

1. ALHAJI KASHIM IBRAHIM
2. ALHAJI IBRAHIM UMAR KIDA
3. PEOPLES DEMOCRATIC PARTY

V.

1. SENATOR ALI MODU SHERIFF
2. ALHAJI ADAMU DIBAL
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION
4. THE RESIDENT ELECTORAL COMMISSIONER, BORNO STATE
5. THE RETURNING OFFICER, BORNO STATE GUBERNATORIAL  
ELECTION
6. ELECTORAL OFFICER, NGALA LOCAL GOVT. ARE A
7. ELECTORAL OFFICER, GUBIO LOCAL GOVT. AREA
8. ELECTORAL OFFICER, MAIDUGURI METROPOLITAN LOCAL GOVT AREA
9. RETURNING OFFICER, NGETRA WARD, GUBIO
10. RETURNING OFFICER, WULGO WARD NGALA LOCAL GOVT.AREA
11. RETURNING OFFICER, DUFU WARD NGALA LOCAL GOVT. AREA
12. RETURNING OFFICER, WARSHALE WARD, NGALA LOCAL GOVT. AREA

*(COURT OF APPEAL)*

*(JOS DIVISION)*

CA/J/165/2003

SUNDAY AK1NOLA AKINTAN. J.C.A. *(Presided and Read the leading judgment)*

SIMEON OSUJI EKPE, J.C.A.

JOHN AFOLAB1 FABIYI, J.C.A.

**WALTER SAMUEL ONNOGHEN, J.C.A.**

**ABUBAKAR ABDULKADIR JEGA, J.C.A.**

**WEDNESDAY, 8TH OCTOBER, 2003**

ELECTION PETITION-Allegation of malpractice against electoral officer-Where made in election petition without joinder of the officer as party - Effect of.

ELECTION PETITION-Election petition-Nature of- Importance of— Need to hear and determine, on the merits and disregard technicalities.

ELECTION PETITION - Election petition - When may be struck out on ground of Incompetence — Paragraph 4(1) of 1st Schedule to Electoral Act, 2002 considered.

ELECTION PETITION - Electoral Act, 2002, paragraph 4(3)(b) of the 1st Schedule thereof- Plow construed.

ELECTION PETITION - Joinder of parties - Returning officers to an election - When may be joined as parties to election petition — Relevant consideration for determination of.

ELECTION PETITION - Non-compliance with provisions of paragraph 4(4) of the 1st Schedule to Electoral Act, 2002 -Effect of.

ELECTION PETITION - Procedural rules for election petition -Non-compliance with - Effect of- Paragraph 49 of 1st Schedule to Electoral Act, 2002 - Duty on tribunal in respect of.

INTERPRETATION OF STATUTES - Electoral Act, 2002, paragraph 4(3)(b) of the 1st Schedule thereof- How construed.

INTERPRETATION OF STATUTES - Intention of law maker - How discovered.

INTERPRETATION OF STATUTES - Literal rule of construction -Where would produce an unreasonable result - Duty on court.

INTERPRETATION OF STATUTES - Principles of interpretation -Presumption against unreasonableness - Application of.

INTERPRETATION OF STATUTES - Words in singular including the plural - Application of' — Section 14(b) of Interpretation Act considered.

PRACTICE AND PROCEDURE-Allegation of malpractice against electoral officer - Where made in election petition without joinder of the officer as party - Effect of.

PRACTICE AND PROCEDURE - Election petition - Procedural rules governing - Non-compliance with - Effect of- Paragraph 49 of 1st Schedule to Electoral Act, 2002 - Duty on tribunal in respect of.

PRACTICE AND PROCEDURE - Joinder of parties - Returning officers to an election - When may be joined as parties to election petition - Relevant consideration for determination of-

PRINCIPLES OF INTERPRETATION-Interpretation of statutes -Presumption against unreasonableness - Application of.

PRINCIPLES OF INTERPRETATION-Interpretation of statutes-Words in singular including the plural - Application of-Section 14(b) of Interpretation Act considered.

PRINCIPLES OF INTERPRETATION - Literal rule of construction - Where would produce an unreasonable result - Duty on court.

**Issues:**

1. Whether the petition before the election tribunal is competent in law in view of the fact that only the 1st appellant signed same and provided an address for service.
2. Whether the non joinder of the 29 supervisors of the 4th respondent mentioned in paragraph 16(xi) of the petition is fatal to the petition.

**Facts:**

The 1st appellant was a candidate of the 3rd appellant, a political party, at the governorship election for Borno State held on 19th April, 2003, while the 2nd appellant was his running mate.

The 1st respondent who contested the same election on the plat-form of the All Nigeria Peoples Party (ANPP) was declared the winner of the election. The 2nd respondent was his running mate.

The appellants were dissatisfied with the result of the election as announced by the 3rd respondent and therefore filed a petition at the Borno State Governorship Election Tribunal sitting in Maiduguri. The main reasons for challenging the result set out in the petition were that the 1st and 2nd respondents were not qualified to be elected to the office of the Governor and Deputy Governor respectively and that the election was marred by corrupt practices. In paragraph 16(xi) of the petition it was pleaded thus:-

"(xi) In Bama Local Government Area, the 1st respondent unlawfully induced the 29 supervisors of the 4th respondent with a sum of N450, 000 to influence, alter and manipulate the result of the election in favour of the 1st and 2nd respondent". Then the petitioners in paragraph 20 of the petition prayed as follows:-

"(20) Wherefore your petitioners pray that it may be determined that:

- (i) the 1st and 2nd respondents were and are presently under a legal/constitutional incapacity which disqualified and continue to disqualify them from holding and thus seeking election into the office of executive Governor and Deputy Governor of Bomo State respectively,

- (ii) The 1st and 2nd petitioners, being the candidates with the highest number of valid and lawful votes from among other constitutionally qualified candidates in the Borno State Gubernatorial Election held on 19th April, 2003 (having polled a total of 341,537) are the winners in the said election and be declared and returned as such. In the alternative, your petitioners pray that it may be determined that:
- (iii) The above-named 1st and 2nd respondents were not duly elected or returned by the majority of lawful votes cast at the election.
- (iv) The entire Governorship election conducted in Borno State on 19th April, 2003 be nullified and the return of the 1st and 2nd respondents in respect therefore be so nullified and that fresh gubernatorial election be held in Borno State.

Dated this 19th day of May, 2003.

Signed: Alhaji Kashim Ibrahim-Imam)

The name of my solicitor is:

Dr. B.O. BabalakinSAN  
Babalakin & Co.  
Petitioner's Counsel  
The Rooftop (8th -10th floor)  
24A Campbell Street  
Lagos.

