

1. EMMANUEL JIMI
2. ALL PROGRESSIVES CONGRESS

V.

1. INDEPENDENT NATIONAL ELECTORAL  
COMMISSION (INEC)
2. SAMUEL IORAER ORTOM
3. PEOPLES DEMOCRATIC PARTY (PDP)

SUPREME COURT OF NIGERIA

SC.1510/2019

OLABODE RHODES-VIVOUR, J.S.C. (*Presided*)

NWALI SYLVESTER NGWUTA, J.S.C. (*Read the Leading Judgment*)

MUSA DATTIJO MUHAMMAD, J.S.C.

AMIRU SANUSI, J.S.C.

AMINA ADAMU AUGIE, J.S.C.

PAUL ADAMU GALUMJE, J.S.C.

UWANI MUSA ABBA AJI, J.S.C.

TUESDAY, 21<sup>ST</sup> JANUARY 2020

*APPEAL - Meaning of appeal.*

*APPEAL - Appeal on which Court of Appeal has not made pronouncement – Whether*

*Supreme Court can determine.*

*APPEAL - Issues for determination - Formulation of Principles governing.*

*APPEAL - Issues for determination - Issue not pronounced upon by Court of Appeal –  
Whether Supreme Court can entertain.*

*APPEAL - Issues for determination - Proliferation of - What amounts to.*

*DOCUMENT - Documentary evidence Need for party to demonstrate relevance of  
document to his Case-Front-loading of document - Whether relieves party of duty  
thereof.*

*ELECTION PETITION - Card reader machine - Purpose of Usefulness of in determining  
issues in election petition - Scope of.*

*EVIDENCE - Documentary evidence - Need for party to demonstrate relevance of  
document to his case - Front-loading of document - Whether relieves party of duty  
thereof.*

*EVIDENCE - Front-loading of document - Mere front loading of document without more  
- Whether can legally prove a case Section 135(1), Evidence Act.*

*PRACTICE AND PROCEDURE - Appeal - Meaning of*

*PRACTICE AND PROCEDURE - Appeal on which Court of Appeal has not made  
pronouncement - Whether Supreme Court can determine.*

*PRACTICE AND PROCEDURE - Front-loading of document - Mere front loading of  
document without more - Whether can legally prove a Case-Section 135(1), Evidence  
Act.*

*PRACTICE AND PROCEDURE - Issues for determination - Formulation of - Principles governing.*

*PRACTICE AND PROCEDURE - Issues for determination - Issue not pronounced upon by Court of Appeal - Whether Supreme Court can entertain.*

*PRACTICE AND PROCEDURE - Issues for determination Proliferation of - What amounts to.*

*WORDS AND PHRASES - Appeal - Meaning of.*

*WORDS AND PHRASES - Proliferation- What amounts to.*

*WORDS AND PHRASES - Prolix - Meaning of*

**Issue:**

Whether the Court of Appeal was right in holding that the exhibits tendered were dumped on the tribunal without taking cognizance of the front-loading system in which the witnesses had spoken to and demonstrated in their written statements on oath the said documents contrary to the old position of leading witnesses in chief by *viva voce* testimonies.

**Facts:**

On 9<sup>th</sup> March 2019, the 1<sup>st</sup> respondent conducted election into the office of Governor of Benue State. At the end of the exercise, the 1<sup>st</sup> respondent declared the election inconclusive. Consequently, a re-run election was scheduled and conducted on 23<sup>rd</sup> March 2019.

The combined results of the election conducted on 9<sup>th</sup> March 2019 and the re-run held on 23<sup>rd</sup> March 2019 showed that the 2<sup>nd</sup> respondent scored a total of 434,473 votes while his

closest rival, the 1<sup>st</sup> appellant, scored 345,155 votes. The 2<sup>nd</sup> respondent was declared winner of the election.

The 1<sup>st</sup> and 2<sup>nd</sup> appellants were not satisfied with the result of the election and they filed an election petition at the Governorship Election Tribunal on the following grounds:

- “1. That the 2<sup>nd</sup> respondent was not duly elected by majority of lawful votes cast at the election.
2. That the election of the 2<sup>nd</sup> respondent was invalid by reason of non-compliance with the provision of the Electoral Act 2010 as amended.”

At the conclusion of hearing, the tribunal dismissed the petition. Dissatisfied, the appellants appealed to the Court of Appeal which dismissed the appeal and affirmed the decision of the tribunal. Still dissatisfied, the appellants appealed to the Supreme Court.

