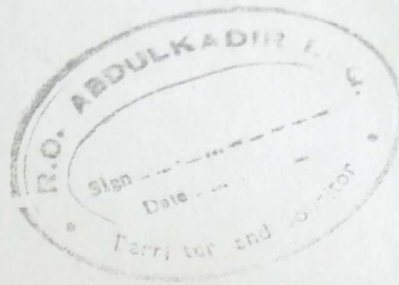


**HALLMARK
OF JUSTICE**

**COMMENTRIES ON SELECTED
JUDGEMENTS OF
HON. JUSTICE M.M.A. AKANBI**



**Edited by: I. A. Yusuf
M. M. Akanbi
A. T. Shehu**



HALLMARK
OF
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COMMENTRIES ON SELECTED JUDGEMENTS

OF

HON. JUSTICE M.M.A. AKANBI CFR, PCA (RTD)
THE WAKILI ILORY

Edited by:

I. A. Yusuf

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HALLMARK OF JUSTICE: COMMENTARIES ON SELECTED PROVISIONS OF
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Chapter 31

IN THE HIGH COURT OF JUSTICE OF THE PLATEAU STATE OF NIGERIA IN THE
ELECTION TRIBUNAL OF PLATEAU STATE
HOLDEN AT JOS

BEFORE:

THE HON. MR. JUSTICE M.M. AKANBI

THE HON. ALHAJI YAHAYA KANAM

THE HON. MR. JUSTICE L.D. ABDULLAHI

SUIT NO: JD/EP/3/79

CHAIRMAN

MEMBER

MEMBER

BETWEEN:

AND

JOHN JATAU KADIYA.....

PETITIONER

1. JOHN WASH PAM

2. J.S LOKO

RESPONDENT

JUDEGEMENT DELIVERED BY HON. JUSTICE M.M.A. AKANBI

Comment by: Abdulkadir O. Abdulrazaq*

INTRODUCTION

BRIEF MATERIAL FACTS OF THE CASE

The senatorial election for Jos Constituency was conducted on the 7th July, 1979 by the Federal Electoral Commission. At the end of the polling exercise, the electoral commission returned the 1st Respondent having satisfied the requirement of the law. Dissatisfied with the result of the election, the petitioner filed his petition before the tribunal challenging the return of the 1st Respondent. The petition is grounded on the allegations of corrupt practices and non-compliance with the provision of Part II of the Electoral Decree No. 73 of 1977.

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PRINCIPLES OF LAW DISTILLED IN THE JUDGMENT AND THEIR RELEVANCE TO THE CURRENT POSITION OF THE LAW

One of the principles enunciated in this case is that where none of the averments in a petition supports allegation of corrupt practices, the petition is bound to fail on the ground of corrupt practices. The petitioner in this case made heavy weather on corrupt practices in his sixteen paragraphs averments but could not establish any of them based on the provisions of the Electoral Decree No. 73 of 1977. Although, the tribunal maintained that even if the petitioner was able to establish his allegations, the allegations only support a case of non-compliance with certain sections of the Decree. The petitioner is also under obligation to prove that the malpractice and non-compliance prevented him from winning the election (Akanbi JCA, as he then was in **Kudu vs. Aliyu**).³⁵⁶ The tribunal stated that where non-compliance with the Electoral law is established on the preponderance of accepted evidence, the petitioner is entitled to succeed, but where the accepted evidence is next to nothing or not sufficient, cogent and reliable, the petition is bound to fail. The position of the tribunal is in line with section 139(1) of the Electoral Act 2010 (as amended) and decision of court in **Buhari vs. Obasanjo**.³⁵⁷ It is axiomatic that where allegation of corrupt practices during the conduct of an election is raised, the petitioner has burden to prove such allegation beyond reasonable doubt in accordance with the provision of Electoral 2011 (as amended).

In doing this, the petitioner must establish that:

- i. The Respondent personally committed the corrupt act or aided, abetted, counseled or procured the commission of the alleged act of corrupt practice;
- ii. Where the alleged act was committed through an agent, that the agent was authorised to act in that capacity or granted authority;
- iii. The corrupt practice affected the outcome of the election and how it affected it.

Again, the principle enunciated by his Lordship in the case at hand represents the current position of the law. In the case of **Wali vs. Bafarawa**³⁵⁸, the court stated that:

356 (1992) 2 NWLR (PT 231) 615 at 620

357 (2005) 13 NWLR (PT 941) 308-309. See also *Nnachi vs. Ibom* (2004) 16 NWLR (PT 900) 614 at 635

358 (2004) 16 NWLR (Pt. 898) 1 at 39. See also *Yusuf vs. Obasanjo* (2005) 18 NWLR (PT 956) 96 at 186. *Agomova vs. Iroakazi* (1998) 10 NWLR (PT 568) 171 at

In their petition before the tribunal, the appellants used terms such as electoral malpractices, intimidation of voters, harassment of agents and bribery. All these are electoral offences...The offences therefore must be proved beyond reasonable doubt.

Also, it was enunciated in the case under examination that evidence of non-voting at polling units can only be established by voters who were unable to vote at polling units. This principle articulated in the judgment of his lordship in the case under review still stands the test of time. One of the petitioner's witnesses (Mr. Dominic Alibidi) alleged that voting exercise stopped at 1pm and a lot of voters did not vote, but none of the voters who were unable to vote gave evidence. The settled position of the law was well captured in the case of **Ayogu vs. Nnamani**³⁵⁹ that where a petitioner alleges that registered voters were unable to cast their votes, it is up to the petitioner to adduce evidence before the tribunal by calling the registered voters in each of the units, to show that that they did not vote.

Similarly, evidence of insufficiency of Electoral Materials must be given by person(s) who were unable to vote at polling units. Pw 2 gave evidence that Electoral materials were not sufficient and over 100 voters were unable to vote, but none of the voter was called to testify and the tribunal disregarded the evidence. In the case of **Egemasi vs. Onyekwere**,³⁶⁰ the court held that allegation of insufficiency of Electoral Materials connotes electoral malpractice and therefore criminal in nature. The evidence to be proffered in such situation must be clear, unequivocal and prove beyond reasonable doubt.

