be substantial. But what about it in the background of ballot papers not being accounted for or more than issued being used in some units?

Furthermore, how should any reasonable tribunal view such non-compliance in the face of oral evidence claiming ballot stuffing? And where such evidence is not controverted by the Presiding Officers of the units who are parties in the case?

In these and still other circumstances that constitute the matrix of this petition, we believe no reasonable tribunal has any choice but to consider the non-compliance substantial. It shall be seen in the course of the judgment how we practically manifested these considerations.

Presence or Absence of Voter's slips called Temporary Voter's Cards

A few of these cards found in the envelopes and pouches for unclaimed voter's Cards have been tendered by the Petitioners. Indeed they were tendered half-heartedly and only in a few instances despite being available in almost every unit. Very well so, because these Temporary Cards do not prove anything but the fact that the holders have exchanged them for their cards. Where they are in the possession of voters, they prove nothing more than the fact that the holder presented himself for registration. Since many as we shall soon see were rejected and not "allowed", holding the slip is not evidence of successful registration and so not evidence of a voter that did not vote.

Failure to Account For Ballot Papers Issued

The case of *Kingibe v Maina* (supra) is the *locus classicus* that accords pride of place to one of the essential principles of the Electoral Act, 2002, the principle of accountability in the electoral process. It reproduced, and for us, gave the stamp of a binding authority to the provisions of the Manual (Exh.9) at page 26 on accounting for issued ballot papers. The Court of Appeal , per Bulkachuwa , J.C.A. held at pages1602-1603 that:

Presiding Officers are mandatorily directed not to announce the result of a polling station where the number of ballot papers used and unused do not tally with the number of ballot papers issued…

The Court went on to hold that where this situation is established by evidence "The onus then would shift to the respondent to show that the non-compliance did not substantially affect the result."

So in the petition at hand, where no evidence is led by the respondents to explain or show that such non-compliance has not substantially affected the result, we have no option but to hold that substantial non-compliance has been established.

Over Voting On The Face Of the Forms

Some of the Forms clearly, on the basis of the entries thereon, disclose over voting. But it is submitted on behalf of the respondents that without the Voters Register, even the entry for total voters on register is not enough to conclude that there is over voting. Again the case of *Kingibe v Maina* (supra is authority against that proposition. The Court of Appeal nullified the election for, *inter alia,* use of more

ballot papers than issued to the polling stations, although, per Oduyemi, JCA at 1608 D-E:

…the number of ballot papers provided for use at the polling stations have not been shown to be in excess of the number of registeredvoters in the polling stations-**evidence of the number of registered voters not having been given before the Tribunal.**

Emphasis supplied, to show that voters' register is not essential to a determination of over voting.

At any rate, it is paradoxical that the respondents who rely on the presumption of regularity now question the entries made by them, i.e. the Presiding Officers. Over voting on the face of the Form is a substantial irregularity that in accordance with section 44 of the Electoral Act, shall result in the nullification of the result.

Over Voting As Revealed By the Delimitation Statistics

Exhibit P.10, the delimitation statistics which the respondents fought so hard to keep away from the Tribunal is an extract from the Register of Voters that simply gives the total number of voters that were counted, the number disallowed and the number allowed and issued cards.

The petitioners questioned some of the entries made on the Form as to the number of registered voters, that the figures have been inflated to conceal over voting . When compared to Exhibit P.10 some of the entries challenged were vindicated but some were found to have been inflated.

To make the comparison, it was necessary to get the name of the polling unit from the Form admitted as Exhibit and then trace it on Exhibit P.10 through the Local Government and then the Registration Area (ward). Though the polling unit numbers (P.U. Nos.) do not appear on the Exhibit (hidden by the spreadsheet formatting adopted), the units are clearly arranged in the order they are numbered on the Forms EC8A(1).

In the absence of any explanation from the respondents, in those units where the numbers have been inflated we have taken account of the correct number and considered the effect on the result accordingly as shall soon be seen on the charts.

Claimed or Issued But Unstamped Cards

These are registration cards of voters that have not been stamped and marked at the back to indicate that the holder voted at the indicated elections. These were principally tendered by the petitioner No.1 who testified as PW 34. That when he went round on tour after the elections, he was met at the Local Government Headquarters by voters who felt strongly about their inability to vote. That they gave him their cards. The respondents mounted a two fronted attack against the use of those cards.

First that the absence of the stamp does not conclusively reveal that the holder did not vote. Through RW4, Momsunyare, they contended that to conclude that the holder did not vote, it is necessary to examine the voters register for the unit to confirm his or her name is not ticked. Also that the fingers have to be examined for indelible ink. In short, it is not possible for the Tribunal to at this stage or indeed at any reasonable stage determine whether a given voter voted or not. It is a now familiar approach of the respondents that regales in stultifying the provisions of the Act meant to ensure accountability and verifiability in the electoral process.

Like in the defence of man against the elements, paucity of defensive material appears to have foisted a Hobson's choice situation on the respondents, which they apparently have not seen. It is all too familiar to those living in the Hamartan cold

wind zone: when the piece of blanket is too small and covering the head exposes the legs, yet covering the legs exposes the head. Now if it means this substantial number of unstamped cards (1,967 admitted through PW34 alone) belong to persons who voted, then there is substantial irregularity or widespread non-compliance with the provisions of the Manual which makes the sight of a stamped card a precondition for the Presiding Officer's issuance of the ballot papers to a voter (Pg.24 Step.1).

So it is either that the holders of these cards did not vote or that there was widespread non-compliance with those provisions of the Manual made to give effect to the Act. But there is another front of attack against the cards.

That PW 34 who tendered most of the cards is not a reliable witness because he gave contradictory testimony. Amongst the cards tendered by PW 34 are three cards, one each from the lots tendered as exhibits P.670, P.688 and P.669 that on their reverse sides bear indications that the holders voted at the Gubernatorial and Presidential Elections. They were picked out and he was cross-examined on them. His answers:

Yes it has the INEC stamp. Yes it is dated, I have seen 19 and then 04 which means April but this indicates that the bearer of the card has voted for the Presidential and Gubernatorial Elections of the 19-04-2003. However, we have seen before this Tribunal unclaimed cards in possession of INEC brought by INEC to the Tribunal as unclaimed cards were also stamped, signed and dated.

A few questions down the line, indeed before the one from exhibit 688 was shown to him, the witness proffered another explanation for the presence of the stamped cards. That after the various elections, various candidates of his party for the National and State Assembly elections went out gathering evidence for their own petitions and received cards from their own supporters who did not vote at the elections. That all such petitions were handled from his office and by lawyers appointed by him, and all those cards collected by them were submitted to his office for the use of the lawyers. He said:

I believe in the course of sorting them, which I told the Tribunal my resource people did, they might have mixed cards intended to be used by the petitioners with these to be used by me at this Tribunal. I believe such incidences are very few.

When asked which explanation he wanted believed, he said both "…because what I am saying now was not in issue, that is why I thought it was not necessary to over labour the Tribunal to hear all these explanations".

It became necessary to reproduce these because of the slants and spins they have been subjected to. For one, the witness never shifted from his position as to receiving the cards himself from his aggrieved supporters. Other candidates received from their own supporters and for them, cards used at the P.G.E. (Presidential and Gubernatorial Election) were relevant to their cases as not having voted. The resource persons only sorted out the cards. There is nothing contradictory from this.

Indeed, from a logical standpoint as informed by the evidence before the Tribunal, the two explanations proffered are not mutually exclusive. Consider the case of a Titus Jalibu of Chikila ward in Guyuk Local Government, who decides to attend to one or two chores before going to the polling station and is told on his arrival at 2.00 PM that he cannot vote. He thrusts out his slip or Temporary Voter's Card His card is sorted, fished out and given to him in replacement and is mollified with that, that next he will be allowed to vote on presenting it. And on the reverse side of his card are the marks of having voted, placed thereon under whatever be the

circumstances under which so many cards presented by INEC as unclaimed Cards acquired their own marks.

So the two explanations are not logically incompatible. Indeed, we only see on PW 34's part a willingness to accept blame by offering the second explanation. It should attract credibility and not the contrary. Mix-ups when handling substantial quantities of these cards is a human occurrence. In assessing and evaluating the documentary evidence led before us in this petition we too have fallen victim to this very human failing. It should be a miracle if one or two such mix-ups do not survive our best efforts at detection and rear their embarrassing heads after this judgment We do not intend to default in paying our premium in insuring ourselves against harsh judgment by holding others to supernatural standards But we believe as more likely the explanation that the mix up may be from the preparation of the various petitions.

As for the presence of stamped cards in the possession of INEC , our observation is that the explanation proffered by RW4 appears inadequate. The ballot box is out in the open and so dropping the card into it would have been seen and corrected. Secondly, the sheer number of such cards in some units rules that out as a reasonable explanation. Thirdly, it has appeared in some units that if that were the case, the cards would have been returned to the holders during subsequent elections. Lastly, it is an explanation proffered by RW4, a very unreliable witness; we may have given the explanation better weight if it came from the Presiding Officers concerned, unless they too give us reason not to accord them a presumption of neutrality and consequently greater credibility.