*Petitioner's Address For Service*

Kashim Ibrahim-Imam's residence  
Off Gombole Road  
OldG.R.A.  
Maiduguri, Borno State  
Occupier-Alhaji Kashim Ibrahim-Imam"

Upon being served with the petition, the respondents filed two preliminary objections challenging the competence of the petition. The grounds for challenging the competence of the petition as contained in the notice of objection by the 1st and 2nd respondents was as follows: -

"The grounds for this application are:-

Breaches of section 133(2) and paragraphs 4(3) (b) and 49(2) and (3) of the 1st Schedule to the Electoral Act, 2002 ..."

The 3rd to the 12th respondents in their own preliminary objection relied on the following grounds:-

- "1. That the contents of the petition as it relates to signature, address for service and the name of occupier of the premises is lacking with respect to the 2nd and 3rd petitioners in the petition, as required by the mandatory provisions of paragraph 4,1st schedule of the Electoral Act, 2002.
2. That the failure/neglect to join electoral officers and/or presiding officers where complaints were made against their action, inaction, negligence, allegation of activities of malpractices in certain polling booth(s) in paragraphs 16, 17 and 18 of the petition, as required by the mandatory provisions of section, 133(2) of the Electoral Act, 2002.
3. That the failure to join all necessary and or interested parties i.e. All Nigeria Peoples Party and other candidates/political parties at the election by virtue of the relief sought for the nullification of the entire election.
4. That the reliefs sought in the petition are inconsistent with the Electoral Act, 2002.
5. That the 9th - 12th respondents are not persons known to law as it relates to this petition,
6. That by reason of such failure in paragraphs 1-5 above, the petition was filed in recklessness or gross violation of the Electoral Act, 2002 and therefore an abuse of the process of this tribunal".

They therefore sought an order striking out the petition. Thereafter the petitioners filed two applications seeking to amend the petition by striking out the names of the 2nd and 3rd petitioners and to delete paragraph 16(xi) of the petition but the applications were refused.

The tribunal heard and upheld the objections striking out the petition.

Being dissatisfied, the appellants appealed to the Court of Appeal contending that since the 1st appellant signed the petition and provided his address as address for service the tribunal ought not to have struck out the petition and that the allegation made in paragraph 16(xi) of the petition was made against the 1st respondent and therefore the 29 supervisors referred to therein ought not to be joined as necessary parties to the petition in the circumstance. They also argued that the perceived irregularity in the election petition were such as could be remedied by invocation of the power of the tribunal in paragraph 49(1) of 1st Schedule to the Electoral Act, 2002.

In the determination of the appeal, the Court of Appeal considered the provisions of paragraphs 4(3)(b); 4(4) and 49(1) of the 1st Schedule to the Electoral Act, 2002 which provides:-

"4(3) The election petition shall further:-

(b) be signed by the petitioner or all petitioners or by the solicitor, if any, named at the foot of the election petition.

4(4). At the foot of the election petition there shall also be stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier.

"49(1) Non-compliance with any of the provisions of this schedule, or with a rule of practice for the time being operative, except otherwise stated or implied, shall not render any proceeding void, unless the tribunal or court so directs, but the proceeding may be set aside wholly or in part as irregular, or amended or otherwise dealt with in such manner and on such terms as the tribunal or court may deem fit and just."

**Held** (*Unanimously allowing the appeal*):

1. *On Whether any breach of Electoral Act nullifies petition —*

Paragraph 4(6) of the 1st Schedule to the Electoral Act, 2002 which provides for striking out of defective petitions is specific in restricting the sanction prescribed therein to instances outlined in sub-paragraph 4(1) of the Schedule. Therefore it is difficult to agree with the view that that sanction is applicable to paragraph 4(3)(b) which is in contention in this case. Even in the instances listed in paragraph 4(1) of the said schedule, it is not mandatory that a breach must result in an order striking out the petition. This follows from the fact that the phrase "may be struck out" used gives room for imposition of a sanction not as severe as striking out the petition. (P. 67, paras. F-H)

2. *On Interpretation of "petitioner" paragraph 4(3)(b) of the 1st Schedule to the Electoral Act, 2002 —*

By virtue of section 14(b) of the Interpretation Act words in the singular include plural and words in the plural include the singular. Based thereon, the word "petitioner" used in paragraph 4(3)(b) of the 1st Schedule to the Electoral Act, 2002 includes the plural. The same is applicable to the words "all the petitioners". That phrase also includes the singular (P. 67, paras. E-F)

3. *On Effect of non-compliance with rules relating to election petition —*

By virtue of paragraph 49(1) of the 1st Schedule to the Electoral Act, 2002, non-compliance with any of the provisions of the schedule, or with a rule of practice for the time being operative, except otherwise stated or implied, shall not render any proceeding void, unless the tribunal or court so directs, but the proceeding may be set aside wholly or in part as irregular, or amended or otherwise dealt with in such manner and on such terms as the tribunal or court may deem fit and just. This provision is aimed at preventing a breach of any of the rules from resulting in unjust or unreasonable result. It is therefore not correct to say that the provision is inapplicable to the situation in the present case. The only situation where a petition can be struck out is where neither any of the petitioners nor their counsel signed the petition. [Williams v. Tinubu (Unreported) Appeal No-EPT/CA/003/03 delivered on 18th July, 2003 referred to.] (P. 68, paras. A-D)

**Per AKINTAN, J.C.A.** at page 68, paras. E-H:

In conclusion, therefore, I hold that the tribunal was wrong in holding that each of the three petitioners must sign the petition before it could be valid. I believe and hold that signature by any of them is sufficient and that such is enough to satisfy the requirement of paragraph 4(3) (b) of the 1st Schedule to the Electoral Act, 2002,<sup>1</sup> also hold that the sanction prescribed in paragraph 4(6) of the said 1st Schedule is only applicable to the provision of paragraph 4(1) of the 1st Schedule and that the sanction is in applicable to paragraph 4(3) of the said 1st Schedule. I also have no doubt in holding that even in the event of a breach of the provision of paragraph 4(1) of the 1st Schedule, it is not mandatory that such will result in the petition being struck out. This is because the said paragraph 4(6) does not provide for such a rigid interpretation since what is provided in that sub-paragraph is that the petition "may be struck out" and not that the petition "shall be struck out" or that petition "must be struck out." There is therefore merit in the appeal as it relates to the appellants' first issue".