Evidence of beaten or teargased during polling exercise must be given by the person beaten or teargased, otherwise it would amount to hearsay evidence. Pw 4 (Alhaji Musa Muhammad) in this petition gave evidence that some voters were beaten and teargased during the conduct of the election. Apart from the fact that these allegations are criminal in nature which require prove beyond reasonable doubt, it cannot be sustained by vague testimonies of this petitioner's witness because neither the person(s) beaten nor the police were called as witness to give evidence of beatings or violence or that the Respondents authorised the act. This represents the current position of the law as captured in the cases of **Ajadi vs. Ajibola**³⁶¹, **Ogu vs. Ekweremadu**³⁶², **Nnnachi vs. Ibom**³⁶³, among others.

³⁵⁹ 176 and Oyegun vs. Igbinedion (1992) 2 NWLR (PT 226) at 747.

³⁶⁰ (2006) 8 NWLR (PT 981) 160 at 166 and 194. See also Rotimi vs. Faforiji (1996) 6 NWLR (PT 606) at 305 and Okoroji vs. Ngwu (1992) 9 NWLR (PT 113).

³⁶¹ (1983) 9 SC 7.

³⁶² (2004) 16 NWLR (PT 898) 91 at 163-164.

³⁶³ (2006) 1 NWLR (PT 961) 255 at 282.

Importantly, evidence of witnesses must be tied with the petition, allegations in a petition that are not proved by way of evidence go to no issue and evidence without pleading is of no moment. Paragraphs 3(II), 3(III), 3(XI) and 3(XIV) of the petition which gave account of the incidents at Hilit Polling Station and other polling units were not established through evidence and therefore deemed abandoned. It is trite that averment in a petition without evidence goes to no issue. In the same token, the tribunal led by his lordship (Justice M.M. Akanbi) held that evidence of PW 10 (Alhaji Abdullahi Gimba) on the issue of '200 clipped ballot papers' which according to him had earlier been clipped or pinned together before they were enclosed in an envelope was not pleaded in paragraph 3(X) of the petition and therefore of no moment. The position taken by the tribunal in this instant case represents the current trend as decided in the case of *Edet vs. Eyo*.³⁶⁴ In *Ukpo vs. Ngaji*³⁶⁵, the court held that evidence on matters not pleaded goes to no issue and evidence obtained under cross-examination on unpleaded facts goes to no issue.

Finally, it is interesting to make allusion to the worthy notable pronouncement of his lordship in the case under consideration. It was posited that counsel has onerous duty to incorporate only allegations which are of material importance and can be substantiated by evidence in a petition. The tribunal by way of admonition held that counsel should include only allegations which can be sustained by evidence in a petition. It further stated that a petition which contains specious or frivolous allegation would hardly win the sympathy of any reasonable tribunal. This admonition is imperative in the light of current trends where counsels prepare petition with numbers of unachievable allegations.³⁶⁶ It is better to incorporate a single allegation that is sustainable by way of credible evidence than army of specious and frivolous allegations. Regrettably, counsel in recent times have failed to heed this heartwarming admonition of Hon. M.M Akanbi and consequently suffered monetary liability. Such was the situation in the case of *Ogboru vs. Uduaghan*³⁶⁷, where the Supreme Court of Nigeria in an unprecedented move fines counsel to the Appellant (Great Ogboru) the sum of N8, 000,000.00 for approaching the court in the case.

CONCLUDING REMARKS

It has been shown in the analysis of this case that many of the principles enunciated by

³⁵⁹ 176 and Oyeun vs. Igbiniedion (1992) 2 NWLR (PT 226) at 747

³⁶⁰ (2006) 8 NWLR (PT 981) 160 at 166 and 194. See also Rotimi vs. Fafonji (1996) 6 NWLR (PT 606) at 305 and Okoroji vs. Ngwu (1992) 9 NWLR (PT. 263) 113

³⁶¹ (1983) 9 SC 7

³⁶² (2004) 16 NWLR (PT 898) 91 at 163-164

³⁶³ (2006) 1 NWLR (PT 961) 255 at 282

³⁶⁴ (2004) 16 NWLR (PT 900) 614 at 635

³⁶⁵ (1999) 6 NWLR (PT 605) 18

³⁶⁶ (2010) ALL FWLR (PT 514) 144 at 168

³⁶⁷ This has long formed the practice in certain jurisdiction. For example, under Order 4 Rule 17 of the FCT High (Civil Procedure) Rules 2004, counsel are under obligation to give pre-action counseling on the weakness or otherwise of case to their clients. Accordingly, where a case turns out to be frivolous one, counsel would be personally liable.
(Unreported)

his lordship more than three decades ago are still apt and can stand the test of time. Importantly, one of his lordships notable pronouncements to counsels handling election matters where taken into consideration will go a long way in obviating our judicial system from specious and frivolous petitions. In essence, counsels are duty bound to incorporate only allegations which are of material importance and can be substantiated by evidence in a petition. Where the principle is adhered to, cases like Ogboru vs. Uduhaghan will not find its way to court.

IN THE HIGH COURT OF JUSTICE OF THE PLATEAU STATE OF NIGERIA IN THE ELECTION
TRIBUNAL OF PLATEAU STATE
HOLDEN AT JOS

SUIT NO: JD/EP/3/79

BEFORE:

THE HON. MR. JUSTICE M.M. AKANBI	—	CHAIRMAN
THE HON. ALHAJI YAHAYA KANAM	—	MEMBER
THE HON. MR. JUSTICE L.D. ABDULLAHI	—	MEMBER

BETWEEN:

JOHN JATAU KADIYA.....PETITIONER

AND

3.	JOHN WASH PAM	
4.	J.S LOKO	RESPONDENT

JUDGEMENT DELIVERED BY HON. JUSTICE M.M.A. AKANBI

By this amended petition, the petitioner John Jatau Kadiya seeks to void the election of the 1st Respondent John Wash Pam who was returned as the duly elected candidate for the Jos Senatorial Constituency. The petition is grounded on allegations of corrupt practices and/or non-compliance with the provisions of part II of the Electoral Decree No. 73 of 1977.

The facts in support of the grounds have been fully set out in the petition. A study of each of the sixteen paragraph averments, shows that not one of them seriously supports or can ground a case of corrupt practice under any of the provisions of the Decree, also did not establish that there was corrupt practice of any sort and that ground must fail. All the 16 paragraphs, if proved, can only support a case of non-compliance with certain Sections of the Decree.