We have therefore, relied on unstamped Claimed Voter's Cards as *prima facie* evidence that the holders did not vote. So it rebuts any presumption and without any evidence to the contrary, leaves us with no option but to conclude that the holder did not vote. If any Presiding Officer had testified in defence of the result from his unit, we may have required the testimony of the holder too. We indeed may have accorded the testimony of such an officer a lot more weight.

The effect of these conclusions on the affected units shall be manifested in the charts.

Unclaimed Voter's Cards

The effect of the presence of unclaimed Voter's Cards in the possession of INEC is the same with that of the claimed unstamped cards. We already have discussed the feeble and obscurantist explanations put forward by the respondents on this. We are not taken in at all. Each unclaimed card represents a voter who, for whatever reason, did not or could not vote.

Ballot Stuffing

The petitioners led evidence to the effect that certain results were obtained by stuffing the ballot boxes with ballot papers and not the result of lawful voting There were, as we have already seen earlier, instances of direct evidence of witnesses who testified to actually having seen the boxes being stuffed. In other instances however, evidence was led to the effect that the ballot papers bore the features of stuffed and not voted in, ballots. The features were described.

1. Straight and belt-like bundles of ballot papers
2. Serial voting i. e. some of the ballot papers numbered serially still being found one after the other as serially printed.
3. Some of the ballot papers are not stamped and signed at the back by the Presiding Officers.

4. The ballot papers in one box bearing two or more different signatures at the back.

The respondents countered this by testimony that ballot stuffing is an old trick that has no relevance in present day voting procedures (RW.6). Does that account for the alleged impunity with which it was allegedly done? Also by the testimony of RW. 12, that when they take out the ballot papers for sorting and counting, they "stretch" them. From what we have seen a hot pressing iron is called for. Also that the voters fold it "slightly", said in such a way that one would think the aim of the process was the "slightly" and not the folding. Fortunately, as petitioners' counsel observes in the address, the Manual (Exhibit 9, with which they were admittedly trained) illustrates how the ballot papers shall be folded. And the emphasis is certainly not on 'slightly'.

Some of these boxes were opened in open court and these features were demonstrated. The first feature alone has been breathtakingly convincing. Again we have considered the possibility of even two ballot papers that came off the print next to each other, remaining in that order even after under going all these processes: being issued to separate voters, though one after the other who however vote separately and drop them separately into the box. Do they fall into the same corner of the box? If they do, do they fall one after the other when emptied and spread out for sorting? And are they picked up one after the other for sorting? Placed one after the other after counting?

It does not take a mathematical genius to work out these probabilities. And here in court we deal with reasonable probabilities that do not affront the common sense.

And we have taken account of the absence or variety of signatures at the reverse sides, requirements that have been stipulated for these very situations, etc.

These are real and inferential evidences that are beyond the realms of speculation. We are convinced beyond reasonable doubt that these boxes were stuffed.

90% To 100% Voting and 100% Ballot Paper Usage

We cannot hold that a high voter turnout of 90 to 100% is invariably an irregularity. Unusual it may be, but still enjoys, in the absence of evidence to the contrary, the presumption of regularity. What then is the nature of the evidence to the contrary? Of course where evidence shows, by the presence of claimed or unclaimed Voter's Cards that some registered voters did not vote in that unit, even a single such voter renders the result invalid for over voting The situation is akin to that described in the case of accredited voters.

But even where there is no such direct evidence the witnesses of the petitioner have contended that such turnout is impracticable or impossible especially in a rural setting. They gave the level of hindrance by topography and the sheer distance between the polling stations and the need for voters to walk very long distances and literally cross rivers and climb mountains before reaching the polling stations. They have contrasted this with the ease in the urban population centres where booths are around the corner. Yet the turnout is much higher in the rural areas.

The respondents have countered this to the effect that the educated town dwellers are less concerned about these things. And also that most town dwellers went back to their villages of origin to register, and then later returned to vote.

The question is if educated town dwellers are not bothered, how come they are at the same time making trips to the villages to register and then to vote? And if they did not register in the towns, how does their absence affect the percentage turnout in

the town? Again we see the inadequate blanket. But these are no more than icings on the main arguments.

The point is evidence, in proof or rebuttal may be direct or circumstantial. And it has been said that it is no derogation of evidence to say that it is circumstantial. It can establish even a case of murder. We have considered the assertion of impossibility or impracticability by the petitioners, in the light of the totality of evidence that surround the 90% to 100% voter turnout, and the sister incidences of 100% utilization of ballot papers issued to polling stations. These are:

1. That they are part of a chain of results where several of such percentage turnouts have been revealed by evidence to be false. This either by the presence of unclaimed cards or claimed but unstamped ones that show the holders did not vote. See chart.
2. That the producers of these result Forms, as we already have observed, Presiding Officers, were trained, instructed and controlled by Supervisory Presiding Officers and Electoral Officers. The Forms reveal (discounting the odd incompetent non-compliant or stubborn one), distinct noticeable traits from Ward to Ward and Local Government to Local Government. Thus in Jada1 Ward, ballot papers were supplied to all units just below the number of registered voters. There cannot therefore be over voting . In Michika the rule for most Wards appears to be that all registered voters must vote. In Tsukumu/Tillijo even of Michika, each Presiding Officer returns a token number of unused ballot papers (Exh.P.430 (a-k)). Ditto Wula Ward of Madagali Local Government (P.456 (a-f)). In Yelli Ward of Jada all ballot papers are used (Exh.P.168 (a-m)). In Binyeri Ward of Mayo Belwa all ballot papers are all cast with a few recorded as rejected ballot papers (P.243(a-f)), i.e., issued to a voter and cast by him but invalidly, it therefore reflects in computing voter turnout. In Bakari Guso Ward of Ganye Local Government while all ballot papers are used, the few ballot papers that are not validly cast are "spoiled" ballots (P.289 (a-g)), i.e. not cast but wasted and so do not reflect on turnout. Same for Gamu ward of the Local Government (P.285 (a-f)).

These are distinct and noticeable footprints of individual Supervisory Presiding Officers and Electoral Officers, noticeable from the results entered and filed in by individual Presiding Officers under their charge.
3. We have it in evidence through PW 9, Umar Duhu that the Presiding Officer for Kambula unit in Madagali Local government insisted on exhausting the ballot papers issued to him. That it was his instruction from the person who got him the job. The Presiding Officer, a party to this petition has not testified and no other evidence has been led to controvert this. The witness was asked only one question on this under cross examination and he answered that he did report this to the Electoral Officer. The Electoral officer too considered it better to keep quiet.
4. We have seen the test inadvertently set by the respondents as the test that may take the matter beyond the realms of speculation:

Speculation cannot take place of proof. There was no evidence that there was any death of are registered voter or that voters did not vote in each of the units the petitioner claimed the voter turn out was "impracticable" or "impossible".

Late Hon. Alexander Shombi, a former Honourable member of the State House of Assembly , by the uncontradicted and uncontroverted testimony of PW11, registered at Bajama Ward, Unit 001 but, as is common knowledge died before the

election. That unit returned 100% voting on Exhibit P.239 (a). And yes, there are 115 unclaimed cards from the unit (Exh. P. 240).

5. That as we shall soon see, some Forms EC8A (1) returning such high turnout on look them reveal the fact that such result were just worked towards and filled. Such are obvious on the faces of the Forms. Exhibit P.261 (j), P.262 (i), P.265 (e) etc.

6. That the Forms bearing such perfect turnout and ballot utilisation come with imperfections like absence of requisite stamps and inexplicable alteration etc. reason dictates that such voting should make it easier to fill columns like those for rejected ballots, since there could be none.

7. That on some of the Forms, a simple mistake in addition for example, will be carried all through, reflecting on the account of ballots and other entries. For example a mistake whereby 10 was added to the total votes cast should not ordinarily lead to a reduction in total ballots issued. If it does and the entry for total ballot papers issued is reduced, clearly results are just filled in. Or where an entry of ten unused ballot papers is thereby cancelled. The entry for unused ballots should ordinarily be a result of simply counting what remains undetached from the bunch and entering the figure on the Form. Such alterations and entries clearly reveal the truth of the process actually at play.

8. That some exceed the issued ballot papers not because ballots may have come in from outside but because in working the results, eyes were on total registered voters forgetting the limitation by the total issued ballot papers.

9. That it is also in evidence that some simply enter higher figures for total number of registered voters and thus avoid revealing over voting on the face of the Forms.

10. As a result of first assuming that certain entries revealing over usage of ballot papers are really arithmetical errors, we have checked all such entries and have been amazed to discover that in most of the instances where an error is detected, the voter turnout too is low. Inexplicable alterations and entries appear to have a correlation with high turnout e.g. exhibit P.650 (f) and P.482 (a).