As part of their reactions to the appeal, the respondents filed applications in which they prayed the Supreme Court to, *inter alia*, strike out issues 1 and 4 of the appellants' brief of argument for proliferation in that the said issues were derived from the same grounds of appeal.

**Held** (*Dismissing the appeal*):

1. *On Purpose of card reader machine -*  
**A card reader machine is set up to authenticate or verify permanent voter's card (PVC) issued by the Independent National Electoral Commission. [Nyesom v. Peterside (2016) 7 NWLR (Pt. 1512) 452 referred to. (P. 399, para. E)**
2. *On Need for party to demonstrate relevance of document to his case and whether front-loading of document relieves him of duty thereof -*  
**By virtue of section 135(1) of the Evidence Act, the mere front-loading of documents without more cannot legally meet the legal requirement that he who asserts must prove his assertion. The tribunal or court is not bound to accept and rely on documents of which veracity or authenticity is not tested or even in doubt. Nothing prevents a witness from making a**

false declaration on oath for a fee to help his candidate of choice. Thus, front loading relied upon by a party does not derogate from the need to demonstrate the relevance of the document to the case or to an aspect of the case. And the person most qualified to make the demonstration is the maker of the document. In the instant case, the smart card reader machine was made to assume a more prominent position than it deserved in an electoral process because the smart card reader was limited in its operation and could not settle the issues complained of by the appellant. (P. 599, paras. B-D)

3. *On Meaning of appeal -*

**An appeal is an invitation to a higher court to review the decision of the lower court to find out whether in proper consideration of the facts placed before it and the applicable law, that court arrived at a correct decision. [Oredoyin v. Arowolo (1989) 4 NWLR (Pt.114) 172 referred to.] (P. 598, paras. D-E)**

4. *On Definition of proliferation*

**Proliferation is defined among others as “a large number of a particular thing. (P. 595, para. C)**

5. *On Meaning of prolix -*

**Prolixity means the same thing as proliferation and is defined as unnecessary and superfluous. (P. 595, paras. C-D)**

6. *On Principles governing formulation of issues for determination -*

**The principle which governs the formulation of issues in an appeal is that a number of grounds of appeal would, where possible, give rise to one issue for determination. Thus, an issue emerges from one or more grounds of appeal. It is not a proliferation of issues to frame one issue for one ground of appeal. Though it is not ideal but it is within the principle**

governing formulation of issues. On no account should the number of issues exceed the number of grounds of appeal from which they are distilled.

In the instant case, the appellants raised issues 1 and 4 from grounds 9 and 10 of the grounds of appeal. If the two issues were framed from either ground 9 or 10, the other ground from which no issue is framed would not have been inserted. It appeared logical that the appellant framed one issue from each of grounds 9 and 10. The two issues were not framed from either of the two grounds but from both, one issue from each of grounds 9 and 10. Thus the application challenging the appeal for proliferation of issues was without merit. [*Labiya v. Anretiola* (1992) 8 NWLR (Pt. 258) 139; *Ugo v. Obiekwe* (1989) 1 NWLR (Pt. 99) 566; *Garba v. State* (2000) 6 NWLR (Pt. 661) 378; *Ifabiyi v. Adeniyi* (2000) 6 NWLR (Pt. 622) 532 referred to.] (Pp. 595-596., paras. E-E)

7. *On Whether Supreme Court can entertain issue not pronounced upon by Court of Appeal -*

Where a party voluntarily denies the Court of Appeal the opportunity to hear his appeal and render judgment one way or the other, the Supreme Court has no jurisdiction to entertain issues upon which the Court of Appeal, for one reason or the other, did not make a pronouncement. (*P. 598, para. D*)

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

*Adeyemi v. State* (2014) 13 NWLR (PL. 1423) 132

*Amodu v. Commandant, Police College, Maiduguri* (2009) 15 NWLR (Pt. 1163) 75

*Garba v. State* (2000) 6 NWLR (PL. 661) 378

*Ifabiyi v. Adeniyi* (2000) 6 NWLR (Pt. 622) 532

*Labiya v. Anretiola* (1992) 8 NWLR (Pt. 258) 139

*Nyesom v. Peterside* (2016) 7 NWLR (Pt. 1512) 452

*Oredoyin v. Arowolo* (1989) 4 NWLR (PL.114) 172

*Ugo v. Obiekwe* (1989) 1 NWLR (PL. 99) 566

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

Constitution of the Federal Republic of Nigeria, S. 246(1)(c)