The first complaint is in respect of Amo Rukuba District polling station where it is said that the ballot papers for that station was exhausted at 1.00 p.m and voters were told

his lordship more than three decades ago are still apt and can stand the test of time. Importantly, one of his lordships notable pronouncements to counsels handling election matters where taken into consideration will go a long way in obviating our judicial system from specious and frivolous petitions. In essence, counsels are duty bound to incorporate only allegations which are of material importance and can be substantiated by evidence in a petition. Where the principle is adhered to, cases like *Ogboru vs. Uduhaghan* will not find its way to court.

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4. J.S LOKO RESPONDENT

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By this amended petition, the petitioner John Jatau Kadiya seeks to void the election of the 1st Respondent John Wash Pam who was returned as the duly elected candidate for the Jos Senatorial Constituency. The petition is grounded on allegations of corrupt practices and/or non-compliance with the provisions of part II of the Electoral Decree No. 73 of 1977.

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The first complaint is in respect of Amo Rukuba District polling station where it is said that the ballot papers for that station was exhausted at 1.00 p.m and voters were told

to go home. The only witness who testified in support of this allegation is Mr. Dominic Alibidi who described himself as a Supervisory Counsellor for education and Social Services of the Bassa Local Government Area. He said he was at Amo Rukuba when voting stopped at 1.00 p.m because the Presiding Officer said he was short of ballot boxes and although this was reported to the Federal Electoral Commission's officials at Bassa Local Government Secretariat, no action was taken. The report according to him was made at 6.00 p.m and between 1.00 p.m and 6.00 p.m, about 100 voters waited at the polling station. This witness admitted under cross examination that he was one of the N.P.N polling agents. He later said that over 100 persons did not vote and he knew them because they voted during the second election and their names are on the voters list. Not one of his evidence, is the evidence of Mr. Sylvanus David Lot, an Assistant Electoral Office, for the Bassa Local Government Area, which is a component part of the Jos Senatorial District. This witness said that Amo Rukuba was one of the state Assembly Constituencies which has 52 polling stations and none of them is named Amo Rukuba. He said that he did not receive any report that ballot papers got finished in any of the 52 polling stations.

Although the second P.W.2 said that he made his report to a headmaster, when he was conveyed to the Federal Electoral Commission's office by one Alhaji Maidoya; another Alhaji Salihu Maidoya, who himself must have known what happened if he was there all, nor any of the prospective voters, as we pointed out before had come forward to support the allegation. We cannot on this sketchy evidence, say that voting actually stopped at 1.00 p.m even if there was only one polling Station that goes by the name Amo Rukuba District Polling station. At any rate, we prefer the evidence of Mr. David Lot whom we believe has no axe to grind in the matter to that of the petitioner's witness.

There is no substance in the particulars 3(ii). There is no evidence to support the averment as regards what happened at Hulit Polling Station and no evidence was led to establish that any voting took place at the station between 5.00 a.m. and 7.00 p.m. This must also fail. Particulars 3(iii), 3(xi), 3(xiv) were not proved; and no evidence was called to establish each or any of the allegations therein made. As regards particulars 3(iv) P.W. 5 was the only witness who gave evidence to support the assertion that at 6.00 p.m. the closing time for voting, there were still about 100 persons who were willing and ready to vote but they were turned away by Federal Electoral Commission's Officials on the pretext that it was already closing time. In the course of his evidence, he said the voters numbered about 300. Here again not one of these prospective and willing voters was called to say at least that he was within the acceptable vicinity of the polling booth, "waiting to enter and vote," but was prevented from doing so. There is need for such evidence, at least to lend some credence to the evidence of this partisan witness because of the provision of Sections 42 and 59(i) of the decree which require

that polling should stop at 6.00 p.m and only such voters as are already inside the polling station or in close proximity to it, can be allowed to vote. It is difficult to accept without reservation the bare evidence of P.W.5 and on that score hold that a case of non-compliance has been made out.

Particular 3(v) complains of the absence of voters list at Jengre Islamiyya School Polling Station and that no polling took place there. Furthermore, the report made to the Assistant Electoral Officer about these complaints, received no attention. The evidence in support was furnished by P.W. 7, a very young man who described himself as a class II Teacher-in-training in one of the teachers' training Colleges. He is 22 years old and an agent of the N.P.N. He said that there was no voters list at the Jengre Islamiya Polling Station and so on one voted. After saying in cross-examination that he did not know the name of the other agents at the polling station except that of N.P.P, he turned around later to say that there were only two party agents at this particular polling station. The Assistant Electoral Officer Mr. David Lot gave evidence that voting took place at this Islamiya polling station No 35. We believe him. Even without his evidence, it is clear to us P.W. 7 was not a truthful witness. Indeed, his demeanour in the witness box gave him up as an unreliable witness; we do not accept his evidence.

The evidence in support of particular 3(vi) was also given by another agent of the N.P.N. He is Mallam Muazu Tanko. According to this witness there was no voting at Old Islamiya Polling station until 3.30 p.m. Consequently, he had to cast his vote elsewhere. A G.N.P.P. agent produced a voters list which was used for voting and as voting progressed at about 6.00 p.m, an unknown man entered the polling booth and warned that after certain persons he identified had voted, voting would be stopped and at 6.00 p.m voting terminated.

Under cross-examination, he said he did not know whether the persons he saw at the polling station have their names in the voters list. It is difficult to believe this witness. The G.N.P.P. man who produced the alleged voters, list which was used ought to have been called or any of the persons who were said to be at the polling station before 3.30 p.m. when curiously enough the G.N.N.P. agent produced the voters, list used for voting. There is no evidence that any complaint was made of this serious lapse if it did occur at all. Here again, the evidence of the Assistant Electoral Officer whose duty it was to oversee the activities of the other Federal Electoral Commission Officials in charge of the elections, ring true to us and we accept his evidence that voting took place at that particular polling centre. His account of the circumstance that warranted his having to dash down from Miango to Jengre as a result of the false information given to him by one Alhaji Martala who told him that there was no voting at all, is elucidating and most revealing.

With respect to particulars 3(vii), the evidence relied upon, is that of the 3rd plaintiff witness Audu who said he was at Gadan Songai Polling station on 7th July, 1979 as a polling agent to oversee what went on there. According to this witness polling which was expected to start at 7.00 a.m. did not start until 4.30 p.m and went on till 6.00 p.m when polling stopped. At the time of closing, there were still people around, who were willing to cast votes. He did not know their number.