We appreciate the fact that some of these considerations belong to touchy frontiers of the law of evidence. Similar circumstances have been faced even in criminal cases, and similarly touchy provinces of the law of evidence have had to be trod for good reason. Our point finds illustration in *Boardman v Director of Public Prosecutions* [1974] 3 All ER 887 page 905:

What there must be is variously described as ‘underlying unity’ (*Moorov*) ‘system’ (see per Lord Reid in *Kilbourne* ([1973] 1 All ER at 456, [1973] AC at 751)) ‘nexus’, ‘unity of intent, project, campaign or adventure’ (*Moorov*)… ‘The test is (per Lord Simon of Glaisdale in *Kilbourne* ([1973] 1 All ER at 456, [1973] AC at 751)) whether there is ‘such an underlying unity between the offences as to make coincidence an affront to common sense’…

Upholding these ‘100% returns’ in the face of all these facts and circumstances affronts not only common sense but outrages conscience and insults reason.

We have already seen that the presumption of regularity is a common sense based rebuttable presumption in our laws intended, as made apparent by the opening words of section 149 to aid and not to shackle the courts in arriving at reasonable decisions.

THE FOUR WARDS OF FUFORE

The petitioners in paragraph 91 of the petition No.10 pleaded that their agents were chased away from four Wards Karlahi, Yadim, Uki Tuki and Mayo Inne. They further pleaded that over voting was recorded in these wards. They were prevented by INEC from inspecting materials in the Local Government. We are convinced the inspection would have revealed evidence adverse to the 2nd respondent. We have in this petition seen how results that at first looked impeccable turned out to be monumentally irregular, so we refuse to consider any fact in an attempt at mitigating the effect of the 2nd respondent's conduct. We therefore find that the petitioners have proved their case by operation of the presumption that the respondents withheld evidence that would have gone against them.

We also disregard the attempt in the addresses to befuddle the testimony of PW26. He volunteered that in Fufore **WARD,** where he was coordinator, although PDP won the election was free and fair. He never said Fufore Local Government…

OTHER ALLEGATIONS

However, the petitioners also pleaded and led evidence on other irregularities that are general in nature. One of these is the allegation that the agents of the petitioner were chased away and prevented from performing their roles as watchdogs for the petitioners. There is also the general allegation that a climate of fear targeted at the supporters of the petitioners was created by security agents on the eve and the days of the election.

Climate of Fear and Harassment

One such is the evidence led in proof of the petitioners' claim that their **agents were harassed, prevented and chased away** from performing their roles on behalf of the petitioners. The respondents have submitted that the evidence led on this was hearsay evidence, that the agents themselves have not been brought to court, to give direct evidence instead of the hearsay from so called supervisory agents.

Truly, some of the evidence led on this was hearsay. A lot of it was not recorded at all. Indeed it was a running battle between some of the petitioners witnesses and petitioners' counsel that such testimony shall not be given. But still some such testimony did get in and shall completely be ignored. But is it true to say that all the evidence led on this issue was hearsay? That is what Mr Duru appears to contend.

PW4, Musa Buba Kari Kamale , was admittedly not a polling agent at any of the units. But his testimony that he is a chieftain of the ANPP saddled with the responsibility of despatching agents was not disputed. And it is admitted by the respondents' witnesses that he was arrested in the morning on Election Day (RW.10). His own arrest and the circumstances surrounding the arrest are therefore established. The evidence is therefore beyond hearsay.

PW5, Mohammed Bapetel Ahmad, testified that on the 18th day of April, 2003, he led a team of 270 agents meant for Jada , Toungo and Ganye . It is also in evidence (PW.25) that a complement of agents expected from Yola did not arrive at Toungo. Now PW5 testified that the convoy was stopped at a roadblock just after the police station in Jada by a combined team of the police, soldiers and PDP youths known as Agenda 2003 and told to go back, despite showing their tags and identifying themselves and their mission. For resisting, they were insulted, beaten and told to frog-jump. Many ran away and 26 of them were arrested and detained at the police station but released the next day after the elections without being charged to court.

Is this hearsay evidence? That he was part of, saw and felt what happened, to which he testified? Indeed all the cross examination of the witness was not even targeted at

disproving his testimony but as to whether the event took place near the border with the Cameroon Republic; where the witness and those agents he led reside; whether they were registered with INEC as agents, etc. The event itself was not at all challenged.

PW 9, Umar Duhu , in respect of Madagali Local Government testified to the effect that "To my greatest dismay, I saw all our agents being driven from the polling units" and that he rushed to report to the Divisional Police Officer in Gulak , the Headquarters of the Local Government. That particularly in Duhu/Shuwa ward he saw the agents being driven away by persons wearing PDP T-Shirts and Face-Caps and took a picture of the scene. That he covered only the motorable wards in the Local Government, that is 5 to 6 (parts of Bebel ward) wards. All that was achieved in cross examining this witness was to expose his veracity and clear any lingering doubts as to the possible reasons for his actions, e.g. reporting the conduct of presiding officers to the Electoral officer and not the police. He was not seriously challenged as to the testimony that he saw their agents **being driven away.**

PW20, Modu Hassan , testified that he was one of six agents sent to Bille in Demsa Local Government. He in particular was assigned to watch the box at the Police Station near the market. That they were beaten by some youths in PDP attire, who were led by Mr Obidah (Obi Wycliff Dah, RW3), then Attorney-General, who gave PW.20 and his team the option of choosing between their candidates and their own lives. They chose their lives and left town as earlier advised by the police and some soldiers.

PW.21 Yusuf Zira testified that he was the ANPP agent at Hudzukwi polling unit 002, Moda/Dlaka , Michika . He testified to the effect he was over powered by three persons who wore vests bearing slogans indicating support for the 1st respondent who stuffed the box with ballot papers. That at the end he refused to sign the result sheet P.397 (b). But that they forged his signature in front of NDP.

Is this hearsay evidence? But the Presiding Officer, who is the 1272nd respondent, could have given useful evidence on this. He did not testify.

PW22, Aliyu Garba, said he was beaten by security agents on the instruction of one Boss Mustapha, a PDP top-notcher.

PW23, Abdullahi Anthony , gave evidence of what he personally went through along with others when he was posted to be ANPP agent at Borrong .

PW.25, Jonathan Waziri , testified that at Dalasu polling unit 002 he saw their agent slapped, he was prevented from voting and the ballot box was stuffed, while both the Presiding Officer and the policeman on duty did nothing. That the Presiding Officer counted those ballot papers. He requested for the ballot papers of that unit (P.664) and showed that those papers could not have been folded and inserted.

Was this hearsay? Could the Presiding Officer for the unit, 624th respondent, not have given useful evidence?

Evidently, a lot of direct evidence has been led on the allegation that agents were chased away and prevented from even reaching the units where they were supposed to be agents.

But the respondents also led evidence in rebuttal. For the alleged events at Demsa testified to by PW20, RW 3, Wycliff testified to the effect that it was the ANPP local chieftain who reported his own party agents to him, the PDP Government Commissioner. That he is an elder. That he did not threaten them but rather admonished them and left. It would require some effort to believe this even from as eminent a person as the witness. While his testimony is that the ANPP supporters are civil enough to cross party lines and lodge the complaints. This contradicts the

impression created by another Commissioner, RW 6: that the party ran a wild campaign that he likened to war and invasion. We would have been more comfortable if the elder came to court along with the opposition personalities that dragged him into the matter. As matters stand, common sense tilts towards according credit to the testimony of PW20.
RW 11 was called apparently to counter the evidence of petitioners' witnesses that the signatures purporting to be those of their agents that appear on the Forms EC8A (1) were affixed by their opponents and the Presiding Officers. RW11 testified that he was his party's agent at Mayo Baji unit of Dawo2 ward in Toungo . He testified that the ANPP agent signed the Form from that ward. When asked to point out the signature on the Form which was already an exhibit, he could not as there was no signature for the ANPP Agent on the form although that of the witness is on the Form. Why was he confident he could find the signature and in fact testified that he saw the ANPP agent sign? Was there supposed to be a signature there but by sheer providence was not affixed?
A much more amazing situation is the attempt to counter the testimonies of PW. 5 and PW.25 with respect to agents destined to Toungo , Ganye and Jada being stopped and chased away and arrested at Jada. Mr Jegede it was, in friendly cross examination of RW9, the Divisional Police Officer for Jada, tendered exhibit R14,which is the case diary containing the statements of the persons they arrested and escorted out of Jada to return to Yola. The witness admitted he read the statements. The diary clearly shows who were the persons arrested and by whom.
All of them stated that they were agents or party officials engaged in preparations involving agents at the polling booths: 11 of them Jada people, Agents, Ward Secretaries, Ward Chairmen and Councillorship Candidates of their party…

ON THE SCALE
Having dealt with the specifics, we now relate them to the entirety of the case presented by the petitioners vis a vis the evidence led by the respondents. It shall be obvious at this stage with the specific findings in the course of this rambling judgment (which of necessity had to sacrifice style, structure and appropriate diction for more serious considerations); the respondents have been unable to effectively create any doubt as to those salient facts of non-compliances and irregularities presented by the petitioners.

In a few instances where testimonial evidence from the two sides is at par, extrinsic facts come in to tilt the scale in favour of the petitioners. For example, the respondents went to great lengths to controvert the testimony of PW 10, Amos Turche Kwaghe, that in the unit where the 1st respondent voted the box was immediately taken away and he who was registered there could not vote. He tendered his unstamped card exhibit P.165.