4. *On Effect of non-compliance with rules relating to election petition -*

The breach of paragraph 4(4) of the 1st Schedule to the Electoral Act by failure of the 2nd and 3rd petitioners to state their addresses for service of documents intended for them and names of the occupier of the said addresses in the circumstance of the case cannot result in the petition being struck out as the tribunal did in this case. Rather, such breach is among those that can be saved by paragraph 49(1). Looking closely at the fact of this case and the applicable rules of court, the signing of the petition by only the 1st petitioner/appellant and the provision of his address for service of processes is in substantial compliance with the rules applicable to filing of election petition and consequently the petition is valid and subsisting. It is therefore wrong for the tribunal to impose the severe sanction of striking out the entire petition or to hold that the breach was fundamental in nature. (Pp. 69, paras. A-D; 75, para. B)

5. *On Invocation of the provisions of paragraph 49 (1) of 1st Schedule to Electoral Act, 2002 –*

An election tribunal does not need an application from a petitioner before it could apply or invoke the provisions of paragraph 49(1) of the 1st Schedule to the Electoral Act, 2002 which deals with the effect of non-compliance with the provision of the rules. It is the duty of the tribunal to fall back on any relevant law in ensuring that justice is done to all parties in the case before it. (P. 71, para. D)

6. *On Principles guiding interpretation of statutes –*

There is a presumption against unreasonable and inconvenient results or presumption against the legislature intending what is inconvenient and unreasonable in interpretation of statutes. Such construction most agreeable to justice and reason must be adopted. (P. 66, para. A)

7. *On Principles guiding interpretation of statutes –*

In determining either the general object of the legislature or the meaning of its language in construing any particular passage in a statute, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of

doubtful significance, be presumed to be the true one. An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available. However, the question of inconvenience or unreasonableness must be looked at in the light of the state of affairs at the date of the passing of the statute and not in the light of subsequent events. (P. 66, paras. B-F)

8. *On Principles guiding interpretation of statutes –*

Where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result, the court must do some violence to the words of the statute and so achieve that obvious intention and produce a rational construction. (P. 66. paras. D-E)

9. *On Principles guiding interpretation of statutes -*

Not only are unreasonable or artificial or anomalous constructions to be avoided, it appears to be an assumption, often unspoken, of the courts that where two possible constructions present themselves, the more reasonable one is to be chosen. [Egoluni v. Obasanjo (1999) 7 NWLR (Pt.611) 355 referred to.] (P. 66, paras. F-G)

**Per AKIN TAN, J.C.A. at pages 66-67, paras. D-G:**

"The complaint in the instant case is that two out of the three petitioners did not sign the petition. Although the requirement of paragraph 4(3)(b) is that the documents shall be signed by the petitioner or all petitioners or by the solicitor, if any ..." the tribunal in this case was of the opinion that failure of the two petitioners to sign the document constitutes a very fundamental defect the result of which the entire petition had to be struck out. Among the questions which one may ask are can the interpretation adopted by the tribunal be said to be in line with the intention of the legislature that such a result in which the petitioner who signed the petition would also be denied of his case being heard on merit; or can it be said that such interpretation adopted by the tribunal is in accord with convenience or reason or was it the best way of doing justice between the parties in the case before the tribunal. Or is it in line with the well laid down practice in the Nigeria Legal Practice? The requirement that every plaintiff or petitioner, as in the present case, must sign the writ or petition is not common in the rules of court in force in Nigeria. The question then is can the legislator by enacting the paragraph 4(3)(b) be said to envisage a situation where even a party who complied with the requirement relating to signing the petition have his case struck out just because one or more co-petitioners failed to sign the document. The answer to each of the above questions is definitely in the negative. I also have no doubt in holding that the result of adopting the interpretation adopted by the tribunal in this case cannot be said to be in accord with reason, justice and legal principles."

10. *On Importance of election petitions and need to hear same on the merits -*

Election petitions are by their nature peculiar from other proceedings. They are very important from the point of view of public policy. It is the duty of courts therefore to hear them without

allowing technicalities to unduly fetter their jurisdiction. The vogue these days is to hear election petitions on their merit where such petition can be saved. The door of justice should not be closed to a party who signed a petition on the ostensible reason that some other petitioners did not sign same. Such cannot be the intention of the law makers. In the instant case the provision of paragraph 49(1) of the 1st Schedule to the Electoral Act, 2002 should have been employed by the trial tribunal to cure the perceived irregularity and so save the petition and hear it on the merit. [Nwobodo v. Onoh (1984) 1 SCNLR 1 referred to.] (Pp. 72-73, paras. F-A)

*11. On When election petition may be struck out -*

An election petition can be struck out for non-compliance with the provision of paragraph 4(1) of the 1st Schedule to the Electoral Act, 2002. However, defects that may lead to an election petition being struck out are not limited to non-conformity with the provision of sub-paragraph 4(1). For instance, where a party presents an unsigned election petition, such petition is defective and is liable to be struck out, though such non-conformity is not one of those mentioned in sub-paragraph 4(1) of the Schedule. [Williams v. Tinubu appeal No EPT/CA/L/ 003 delivered on 1st July, 2003 by the Court of Appeal referred to.] (P. 74, paras. F-H)

*12. On When it may be necessary to join electoral officers as respondents in election petition -*

Section 133(2) of the Electoral Act, 2000 provides for the joining as necessary parties any officer of the Electoral Commission against whom the petitioner lays a complaint. It is necessary that there must be a complaint against the conduct of an officer and the complaint must relate to his role during the election before he could necessarily be joined as a respondent to a petition. In the instant case, it is true that it was pleaded in paragraph 16(xi) of the petition that the 1st respondent gave out specified sum of money to the 29 INEC supervisors, but no allegation of any wrong doing was levied against any of the 29 supervisors regarding the role they played during the election as a result of the alleged monetary inducement that could warrant their being joined as necessary parties. The allegation in paragraph 16(xi) of the petition, ex facie, is against the 1st respondent and not against the 29 supervisors. [Nwobodo v. Onoh (1984) 1 SCNLR 1; Ego v. Obasanjo (1999) 1 NWLR (Pt.611) 355; Jidda v. Kachallah (1999) 4 NWLR (Pt.599) 426; Omoboriowo v. Ajasin (1984) 1 SCNLR 108; Oduka v. Okwaranyia (1999) 4 NWLR (Pt.597) 35 referred to.] (P. 70, paras. C-H)

*13. On Effect of failure to join an electoral officer against whom allegation is made -*

Failure to join an electoral officer against whom an allegation of wrong doing had been made in an election petition would, at best, result in the relevant paragraph of the petition containing the allegation being struck out. The petition could therefore still stand provided that the remaining paragraphs of the petition could sustain it. In the instant case, even if paragraph 16(xi) is struck out the remaining paragraphs will sustain the petition. The question of striking out the entire petition did not therefore arise and the trial tribunal was wrong to have done so. [Oduka v. Okwaranyia (1999) 4 NWLR (Pt.597) 35; Omoboriowo v. Ajasin (1984) 1 SCNLR 108 referred to.] (Pp. 70-71, paras. G-B)

**Nigerian Cases Referred to in the Judgment:**

Egohtu v. Obasanjo (1999) 7 NWLR (Pt.611) 355

Nwobodo v. Onoh (1984) 1 SCNLR 1

Jidda v. Kachallah (1999) 4 NWLR (Pt.599) 426

Omoboriowo v. Ajasin (1984) 1 SCNLR 108

Oditka v. Okwaranyia (1999) 4 NWLR (Pt.597) 35

Williams v. Tinubu (Unreported) suit No. EPT/CA/L/003/2003 of 18/7/2003

**Foreign Cases Referred to in the Judgment:**

A.-G., v. Augustus (1957) AC 436

Artemiobi v. Procopoil (1966) 1 QB 878

Luke v. I.R.C. (1963) AC 557

**Nigerian Statutes Referred to in the Judgment:**

Electoral Act, 2002. 8.133(2), paras. 4(1), (3)(b), (6) and 49(1) of the First Schedule

Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990, S. 14(6)

**Book Referred to in the Judgment:**

Maxwell on the Interpretation of Statutes, 12th Edition by Langan, pages 199 and 203

**Appeal:**

This was an appeal against the decision of the Borno State Governorship Election Petition Tribunal which struck out the appellants' petition for incompetence. The Court of Appeal, in a unanimous decision, allowed the appeal.

