

Commission where the result at that polling unit may affect the overall result in the Constituency.”

(Underlining ours).

Consequently, the submission by learned counsel for the Respondents that the failure to produce the voter's registers in the Polling Units under contention by the Petitioners is fatal to the case of the Petitioners is not correct. The reason is not farfetched. The facts and the law applicable in this petition are different from the facts and the law applicable in the authorities cited by learned counsel for the Respondents for the mandatory use of a voter's register in proof or otherwise of over-voting in an election in a Polling Unit. Accordingly, we hereby decline to apply the good authorities of law cited by learned counsel for the Respondents in the mandatory use of voter's register in respect of issues 2 and 3 herein. See **Adegoke Motors Ltd vs. Adesanya & Anor (1989) LPELR-94 (SC) 1 at 5 – 6 para C, per Oputa, JSC** (as he then was), of blessed memory, wherein he held inter alia as follows:

“.....there is now a tendency among our lawyers, and sometimes among some of our judges, to consider pronouncements made by justices of the Supreme Court in unnecessary isolation from the facts and surrounding circumstances those particular cases in which those pronouncements were made. I think it ought to be obvious by now, that it is the facts and circumstances of any given case that frame the issues for decision in that particular case. Pronouncements of our justices whether they are rationes decidendi or obiter dicta must therefore be inextricably and intimately related to the facts of the given case. Citing those pronouncements without relating to the facts that induced them will be citing them out of their proper context, without know facts, it is impossible to know the law on those facts..... that court decisions and pronouncements derive their strength, their persuasive potency, their inspiration and therefore their value as precedents from the fact of the case as pleaded and as presented.”

(Underlining ours).



In other words, a case is authority for what it decides. **See Anyankwo v. Okoye (2010) 1 SC (Pt.1) 30.** For the sake of emphasis, and at the risk of repetition, where a statute under consideration is different from the statute under which a principle of law has been made by a court of law, the said principle of law, would for all intent and purposes be inapplicable in the determination of the issues in dispute under the new different statute

As shown in the table reproduced in this judgment, both the Petitioners and the 2nd with 3rd Respondents benefitted from the over voting which, by credible evidence on record, happened in the election conducted on 16th July, 2022.

The RW1, in her evidence also admitted the fact of over voting. Hear her evidence, when she testified under cross-examination by learned counsel for the Petitioners, thus:

"..... I see paragraph 21.35 of page 413 of volume 2 of the 1st respondent statement on oath of witnesses.

I maintain paragraph 21.35 of my statement on oath. I see exhibit R.BVR at page 25. I see the entry on it. Accreditation is 313 as against 388 in my statement on oath. There is seeming over voting by 75 votes.

I see paragraph 21.36 on page 419 of my statement on oath. The accreditation is 830. The accreditation figure R.BVR is 793. There is seeming over voting of 37 votes.

I see paragraph 26.7 at page 548 of volume 2. The accreditation is 402. In exhibit R.BVR, it is 263 accreditation.

There is seeming over voting by 139 votes. I see paragraph 23.24 on page 476 of volume 2.

Accreditation is 448. In exhibit R.BVR, it is 224. There is seeming over voting of 224.



I did not say exhibit BVR was an interim document; but it is issued as at 27/7/2022, while synchronization was ongoing. Each BVAs machine has an identifier unique to it.....”

The said admissions were made by RW1 on the 21/12/2022.

RW2, in exhibit 2R.RW2 on page 64 thereof admitted over voting in 6 Polling Units. The said Polling Units are as contained in the table reproduced below;

TheNigerialawyer



"OSUN GOVERNORSHIP ELECTION

HELD ON 16TH JULY 2022

6 POLLING UNITS – WITH IRREGULARITY AS TO OVER-VOTING

S/NO	LGA	WARD	POLLING UNITS	DELIMITATION	EC8A SERIAL NO	ACCRED. ON EC8A	PHYSICAL INSP. ACCRED ON BVAS	REL. BALLOT	APC SCORE ON EC8A	PDP SCORE ON EC8A	OTHER PARTIES – EC8A	TOTAL VOTES CAST
1	EGBEDORE	AWO/ABUDO	ABUDO COMMUNITY PRY. SCHOOL	29-09-01-004	0000800	95	95	2	24	69	1	96
2	EGBEDORE	IDO/OSU	IDO-OSUN DISPENSARY PREMIES	29-09-04-003	0000821	557	557	6	259	276	17	558
3	OBOKUN	IPETU-ILE/ADAOWODE	IPETU-ILE METHODIST PRY. SCHOOL 1	29-24-02-001	0002814	229	229	4	83	140	3	230
4	OBOKUN	IPETU-ILE/ADAOWODE	IPETU-ILE SURAJUDEEN PRY. SCHOOL	29-24-02-008	0002821	361	285	3	159	193	6	361
5	OLORUNDA	OBA-ILE	ELEMO'S COMPOUND	29-27-09-003	0003243	251	251	11	109	130	2	252
6	OSOGBO	ARE-AGO	COSTAIN MATERNITY L.G	29-30-08-012	0003654	363	364	4	137	214	10	365
GRAND TOTAL						1,856	1,781	30	771	1,022	39	1,862



Facts admitted need no further proof. See Sections 20, 21(1) read with Section 123 of the Evidence Act (Supra). The fact that the claims in this petition are declaratory in nature does not detract from the said admissions. This is so because the admissions are based on documents. See **Eco Bank vs. Kunle & Ors (2018) LPELR-44239 (CA) 1 at 23 – 25 paras, B- D**. The said admissions are against the interest of the Respondents, and we hereby so hold.