The respondents called RW1 and dragged in RW 10, the Divisional Police Officer of the area to lead evidence to the contrary. But PW 12 also testified that the Form EC8 A (1) for unit 003 could not be given to them by INEC to inspect. That it was not found. This was not controverted by the respondents who were subpoenaed to produce all these Forms.

Lo and behold, on checking exhibit P.165, we found it is the card for that very unit whose result Form could not be found. Is there any problem determining the side that told the truth about the box having been taken away? We think not.

Again the petitioners led evidence of communal clashes that allegedly led to several persons leaving some wards of Yungur in Song Local Government and therefore making it impossible to obtain a high voter turnout. In response to this, the respondents brought comical relief to the tensed proceedings of the Tribunal. RW 7 was simply a clown. A gubernatorial candidate who told his supporters to go and vote for whomever it pleased them to. Who would not say who he voted for? Who said in his evidence in chief that only a few women and children fled to Song from Dumne . But when cross examined, that four buses made "so many trips" to return them.

The result of all the foregoing is that substantially, the petitioner presented a case backed by infallible documentary evidence and by credible witnesses whose testimonies found easy corroboration from impersonal and undisputed facts. Against this, the respondents' evidence was discreditable and in fact discredited by even facts and circumstances they admitted or even produced.

THE ANSWERS

The determination of the principal issues raised by counsel in the petition shall be by way of answers to the questions posed.

In view of the foregoing findings, have the petitioners established instances of irregularities, non-compliance, malpractices etc? The answer of course is yes. The sundry instances have been determined and highlighted in the course of the judgment

The next question is: have these proven instances substantially affected the ultimate outcome of the election? In other words could it be reasonably said that the 1st respondent could still have won had these irregularities, non-compliance, etc not taken place? We think not for the following reasons:

1. Without more, even the specific allegations that have been found to have been established show that no reasonable man would hold that the 1st respondent could still have won. The areas affected account for a total number of 485, 443 registered voters. By exhibit P.667 (tendered by the petitioner) a total 996, 732 votes were cast in the entire election. There is no point belabouring the point that the resultant disenfranchisement of such a large number of voters has affected the outcome of the election. Indeed the result declared by the 2nd respondent (exhibit P.667) is to the effect that the 1st respondent scored 660,520 votes against the petitioner's 282,852 votes, a difference of 377,668 votes. Certainly the votes in the area affected are significant enough to tilt the scale of victory to another side. If 1st respondent's affected votes of 372,512 are deducted from his declared score of 660, 520 it leaves him with 288,008 votes. But those 372,512 votes are significant enough if only 200,000 of the go to the petitioner to tilt victory to his side with 482,852 votes against a vote of 460,520 for the 1st respondent. These are the reasonable probabilities that determine whether the outcome is affected. The long and short of it is that 485, 443 potential voters are affected, 439,108 votes were purportedly cast but nullified and so an election based on a difference of 377,668 votes is affected.

2. In addition to the specific units, we have found that the entire results from four local governments, Jada , Toungo , Ganye and Mubi North are liable to cancellation for malpractices or non-compliance the effects of which are by law deemed substantial. As a result an additional figure of 35,450 would be deducted from the score of the 1st respondent, being the remaining votes in those Local Government scored by him after the specific ones were deducted.

3. We have adverted our minds to the question of the percentage of votes cast in the Local Government that the 1st respondent may have left standing after deducting the nullified votes. The question is which total figure of votes cast may be used? Including the votes cast but cancelled? Or just what is left after the cancellation which may be ridiculous. For example in Jada , after cancellation the votes cast at the specific units, only 4,125 votes remain as total votes cast, in Toungo the figure is 5,690. Determination of percentage scores per Local Government is relevant only in situations where a substantial number of the votes cast were valid. In the circumstance of this petition, the extent of irregularities and their effect is beyond such situations. The irregularities are so substantial that such determinations cannot be reasonably undertaken. But we have extracted from exhibit P.667 the information required for such calculations.

4. Section 135 (1) of the Electoral Act indicates that it is importantfor the elections to be conducted substantially in accordance with the "principles" of the Act. We discern from the Act the essential principle that the electoral process shall be in such a way that it is **fair, accountable and verifiable**. This informed several of the provisions the Act: the design for accounting for issued ballot papers on the EC8A(1), certification of the Form by the Presiding Officer, the registration of voters and issuance of cards, the stamping etc at the back of the cards for those that voted, allowing candidates to be represented by agents, stamping and signing issued ballot papers, disallowing partisan persons from conducting the elections, cancellation of results where ballots are not accounted for, preservation of election materials, etc. to crown it all, candidates are permitted to inspect the materials used at the elections with a view to instituting or maintaining election petitions.

In view of all the foregoing therefore, we have come to the conclusion and order as follows:

That the results of the elections in the following Local Governments were arrived at and declared by the 2nd respondent in substantial violation of the provisions of the Electoral Act and are hereby cancelled. They are:

1. Jada
2. Ganye
3. Toungo
4. Mubi North
5. Hong
6. Gombi
7. Michika
8. Madagali
9. Mayo Belwa
10. Demsa
11. Numan
12. Guyuk
13. Lamurde
14. Song

That the results of those units specifically listed as irregular on the main and detailed chart for the following Local Governments are also cancelled:

1. Girei
2. Fufore (the 4 wards)
3. Mubi South

That the results for the remaining wards and polling units in the above three Local Governments and

1. Yola North
2. Yola South
3. Maiha
4. Shelleng

which have not been challenged or evidence led against (Shelleng) shall stand as valid.

That consequently the 1st respondent as returned by the 2nd respondent was not validly elected and his election is hereby nullified.

That the 2nd respondent shall note the observations and findings made in this judgment make amends and in accordance with the provisions of the Electoral Act conduct fresh elections in those areas whose results are by this judgment cancelled. The result of which shall be added to the subsisting result to determine the winner.

In the result that the election of the 1st respondent as Governor of Adamawa State is hereby accordingly nullified and that being the main and first prayer of the petitioners, the position of the law is that the alternative prayers may not be considered.

So ordered.

SGN
Hon. Justice Kashim Zannah
(Chairman)

SGN
Hon. Justice T. Akomolafe
(Member)

SGD
Hon. Justice I. M. Saulawa
(Member)

SGD
Hon. Justice A. A. Philips
(Member)

SGN
Hon. Justice M. I. Sirajo
(Member)

APPENDIX: 2

Excerpt from the Lead judgement of the Court of Appeal in the gubernatorial election case between Mr. Boni Haruna of the PDP and Alhaji Adamu Modibbo of the ANPP , delivered by Hon. Justice P. O Aderemi, Jos on Monday the 5th day of July, 2004. The selection is from pages 32 and 59 of the Lead judgement.

…On the issue of unclaimed voters card the lower tribunal held at 753 of the record.

"The effect of the presence of unclaimed Voter's Cards in the possession of INEC is the same with that of the claimed unstamped cards. We already have discussed the feeble and obscurantist explanations put forward by the respondents on this. We are not taken in at all. Each unclaimed card represents a voter who for whatever reason, did not or could not vote."

I have gone through the whole 'proceedings, not a single witness was called to say that he was the owner of the unclaimed card to testify as to whether he voted or did not vote and the reason for not voting. As to the evidential value of tendering unclaimed voters cards it seems to me that if the number of unclaimed vote's cards exceed the member of registered voters in the authentic document -VOTERS' REGISTER-and evidence of the various owners is given then a case predicated on Unclaimed Voters Cards will inure to the benefit of the petitioner. But certainly Ex P10-the DELIMINATION STATISTICS cannot take the place of VOTERS' REGISTER. EX P10 does not bear the original stamp of the authority that should produce such document. The absence of this reduces its evidential value, if it has any at all.

The issue whether a voter without a registration card could vote at an election or not is better answered by re-stating the provisions of the MANUAL FOR ELECTION OFFICIALS issued by INEC made pursuant to the Electoral Act 2002 Chapters 5, page 18 thereof the germane provision reads:

STEP 2
"If the person does not have a voter's card the poll clerk shall ask the person's name, address and age and for other information contained in the register.

(a) If the Poll Clerk is satisfied that the person's name is in the register, the poll clerk shall proceed to step 5"

STEP 5
"If the voters name is on the Register, the Poll Clerk shall make a mark on the left of the voter's name in the register to indicate that he/she will be voting in this election."

STEP 6
The Poll Clerk shall then give the voter's card to the poll Assistant".

Section 40 (1) and (2) of the Electoral Act 2002 which relates to the issuance of ballot Paper provides:

Section 40 (1):-

Every Person intending to vote shall present himself to a Presiding officer at the polling within the Constituency in which his name is registered with his voter's card.

Section 40(2)

"The Presiding officer shall on being satisfied that the name of the person is on the Register of Voters issue him a ballet paper and indicate on the Register that the person has voted."

It is never the intendment of the law-makers to disenfranchise any law-abiding citizen. A judge must always refrain from construing an act or a rule in a manner that will result in absurdity. Blunders or mistakes are bound to take place from time to time. In the course of same, voters' cards can easily get into wrong hands. If emphasis is placed on presentation of cards rather than the physical presence of a person who intends to vote incidence of impersonation at the polling centre will be more. It seems to me that emphasis should be on the second arm of Section 40 of the Act which requires that a Presiding Officer should be satisfied that the name of the person who intends to vote is on the register of Voters rather than the first arm which stipulates that the intending voter should rely only on the voter's card he is holding. If the name of a carrier of a voter's card is not on the Register of voters he certainly will not be allowed to vote.