**History of the Case:**

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Jos

Names of Justices that sat on the appeal: Sunday

Akinola Akinlan, J.C.A. (Presided and Read the Leading Judgment): Simeon Osuji Ekpe, J.C.A.; John

Afolabi Fabiyi, J.C.A.; Walter Samuel Nkanu

Onnoghen, J.C.A.; Abubakar Alxlulkadir .jega. J.C.A.

Appeal No.: CA/J/165/2003

Date of Judgment: Wednesday, 8th October, 2003

Names of Counsel: Dr. B.O. Babalakin, SAN (with him, O. Wadzani, Esq.; H.M. Dlakwa, Esq.; T. Oshobi, Esq. and T. Adebayo. Esq.) -for the Appellants.

Mr. C.O. Akpamgbo, SAN (with him, Dr. S.S. Ameh.

SAN; Unus Ustas Usman, SAN; Chief Chris Uche. "

SAN; M.T. Mongonu Attorney-General, Borno State;

Amobi Nzelu, Esq.; T.A. Dibal, Esq.; A.A. Airadion,

Esq.; 1. Kaigama, Esq.; I.M. Mshelia, Esq.; A.M. Kura.

Esq.; A.A. Aji, Esq.; B.R. Balami, Esq.; A.T. Uwais,

Esq.; W.T. Waba, Esq.; B. Bundi, Esq.; G.M. Chibok,

Esq. and Irene Ekweozor [Miss]) -for the 1st and 2nd

Respondents

Mr. F.E. Abbe -for the 3rd to 12th Respondents.

**Tribunal:**

Names of the Tribunal: National Assembly/Governorship and Legislative Houses Election Tribunal, Borno Date of Ruling: Wednesday, 18th, June, 2003

**Counsel:**

Dr. B.O. Babalakin, SAN (with him, O. Wadzani, Esq.; H.M. Dlakwa, Esq.; T. Oshobi, Esq. and T. Adebayo, Esq.) -for the Appellants Mr. C.O. Akpamgbo. SAN (with him, Dr. S.S. Ameh, SAN- Unus Ustas Usman, SAN: Chief Chris Uche, SAN; M Mongonu Attomey-General, Borno State; Amobi Nzelu. Esq.; T.A. Dibal, Esq.; A.A. Airadion, Esq.: I. Kaigama, Esq.; I.M. Mshelia, Esq.; A.M. Kura, Esq.; A.A. Aji, Esq.: B.R. Balarni Esq.; A.T. Uwais, Esq.; W.T. Waba, Esq.; B. Bundi, Esq.; G.M Chibok, Esq. and Irene Ekweozor [Miss]) -for the 1st and 2nd Respondents

Mr. F.E. Abbe - for the 3rd to 12th Respondents.

**AKINTAN, J.C.A. (Delivering the Leading Judgment):** This is an appeal from the decision of the National Assembly/Governor-ship and Legislative Houses Election Tribunal sitting at Maiduguri p. delivered on 18 June, 2003. The 1st appellant, Alhaji Kashim Ibrahim, was a candidate at the Governorship election for

Borno State held on 19th April, 2003. The 2nd appellant, Alhaji Ibrahim Umar Kida, contested for the post of Deputy Governor in the same election. Both men contested the election as candidates of the 3rd appellant, the Peoples Democratic Party. The 1st respondent, Senator Ali Modu, Sheriff also contested the same election as Governorship candidate on the platform of All Nigeria Peoples Party (ANPP). The 2nd respondent, Alhaji Adamu Dibal, contested for the post of Deputy Governor to the 1st respondent. The 3rd respondent, Independent National Electoral Commission (INEC) is the body that conducted the elections. The 4th to the 12th respondents are the returning officers for the various Local Government Areas. They are officials of the 3rd respondent involved in the conduct of the election. Eight other political parties also sponsored candidates for the same post at the election.

At the conclusion of the elections, the 3rd respondent declared the scores of each of the candidates. According to the results declared, the 1st respondent was credited with the highest score of 581,880 votes. He was followed by the 1st appellant's score, given as 341,537. The 1st respondent having scored the highest votes at the election was declared as the winner of the election by the 3rd respondent. The 1st and 2nd appellants were dissatisfied with the results declared by the 3rd respondents. The two men along with their political party the PDP therefore jointly filed the petition at the Borno State Governorship Election Tribunal holder; in Maiduguri.

The appellants, as petitioners, prayed the tribunal for the following reliefs in paragraph 20 which is the concluding paragraph of their said petition:

"(20) Wherefore your petitioners pray that it may be determined that:

- (i) The 1st and 2nd respondents were and are presently under a legal/constitutional incapacity which disqualified and continue to disqualify them from holding and thus seeking election into the office of Executive Governor and Deputy Governor of Borno State respectively.
- (ii) The 1st and 2nd petitioners, being the candidates with the highest number of valid and lawful votes from among other constitutional qualified candidates in the Borno State Gubernatorial Election held on 19th April, 2003 (having polled a total of 341,537) are the winners in the said election and be declared and returned as such.

In the alternative, your petitioners pray that it may be determined that:

- (iii) The above-named 1st and 2nd respondents were not duly elected or returned by the majority of lawful votes cast at the election.
  - (iv) The entire Governorship election conducted in Borno State on 19th April, 2003 be nullified and the return of the 1st and 2nd respondents in respect therefore be so nullified and that fresh gubernatorial election be held in Borno State.
- Dated this 19th day of May, 2003 signed: Alhaji Kashim Ibrahim-Imam  
The name of my solicitor is: Dr. B. O. Babalakin SAN Baba akin & Co. Petitioners' Counsel  
The Rooftop (8th - 10th Floor) 24A Campbell Street Lagos.

Petitioner address for service

Kashim Ibrahim-Imam's residence of Gombole Road

OldG.R.A,

Maiduguri, Borno State

Occupier - Alhaji Kashim Ibrahim-Imam."

The petitioners' main reasons for challenging the results as set out in their said petition are that the 1st and 2nd respondents were not qualified to be elected to the office of Governor and Deputy Governor respectively and that the elections were marred by corrupt practices.

They set out the various allegations in paragraph 16 of their said petition. They pleaded specifically in paragraph 16(xi) as follows:

“(xi) In Bama Local Government Area, the 1st respondent unlawfully induced the 29 supervisors of the 4th respondent with a sum of N450, 000 to influence, alter and manipulate the result of the election in favour of the 1st and 2nd respondents.”