Under cross-examination, he said there is a place known as Gadan Songai. He said that people from Garden Songai voted at U.N.A. School even though, he still asserted that there was a polling station which he says, is far from the U.N.A. School where he worked. Pressed further under cross-examination he finally agrees that there was no polling station in Gadan, but people from that town voted at the U.N.A. School hence that polling station was referred to as Gadan Songai. On the evidence of this witness we are unable to find that there was a polling station known as Gadan Songai let alone his conflicting assertion that voting took place there.

We find further support for our view of the evidence of this unreliable witness, on the positive evidence of the 2nd Respondent Mr. J.S. Loke who said there was no station known as Gadan Songai. We accept his evidence and hold that if there was no voting at Gadan Songai, it is because it was not a polling station at which people could be expected to vote.

The 4th petitioner's witness Alhaji Musa Muhammed, a member of the N.P.N said he was at the community Centre which was used as a counting centre after the election of 7th July 1979 had been completed. Witness said that around 8.00 p.m., lorries conveying ballot papers began to arrive at the Centre. Soon after, a private Peugeot 504 with registration No. PL 200 JA emerged and out came a young man, he had known before. The man's name is A. M. Dung. According to P.W. 4, Mr. Dung opened the boot of his car and brought out 3 ballot boxes one after the other. Witness said that when he asked Mr. Dung whether it is permissible to use private car for conveying ballot boxes, he was told that he had no business to interfere. However, he said further that as the third box was being moved out the police tear-gassed the thick crowd that had gathered at the counting centre. Whereupon he became confused, and ran to get water to wash his face; but by the time, he recovered from the agony or painful effect of the tear gas, he could not see anything except that he knew that the boxes were already inside the counting centre.

In answer to the tribunal's question, he said there was no disturbance, commotion or confusion before the tear-gas was thrown by the police. On the contrary, he said, the atmosphere was peaceful. Witness said that he also went to Fatima School near Laranto, where following a report he received about the removal of one of their

agents, he advised that a report be made to the office of Federal Electoral Commission. The agent went away but returned a beaten man. We do not think this piece of evidence has any probative value, as it is in the nature of hearsay and since the person alleged beaten was not called to give evidence we shall disregard it.

Under cross-examination P.W. 4 said that Mr. Dung's car was not dark in colour, but white. He further agreed that at that Community Centre, his party the N.P.N. won by an overwhelming majority. He again said Peugeot car No. PL 200 JA was white in colour. Mr. A.M. Dung gave evidence as the 2nd witness for the first respondent. He said that he did not know the 4th petitioner's witness Musa Scout but he may be able to identify him, if he sees him. He denied ever going to the Community Centre Counting Station or being anywhere near that vicinity on 7th July 1979. He admitted that Peugeot No. PL 200 JA was registered in his Company's name which he says solely, ran by him. He said the car was painted in the premises of the Court and were satisfied that it was painted in light blue colour. This witness was unshaken in cross-examination and we certainly prefer his evidence to that of the petitioner's 4th witness. Apart from the fact that the car PL 200 JA is not WHITE in colour, the story of Musa scout sounds incredible. First of all, the no other witness gave evidence of the events described by him. No policeman, nor any of the victim of the unprovoked tear-gas attack launched by the police, in these curious circumstances, he described, gave evidence. Nor was there any other witness called to confirm the story that ballot boxes were taken to the polling station in car No. PL 200 JA.

What is more paragraph 3(viii) did not speak of any use of tear gas by the police and even though it alleged that the boxes were brought from Local Government Area polling stations, no reference was made to the very Local Government Area from where they were alleged to have been brought. We hold that paragraph 3(viii) of the petition has not been proved. Particulars 3(ix) alleges that no voting took place at the Islamiya School, Bauchi Road, Jos until 4.30 p.m and hundreds of voters had to be sent away by Federal Electoral Commission's Official when it was time for polling to close. Not a single witness, who was present but refused the right to vote was called to substantiate this allegation.

The 10th petitioner's witness Alhaji Abdullahi Gimba, a counting agent of the N.P.N. said that on 7th July 1979, he was at Federe in Jarawa District, which was the counting centre for constituency No. 17; and following a report made to him, he took objection to the counting of certain ballot papers, which according to him had earlier been clipped or pinned together before they were enclosed in an envelope. These clipped ballot paper were "carefully and well stamped". He went on to say that about 18 ballot boxes were also not stamped. In answer to questions from this tribunal, he said that all-in-all the "clipped ballot papers" which were dumped in an envelope, were about

200. He said further that 14 ballot boxes were altogether counted, while 18 were rejected because they were not signed or stamped. He however said he did not know the number of ballot papers contained in the 18 rejected ballot boxes. Also with regard to the 14 boxes which were counted, he said he did not know exactly the number of ballot papers in them but estimated that it would be about 3,000. The evidence which we have set out above no doubt was intended to establish the averment in paragraph 3(x) of the petition. Regretfully enough, the evidence does not support the averment. The allegation in that paragraph is that "14 ballot boxes were not counted" as opposed to 18 which according to the evidence were not counted. There is not an iota of evidence to either establish the alleged "blatant act of direction of duty" or of any "conspiracy on the part of Federal Electoral Commission's official with the victorious party men to ensure that justice does not prevail in the end." In passing, we would wish to state that any such wild allegation, in the absence of any evidence to sustain or establish it ought not been made. Need we say that counsel has a duty to ensure in matters of this nature that only those allegations which are of material importance and which can be substantiated by acceptable evidence form the basis of any election petition. To our minds, a petition which contain specious or frivolous allegation, would hardly earn the sympathy of any reasonable tribunal, whether or not such allegations are made by public officers or ordinary citizens of the state. While still on the evidence of the 10th witness for the petition, we wish to further aver that the evidence relating to "200 clipped ballot papers" was not pleaded in paragraph 3(x) or indeed in any other paragraph. No amendment was sought or obtained to amend the petition to include this piece of evidence, we must therefore ignore that portion of the evidence. For it is now trite law to say that what is not pleaded goes to no issue. The end result of our observation is that paragraphs 3(x) have not been established.