Whatever may be the rigidity of Section 40 of the Act, and I cannot see it to be obvious, the promulgation of the Manual to guide the officials is the equity that waters down any rigidity of the law. After all equity is always regarded as a correction of the law, when too general, in the part where it seems defective. Sub-sections (1) and (2) of section 40 require the intervention of equity of good reasons and justice are to prevail. I think this is the Latin Maxim LEX ALIQUANDO SEQUITUR AEQUITATEM –meaning Law sometimes follows equity is very apposite. Even the maxim – JUS RESPICIT AEQUITATEM-meaning Law regards equity, must always be accorded pride of place by a judge in his interpretative exercise. The combined effect of the law and the manual in my view is to facilitate, voting by the electorate.

There is that allegation that some results in the election were obtained as a result of stuffing the ballot boxes. Evidence for and against was led by both sides. In the evaluation of the evidence the lower tribunal held:

"The petitioners led evidence to the effect that certain results were obtained by stuffing the ballot boxes with ballot papers and not the result of lawful voting There were, as we have already seen earlier, instances of direct evidence of witnesses who testified to actually having seen the boxes being stuffed. In other instances however evidence was led to the effect that the ballot papers bore the features of stuffed (sic) and not voted in ballots...

The respondents countered this by the testimony that ballot stuffing is an old trick that has no relevance in present day voting procedures… Some of these boxes were opened in open court and their features were demonstrated".

I do not wish to go further than what I have quoted supra. The tribunal was dealing with vital documentary evidence kept in a ballot box. To give the evidence on this issue of credibility, the ballot boxes in which the ballot papers were allegedly stuffed must be tendered before the tribunal and opened there. Was there any ballot box tendered? The answer to this all-important question would be found in the proceedings before the tribunal. P/W8-Shem Dimas, a politician and a member of ANPP , the Chairmanship candidate of the party in the course of seeking to tender what he termed the ballot box said:

"On P.109 (d) on opening the box we found that a reasonable number of the ballot papers were not stamped and signed indicating ballot box stuffing. I want the box produced to show this. This is the box".

The counsel to the petitioners before the lower tribunal Chief Ahamba sought to tender what was regarded as the box. Mr. Jegede, counsel for the 3rd set of appellants said: at page 707 of the record of proceeding in response to what was sought to be tendered:

"It is not a box. I must continue to now observe, otherwise, no objection.

Chief Ahamba senior counsel for the petitioners in the court below said in reply to Jegede:-

"Same response. We have all been calling it box from the beginning. I was tendering contents 'despite the container and I followed them to call it box. 1 sub-**poenaed** them to produce box and I took what they produced. I have no problem with it."

It is quite clear from the responses of counsel in the open tribunal that no ballot box was tendered. The lower tribunal therefore fell into a grave error in holding that ballot boxes containing ballot papers were tendered before it. It is only when ballot boxes are before a tribunal and opened before it for the contents to be seen by every one present in the tribunal that the allegations of the petitioner can be said, prima-facie, to be sustainable.

Malpractices in an election, as 1 have said, include over-voting, rigging etc. They are criminal in nature and so the standard of proof is beyond reasonable doubt. Where proved, the whole election is rendered void see SER1KI VS. ARE (1999) 3 NWLR (PT 595) 469. Also where a petitioner makes non-compliance with the provisions of the Electoral Law as the foundation of his complaint as in the instant case he is fixed with the heavy burden to prove before the tribunal, by cogent and compelling evidence that the non-compliance is of such nature as to affect the result of the election see I HUTE VS. I.N.E.C. & ORS (1999) 4 NWLR (PT 599) 360. From what transpired in the tribunal can it be said that the allegation of ballot stuffing was established beyond reasonable doubt? My answer is unequivocally in the negative, again see EDET VS EYO (1999) 6nwlr (PT 605) 18. From all I have been discussing, issues Nos 6, 8 and 9 on the set of appellant's brief are answered in the negative; they are resolved in favour of the 1st appellant Issue No 5 on each of the briefs of the 2 and 3 sets of appellants are resolved in their favour. I resolve Issue No 3 on the respondent brief of argument against them…

Let me start by saying that the responsibility of arriving at a judicial conclusion remains that of the judge alone. This he does both by making findings of facts based

on the credibility of witnesses and findings based on the evaluation of evidence which has been accepted. But, the trial judge is not at large to do whatever he likes with the evidence presented before him. He must not substitute his own evidence for that of the witnesses that testify before him. Where the evidence led before him is at variance with the pleadings; he is under a duty to pronounce such pieces of evidence as going to no issue; consequently, he must disregard such evidence. Furthermore, where no explanation has been furnished by any witness for any inconsistency in the evidence of the witnesses called, it is no business of the court to pick and choose which witness to believe and which not to believe among such witnesses. The trial judge must not accredit one witness and discredit the other in such circumstances.

Of the appellate judge, the law imposes on him to loathe or to be patently reluctant to differ from a trial judge on a finding of fact. However, a distinction must always be drawn between findings of fact based on the credibility of witnesses and findings based on an evaluation of evidence which has been accepted. In the later case, an appellate judge or the appellate court is in as a good position to evaluate the evidence as the court of trial, though it will of course give weight to the opinion of the trial judge see NWAEZE MA VS. NWAIYEKE (1990) 2 NWLR (PT 137) 230. It is on the basis of the above fundamental principles of law of evidence that 1 will now proceed to examine the evidence proffered before the lower tribunal and see whether a proper perception and evaluation had been done by the tribunal.

On unclaimed voters' cards R/W4 one Ambrose Ali Mansunnyari a Senior Logistics Officer in the Operations Department of I.N.E.C. said and I quote:

"Unclaimed voters' cards are cards that were not claimed by the voters. On the day of the election, these cards were in our offices, Local Government Offices. The three officers at the Unit had nothing to do with unclaimed cards. Eligibility to vote is when a voter has his name on the Voters Register. For those that have their voters cards on the day of elections they will bring to the polling center where the poll clerk collects it and confirm the name in the register, stamp and indicate on the card the name of the election on the back of the card. He will then be issued with a ballot paper to cast his vote. Those that have misplaced or had their cards destroyed still came and the presiding officer asks them some questions like name, age and address and number, if satisfied that the information is correct and the name on the register he will also be issued with a ballot paper to cast his vote. They will then mark against his name on the register to indicate that he has voted. Those that did not exchange their cards and are still holding the temporary voters card, the clerk collects the slip to confirm the name on the register, if there, the name is marked and he is issued a ballot paper to vote. These are the three methods."

Another witness by name Japhet Pamassa, giving his testimony said: -

"I went to vote on the 19th of April, 2003. 1 know the name of the Polling Unit it is called Kofar lliya Janro Mya-Mugoron. Yes, I was able to vote. I am a registered voter. This is my slip to show that I have registered…

Yes my slip was stamped at the back after 1 voted …The officials of INEC stamped the slip for me.

When cross-examined, by Mr. Mbagwu, learned counsel for the petitioner, the witness said:

"I do not have a voter's card. If 1 did not vote with this slip Exhibit R. 7 then why was it stamped? As my card is in evidence that I did not collect it. I say I voted with this slip. The slip was not stamped after the elections by INEC staff but at the time of voting I do not know any INEC office"

Yet another witness by name Aseph Zadok called as R/W6 said on oath before the lower tribunal that he voted with the temporary card because he did not collect the voter 's card at the time he went for registration R/W12 ON Wlibinah A Gabriel, a teacher by profession, he conducted elections of Presidential and Gubernatorial candidate in a unit at Guyuk local government , in corroborating the evidence R/W4 on the modalities for casting votes said:

"One person will come with a Temporary Voters Card or a permanent voters card.
The name will be checked by the poll clerk and if it is on the register, I tick it and clear the ballot papers and the Poll Assistant will put ink on the person's finger. Then I will stamp the ballot papers and give to them to go and vote.
If a person does not have voters' card or temporary voters card, we check his name and if he gives us the same particulars on the register, he is then eligible and is allowed to vote."

No where in their reply brief did the respondents allude to any piece of evidence adduced before the lower tribunal that contradicts the above pieces of evidence in any material respect. I have also carefully gone through the two voluminous records, I cannot find any evidence to the contrary of what I have reproduced supra . Yet in the face of the overwhelming pieces of evidence that I set out above, the lower tribunal held and

I quote:

"That being the case we hold that every voter who went to vote with his Temporary Voters Card that remained with INEC (call it unclaimed, unretrieved exchanged or whatever) represents a voter that could not have voted."

This finding to say the least is incongruous to the unchallenged pieces of evidence reproduced supra. It is perverse to the extreme.