Learned counsel for the parties in this petition, addressed this Tribunal on Section 137 of the Electoral Act (Supra). The said section provide thus;

“137. It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged.”

It should be noted that, it is not the duty of this Tribunal to question the propriety or otherwise of the National Assembly in making Section 137 of the Electoral Act (Supra). The duty of this Tribunal is to interpret the law as made by the legislature. The Respondents have also not shown which Section of the Constitution of Nigeria (Supra), or the Evidence Act (Supra), which Section 137 of the Electoral Act (Supra), is inconsistent with. Rather, Section 3 of the Evidence Act (Supra), renders Section 137 of the Electoral Act (Supra), applicable to “any” evidence admissible by “any” other legislation in Nigeria. The use of the word “any” in a statute means without any limitation or qualification. See **NSA & Anor v. Tassang & Ors (2022) LPELR-57211 (CA) 1 at 33 – 37 para E**. Thus, the submission of learned counsel for the Respondents to declare as null and void Section 137 of the Electoral Act (Supra), is not correct. It is hereby dismissed.

We have looked, and evaluated the evidence of the parties as shown in the exhibits before this Tribunal. The contents of the exhibits are clear as day. The said evidence is not from the fertile and creative imagination of learned counsel for the Petitioners, as erroneously submitted by learned counsel for the Respondents in their respective reply addresses on points of law to the issues under consideration.



The “synchronization” of the documents made by the 1st Respondent, and the physical inspection of same done by the 2nd and 3rd Respondents, as shown in the table hereinbefore reproduced, run riot to the defences raised by each of the Respondents to this petition in respect of issues 2 and 3 under consideration.

The said “synchronization”, rather than rhyme with each other are inconsistent and contradictory. The said exhibits tendered by the Respondents have not rebutted the presumption of regularity in favour of exhibit BVR and the other documents tendered by the Petitioners in this petition.

In other words, the defences of the Respondents are plagued with fundamental mortal flaws highly irreconcilable and unreliable, incapable of defeating the credible evidence tendered by the Petitioners in respect of the 744 Polling Units where over-voting has been established. The inference, we hereby draw from the facts established by the evidence on record is that, the election conducted on the 16th day of July, 2022 was done in substantial non-compliance with the provisions of the Electoral Act (Supra), and the extant regulations made thereunder.

Moreover, exhibit BVR has not been withdrawn by the 1st Respondent who made and issued it. The Petitioners relied on exhibit BVR in maintaining this petition. The Respondents are hereby estopped from acting inconsistent with the import and tenor of exhibit BVR. See Section 169 of the Evidence Act (Supra). See also **Thaddeus v. Atule (2022) LPELR-57539 (CA) 1 at 57 – 59, paras, F – A; Agboguuleri v. Depo & Ors (2008) LPELR-243 (SC) 1 at 17 – 18, paras, C – C; AG. Rivers State v. A.G Akwa Ibom State & Anor (2011) LPELR-633 (SC) 1 at 21 – 22 paras F – A and Mabamije v. Otto (2016) LPELR – 26058 (SC) 1 at 15 – 16 paras C – B.**

Similarly, the exhibits tendered by the Respondents after exhibit BVR, as rightly submitted by learned counsel for the Petitioners were thought of after the declaration of result on the 17th day of July, 2022. See **Agbonifo v. Aiwereoba (Supra); Lawal v. State (2010) LPELR-46221 (CA) 1 at 23 paras B – C; PDP & Anor v. Aminu & Anor (2019) LPELR-47330 (CA) 1 at 34 – 35 paras C – D and Agbo v. State (2006) LPELR-242 (SC) 1 at 43 – 44 paras G – B.**