Electoral Act, 2010 (as amended)

Evidence Act, S. 135(1)

**Nigerian Rules of Court Referred to in the Judgment:**

Court of Appeal Rules, 2016, O. 11 r. 5

**Books Referred to in the Judgment:**

Beecks Law Dictionary Fifth Edition, p. 1092

Oxford Advance Law Lexicon Book 3. p. 3796

Oxford Advance Learner's Dictionary, p. 926

**Appeal:**

This was an appeal against the judgment of the Court of Appeal which affirmed the decision of the Governorship Election Tribunal which dismissed the petition of the appellants. The Supreme Court dismissed the appeal.

**History of the Case:**

*Supreme Court:*

*Names of Justices that sat on the appeal:* Olabode Rhodes -Vivour, J.S.C. (Presided); Nwali Sylvester Ngwuta, J.S.C. (*Read the Leading Judgment*);

Musa Dattijo Muhammad, J.S.C.; Amiru Sanusi, J.S.C.; Amina Adamu Augic, J.S.C.; Paul Adamu Galumje, J.S.C.; Uwani Musa Abba Aji, J.S.C.

*Appeal No:* SC.1510/2019

*Date of the Judgment:* Tuesday, 21<sup>st</sup> January 2020

*Names of Counsel:* Yusuff Ali, SAN and Adeboye O. Adelodun, SAN, S.I. Ameh, SAN and K.K. Eleja, SAN (*with them*, O.O. Olowolafe, Esq.) - *for the Appellants* O.E.B. Offiong, SAN (*with him*, Dr. D. G. O. Ogunyomi, Esq; Uyi Igunma, Esq.; Genesis Francis, Esq.; Nguevese Tine Tur, Esq.)- *for the 1<sup>st</sup> Respondent*

Chief Sebastine T. Hon, Esq. and Chief E.K. Ashickan, SAN (*with them*, J. J. Igbobonu, Esq.; J. S. T. Anchaver, Esq. and Prof. V.V. Tarhule, Esq.)- *for the 2<sup>nd</sup> Respondent* Chief Chris Uche, SAN and Oba Maduabuchi, SAN (*with them*, Emeka Okoro, Esq.; P.S. Abaaogu, Esq. and Clement Mue, Esq.)- *for the 3<sup>rd</sup> Respondent*

#### *Court of Appeal*

*Division of the Court of Appeal from which the appeal was brought:* Court of Appeal, Makurdi

#### *Tribunal:*

*Name of the Tribunal:* Governorship Election Petition Tribunal

*Date of the Judgment:* Monday, 7<sup>th</sup> October 2019

#### **Counsel:**

Yusuff Ali, SAN and Adeboye O. Adelodun, SAN, S.I. Amch and SAN, K.K. Eleja, SAN (*with them*, O.O. Olowolafe, Esq.) - *for the Appellants*

O.E.B. Offiong, SAN (*with him*, Dr. D. G. O. Ogunyomi, Esq; Uyi Igunma, Esq.; Genesis Francis, Esq.; Nguevese Tine Tur, Esq.) - *for the 1<sup>st</sup> Respondent*

Chief Sebastine T. Hon, Esq. and Chief E.K. Ashiekaa, SAN (*with them*, J. J. Igbobonu, Esq.; J. S. T. Anchaver, Esq. and Prof. V.V. Tarhule, Esq.) - *for the 2<sup>nd</sup> Respondent*

Chief Chris Uche, SAN and Oba Maduabuchi, SAN (*with them*, Emeka Okoro, Esq.; P.S. Abaaogu, Esq. and Clement Mue, Esq.) - *for the 3<sup>rd</sup> Respondent*



**NGWUTA, J.S.C.** (Delivering the Leading Judgment): On 9<sup>th</sup> March 2019, the 1<sup>st</sup> respondent, the Electoral umpire conducted election for the office of Governor of Benue State. The election was mostly nationwide.

At the end of the election on 9<sup>th</sup> March, the 1<sup>st</sup> respondent declared same inconclusive. Consequently, a re-run election was scheduled for, and conducted on 23<sup>rd</sup> March 2019.