I have somewhere in this judgment said that Exhibit P10 cannot be a substitute for a voters Register. I have also said that the onus of proof always rests on the party who would fail if no evidence at all, or no more evidence, as the case may be, were given on either side. It is for him who asserts to prove. The Voter's Register, I have said is a sine qua non to proving the electoral malpractices pleaded. It was never tendered in evidence R/W4 explaining the where about of the Voters' Register cross-examination said"-

"Presently, the voters register we used at the elections is at the Court of Appeal Abuja in request of the Presidential Election Tribunal case. The Register was taken to Abuja on the request of the Chief Counsel to the petitioner, Chief M. I.

Ahamba. S.A.N. yes we deliver them to the court I still have the copy of the subpoena to the register. Also the application requesting for them by M. I. Ahamba S.A.N. I can identify documents if shown. The name of the case is Muhammadu Buhari and Chuba Okadigbo vs Chief Olusegun Obasanjo. It is also signed by Hon. Justice Oguntade. Attached to it is the letter from Chief M. I. Ahamba certified true copy of the letter. This is the copy of the subpoena order. This is the letter from Chief M. I. Ahamba.

What did the lower tribunal make of the above-uncontradicted testimony? The conclusion reached is this:-

'In the circumstance, it is clear that Tribunal has been deprived of the use of the Voters' Register not by the petitioners who have sub-poenaed what is at worst a copy, but by the 2nd respondent who had but withheld it."

If the Tribunal had given due consideration to the unchallenged evidence it would have easily come to the conclusion that at that material time the Voter's Register was in the possession of the Chief Registrar and or Deputy Chief Registrar Court of Appeal , Abuja and that at the instance of Chief Ahamba learned senior counsel for the petitioners in the matter before it (the Tribunal) and also the learned senior counsel for the Petitioner in the Abuja matter. It is squarely his (Chief Ahamba) to take necessary steps to get it from the custody of the Court of Appeal Abuja the said vital document. For the umpteenth time, I wish to say that the general burden of proof, in the sense of establishing the case, initially lies on the plaintiff or the initiators of the law suit. The proof or rebuttal of issues which arise in the course of the proceedings may shift from the; plaintiff to the defendant and vice versa as the case progresses. This general rule which is enshrined in the Maxim EL QUI AFFIRMAT NON EI QUI NEGAT INCUMBIT PROBATIO has been encapsulated in Section 137 (2) of the Evidence Act which provides:

"If such a party adduces evidence which ought reasonably to satisfy a jury that the fact sought to be proved is established, burden lies on the 'party against whom judgment would be given if no more, evidence were adduced; and so on successively, until all the issues in the pleadings have been dealt with"

However, until the plaintiff or the petitioner has discharged the onus cast on him by law, the onus does not shift. The petitioner in the instant case, has woefully failed to discharge his initial duty of tendering said vital document. The finding to say the least is perverse. I have somewhere in this judgment treated the issue of ballot stuffing. I do not want to repeat myself. Suffice it to say that I still stand by the conclusion I have reached that no ballot stuffing was proved. Again as to the issue of cancellation of the election in Jada , Joungo, Ganye and Mubi North, I have after reviewing the various pieces of evidence led, held that the testimonies so given lacked evidential value for the reason that some of the witnesses who testified never came out of the doors of their respective houses on the day of election; a clear example was P/W4-Kamale who claimed he remained indoors on the day of election and in respect of others, there was no evidence pointedly showing that those others who testified were accredited agents of the petitioners. One very curious aspect of the trial was that initially the Peoples Democratic Party, the party under whose platform the 1st appellant contested and the Police were made parties to the petition. At a point, during

the trial, the petitioners voluntarily withdrew against the duo and so their names and all the paragraphs of the petition relating to them were struck out. Yet evidence was allowed to be led on allegations already levied against the P.D.P. and the Police in the pleadings. These pieces of evidence adduced by the witnesses called by the petitioners were made use of by the tribunal and findings were made against the P.D.P. and the Police with adverse effect on the appellants. I have always thought that the law remains static that nobody shall be condemned unless he is given an opportunity to be heard. Having struck out the names of P.D.P. and the Police no evidence incriminating or indicting them should have been entertained let alone used in the judgment. By so doing, the lower tribunal committed a very grave error of law. All the serious errors of law committed by the tribunal and which I have set out above are sufficient to persuade me to allow this appeal. Consequently, issues Nos. 5 6, 7, 9, 10, 11, 12. and 13 contained in the brief of argument of the first set of appellant are answered in the negative. Similarly, issues Nos 2, 5 and 6 on the brief of argument of the second set of the appellants are answered in the negative. Issue No. 2, on the third set of appellants brief is hereby resolved in their favour while issues Nos 3, 6, 8, 9 and 10 on the same brief are, following all I have been saying, answered in the negative. Issues Nos 4, 5 and 6 on the petitioners/respondents brief are answered in the negative, while issue No. 7 on the same brief is answered in the affirmative- it is resolved against the respondents; also issues Nos 8, 9, 10 on the same brief are hereby resolved against the respondents.

I now proceed to treat issue No. 1 on each of the briefs of the fires Set of appellants and the respondents both of them on the legal propriety of the lower tribunal delivering a single judgment in the consolidated petitions before it. The first petitioner before the lower tribunal now the 1st respondent / cross appellant had brought his own petition challenging the results of the gubernatorial election. The second petition was filed by the A.N.P.P. the political party of the candidate. Both petitioners had brought an application for the consolidation of their two petitions. The application was opposed by the respondents at the lower tribunal. The tribunal, after taking arguments from their respective counsel ruled in favour of consolidation. The petitions were thus consolidated and tried together. At the end one single judgment was produced by the tribunal. The first set of appellant has, in his brief of argument, contended that the consolidation of the trial and judgment was bad, in law. The procedure adopted by the tribunal it was further argued, was not only erroneous, it was fatal to the judgment delivered; maintaining that when a suit is consolidated it is only the trial that is consolidated no more. Two separate judgments, it was argued, ought to have been delivered; reliance was placed on the decisions in HABIB NIGERIA BANK LTD VS OPOWLERO (2000) 15 NWLR (PT 690)315 and NWALZE VS EZE (1999)3 NWLR (PT 5-95)410.

In opposition to the stand of the appellants, the respondents argued, through their brief, that the complaint by the Appellant, as to delivery of a single judgment is not consistent with the paragraph 46 of Schedule 1 to the Electoral Act, 2002. The Provisions of paragraph 46 afore-mentioned are superior to the Federal High Court rules, 2000. This court was urged to depart from the decision in NWAEZE VS EZE quoted suprafor the reason it was based on Rules of Court, which are not in pari materia with the provisions of the decree under consideration in that case; that judgment, it was again argued, was given per incuriam…

What is the purpose of consolidation of suits in a court of law? By judicial decisions, the main purpose of consolidation, it has been held, is to save costs and time and therefore it will not usually be ordered unless there is some common question of law or fact bearing sufficient importance in proportion to the rest of the subject-matter of the actions such that it renders it desirable that the whole should be disposed of at the same time see NASR VS. COMPLETE HOME ENTERPRISES (NIG.) LTD (1977)5 S.C. 1 and PAYNE VS- BRITISH TIME REC- ORDER CO. LTD & AN. (1921)2 K.B.

1. Paragraph 46 of Schedule 1 to the Electoral Act 2002 to which our attention has been drawn by the respondents provides:

"Where two or more petitions are Presented in relation to the same election or return, all the petitions shall be consolidated, considered and dealt with as one petition unless the Tribunal or Court shall otherwise direct in order to do justice, or an objection in line against one or more of the petition has been upheld by the Tribunal or Court."

The first Schedule to the Electoral Act is no more than rules of procedure as often made for use in civil cases. Section 139 of the Act puts it beyond any doubt; it reads:-

Section 139 of Electoral Act 2002

"The rules of procedure to be adopted for electoral petitions and appeals arising therefrom shall be those set out in First Schedule to this Act"

The respondent had submitted that the provisions of paragraph 46 of the 1st schedule are superior to the Federal High Court Rules 2000. With due respect 1 disagree with that submission, the mere fact that such electoral rules are fashioned into what is called a schedule does not give it any higher status. They still remain rules of electoral tribunal or Court (in this instance, the Court of Appeal They are, as rules touching the administration of justice, designed to attain justice with ease, certainty and dispatch. They must be understood to be made consistent with the fundamental principles of justice. Nothing can be more certain than for a person who seeks a redress in the court of justice to have a clear-cut pronouncement on the relief sought in a separate legal document called judgment notwithstanding that a consolidation has been made between his case and that of another in the course of trial. Consolidation of actions; YES; but it will be absurd to have a consolidation of judgments 1 have just said rules of court are there to enable justice be attained with ease, certainty and dispatch. Strict adherence to the afore-mentioned rules will not make for that desirable certainty if in the course of writing judgment the reliefs sought by the two parties, who had had their suits consolidated, would not have, to scamper for the part of the judgment favourable to him, particularly in a very voluminous judgment tile like of what is before us in this appeal. Let me further say that once strict adherence to the rules will clash with the fundamental principles of justice, a court of justice which is as well a court of equity must readily jettison those rules see UNILAG & AN VS. AIGORO (1984) 11 SIC. 152…

In issue No. 7 raised by the third set of appellants the matte raised therein is whether the 1st respondent could be blamed for the acts of practices allegedly committed; the allegation of chasing away petitioners agents from the polling booths and other irregularities said to have been committed. I have earlier said that the above

allegations-are criminal in nature and the standard of proof required from those who alleged (petitioners) them is one beyond reasonable doubt. It follows that the petitioners owe it as a basic duty to prove that no other individuals than 1st respondent committed those acts or that he authorized his agents to commit the nefarious acts on his behalf Until there is a credible evidence in that direction, the 1st respondent cannot be held criminally liable for the alleged criminal acts said to have been committed. The principle has long been established that no one is punished for the crime of another.