The evidence relating to particulars 3(xii) was given by the 8th witness for the petitioner. He said on 7th July, 1979 he was at the Advance Teachers College counting centre where he acted as a counting agent for the petitioner. He said that counting of votes started at 10.00 p.m and went on till 3.00 a.m of the following day, when an objection was raised by one Mr. Swesh on the grounds that particular boxes were neither signed nor stamped by the Presiding Officer. It was there and then ruled by one Mr. A.A. Kanta that those boxes will not be counted. The evidence did disclose that much. The 8th P.W. concluded his evidence by saying that in all 26 boxes were affected and rejected.

Under cross-examination witness agreed that there were more than 60 polling stations from which ballot boxes were brought to Advance Teachers College, Akwanga. He also agreed with the Returning Officer that the ballot boxes were not stamped. We have no reason to disbelieve the evidence of his witness who is the Supervisory Counsellor for Agriculture and Natural Resources in the Jos Local

Government Area. Section 63(2) (a) empowers the presiding officer to reject ballot papers contained in an unstamped and unsigned envelope. Admittedly a presiding officer is required by Section 45 to sign his name over the stamp before passing it on to the intending voter. The breach complained was not done in respect of 26 boxes. There is no evidence of how many envelopes were involved for us to know its effect on the general turn out of voters for that constituency. The 8th witness for the petitioner, who no doubt is an intelligent man as the agent of the petitioner said he saw these papers. His evidence did not go far enough. We cannot speculate on the issue. The petitioner did not call other witness, not even the Returning Officer, or any of the persons, who can carry the evidence of 8th further than he left it. In the circumstance, on the evidence before us although, there appears to us to be a breach of Section 45 with regard to these 26 boxes, as no evidence was led as to the content, we cannot say it affected the fortune of the petitioner.

The 9th petitioner's witness Adamu Chushe, a shoe maker and a counting agent of the N.P.N gave evidence in support of the averment contained in paragraph 3(xv). According to this witness, while he was at the Community Centre Counting Station Jos, he observed the ballot papers contained in 16 ballot boxes were neither stamped nor signed and were accordingly rejected. Under cross-examination, he said that altogether 87 boxes were brought from polling stations. He also said that he agreed with the returning officer that the ballot papers were not stamped or signed. This complaint is like the preceding one and it suffices to say that breach complained cannot on the facts vitiate the election.

Finally it was the evidence of P.W 1 Alhaji Hassan Mohammed that there were no voters list in most of the polling stations he visited in his capacity as the supervisory Polling Agent of the petitioner. He also said that there was no ballot papers account. We say straightway that this witness did not impress us as a truthful witness. Although he said that he visited not less than 120 polling stations, yet he could not remember the name of one. He also said he voted at the Islamiya School Jos at 6.30 a.m This is interesting indeed in the light of the averment in paragraph 3(ix) of the petition in which the petitioner stated that no voting took place at that station until 4.30 p.m Further he said he asked for the ballot paper account at 9.00 a.m. When he himself had stated that the ballot paper account is prepared after the close of an election. The 1st respondent John Wash Pam said under cross-examination by Mr. Gumut that he saw voters list in the various polling stations he visited and was frank to admit unlike the 1st P.W. that it was humanly impossible to cover all the senatorial constituencies. He also said he was at the counting centre for some time and there he saw the ballot papers account. We are impressed by his frank admission of the obvious and the inconsequential even where it was apparent that such admission does not necessarily support his case. Perhaps, it may well be for the same reason that Mr. Peterside in his

address said he had no complaints against him. Accordingly we accept his evidence and find that there were voters list and ballot papers account as he stated in his evidence. Paragraph 3(xv) therefore fails. In *Swem vs. Dzungwe* (1966) NMLR 297 at 302, Coker J.S.C. as he then said:-

"Non-compliance may result not only from the degree of but also from the nature of the complaint and the question in every case is whether or not in view of the findings the constituency was allowed to elect its representative....."

Further at P.303 he said:-

"If follows clearly therefore that if at the end of the case of the petitioner a case of non-compliance is established which may or may not affect the result of the election and it is impossible for the tribunal to say whether or not the results were affected by the non-compliance established, unless there be evidence on behalf of the respondent that such non-compliance as found could not and did not in fact affect the results of the election, then the petitioner is entitled to succeed on the ample ground that civil cases are proved by a preponderance of accepted evidence (underlining supplied).

In the instant case the accepted evidence is next to nothing and degree and nature of the complaint as we have outlined above, are not sufficient, cogent and reliable enough to warrant any interference with the election of the 1st Respondent. This allegation against the 2nd Respondent were generally not proved. In the *Swem's* case, as well as the *Ogaba's* case (in the election Tribunal) before Orojo Chief Judge sitting in Benue State in the latter judgement having been graciously made available to me by Mr. Peterside as he had earlier promised the tribunal, the evidence of non-compliance was so overwhelming and substantial that the final conclusion reached in each case can hardly be assailed. In this case, the reverse is the case. Accordingly, this petition must fail and it is dismissed. The election of John Wash Pam as the Senator for the Jos senatorial constituency stands confirmed and this decision shall be certified to the Federal Electoral Commission.

HON. MR. JUSTICE M.M. AKANBI
(CHAIRMAN)

HON. ALHAJI YAHAYA M. KANAM
(MEMBER)

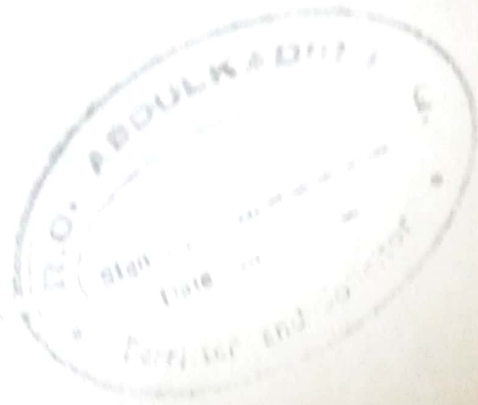
HON. MR. JUSTICE L.D. ABDULLAHI
(MEMBER)

**HALLMARK
OF JUSTICE**

**COMMENTRIES ON SELECTED
JUDGEMENTS OF
HON. JUSTICE M.M.A. AKANBI**



Edited by: T. A. Yusuf
M. M. Akanbi
A. T. Shehu



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Comment by: Abdulkadir O. Abdulrazaq*

INTRODUCTION

BRIEF MATERIAL FACTS OF THE CASE

The petitioner and Respondents in this case contested the governorship election of Plateau State held on 28th July, 1979. At the end of the election, the Federal Electoral Commission returned the Respondents as duly elected as Governor and Deputy Governor respectively. Dissatisfied, the Petitioner brought out his petition against the Respondents on the ground that there was non-compliance with the provisions of Part 11 of the Electoral Decree No. 73 of 1977, in that the 1st Respondent was not qualified to contest the election because he was removed as the Chairman of the African Continental Bank Limited on account of dishonesty.