The combined results of the election conducted on 9<sup>th</sup> March and the re-run held on 23<sup>rd</sup> March 2019 showed that the 2<sup>nd</sup> respondent scored a total of 434,473 votes while his closest rival, the 1<sup>st</sup> appellant scored 345,155 votes. The 2<sup>nd</sup> respondent was declared winner.

The 1<sup>st</sup> and 2<sup>nd</sup> appellants who were not satisfied with the result of the election, approached the Governorship Election Tribunal for Benue, sitting at Mukurdi, Benue. They filed an election petition predicated on the following two grounds:

1. That the 2<sup>nd</sup> respondent was not duly elected by majority of lawful votes cast at the election.
2. That the election of the 2<sup>nd</sup> respondent was invalid by reason of non-appliance with the provision of the Electoral Act, 2010 as amended.

After hearing the petition, the tribunal dismissed same on 7 October, 2019.

The appellants were not satisfied with the judgment of the trial tribunal and appealed same to the Court of Appeal, Mukurdi, Benue State. The Court of Appeal dismissed the appeal and affirmed the decision of the trial tribunal.

Again, the appellants were not satisfied with the decision of the Court of Appeal and appealed same to this court on 22 grounds from which they formulated the following four issues for determination of the appeal.

1. “Whether the learned Justices of the Court of Appeal were correct in their view that the testimonies of PW3, PW5, PW10, PW15, PW17, PW22, PW26, PW27, PW29, PW31, PW33, PW37, PW38, PW39, PW51 and PW59 and the witnesses called by the appellants amounted to hearsay evidence and that the testimonies of the PW1 and PW2 were rightly discountenanced by the trial

- tribunal when it was legally erroneous to do so. Grounds 1, 9, 10, 11, 13, 14, 15, 16, 19 and 21.
2. Whether the learned justices of the Court of Appeal were correct in holding that the report of the Card Reader exhibit P1139 was irrelevant to the determination of whether over voting occurred at the election or not given the prominence and the importance of smart card reader by the manual for election officials and the guidelines and the principles of the continuous accreditation and voting process employed for the said elections. Grounds 2, 3, 4, 6, 7, 8, 17 and 18.
  3. Whether the learned justices of the Court of Appeal came to a correct decision when they held that the exhibits tendered were dumped on the tribunal without taking cognizance of the front loading system in which the witness had spoken to and demonstrated in their written statement on oath the said document contrary to the old position of leading witnesses in chief by viva voce testimonies. Grounds 5, 12 and 20.
  4. Whether the learned justices of the Court of Appeal came to a right decision in upholding the uneven treatment of the cases of the parties by the tribunal and holding that witnesses called by the appellants were too few when what the law requires is the probative value of the evidence and not the number of the witnesses. Grounds 9, 10 and 12.

The 1<sup>st</sup> respondent in its brief submitted the following issues:

1. Whether the learned justices of the Court of Appeal were correct in their decision that the testimonies of PW3, PWS, PW10, PW15, PW17, PW22, PW26, PW27, PW29, PW31, PW33, PW37, PW38, PW39, PW51, PW59 and the other witnesses called by the appellants amounted to hearsay evidence and that the testimonies of the PW1 and PW2 were rightly discountenanced by the trial tribunal. Grounds 1, 9, 10, 11, 13, 14, 15, 16, 19 and 21.
2. Whether the learned Justices of the Court of Appeal were correct in holding that the report of the Smart Card Reader, exhibit P1139 was irrelevant to the determination of whether over voting occurred at the election or not.

3. Whether the learned Justices of the Court of Appeal came to a correct decision when they held that the Exhibits tendered were dumped on the tribunal.  
Grounds 5, 12 and 20.

The 2<sup>nd</sup> respondent submitted these two issues for determination:

1. Was the Court of Appeal right having regard to the case presented by the appellants before the tribunal to have affirmed the trial tribunal evaluation of the oral and documentary evidence tendered in the appellants. Grounds 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 of the grounds of appeal.
2. Was the evaluation of the evidence of PW1 and PW2 (erroneously labelled by the Court of Appeal as RW1 and RW2 respectively) correct and right in law and fact. Grounds 10 and 11 of the ground of appeal.