After the respondents had been served with the petition, two -c notices of preliminary objections were filed against the petition. One of the notices of objection was filed on behalf of the 1st and 2nd respondents. The other was filed on behalf of the 3rd to 12th respondents. The reliefs sought in the notice of objection filed on behalf of the 1st and 2nd respondents read, inter alia, as follows: p

"An order striking out or dismissing this petition as this Honourable Tribunal lacks jurisdiction to entertain same.

The grounds for this application are:

Breaches of section 133(2) and paragraphs 4(3) (b) and

49(2) and (3) of the 1st Schedule to the Electoral Act, 2002..."

The 3rd to 12th respondents also prayed the tribunal, in their said notice of objection, "for an order to dismiss or strike out the petition in limine for being incompetent and an abuse of court process and the tribunal lacks the jurisdiction to hear the petition".

The grounds upon which the objection was brought are also set out in six paragraphs. They are as follows:

"(1) That the contents of the petition as it relates to signature, address for service and the name of occupier of the premises is lacking with respect to the 2nd and 3rd petitioners

in the petition, as required by the mandatory provisions of paragraph 4, 1st Schedule of the Electoral Act, 2002.

- (2) That the failure/neglect to join electoral officers and/or presiding officers where complaints were made against their action, in action, negligence, allegation of activities of malpractices in certain polling booth(s) in paragraphs 16, 17 and 18 of the petition, as required by the mandatory provisions of section 133(2) of the Electoral Act, 2002.
- (3) That the failure to join all necessary and or interested parties i.e All Nigeria Peoples Party and other candidates/political parties at the election by virtue of the relief sought for the nullification of the entire election.
- (4) That the reliefs sought in the petition are inconsistent with the Electoral Act, 2002.
- (5) That the 9th - 12th respondent's are not persons known to law as it relates to this petition.
- (6) That by reason of such failure in paragraphs 1 - 5 above, the petition was filed in recklessness or gross violation of the Electoral Act, 2002, and therefore an abuse of the process of this tribunal."

The tribunal, after taking submissions from counsel on the two preliminary objections, delivered its considered ruling on 18 June, 2003. It upheld the objection, and struck out the petition in its entirety. This appeal is against the said ruling of the tribunal. Three original grounds of appeal were filed against the decision. The appellants, however, replaced them, with leave of this court, with 4 amended grounds of appeal. The parties filed their briefs of arguments in this court. To that end, the appellants filed an appellants' brief. Another brief was also filed on behalf of the 1st and 2nd respondents. Although no brief was filed on behalf of the 3rd to 12th respondents, they were, however, represented by counsel at the hearing in this court.

The appellants formulated the following issues in their brief as arising for determination in the appeal:

- "3.1.1 Whether it was necessary for the 2nd and 3rd appellants to sign the petition, the 1st appellant having duly signed same under the Electoral Act, and whether the failure to do so is a fundamental vice that affects the competence of the entire petition and thus taking away the jurisdiction of the tribunal.
- 3.1.2. Whether it was necessary to state the addresses for service and names of the occupiers for 2nd R and 3rd appellants in the petition under the Electoral Act, 2002 and whether the non-stating of the addresses and occupiers can render the entire petition incompetent and liable to be struck out.

- 3.1.3. Whether the 29 supervisors of the 3rd respondent who were alleged to be financially induced by the 1st and 2nd respondents in paragraph 16(xi) of the petition were necessary respondents to be joined in the petition under the electoral Act, 2002, and whether the failure of the appellants to join them is fundamental enough to render the entire petition incompetent and liable to be struck out.
- 3.1.4. Whether the tribunal was right in holding that E the appellants did not make appropriate application to enable it invoke its power under paragraph 49(4) of the 1st Schedule to the Electoral Act, 2002."

Four similar issues are also formulated in the 1st and 2nd respondents' brief. I therefore consider it unnecessary to reproduce them.

At the hearing before the tribunal, the questions raised in the objections were narrowed down by the tribunal. They are:

- (a) Whether the failure by the 2nd and 3rd petitioners to also sign the petition is fundamental enough to affect the competence of the petition.
- (b) Whether failure to give the address for service and the name of its occupier for 2nd and 3rd petitioners is an irregularity that could affect the competence of the petition.
- (c) Whether the non-joinder of necessary parties - i.e. the 29 INEC supervisors could render the petition incompetent; and
- (d) Whether failure to plead the presumed results apart from those declared by INEC is fatal to the petition.

The objections raised were accordingly considered under each of the aforementioned headings. The tribunal came to a final conclusion that there was merit in the preliminary objections. It accordingly upheld them and made an order striking out the entire petition.

Dr. Babalakin, SAN learned leading counsel for the appellants submitted, on his issue 1, both in the appellants' brief and in his oral presentation before us, that the main question raised in that issue hangs on the interpretation of paragraph 4(3)(b) of the 1st Schedule to the Electoral Act, 2002. He submitted that the tribunal was wrong when it held that the defect on which the tribunal relied in striking out the petition came under paragraph 4(1) of the said 1st Schedule.

: The defect is said to come under paragraph 4(3) (b) of the said schedule. Reference is made to paragraph 4(6) of the same 1st schedule and he submitted that breaches for which a petition may be struck out are limited by that sub-rule to those named in sub paragraph 1 of the said rule. Breaches of the provisions of sub-paragraph (3) of the rule are therefore not included.

He further submitted, on paragraph 4(3)(b) of the said rule, that it is sufficient for any of the 3 petitioners to sign and that it is not necessary for all of them to sign the petition. The use of the words "petitioner or all petitioners" in the paragraph is said to have made it clear that the provision should be

read disjunctively and not conjunctively. Reference is also made to the provisions of paragraph 28(2) of the same rule, which deals with withdrawal of an election petition. That sub-rule 28(2) provides as follows:

"Where the petitioners are more than one, no application for leave to withdraw the election petition shall be made except with the consent of all the petitioners."

It is submitted that if the position that all the petitioners must sign a petition were to be correct, the law would have clearly and specifically stated so. The contention by the tribunal that failure of 2nd and 3rd petitioners to sign is not in accordance with the format set out in Form TFOO1 prescribed in the Electoral Act, 2002 is also said to be erroneous. This is said to be because forms in Schedules are said to be merely examples and for convenience. It is therefore submitted that the petition filed was in compliance with the provisions of the law and as such the order of the tribunal striking it out should be set aside.

It is submitted in the alternative that the non-signing of the petition by the 2nd and 3rd petitioners could at best, amount to a mere irregularity on the face of the petition which could not amount to a fundamental defect. Such a mere irregularity is said to be curable by virtue of paragraph 49(4) of the same 1st Schedule to the Act.