That principle which has as its MAXIM-NEMO PUNITUR PRO ALIENO DELICTO has stood the test and of our criminal jurisprudence. In examining the evidence led before the lower tribunal I had said that no corrupt practice was laid at the door of the 1st respondent. Also, I have had a second careful examination of the evidence led, there is nothing on record to link the 1st appellant with the chasing away, if it ever took place, of the petitioners' agents nor any, other irregularities at the election of 19th April 2003. The arguments proffered by the respondents in their reply filed on May 2004 have not advanced contention that there was a proof of the allegations as required by law. The result is that I resolve issue No. 7 so identified, in favour of the appellants.

Having dealt with all the issues identified by the parties to the main appeal. I shall now proceed to address the cross-appeal. Only one issue was raised by the cross-appellants for determination and for the umpteenth time it reads:-

"Whether, in the circumstance of the evidence before the Honourable Election Tribunal, a consequential order disqualifying the 1st respondent under section 129 of the electoral Act, 2002 should not have been made by the Tribunal".

Section 129 of the Electoral Act, 2002, under which the cross-appellants have contended that an order disqualifying the 1st respondent should have been founded, provides:

"A person who

(a) directly or indirectly, by himself or by another person on his behalf makes use of or threatens to make use of any force, violence or restrain.
(b) Inflicts or threatens to inflict by himself or by any other person, any temporal or spiritual injury, damage, harm or loss on or against a person in order to induce or compel that person to vote or refrain from voting or on account of such person having voted or refrained from voting; or

(c) by abduction, duress or fraudulent device or contrivance, impedes or

prevents the free use of the vote by a voter or thereby compels, induces, or prevails on a voter to vive or refrain from giving his vote.

(d) by preventing any political aspirants from free use of the media, designated vehicles, mobilization of political support and campaign at an election. Commits the offence of undue influence and is liable on conviction to a fine of N100, 000.00 or imprisonment for twelve months, and shall in addition be guilty of corrupt practice under section 133 of this Act and the incumbent be disqualified as a candidate in the election".

I agree with the contention of the cross-appellants in their brief that the reference to "section 133" in Section 129 quoted supra is wrong. The section that deals with "Disqualification for certain corrupts practices" is SECTION 122 of the Act, which provides.

Sub-Section (1)

"Any person who is convicted of an offence under this part of this Act which amounts to corrupt practice or is convicted of aiding, abetting, counselling or procuring the commission of offence shall, in addition to any other penalty, be disqualified during a period of four years from the date of his conviction from being

(a) registered as a voter or voting at any election; and
(b) elected under this Act or if elected before his conviction, from retaining the office to which he was elected.

Sub-Section (2)

For the purposes of this Section, a candidate shall be deemed to have committed a corrupt practice if it was committed with his knowledge and consent of a person who is acting under the general or special authority of the candidate with reference to the election."

In paragraph 6 of their brief of argument, the cross-appellants are seeking from the Court of Appeal the following reliefs:-

(1) That the judgment of the Trial Tribunal nullifying the election of the 1st respondent be affirmed.

(2) That the 1st Respondent Boni Haruna be disqualified from participating in any bye-election conducted pursuant to the nullification of the election of the 1st respondent.
(3) that the Independent National Electoral Commission (INEC) be ordered to conduct a fresh election between the remaining candidates in the election i.e. ANPP , AD , UNPP and NCP, in accordance with Section 179 (3) of The Federal Republic of Nigeria Constitution 1999.

(d). That the 1st respondent Boni Haruna be referred to the Attorney-General of AdamawaState for prosecution.
(e) That the 1st respondent be ordered to vacate office and hand over to the Honourable Speaker of the State House of Assembly immediately after the determination of this appeal in accordance with the provisions of the 1999 Constitution

The reliefs by the 1st petitioner/cross-appellant before the lower tribunal are:-

(1). An order of the Tribunal cancelling and nullifying all the results where rigging took place, malpractices took place where results were fraudulently returned even though no election took place.
(2) An order nullifying all results in units where there were over voting

He prayed the lower tribunal that the election of the 1st respondent be declared a nullity sequel to the alleged corrupt practices and an order directing the 2nd and 3rd respondents to conduct fresh gubernatorial election in Adamawa State. The 2nd cross-appellant also had materially similar reliefs and prayed for the nullification of the election and an order directing the 2nd and 3rd respondents to conducts a fresh gubernatorial election in Adamawa State . The reliefs sought before us are quite different from those sought in the lower tribunal. Indeed reliefs (b), (c), (d) and (e) were never claimed before the lower tribunal. A court of law may award less, but certainly not more than what the parties have claimed. A fortiori, a court of law should never award that which was never claimed or pleaded by either party. Let it be said that a court of law is not a charitable institution. Its duty is to render unto everyone according to his proven claim. Sec. (1). AKAPO VS. HAKEEM-HABEEB (1992)6 NWLR (PT 247) 266, (2)IMOPM NEVERAGES LTD VS. OWOLABI (1988) 1 NWLR (PT 68) 128 (3) ADEMOLA VS. SODIPO (1992) 7 NWLR (PT 253) 251 and (4) LIMAN VS. MOHAMMED (1999) 9 NWLR (PT 617) 166. Even the power of a court to make consequential orders in a case is limited to the point that it must have a direct and natural bearing on the decision; in AKINBOBOLA VS. PHISSON FISKO (NIG) LTD & ORS (1991) 1 NWLR (PT 167) 270 the Supreme Court at page 288 observed:

"A consequential order is not one merely incidental to a decision but one necessarily flowing directly and naturally from, and inevitably consequent upon it. It must be given effect to the judgment already given, not by granting a fresh and unclaimed or unproven relief."

Reliefs (b), (c), (d) and (e) cannot be entertained by this court as they constitute fresh reliefs or issues see NORTH-SOUTH PET. (NIG)LTD VS. FGN. (2002) 17 NWLR (PT 797) 639. In the alternative, taking the cross appeal on its merits, assuming that the reliefs before us were the same as those claimed in the lower tribunal what are the materials placed before the lower tribunal which will persuade this court to grant those reliefs? I can only identify the pieces of evidence given by the following witnesses, which the cross-appellants identified in their brief.
P/W4-Kamale a member of A. N. P. P. in his testimony said:
"During the period of the elections, I observed two fundamental issues…
The second was the existence of some organization going by different names such as Civil Servants Boni Haruna Solidarity Forum , Movement of Post Primary School Teachers and Students for the success of Obasanjo and Atiku, Boni Haruna Continuity Forum, Agenda 2003. All these wee functional and in operation in Michika Local Government. They were operating at the instance of His Excellency, the governor of Adamawa State, Mr. Boni Haruna . Agenda 2003 was mainly composed of Youths while the other three wee made up of civil Servants, Pubic Officers, Teachers etc."
Other than mentioning the name of the 1st cross/respondent there is nothing, in that evidence materially connecting him with or fixing him with the control and/or establishment of those organization. P/W6 one Teribu is another witness his evidence runs thus:
"My name is Deurs Tumber Teribu. I live in Michika . I am a Civil Servant. I am under sub-poena to testify today… on the 16th of January 2004, I appeared before the Tribunal to produce certain Documents. These documents were the Minutes of the

Meeting of the Civil Servants Boni Haruna Solidarity Forum of 23rd March 2003. The second document was the list of attendance of the meeting. Yes this is one of the documents I produced; the minute of the meeting and the signature here is my own signature. The second signature is that of Vandy Z.Kwaghe . I signed as Secretary of the Forum. And in that capacity kept the documents of the Forum."
Again, nothing from the above testimony can, by any strained evaluation, connect the 1st cross-respondent with the allegations intended. The P/W7 ONE Vimtim said under examination -in- chief and I quote him:

> "I come from Mubi North Local Government…
> I was assigned to the Northern District…
>
> There has been an organization called Civil Servants Boni Haruna Solidarity Forum constituted for the purpose of taking over the affairs of governorship election in favour of Boni Haruna Solidarity Forum were the ones posted as election retuning or presiding officers to take care of the election…"

When cross-examined he said:

"I do not know if only the members of the Boni Haruna Solidarity Forum were appointed by INEC. To the best of my knowledge, it is INEC that appoints its officers. There is (sic) this case appointed the list presented to them, it was the 1st respondent who presented the list of his Forum to INEC. I do not know when he presented it. On the, list I saw, it was written. For the return of Boni Haruna: It was written on the list"

There is nothing in his evidence under examination in chief that convincingly linked the 1st cross-respondent with these organizations. Even, his testimony under cross-examination is replete with doubts as to its truth; for example, he said 1st cross-respondent presented the list of his Forum to INEC in another breath he claimed not to know when he did. Such an all-important assertion must not have the time to its presentation eluding him. Evidence of P/W 9, P/W10, P/w/20, P/W21, P/W/23 and P/W/24 did not link the 1st cross-respondent with the commission of any electoral offences; so also evidence of P.W.25, and P/W28. Where then is the basis to accede to the reliefs sought by the cross-appellant? I am clear in my mind that there is none. Taking an overall view of the evidence presented by the petitioners/cross-appellants, I say without any doubt in my mind that the totality of the evidence placed before the lower tribunal is absolutely inadequate even to prove the simplest of a criminal offence, very impotent of affect the appellants/cross-respondent with commission of any electoral offence and, even if the relifes sought in this court had been sought before the lower tribunal, then such evidence adduced is very scandalous if brought forward, as it has been to support the case of the charges of a grave character as to make us order a nullification of the election and disqualify the 1st cross-respondent from participating in any bye-election (were one to be ordered) conducted pursuant to the nullification of his (1st respondent) election; and finally the totality of such evidence is very much naïve if it is put up (as it has been done) to support the case that the 1st cross-respondent be referred to the Attorney-General of Adamawa State for prosecution and an order that he (1st cross-respondent) vacate office and hand-over to the Honourable Speaker of the State House of Assembly .