The 3<sup>rd</sup> respondent submitted four issues:

1. Whether learned justice of the Court of Appeal were right in their conclusion that the evidence of the appellants witnesses amounted to hearsay. Grounds 1, 13, 14, 15, 16.
2. Whether over voting was prayed by the appellant by smart card reports in view of the decision of the smart card reader reports in view of the decision of Supreme Court of Nigeria regarding the statutory means of accreditation and proof of over voting. Grounds 3, 4, 6, 7, 17.
3. Whether the learned justices of the Court of Appeal were right in concluding that the appellants dumped the exhibits in the tribunal. Grounds 5, 12, 18, 20.
4. Whether having regard to the pleading the burden of proof, the quality and quantity of evidence adduced, the learned justices of the Court of Appeal are right in affirming the decision of the tribunal that the appellants did not proof their petition. (Grounds 2, 8, 9, 10, 11, 19, 21, 22)

The petitioners relied on the following two grounds:

1. That the 2<sup>nd</sup> respondent was not duly elected by the majority of lawful votes cast at the election and;

2. That the election of the 2<sup>nd</sup> respondent was invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 as amended.

I have carefully considered the relevant processes in this appeal. There are motions filed by the respondent. I consider the motions as pre-emptive strikes and I will deal with them before taking any further step in the appeal and cross-appeal.

1<sup>st</sup> respondent/applicant filed a motion on 6/1/2020. The main relief sought in the motion is

“An order striking out issues 1 and 4 of the appellants/ respondent's brief of argument for proliferation of issues, the said issues 1 and 4 having been derived from same grounds of appeal.

The sole ground of the appellant is that:

The appellant/respondent formulated issues 1 and 4 of their brief of argument and stated that both issues were derived from grounds 9 and 10 amongst others.

Affidavits in support and affidavits in opposition were filed and relied on at the hearing of the appeal.

Learned senior counsel for the 1<sup>st</sup> respondent/applicant relied heavily on the case of *Adeyemi v. State* (2014 LPELR-23062 (SC). (2014) 13 NWLR (Pt. 1423) 132. He also relied on *Amodu v. Commandant, Police College, Maiduguri* (2009) LPELR-467 SC Pp. 10-11, (2009) 15 NWLR (PL. 1163) 75.

In learned counsel's views formulation of issues 1 and 4 “from grounds 9 and 10 amongst others” amount to proliferation of issues. Proliferation is defined among others as “a large number of a particular thing.” See Oxford Advanced Learner's Dictionary p.926. Prolivity which means the same thing as proliferation in the present context is defined as “unnecessary and superfluous.....” See Beecks Law Dictionary Fifth Edition P. 1092. See Oxford Advanced Law Lexicon Book 3 P. 3796. In the case at hand issues 1 and 4 were distilled from grounds 9 and 10 “amongst others”. The “others” are not identified and I will discountenance them. The principle which governs the formulation of issues in appeal is that “number of grounds of appeal would, were possible, give rise to one issue for determination. See *Labiya v. Anretiola* (1992) 10 SCNJ 1 at 2, (1992) 8 NWLR (Pt. 258) 139. Thus an issue

emerges from one or more grounds of appeal. See *Ugo v. Obiekwe* (1989) (P. 99) 566, (1989) 1 NWLR (PL. 99) 566. 1

In my humble view it is not a proliferation of issues to frame one issue for one ground of appeal. Though it is not the ideal but it is within the principle governing formulation of issues. On no account should the number of issues exceed the number of grounds of appeal from which they are distilled.

In this case appellants raised issues 1 and 4 from grounds 9 and 10 of the grounds of appeal. If the two issues were framed from either ground 9 or 10, the other ground from which no issues is framed would not have been inserted. It appears logical that the appellant framed one issue from each of grounds 9 and 10. The two issues were not framed from either of the two grounds but from both, one issue from each of grounds 9 and 10. The application is bereft of merit and is hereby dismissed.

Parties to bear their respective cost.

Earlier, on 3/1/2020 the 2<sup>nd</sup> respondent/applicant filed substantially an identical motion asking for the same relief based on the same ground in respect of appellants grounds 9 and 10 from which issues 1 and 4 were distilled.

This motion suffers the same fate as the one dealt with earlier. There being no proof of proliferation of issues, motion filed on 3/1/2020 is dismissed for want of merit. Parties to bear their costs. Another motion in the file was filed on 6/1/2020 by learned senior counsel for the 2<sup>nd</sup> respondent/applicant. Under attack this time are issues 1, 2, and 4 formulated and argued in the appellant's brief.