It is submitted in reply on issue 1 in the 1st and 2nd respondents' brief as well as in the oral submission made before us by Mr Akpangbo, SAN, learned leading counsel for the 1st and 2nd respondents, that the petition is a joint one with the same statement of facts in support and same relief by the three petitioners. But only the 1st petitioner signed it. The failure of the other two petitioners to sign it is said to amount to a breach of the express and clear provision of paragraph 4(3) (b) of the 1st schedule which provides that "the petition shall further be signed by the petitioner or all the petitioners or by the solicitor, if any, named at the foot of the election petition". It is further argued that it is not only non-compliance with paragraph 4(1) of the schedule that could vitiate a petition. The petition not having been signed by the 2nd and 3rd petitioners nor their solicitor is incompetent. Since it is a condition precedent to the presentation of a valid petition, the tribunal is said to have acted correctly by striking it out. Non-compliance with the provisions of paragraph 4(3)(b) of the 1st Schedule is said to have the same effect as breaches of any of the provisions of paragraph 4(1) of the same 1st Schedule and the provision of paragraph 4(6) is said to be applicable to the entire paragraph.

Failure of the petitioners to sign the petition is said to be a fundamental defect. The penalty for such omission is that such petition would be struck out. Such omission is not one which can be cured by paragraph 49(1) of the 1st Schedule.

The requirement that a petitioner needs to sign an election petition is contained in paragraph 4(3) (b) of the 1st Schedule to the Electoral Act, 2002.

Paragraph 4 of the said 1st Schedule sets out the form which an election petition should take. The paragraph reads as follows:

- "4(1) An election petition under this Act shall -
- (a) specify the parties interested in the election petition:
  - (b) specify the right of the petitioner to present the election petition
  - (c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and
  - (d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioner.
- (2) The election petition shall be divided into paragraphs each of which shall be confined to a distinct issued or major facts of the election petition, and every paragraph shall be numbered consecutively.
- (3) The election petition shall further -
- (a) conclude with a prayer or prayers, as for instance, that the petitioner or one of the petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast at the election or that the election may be declared nullified, as the case may be; and
  - (b) be signed by the petitioner or all petitioners or by the solicitors, if any, named at the foot of the election petition.
- (4) At the foot of the election petition there shall also be stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier.
- (5) If an address for service is not stated as specified in sub-paragraph (4) of this paragraph, the petition shall be deemed not to have been filed, unless the tribunal or court otherwise orders.
- (6) An election petition which does not conform with sub-paragraph (1) of this paragraph or any provision of that sub-paragraph is defective and may be struck out by the tribunal or court."

The breach alleged in the instant case is that only the 1st petitioner signed the petition. Failure of the 2nd and 3rd petitioners to sign the document is said to be contrary to the provision of paragraph 4(3)(b) of the said rule. In other words, the provision that the petition should be signed by the petitioner or all the petitioners or by the solicitors, if any, named at the foot of the election petition "is said to be in breach of, if any of the petitioners fails to sign where there are more than one petitioners One of the well established principles of interpretation of statutes is that there is a presumption" A against unreasonable and inconvenient result, or presumption against intending what is inconvenient and unreasonable. Another principle is that construction most agreeable to justice and reason must be

adopted. The position of the law in this respect is well set out in Maxwell on the Interpretation of Statutes, 12th edition by Langan 1976, page 199 as follows:

"In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one. An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available."

In *Luke v. I.R.C.* (1963) AC 557 at 577, Lord Reid held inter alia, that where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result "we must do some violence to the words" and so achieve that E obvious intention and produce a rational construction. See also *Artemion v. Procopiou* (1966) 1 QB 878 at 888 per Dankwerts LJ. Also in *Attorney-General v. Prince Ernest Augustus of Hanover* (1957) AC 436. It was clearly stated that the question of inconvenience or unreasonableness must be looked at in the light of the state F of affairs at the date of the passing of the statute not in the light of subsequent events.

Also, not only are unreasonable or artificial or anomalous constructions to be avoided, "it appears to be an assumption (often unspoken) of the courts that where two possible constructions present G themselves, the more reasonable one is to be chosen". See Maxwell on Interpretation of Statutes, supra, page 203, and also *Egolum v Obasanjo* (1999) 7 NWLR (Pt. 611) 355.

The complaint in the instant case is that two out of the three petitioners did not sign the petition. Although the requirement of H paragraph 4(3) (b) is that the documents shall be signed by the petitioner or all petitioners or by the solicitor, if any the tribunal in this case was of the opinion that failure of the two petitioners to sign the document constitutes a very fundamental defect the result of which the entire petition had to be struck out. Among the questions which one may ask arc - can the interpretation adopted by the tribunal be said to be in line with the intention of the legislature that such a result in which the petitioner who signed the petition would also be denied of his case being heard on merit: or can it be said that such interpretation adopted by the tribunal is in accord with convenience or reason or was it the best way of doing justice between the parties in the case before the tribunal. Or is it in line with the well laid down practice in the Nigerian Legal Practice? The requirement that every plaintiff or petitioner, as in the present case, must sign the writ or petition is not common in the rules of court in force in Nigeria. The question then is can the legislator by enacting the paragraph 4(3)(b) be said to envisage a situation where even a party who complied with the requirement relating to signing the petition have his case struck out just because one or more co-petitioners failed to sign the document.

The answer to each of the above questions is definitely in the negative. I also have no doubt in holding that the result of adopting the interpretation adopted by the tribunal in this case cannot be said to be in accord with reason, justice and legal principles.

Section 14(b) of the Interpretation Act, (Cap. 192, *Laws of the Federation of Nigeria, 1990*) provides that "Words in the singular include plural and words in the plural include the singular". The

word "petitioner" used in paragraph 4(3)(b) includes the plural. The same is applicable to the words "all the petitioners". That phrase also includes the singular.

The question then is, whether an order striking out the entire petition is the proper order, which the tribunal ought to make in the case having regard to the provision of paragraph 4(6) of the said schedule which provides that: "an election tribunal which does not conform with sub-paragraph (1) of this paragraph or any provision of that sub-paragraph is defective and may be struck out by the tribunal or court". (Underlining supplied for emphasis). The sub-paragraph 4(6) is specific in restricting the sanction prescribed therein to sub-paragraph 4(1). I therefore find it difficult to agree with the view that that sanction is applicable to paragraph 4(3)(b) which is in contention in this case. Even in the instances listed in paragraph 4(1) of the said schedule, it is not mandatory that a breach must result in an order striking out the petition. This follows from the fact that the use of the phrase "may be struck out" gives room for imposition of a sanction not as severe as striking out the petition.

Again, the question is whether the provision of paragraph 49(1) of the same 1st Schedule relating to saving a petition for non-compliance with any of the rules would have any effect in cases of breaches similar to the one now under consideration. The said paragraph 49(1) provides as follows:

"49-(1) Non-compliance with any of the provisions of this Schedule, or with a rule of practice for the time being operative, except otherwise stated or implied, shall not render any proceeding void, unless the tribunal or court so directs, but the proceeding may be set aside wholly or in part as irregular, or amended or otherwise dealt with in such manner and on such terms as the tribunal or court may deem fit and just".