PRINCIPLES OF LAW DISTILLED IN THE JUDGEMENT

In this petition, evidence of a witness who testified for the petitioner was shattered under cross-examination and the court stated that where evidence of witness called by petitioner has been shattered and battered under cross examination, the petition would be dismissed on a no case submission. One of the witnesses called by the petitioner to prove his case Mr. Oluyemi Ogunyemi of the Lagos Cabinet Office produced a press release dated 22nd June, 1979. The said document was tendered and admitted as exhibit 2. However, under cross-examination, the evidence of the witness was tattered and battered when he admitted that he did not know anything about the contents of the exhibit despite his admission that he took out the document from a file in his custody. In sum, the court held that based on the evidence before it, it is not sufficient to call on the Respondents to open their defence and the petition was dismissed. The principle stated in the case under consideration was applied in the case of *Yusuf vs. Obasanjo*³⁸² where the court held that the petitioners' evidence having been battered under cross examination at the trial proceedings entitled the petition for dismissal and accordingly dismissed. The principle which has been stated since 1979 is still relevant in today's proceedings and its application is an indication of Justice M.M. Akanbi's deep erudition of the law.

Another principle of law articulated in the case under review is that newspapers cannot take the position of Official Gazette. In an attempt to proof the allegation that the 1st Respondent was removed from office as Chairman of the African Continental

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382 (2005) 18 NWLR (956) 96 at 210

Bank Limited on account of dishonesty, the petitioner's counsel tendered copies of the Nigerian Standard and the New Nigerian both of 25th June, 1979. The tribunal held that newspapers are not government departments or official gazettes where appointments, promotions, removals, dismissals and resignation of public/government officers are made public. It went further to state that newspaper reports are not government gazettes. For a petitioner to succeed on the ground of disqualification arising from act of dishonesty, the report of indictment of the 1st Respondent must be brought and tendered before the tribunal and not the newspapers' alleged removal as the Chairman of the African Continental Bank Limited. The path taken by his lordship in this case is very apt and represents the position of the law now. In the case of **Agbai vs. INEC**,³⁸³ the court held that newspaper reports are not generally admissible evidence of the fact recorded therein.³⁸⁴ Also, an indictment on pages of newspaper is not tenable, accordingly, for a petitioner to succeed, he must have shown that the Respondent has been pronounced guilty by a court of competent jurisdiction. This is in line with the decision of the Supreme Court in the case of **Amaechi vs. INEC**.³⁸⁵

In the same token, it was stated in the judgment that tribunal can *suo-motu* dismiss petition based on the evidence of the petitioner. The tribunal stated that in dealing with Exhibit 2 or the evidence before it, it does not consider it expedient to adopt rule of practice (or even any rule of law) which may require it to ask the Respondents to open their defence before ruling on the matter. The cases of **Alexander vs. Rayson**³⁸⁶ and **Bala Keffi vs. Alhaji Zakari Isa & Another**³⁸⁷ were cited to drive home the argument. It is strongly argued that threading the path suggested by his lordship in the case under consideration will save the court the needless burden of having to call Respondents to open their defence on allegations/evidence that are not sustainable.

CONCLUDING REMARKS

From the examination of the case of Michael Audu Buba vs. Solomon Daushep Lar, it is crystal clear that some principles enunciated by his lordship more than three decades ago formed the basic principles of election petitions in Nigeria. What is more, when his lordship held that newspapers are not government departments or official gazettes where appointments, promotions, removals, dismissals and resignation of public/government officers are made public. Hence, petitioner must submit to the tribunal through evidence, the report of a tribunal/panel which indicts the 1st Respondent.

³⁸³ (2008) 14 NWLR (PT 1108) 417 at 438

³⁸⁴ See also *Ngige vs. Obi* (2006) 14 NWLR (999) 1 at 167-168, *FRNH vs. Sama* (1991) 2 NWLR (PT 171) 64

³⁸⁵ SC 232 2007

HOLDEN AT JOS
ON TUESDAY 18TH SEPTEMBER, 1979

BEFORE:

THE HON. MR. JUSTICE M.M. AKANBI

THE HON. ALHAJI YAHAYA KANAM

THE HON. MR. JUSTICE L.D. ABDULLAHI

BETWEEN:

MICHAEL AUDU BUBA

AND

3.

SOLOMON DAUSHEP LAR

4.

ALHAJI SALIHU MAILAFIA

JUDGEMENT: HON. MR. JUSTICE M.M. AKANBI

SUIT NO: JD/EP/20/79

CHAIRMAN

MEMBER

MEMBER

PETITIONER

RESPONDENTS

The petitioner Michael Audu Buba who was the unsuccessful candidate in the gubernatorial election for Plateau State, held on 28th July 1979, by his amended petition, prayed this tribunal to determine that the 1st Respondent, Solomon Daushep Lar, who was the successful party was not duly elected and that he (the petitioner) ought to have been returned as the "Governor elect" of Plateau State of Nigeria.

This audacious effort at invalidating the election and upsetting the verdict of the electorate is not based on any alleged malpractices or misconduct at the elections, either on the part of the electorates of Plateau State or the successful party or indeed of the officials of the Federal Electoral Commission who carried out the elections. Thus it can be safely said that the election, was so hitch-free that the petitioner had no cause to complain whatsoever on the entire operation.

The ground on which it is sought to invalidate the election, however, is that there was non-compliance with the provisions of part 11 of the Electoral Decree No. 73 of 1977. Particulars of the alleged non-compliance, complained of are set out as follows:-

"1. In that Solomon Daushep Lar who was returned as a successful candidate at the said election was at the time of the election not qualified to be elected in that he held office as the Chairman of the African Continental Bank Limited, a Company incorporated in Nigeria, owned and/or controlled by the Federal Military government, the government of Anambra, Imo and Rivers States whereof (a) he has been removed from that office on grounds involving dishonesty (b) that he was dismissed from the said office.