The parties provided affidavit evidence and filed briefs which were adopted at the hearing of the appeal. Grounds 1 and 4 in their application have been disposed of in the 2<sup>nd</sup> respondent/applicant's earlier motion. That issues 1 and 4 distilled from grounds 9 and 10 do not constitute proliferation of issues. There is no indication that issues 1 and 4 were drawn from one ground. Were it so only the one ground from which the issues were raised would have been stated. It is my view that one issue was raised for each ground. See *Ugo v. Obiekwe* supra; *Mohammed Garba v. The State* (2000) 4 SCNJ 315, (2000) 6 NWLR (PL. 661) 378; *Ifabiyi v. Adeniyi* (2000) 78 LRCN 1402 at 418, (2000) 6 NWLR (Pt. 622) 532.

Having disposed of grounds 1 and 4 of the application based on the grounds on which they are argued. I hereunder reproduce the other grounds, that is grounds 3- 10.

- “3. that the tribunal had on 7<sup>th</sup> October 2019 struck out the statements on oath of the PWs 15, 17, 33 and PW59.
- 4 Appellants appealed to the Court of Appeal against the striking out order, vide appeal No. CA/MK/EP/BW/62/2019.
- 5 On 21/11/2019 when this appeal came up for hearing, learned senior counsel to the appellants Yusuf Ali, SAN voluntarily withdrew same and the appeal was dismissed.
- 6 In spite of the dismissal of the said appeal the appellant have formulated issues 1, 2 and 4 in their brief of argument before this honorable court touching on the evidence adduced by the witnesses whose witness statement oath had been struck out by the tribunal and appellants' appealed to the Court of Appeal which striking out order the court was dismissed.
- 7 Appellants have also proceeded to advanced extensive arguments in their main brief of arguments in respect of the evidence adduced by their witnesses including exhibits P1139 (the Smart Card Report). The main hub of the appellant's election petition, now on an appeal.
- 8 Appellants' appeal with respect to the evidence of these witnesses is in gross abuse of process.
- 9 This honourable court has jurisdiction to grant this application.
- 10 It is in the interest of justice and in accordance with settled case law in appellate practice to grant this application”.

I will take these grounds together excluding grounds 8-10 which are really arguments. At page 7833 of Vol. 8 of the record, the tribunal held:

Application succeeds and it is accordingly granted as prayed. The petitioners' reply to the 1<sup>st</sup> respondent's reply to the petition dated and filed on 12/5/2019 together with all the four written statements on oath attached to it are struck out for being incompetent. For the avoidance of doubt the affected written statements on oath which have already been adopted are as follows:

1. Additional written statement on oath of the Joe Abaagu adopted on 15/7/2019 by PW15.

2. Additional written statement on oath of Emmanuel Jim (1<sup>st</sup> respondent) adopted by PW17.
3. Written statement on oath adopted on 31/7/2019 by PW59.
4. Written statement on oath adopted on 2/7/2019 by PW33....”

Appellants appealed the order made against them on five grounds. The notice containing the grounds of appeal was fixed on 27/11/2019.

The record of the Court of Appeal on 21/11/2019 showed that learned senior counsel for the appellants engaged in “double speak” as it were. The records showed, *inter alia*,

“Yusuf Ali, SAN: we want this to abide the decision in the main appeal - CA/MK/EPT/GOV/57/2019 .... In view of our stand in respect of Appeal No. CA/MK/EPT/GOV/61/2019 and having regard to the court's observation in respect of section 246(1) (c) of the Constitution, we respectively withdraw this appeal.”

In its ruling, the lower court said

“This appeal have been withdrawn and is hereby dismissed. Pursuant to Order 11 rule 5 of the Court of Appeal Rules 2016.”

In saying he wanted his appeal to abide the decision in the main appeal he meant that this appeal against the ruling of the tribunal, which ruling dealt a fatal blow to this case, is effectively subjected to the same fate as the main appeal. As it is both appeals sunk together. On the other hand, his assertion that he had withdrawn his appeal has the same effect in the circumstances, as if the appeal was heard and dismissed.

Learned senior counsel voluntarily denied the Court of Appeal the opportunity to hear his appeal and render judgment one way or the other.

In my view, this court has no jurisdiction to entertain issues upon which the lower court, for one reason or the other, did not make a pronouncement.

An appeal is on invitation to a higher court to review the decision of the lower court to find out whether in proper consideration of the facts placed before it and the applicable law, that court arrived at a correct decision. See *Lawrence Adebola Oredoyin & ors v. Arowolo* (1989) 4 NWLR (Pt.114) 172 at 2111. In view of the definition of appeal (*supra*) it is an error, bordering on absurdity to ask this to verify the correctness *vel non* of issues 1, 2,

and 4 in the appellant's brief and arguments predicated on them. The application has merit and it is hereby granted.