The above provision is aimed at preventing a breach of any of the rules from resulting in unjust or unreasonable result. It is therefore not correct to say that the provision is inapplicable to the situation in the present case. The only situation where a petition can be struck out is where neither any of the petitioners nor their counsel signed the petition - such as in *Williams v Tinubu (Unreported) Suit No. EPT/CA/003/03 delivered on 18/7/2003*.

In conclusion, therefore, I hold that the tribunal was wrong in holding that each of the three petitioners must sign the petition before it could be valid. I believe and hold that signature by any of them is sufficient and that such is enough to satisfy the requirement of paragraph 4(3)(b) of the 1st Schedule to the Electoral Act, 2002. I also hold that the sanction prescribed in paragraph 4(6) of the said 1st Schedule is only applicable to the provisions of paragraph 4(1) of the 1st Schedule and that the sanction is not applicable to paragraph 4(3) of the said 1st Schedule. I also have no doubt in holding that even in the event of a breach of the provision of paragraph 4(1) of the 1st Schedule, it is not mandatory that such will result in the petition being struck out. This is because the said paragraph 4(6) does not provide for such a rigid interpretation since what is provided in that sub-paragraph is that the petition "may be struck out" and not that the petition "shall be struck out" or that petition "must be struck out". There is therefore merit in the appeal as it relates to the appellants' first issue.

The question raised in the appellants' issue 2 is whether it was necessary to state the addresses for service and names of the occupiers on the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners under the Electoral Act, 2002. The requirement is provided for in paragraph 4(4) of the 1st Schedule provides thus -

"At the foot of the election petition, there shall also be stated an address of the petitioners for service at which address documents intended for the petitioner may be left and its occupier".

The allegation in the present case is that only the address of the 1st petitioner was supplied and that since those of the 2nd and 3rd petitioners were omitted, there was a breach of the said provision. But as I have held earlier above, a breach of the said sub-paragraph 4(4) of the Schedule can not result in a petition being struck out as the tribunal did in this case. Rather, such a breach is among those that can be saved by paragraph 49(1) of the same 1st Schedule. I therefore, for the reasons already given earlier above hold that it was wrong for the tribunal to impose the severe sanction of striking out the entire petition or to hold that the breach was fundamental in nature.

The question raised in the appellants' Issue 3 is whether failure to join the 29 INEC supervisors alleged to have been induced with money in paragraph 16 (xi) of the petition as respondents could vitiate the petition. The offending paragraph 16(xi) of the petition reads as follows:

"16 - (xi) In Bama Local Government Area, the 1st respondent unlawfully induced the 29 supervisors of the 4th respondent (INEC) with a sum of N45,000 to influence, alter and manipulate the result of the election in favour of the 1st and 2nd respondents".

It is submitted in the appellants' brief that the allegation is against (he 1st respondent since it has not been alleged that the 29 supervisors actually manipulated the results. It is further submitted that the need to join the officers as respondents could arise only where a complaint is made against them. Reference is made in that respect to section 133(2) of the Electoral Act, 2002 which provides as follows:

"S. 133(2) The person whose election is complained of is, in this Act, referred to as the respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a respondent and shall be joined in the election petition in his or her official status as a necessary party".

It is argued that since no specific allegation of any misconduct has been made against any of the 29 supervisors, the need to join them as respondents does not arise.

It is submitted in reply in the 1st and 2nd respondents' brief that since a careful reading of paragraph f 6(xi) of the petition would show that the 1st respondent gave out the money to the 29

supervisors, the 29 people ought to be joined. It is further submitted that failure to join them is said to be fatal to the whole petition.

It is not in doubt that section 133(2) of the Electoral Act, 2002 provides for the joining as necessary parties any officers against whom the petitioner levies any complaint. It is necessary that there must be a complaint against the conduct of an officer and the complaint must relate to his role during the election before he could necessarily be joined as a respondent. This point has been clearly stated in a number of decided cases. See *Nwobodo v Onoh* (1984) 1 SCNLR 1; *Egolum v. Obasanjo* (1999) 7 NWLR (Pt.611) 355; *Jidda v Kachallah* (1999) 4 NWLR (Pi. 599) 426; *Omoboriowo v Ajasin* (1984) 1 SCNLR 108; (1984) 15 NSCC 81, and *Oduka v Okwaranyia* (1999) 4 NWLR (Pt.597) 35.

In the instant case, it is true that it was pleaded in the said paragraph 16(xi) of the petition that the 1st respondent gave out specified sum of money to the 29 INLC supervisors, but no allegation of any wrong-doing was levied against any of the 29 supervisors regarding the role they or any of them played during the election as a result of the alleged monetary inducement that could warrant their being joined as necessary parties. Again there is the need to consider the effect of not joining them as necessary parties on the petition. That point has long been decided by the Supreme Court in the *Omoboriowo v Ajasin's* case, *supra*. See also *Oduka v Okwaranyia* (*supra*). The position now is that failure to join such people against whom allegation of wrongdoing had been made would, at best, result in the relevant paragraph of the petition being struck out. The petition could therefore still stand provided that the remaining paragraphs of the petition could sustain it.

In the result. I hold that the allegation made in paragraph 16 (xi) of the petition ex-facie, is, against the 1st respondent and as such it was not necessary to join the 29 supervisors as necessary parties since it was not alleged that any of them actually received the money and was in fact induced to act unlawfully as a result of the monetary inducement. Even if it was established that the supervisors were necessary parties not joined, all that could happen is that the omission to join them could only result in striking out the offending paragraphs of the petition. The question of striking out the entire petition does not therefore arise. I therefore hold that the tribunal was wrong in striking out the petition because of the omission to join the 29 INLC supervisors.

The question whether the tribunal was right in holding that the appellants did not make appropriate applications to enable the tribunal invoke the saving provision of paragraph 49(1) of the 1st Schedule to the Electoral Act, 2002 is the one raised in the appellants' issue 4. As already discussed above, the tribunal had no legal basis to justify or support the striking out order it made in the case. Similarly it was also wrong of the tribunal to hold that it needed an application from the appellants before it could apply the provisions of paragraph 49(1) of the 1st Schedule or of any law for that matter. It is the duty of the tribunal to fall back on any relevant law in ensuring that justice is done to all the parties in the case before it.

In conclusion, I hold that there is merit in the appeal. I accordingly allow it. I hereby set aside the order of the tribunal striking out the petition. In its place I hereby order that the said petition struck out

be restored on to the cause list. I also order that the same petition be remitted back to the tribunal for trial on its merit. The appellants are awarded N 10,000 costs against the 1st and 2nd respondents.

**EKPE, J.C.A.:** I had the advantage of reading before now the judgment just delivered by my learned brother, Akinlan, JCA, I consider the judgment as comprehensive enough and I completely agree with his reasoning and conclusion that the appeal has merit and should be allowed. I also allow the appeal and abide by the consequential orders in the leading judgment, including the order as to costs.