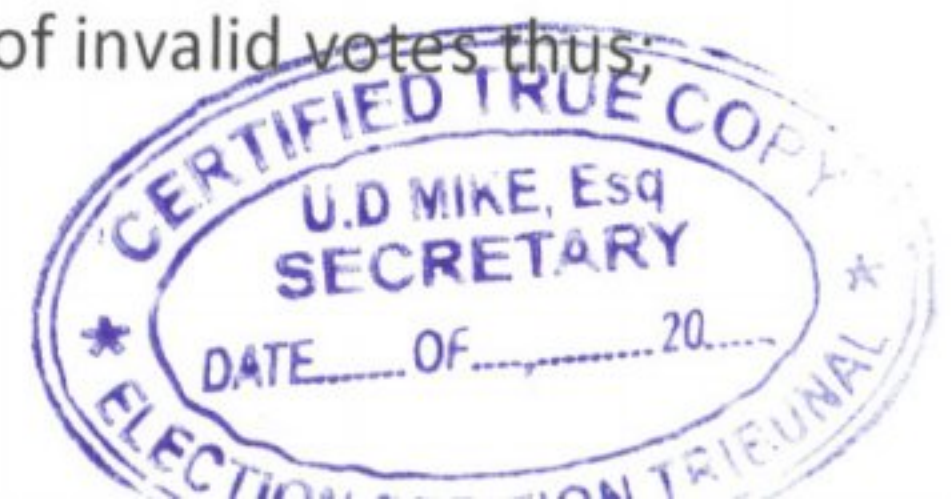
The said conduct of the Respondents, especially, the 1st Respondent amounts to tampering with official records. See **Agbonifo v. Aiwereoba (Supra) at 20 – 21 paras F – A**, per Nnaemeka-Agu (JSC) of blessed memory. The conduct of the 1st Respondent in the said election under consideration has produced multiple accreditation reports contrary to its avowed declaration to conduct free, fair and credible elections on the basis of one man or woman with one vote. The said conduct of the officials of the 1st Respondent, as shown in this judgment, makes the proactive decision of Nneke, the bird in the Novel, Things Fall Apart, 1958 by Chinua Achebe very instructive. In the said Novel, appears these words;

“Men have learnt to shoot without missing, she has learnt to fly without perching.”

Consequently, to forestall a manipulation of BVAs Machines in the conduct of elections in Nigeria by the 1st Respondent, the presiding officers at the Polling Units and other key staff of the 1st Respondent should have on the vest worn by them, during conduct of elections, an electronic device embedded in the said vest, which will have audio, video and other data and information transmissible to a server domiciled with either the Headquarters of the Police Force, NIGCOMSAT, or the office of the National Security Adviser, independent of the 1st Respondent. The data stored at the server in any of the said offices would be a resource material for investigation, and, possible prosecution of any infraction that may occur in the use of the BVAs Machines at the Polling Unit level during the conduct of an election.

From the examination of the evidence of the parties in respect of issues 2 and 3, we find as a fact that over-voting occurred in the election conducted on the 16th day of July, 2022 in the manner stated in the table in paragraph 6.19 of the Petitioners’ final written address, already reproduced in the judgment.

The duty of this Tribunal is to deduct the said invalid votes from the lawful votes of the 1st Petitioner and the 2nd Respondent, to determine who had a majority of lawful votes at the said election. The table produced on page 30 paragraph 7.01 of the Petitioners’ final written address in response to the 1st Respondents’ final written address and page 17 paragraph 6.21 of the Petitioners’ final written address shows a graphic demonstration of the lawful votes, after a deduction of invalid votes thus;



“The table below explains who won the election by majority of lawful votes cast between the parties:

TOTAL NO. OF VOTE CAST IN THE IDENTIFIED 744 POLLING UNITS	TOTAL NO. OF VOTES SCORED BY APC IN THE IDENTIFIED 744 POLLING UNITS AS SHOWN IN COLUMN 12 OF THE ABOVE	TOTAL NO. OF VOTES SCORED BY PDP IN THE IDENTIFIED 744 POLLING UNITS as SHOWN IN COLUMN 13 OF THE TABLE ABOVE	SCORES OF APC AFTER DEDUCTION SCORES IN EC8D1 375,027	SCORES OF PDP AFTER DEDUCTION SCORES IN EC8D1 403,371
181,540	60,096	112,705	375,027 less 60,096 FINAL SCORES 314,931	403,371 less 112,705 FINAL SCORES 290,666

For the sake of emphasis, the total lawful votes for each of the candidates after the said deduction of the invalid votes is 314, 931 for 1st Petitioner, and 290,666 for the 2nd Respondent.

Consequently, the 2nd Respondent did not score a majority of lawful votes cast at the election. The declaration and return is hereby declared null and void. The 2nd Respondent cannot “go lo lo lo lo” and “Buga won” as the duly elected Governor of Osun State in the election conducted on 16th day of July, 2022. See Kizz Daniel song, BUGA. Rather, we hereby hold that the 1st Petitioner scored a majority of lawful votes in the said election and is hereby returned as such.

The 1st Respondent is hereby directed to withdraw the certificate of return issued to the 2nd Respondent, and issue it to the 1st Petitioner as the duly elected Governor of Osun State. Accordingly, reliefs 72c, d in 744 Polling Units only, e, f, g, h and i already reproduced in the judgment are hereby granted.

Having granted the main reliefs, the alternative reliefs are hereby struck out.



T. A. KUME
CHAIRMAN
27/1/2023



RABI BASHIR
MEMBER 2
27/1/2023



APPEARANCES

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