Issues 1, 2 and 4 which arose from matters upon which the lower court did not reach a decision are hereby struck out as incompetent.

Issues 1, 2 and 4 having been struck out appellants have one surviving issue-issue 3. The said issue is hereunder reproduced for case of reference.

Issue 3 -

“Whether the learned justices of the Court of Appeal came to a correct decision when they held that the exhibits tendered were dumped on the tribunal without taking cognizance of the front loading system in which the witness had spoken to and demonstrated in their written statement on oath the said documents contrary to the old position of leading witnesses in chief by viva voce testimonies.”

The appellants' petition is based among other consequential reliefs, on want of majority of lawful votes and in the alternative: a declaration that the election of 9<sup>th</sup> March 2019 and the re-run election of 23/3/2019 be nullified for substantial non-compliance with the Electoral Act.

Front-loading heavily relied by the appellants does not derogate from the need to demonstrate the relevance of the document to the case or to an aspect of the case. And the person most qualified to make the demonstration is the maker of the document. The mere front loading of documents without more cannot legally meet the clique that he who asserts must prove what he asserts. See section 135(1) of the Evidence Act. The tribunal or court is not bound to accept and rely on documents of which veracity or authenticity is not tested or even in doubt. Nothing prevents a witness from making false declaration on oath for a fee to help his candidate of choice.

Smart card reader machine is being made to assume a more prominent position than it deserves in an electoral process. But this court cut it to size when it held that the card reader machine is “set up to authenticate or verify in election. ....” Permanent Voters Card (PVC) issued by INEC” See *Nyesom v. Peterside* (2016) 7 NWLR (Pt. 1512) 452 per Nweze, JSC.

Smart card reader is limited in its operation and cannot settle the issues complained of by the appellant in this issue 3.



Issue 3 is resolved against the appellants.

In the final analysis, the appeal is bereft of merit and it is hereby dismissed.

Parties to bear their respective costs.

**CROSS-APPEAL**

SC.1511/2019

The cross-appeal filed by the 2<sup>nd</sup> respondent in the main appeal has been rendered academic by the order dismissing the appeal. It is al hereby struck out. Each party to bear its own costs.

**RHODES-VIVOUR, J.S.C.:** I had the advantage of reading a draft copy of the leading judgment just delivered by my learned brother, Ngwuta, JSC. I agree with his Lordship's reasons and conclusion.

Appeal dismissed.

**M.D. MUHAMMAD, J.S.C.:** I had the privilege of reading in draft, the lead judgments of my learned brother, Sylvester Ngwuta, JSC in these appeals. His lordship has exhaustively considered and resolved the issues raised by the appeals. I adopt his reasoning and conclusions that the appeals are lacking in merit to dismiss same. I abide by the consequential orders made in the two appeals.

**AUGIE, J.S.C.:** My learned brother, Ngwuta, JSC, who just delivered the lead judgment, dealt authoritatively with the issues for determination in this appeal that was argued this morning. and I agree completely with his reasoning and conclusion. Thus, I also dismiss this appeal, which lacks merit, and strike out the cross-appeal. I also abide by the consequential orders in the lead judgment including costs.

**ABBA AJI, J.S.C.:** I read in draft the judgment of my learned brother, Ngwuta, JSC. I agree entirely with the reasoning and conclusion that the appeal fails.

The 1<sup>st</sup> respondent (INEC) on 9/3/2019 conducted the election for the office of Governor of Benue State wherein it was declared inconclusive by the 1<sup>st</sup> respondent. After a re-run on 23/3/2019, the 2<sup>nd</sup> respondent scored the highest votes with combined total votes

of 434,473 while his closest contestant scored combined votes of 345,155 votes. Thus, the 2<sup>nd</sup> respondent was declared the winner.

After filing the petition, the appellants lost at both the tribunal and the lower court, hence this appeal.

My learned brother having dispassionately and judicially considered the appeal found no merit in it. I therefore pitch my tent with his decision predicated upon the concurrent findings of the 2 courts below. I therefore cannot tamper with it.

I therefore unreservedly agree that the appeal be dismissed. Same fate holds for the cross-appeal. The judgment of the lower court is affirmed.

*Appeal dismissed*