**FABIYI, J.C.A.:** I have had a preview of the judgment just delivered by my learned brother Akintan JCA I agree with his reasons leading to the conclusion that there is merit in the appeal.

The 1st and 2nd appellants contested the gubernatorial election of 19/4/03 for the offices of Governor and Deputy Governor respectively of Borno State on the platform of Peoples Democratic Party (PDF); 3rd appellant herein. The 1st and 2nd respondents contested in the same capacities under the banner of the All Nigeria Peoples Party (ANPP). The 1st and 2nd respondents, on completion of the election, were declared as winners by the 3rd and 4th respondents who conducted the election.

The appellants felt unhappy and filed their petition at the tribunal. The petition was only signed by the 1st appellant herein two applications seeking to amend the petition by striking out the names of the 2nd and 3rd petitioners and deletion of paragraph 16(xi) of the petition were refused on 13th June, 2003. Thereafter, the 1st and 2nd respondents moved the tribunal to strike out the petition for a failure of the 2nd and 3rd petitioners to sign the petition. Placing reliance on paragraph 4(3) (b) of the 1st Schedule to the Act, the tribunal struck out the petition. The petitioners/appellants have challenged the stance of the tribunal in this appeal.

Since the 1st appellant signed the petition, I strongly feel that there is substantial compliance with the dictate of paragraph 4(3) (b) of the 1st Schedule to the Act which provides that the petition 'shall be signed by the petitioner or all petitioner or by the solicitor, if any, named at the foot of the petition'. This is unlike what happened in the case of *Williams v. Tinubu* (Unreported) Suit No. EPT/CA/003/ 03 delivered on 18/7/03 where the petition was not signed at all.

In the case before us, the two main gladiators - 1st appellant and 1st respondent are effectively before the tribunal. The tribunal erroneously pinpointed an irregularity. The provision of paragraph 49(1) of the 1st Schedule to the Act should have been employed to cure the perceived irregularity so as to save the petition and hear it on its merit. The vogue these days is to hear election petitions on their merit where such petitions can be saved. In *Nwobodo v. Onoh* (1984) 1SCNLR 1, the Supreme Court maintained that election petitions are by their nature peculiar from other proceedings. They are very important from the point of view of public policy. It is the duty of courts therefore to hear them without allowing technicalities to unduly fetter their jurisdiction. I strongly feel that the door of justice should not be closed to the 1st appellant who signed the petition on the extensible reason that some other petitioners did not sign same. Such cannot be the intention of the law, makers.

The other issues raised have been ably treated in the lead judgment. For the above views expressed by me and the detailed reasons set out in the lead judgment, I find that the appeal is meritorious and

should be allowed. 1 order accordingly and abide by all consequential orders therein contained including the one relating to costs.

**ONNOGHEN, J.C.A.:** I have had the benefit of reading in draft, the lead judgment of my learned brother Akintan, J.C.A, just delivered. I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

There are primarily two issues that call for determination in this appeal, though the appellant formulated four. The two issues are:-

1. Whether the petition before the lower court/tribunal is competent in law in view of the fact that only the 1<sup>st</sup> appellant signed same and provided an address for service and,
2. Whether the non joinder of the 29 supervisors of the 4th respondent mentioned in paragraph 16(xi) of the petition is fatal to the petition.

It is my considered view that a resolution of the two issues takes care of the appeal.

As regards issue No. 1, it is not in doubt that only the 1st appellant signed the petition in this case and that he did not do so for himself and on behalf of the 2nd and 3rd appellants who, by virtue of the provisions of section 133(1) of the Electoral Act, 2002 are competent parties to present election petition(s). The 1st appellant also provided his address for service of processes relating to the petition as required by the rules. As regards the 2nd and 3rd appellants no such addresses were provided in the petition.

The relevant provisions, whose interpretation is crucial for the determination of this issue is paragraph 4(3) (b) and (4) of the 1st Schedule to the Electoral Act, 2002 which provide as follows:-

- 4(3) The election petition shall further -
  - (b) Be signed by the petitioner or all petitioners or by the solicitor, if any named at the foot of the election petition
  - (4) At the foot of the election petition there shall also be ^ stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier".

Learned counsel for the appellants has submitted that defects R which may result in an election petition being struck out are nonconformity with the provisions of paragraph 4(l)(a) - (d) of the 1st Schedule to the Electoral Act, 2002 by virtue of the provisions of sub-paragraph 6 of the said paragraph 4. He further argued that the signing of the petition by the 1st appellant alone is sufficient compliance with the rules and as such the petition is valid.

Paragraph 4(1) of the 1st Schedule of the Electoral Act, 2002 provides as follows:-

- "4(1) An election petition under this Act shall -

- (a) specify the parties interested in the election petition;
- (b) specify the right of the petitioner to present the election petition;
- (c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and
- (d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioner.

“Sub-paragraph (6) of paragraph 4 then provides thus:-

- "(6) An election petition which does not conform with sub- paragraph (1) of this paragraph or any provision of that sub-paragraph is defective and may be struck out by the tribunal or court."

It is my view that whereas non-conformity with the provisions of paragraph 4(1) supra may result in the petition being regarded as defective and subject to being struck out, defects that may lead to an election petition being struck out are not limited to non-conformity with the provisions of the said sub-paragraph. For instance where a party presents an unsigned election petition, such a petition is defective and is liable to be struck out even though such non-conformity is not one of those mentioned in sub-paragraph 1 of the 1st Schedule supra - see the judgment of this court in Appeal No. EPT/CA/L/003/03: Williams v. Tinubu delivered by the Lagos Division of this court on the 1st day of July, 2003.

this case, the provisions of paragraphs 4( 1) and (6) do not apply, the issue being simply the legal effect on the petition of only the 1st appellant signing same and providing an address for service.

Looking closely at the facts of this case and the applicable rules of court, it is my considered view that the signing of the petition by only the 1st appellant and the provision of his address for service of processes is in substantial compliance with the rules applicable to the filing of an election petition and consequently the petition is valid and subsisting. It is trite law that rules of court are made to aid the attainment of justice. This case is different from one where no one signed a petition. In this case, one out of three signed and provided an address for service. It is my view that justice demands that the petition be heard on the merit.

In conclusion, I too allow the appeal and remit the matter to the Election Tribunal to be heard on merit. I abide by the order as to, cost contained in the said lead judgment of my learned brother, Akintan, JCA.

Appeal allowed.

**JEGA, J.C.A.:** I was privileged to have read in advance the leading judgment just delivered by my learned brother, Akintan, JCA, in this appeal. He has comprehensively set out and tackled all the legal points raised in the appeal I agree with his reasons and the conclusion reached in the said judgment that the

appeal has merit and should be allowed. I allow the appeal and abide by all the consequential orders made in the lead judgment including the order as to costs.

*Appeal allowed.*