2. The petitioner will at the trial rely:-
- (a) The press release issued by the Federal Military Government dated 22nd June 1979, on the African Continental Bank Limited directing that the Board of Directors of the said Bank be dissolved and that Mr. Solomon Daushep Lar, the Bank's chairman amongst others "be further investigated and dealt with according to law".
 - (b) i) The relevant decisions of the minutes of the Board of the Directors of the Central bank of Nigeria, held on 21st June, 1979 in so far as this concerns the African Continental Bank Limited and document titled examination report of African Continental Bank Limited as at 30th November, 1977 by the Department of Banking supervision of Central Bank of Nigeria and submitted to the Federal Ministry of Finance in June 1978.
 - (ii) The report of Oyewunmi and Partners Chartered Accountants of Lagos, who were commissioned by the said African Continental bank limited to examine its books during 1976/77 which report was submitted to the Federal Ministry of Finance.
 - (c) The Federal Military Government Press Release aforesaid as reported by the New Nigerian newspaper of 25th June 1979 and the extent of this circulation in Plateau State.
 - (d) the Nigerian Standard issues of 25th June 1979 and also of 40th July, 1979 (the latter) containing the 1st Respondent's containing the 1st Respondent's reaction to the said publications.
 - (e) The daily times issue of 26th June 1979 and the extent of its circulation in Plateau Station".

In support of the above averments the petitioner who himself did not give evidence summoned three witnesses to testify on his behalf. His first witness one Mr. Oluyemi Ogunyemi of the Cabinet Office Lagos, said that he was a representative of the Secretary to the Federal Military Government and that he had in his custody a "press release" dated 22nd June 1979, and signed by one My. A.A. Ahmadu, the Deputy Press Secretary, Supreme Headquarters Lagos, who as the evidence suggests was too busy to give evidence in person before us. The "press release" was tendered and received in evidence as Exhibit 1 after the objections of the learned Counsel for the Respondents have been over-ruled.

Under cross-examination by Mr. Ikeazor, witness admitted that he did not know anything about the contents of exhibit 2. Apparently it was this strange admission by this witness who had earlier on said that he took out the document from a file in his custody, that perhaps prompted Mr. Ikeazor to say inter alia that exhibit 2 is not a

"genuine document" and "at best it is tainted with suspicion", more so as the press release, contained in their departmental files, was never paged. We do not think we need bother ourselves with whether or not Exhibit 2 is genuine or forged. We shall concern ourselves only with the effect of that document on the issue in controversy and if necessary consider what weight to attach to its content. For the time being, we propose to deal with the other aspects of the case and leave Exhibit 2 for our later consideration. In trying to prove the averment in paragraph 2(b) (i) and 2(b) (ii) of the petition, learned counsel for the petitioner Mr. Gally Brown Peterside made some spirited efforts to have produced from the Cabinet Office and the Ministry of Finance certain vital documents, which no doubt he thinks, will be helpful to the petitioner; but these attempts were frustrated by the production of two certificates; one signed by the Federal Attorney General and Commissioner for Justice A. Nnamani J.S.C. and the other signed by Major General Oluleye, Commissioner for Finance respectively claiming privilege in respect of the sub-poenaed documents sought to be relied upon, on the grounds of their "public interest". The end result is that at the close of the case for the petitioner there was no evidence to establish the averments in paragraphs 2(b) (i) and 2(b) (ii) of the petition.

Faced with the harsh realities of the situation, which the two certificates Exhibit 1 and 3, had foisted on him, Mr. Peterside remained undaunted. He pressed on tenaciously and again made further spirited effort to prove paragraphs 2(c) and 2(d) of the petition. Here again, he was faced with another legal hurdle to clear. His attempt to tender/produce copies of the Nigerian Standard and the New Nigerian of 25th June 1979, was also unsuccessful; as we ruled that both papers, were not relevant to the issue in controversy and as such were inadmissible.

At any rate we are satisfied that they do not further the legal proof to establish that the 1st Respondent was removed from office on grounds of "dishonesty" or on "any ground" at all. In other words, paragraph 2(c) and 2(d) of the petition, which they were intended to prove, even if established would be of one moment as the two Newspapers are not, like the official gazette, (etc) legitimate organs of government by which appointments, promotions, removal, dismissal and resignations of public/government officers are made public. In any case, with their rejection, paragraph 2(c) and (d) of the petition become a non-issue. For obvious reasons, no further effort was made to lead evidence in proof of paragraph 2(e) which suffers from the same disability as the two immediately preceding paragraphs 2(c) and 2(d). The result is that paragraphs 2(b) (i), 2(b) (ii), 2(c) 2(d) and 2(e) therefore cannot sustain the petition. Not unnaturally therefore Mr. Peterside faced with the choice of having to abandon the petition decided to doing characteristically what apparently appears to be the last straw. He argued strenuously but certainly unconvincingly that exhibit 2,

the "press release" when read together with paragraph 7 of the reply provides ample evidence that the 1st Respondent did not of his own volition vacate his office as Chairman of African Continental Bank, but was dismissed from that office Exhibit 2 reads thus:-

"The Federal Military Government has approved a loan of 60 million to be made available to the State Government shareholders of the African Continental Bank Limited for no-tending to the bank. This loan represents additional Federal Government financial assistance to enable the bank to continue to play its role in the development of the economy of the nation. This decision was taken by the Federal Government arising from the findings of the two panels of enquiry into certain specially mentioned accounts and operations of the Foreign Exchange Department of the Bank.

2. Government has given careful consideration to the recommendations of the Board of the Bank as to how to restructure the bank in such a way as to ensure its operational effectiveness but, in its view, these recommendations, do not go far enough because they have not given due regard to the need for appropriate action to be taken against those responsible for the affairs of the bank.

3. Government has, therefore decided to dissolve the existing Board of Directors and to set up a new Board. In addition to this, the top management of the bank is to be revamped with the appointment of a General Manager.

4. The outgoing Chairman, the retired General Manger and some officials of the bank, all of whom have been found by the panels of enquiry to have been responsible for the mismanagement of the affairs of the bank are to be further investigated and dealt with according to law." (underlining is ours).