Having treated al the issues identified by the appellants and the cross-appellants for determination by this court, the conclusion which I reach following the above discussions is that these appeals are meritorious and they are accordingly allowed; and consequently, the consolidated petition are hereby dismissed; consequentially, the election of Boni Haruna, the 1st respondent appellant as the Government of Adamawa State is hereby affirmed. The cross-appeal, which by my judgment is unmeritorious, is hereby dismissed. I order the cross-appellants to pay each of the first, second and third sets of appellants N5,000.00 as cost.

P. O. Aderemi,
Justice, Court of Appeal.

Index

[1] The official name of the election tribunals, set up to hear election cases with respect to the Houses of Assembly and Governorship elections was **The National Assembly/Governorship and Legislative Houses Election Tribunal**. As soon as the 2003 elections were concluded, an election tribunal was constituted for each of the 36 States and the FCT. Because of the common name given to the tribunals, we are referring to the one in Adamawa State as **The Adamawa State Election Tribunal** . This tribunal, unlike many others, had a unanimous agreement and therefore, decided to have one consolidated judgement . The chairman of the tribunal, Hon. Justice Kashim Zannah , delivered the judgement of the election tribunal on Wednesday, 24thMarch 2004 at Yola , the Adamawa State capital.

[2] For the details of the irregularities, which the Adamawa State Election Tribunal found, see pages160-208 and 418-432 of its judgement. An excerpt of the judgement is in Appendix 1 below. The charts constructed by the tribunal, in its judgement, on pages 210-399 also provide a general summary of its findings, especially with respect to election malpractices at the polling booths.

[3] For a full report of the reaction of Alhaji Atiku Abubakar, the Vice President of the Federal Republic of Nigeria, who comes from Adamawa State, see among other newspapers and magazines, **This Day** newspaper of March 27, 2004, pp. 1 & 4.

[4] For details of this judgement see Court of Appeal Abuja Judicial Division, Appeal No. CA/A/74/2002. This judgement was delivered on Friday 26th July 2002 at Abuja. Hon. Justice Dahiru Musdapher, JCA , delivered the 28-page lead judgement.

[5] For the details of the Supreme Court Judgement on this case see case file No. SC228/2002. The Chief Justice of Nigeria , Hon. Justice Muhammadu Lawal Uwais delivered the lead judgement . Since the military intervention in Nigerian politics stated in 1966, Nigerian politics has been regimented and controlled, during the course of transition to civilian rule. This was manifested in the imposition of restriction in the registration of political parties and the screening of candidates. Through such policies, political groupings and individuals who represented interests not favourable to the political establishment , both military and civilian were denied the opportunity to participate in the electoral politics of Nigeria.

[6] The last transition to civilian rule in 1999 registered just three political parties. These were the PDP , ANPP and AD . This was even worse than the regimentation that registered just five political parties in 1979 to usher the Second Republic. These parties were: NPN UPN, NPP, GNPP and PRP. In 1990 the Federal Military Government even refused to register any political party. Instead, it created its own parties. Even in this case, the parties were limited to just two, which were the SDP and NRC. This is the trend, which the judiciary smashed in 2002, by making the conditions for the registration of political parties very easy. As a result of the rulings of these courts, the number of political parties rose from 3 to 30. These 30 parties contested the 2003 elections, in contrast to the 3 that contested the 1999 elections.

[7] In the current political dispensation, the State Governors are very powerful. Because of the enormous powers that the Governors have been exercising, since 1999 some political scientists describe them as "tin gods". The powers of the Governors is to such an extent that in the case of the PDP controlled States, the Governors nominate to the President, virtually all political appointees from their States. This is in addition to the power of appointing all the important positions, including that of emirs and chiefs and the allocation of choice plots of land in their States. It is no wonder that the Governors have been exercising considerable control over members of their State Houses of Assembly and even those of the National Assembly. The tremendous revenue that the State Governments have been receiving in the past five years has cemented the powers of the Governors. They have become all round powerful, especially the PDP Governors who have the advantage of being part of the Federal Government . An apt description of the position and status of State Governors could be found in, Abubaksr Siddique Mohammed, "The Governors As Tin God" **Analysis** Magazine, Vol. 1 No. 2, August 2002, pp 13-14.

[8] See excerpt of the lead judgement delivered by Hon. Justice Pius Olayiwola Aderemi , JCA , in appendix 2.

[9] See the lead judgement delivered by Hon. Justice Pius Olayiwola Aderemi , at Jos , on Monday 5th July 2004 in the case No. CA/J/96/2004, p. 41.

[10] Ibid

[11] See the judgement of the Adamawa State E lection Tribunal , Petitions No. EPT/ADS/GOV/01/2003 and EPT/ADS/GOV/10/2003, p. 178

[12] See the judgement of the Adamawa State E lection Tribunal , Petitions No. EPT/ADS/GOV/01/2003 and EPT/ADS/GOV/10/2003, p. 169

[13] Justice P. O. Aderemi, Op cit, p. 41.

[14] Adamawa State E lection Tribunal , Op cit, p. 169.

[15] Ibid, pp. 175-176.

[16] See the lead judgement delivered by Hon. Justice Pius Olayiwola Aderemi , on Monday 5th July 2004 in the case No. CA/J/96/2004, p. 25.

[17] Justice Aderemi and his colleagues were merely creating a fuss over the lack of tendering of Voters' Register before the election tribunal knowing fully well that as of the time of the sittings of the tribunal, the register had been tendered as an exhibit to the Court of Appeal , Abuja in the case between Muhammadu Buhari and Chuba Okadigbo Vs Chief Olusegun Obasanjo. Mr.Ambrose Alli Monsumnyare (RW4), the Senior Logistic Officer of INEC , had testified to that effect. See the judgement of the Adamawa State E lection Tribunal , p. 111.

[18] See the Federal Republic of Nigeria Official Gazette, No. 108, Vol. 89 of 25th November 2002, Government Notice No. 191, Printed and Published by the Federal Government Press, Lagos, Nigeria, 2002, No. A 45.

[19] See the Lead judgement delivered by Hon. Justice P. O. Aderemi, Op. cit, p. 25.

[20] See the judgement of the Adamawa State Election Tribunal , Petitions No. EPT/ADS/GOV/01/2003 and EPT/ADS/GOV/10/2003, which was delivered on Wednesday 24th March, 2004, at Yola by the chairman, Hon Justice Kashim Zanna , p. 419

[21] Ibid, p. 420

[22] Ibid

[23] Ibid p. 421

[24] Ibid

[25] Ibid, p. 425

[26] The judgement delivered by Hon. Justice Ikechi Francis Ogbuagu , pp. 12-13.

[27] See the Lead judgement delivered by Hon. Justice P. O. Aderemi in case No. CA/J/96/2004, p. 44.

[28] See the judgement of the Adamawa State Election Tribunal , Op. cit, p. 2.

[29] The Lead judgement delivered by Justice Aderemi , Op. cit, pp. 43-44.

[30] See the judgement of the Adamawa State Election Tribunal , Op. cit, pp. 418-419

[31] See the judgement delivered by Justice Aderemi , p. 30

[32] See the judgement of the Adamawa State Election Tribunal, Op. cit, p. 208.

[33] A careful study of the charts reveals different types of malpractices, or rigging that took place during the gubernatorial election in Adamawa State. For details on the charts of Michika local government area see the judgement of the Adamawa State Election Tribunal , pp. 313-335.

[34] For details on this, see the judgement of the Adamawa State Election Tribunal , Op cit, pp. 211-221

[35] See 2004, 2 WRN 65 at 111 para, 30-45.

[36] See the judgement delivered by Hon. Justice Ikechi Francis Ogbuagu of the Appeal Tribunal on the case CA/J/96/2004, delivered in Jos , on Monday 5th July 2004, p. 13.

[37] see Uwaifo JSC, p. 77 G-H in 10, NWLR, part 880 at 50.