It is settled law that a no case submission will be upheld if there is no sufficient evidence in law to support the allegations made in the complaint raised in the petition. See *Mallam Bala Keffi V. Alhaji Zakari Isa and another* (1965) NNLR 17; also *Story Vs. Storey* (1960) 3 ALL or 279.

The present petition is premised on the grounds that the 1st Respondent being the chairman of the African continental Bank has (a) been "removed on grounds involving dishonesty" (b) that he was dismissed from the said office. As we indicated before, exhibit 2 is Mr. Peterside's trump-card. It is the prop on which the petitioner's case must hang or fall. According to Mr. Peterside, exhibit 2 when read together with paragraph 7 of the reply provides "ample evidence of dismissal by the Federal military government". He has therefore asked us to say that Exhibit 2 prove conclusively that the 1st respondent was dismissed from his post as the chairman of the Bank. With respect, we are unable to agree.

indeed, that submission clearly, is not a partial admission that standing alone Exhibit 2, which is the main and sole prop of the petitioner's case, cannot support it. For it must be borne in mind that when considering a no case submission, it is only the case as put forward by the petitioner that is being looked into (and unless there is a material admission in the reply) the tribunal or the adjudicating authority, in reaching a conclusion has to confine itself to the petitioner's case. Exhibit 2 certainly did not say that the 1st respondent has been removed on ground of "dishonesty". No where in that document was it stated that he has been "dismissed" on any ground whatsoever. If anything at all, the impression that document conveys is that those responsible for the "irregularities" in the management of the affairs of the bank are yet to be dealt with and indeed further investigation will have to be before they are finally brought to book.

The report referred to in Exhibit 2 is not before us. We have no doubt that if it is intended that it (or any other report) should be the basis of this petition or of any judgement, the Federal Military Government will not go all out to claim privilege over them or exclude them from our consideration.

In the case of Yakubu Nyenlong Shendam Vs. Amrose Gapsuk and another Suit No. JD/EP/9/79 delivered on 14th September, 1979, was said inter alia.

"Section 73 of the Electoral Decree No. 73 of 1977 provides inter alia for the disenfranchisement of those citizens whose conduct full foul of the provision of that section of the decree. It is indeed a most welcome provision of our law as it is aimed at ensuring that shady or doubtful characters are not elected into our legislative and other elective offices. However as a rule the Courts will construe narrowly any statute which encroaches on the liberty of the subject. Certainly, a citizen unless he suffers from any legal disability is entitled to vote and be voted for; hence the courts will lean in favour of a construction which tends to preserve this right. To that end, it is essential in our view that the reason for the removal of a person from office if made pursuant to Section 73(1) (g) (i) must not be free from doubt. This must necessary be so; since sub-section 1(g) (ii) of that section which immediately follows thereafter, provides for the disqualification of a person from contesting or holding an elective office by reason of the fact that he has been "dismissed" (as opposed to "removed") on grounds involving dishonesty; on the part of the person sought to be precluded from holding an elective office".

Our view therefore is that Exhibit 2, ex facie is not conclusive even of the issues the raised therein, and is therefore not sufficient to satisfy the requirements of sub-sections 1(g) (1) and 1(g) (ii) of Section 73 of the Electoral Decree No.77 of 1977. It did

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Indeed, that submission clearly, is not a partial admission that standing alone Exhibit 2, which is the main and sole prop of the petitioner's case, cannot support it. For it must be borne in mind that when considering a no case submission, it is only the case as put forward by the petitioner that is being looked into (and unless there is a material admission in the reply) the tribunal or the adjudicating authority, in reaching a conclusion has to confine itself to the petitioner's case. Exhibit 2 certainly did not say that the 1st respondent has been removed on ground of "dishonesty". No where in that document was it stated that he has been "dismissed" on any ground whatsoever. If anything at all, the impression that document conveys is that those responsible for the "irregularities" in the management of the affairs of the bank are yet to be dealt with and indeed further investigation will have to be before they are finally brought to book.

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not remove or dismiss, or purport to remove or dismiss the 1st Respondent from office. If it was the intention that it should serve as a notice of dismissal or removal on any ground, whatsoever, it will say as in clear unmistakable terms and in the all too familiar language characteristic of the authority competent to remove him.

Finally, we wish to make it clear that in dealing with Exhibit 2 or the evidence before us, we have not in any way touched on the issue of credibility or reliability of witness, and we have not done so deliberately. According, we do not feel obliged to adopt the rule of practice (or even any rule of law) which may require us to ask of counsel for the Respondent if he would call any evidence; before ruling in the matter. (See *Alexander Vs. Rayson* (1936) 1 KB 169; *BALA KEFFI Vs. ALHAJI ZAKARI ISA* and another (1965) NNLR 17.

We do not intend to deal with the other legal issues raised in the submissions of learned counsel for the Respondents as we do not consider it necessary to go into them in view of the decision we have reached on the effect of Exhibit 2 on which the petition purported to found a case.

In sum, we hold that the evidence before us is not sufficient in law for us to call on the Respondents to answer to the petition; which is hereby dismissed. Accordingly, we held that the election of Mr. Solomon Daushep Lar as the Governor-elect of Plateau State is valid and stands confirmed and this decision shall accordingly be certified to the Federal Electoral Commission.

HON. MR. JUSTICE M.M. AKANBI
(CHAIRMAN)

HON. ALHAJI YAHAYA M. KANAM
(MEMBER)

HON. MR. JUSTICE L.D. ABDULLAHI
(MEMBER)

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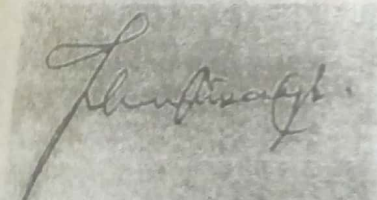
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FROM The Editor-in-Chief
DATE 18 March, 2017
Subject: ACCEPTANCE OF YOUR MANUSCRIPT FOR PUBLICATION

I write to inform you that your paper entitled 'NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY: AN EXPLICATION OF ITS ENFORCEMENT POWERS' has been reviewed, and accepted by our Editorial Board for publication in *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, Volume 8. The Journal edition will be out from the press on or before 30 May, 2017. Do pay, on or before 12 April 2017, the sum of N30, 000 (Thirty Thousand Naira) only to the following Bank Account for remuneration of the Reviewers and to facilitate the publication:

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