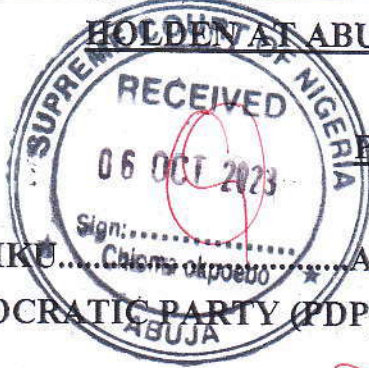


SC/CV/935/2023

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

Copy



Appeal No: SC/CV/935/2023

Petition No: CA/PEPC/05/2023

BETWEEN:

- 1. ABUBAKAR ATIKU..... APPELLANTS/APPLICANTS
- 2. PEOPLES DEMOCRATIC PARTY (PDP)

AND:

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
- 2. TINUBU BOLA AHMED
- 3. ALL PROGRESSIVES CONGRESS (APC).....RESPONDENTS

7:02pm

NOTICE OF MOTION

ORDER 2, RULE 12(1) OF SUPREME COURT RULES 1985

SECTION 137(1) (j), CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED)

UNDER INHERENT JURISDICTION OF THE HONOURABLE COURT

BY SECTION 6(6)(a) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED)

TAKE NOTICE that this Honourable Court shall be moved ontheday of October 2023 at the hour of 9 O clock in the forenoon or so soon thereafter as the Appellants/Applicants or Counsel on their behalf shall be heard praying this Honourable Court for the following Orders:

- (A). AN ORDER OF THIS HONOURABLE COURT GRANTING LEAVE TO THE APPELLANTS/APPLICANTS TO PRODUCE AND FOR THE HONOURABLE COURT TO RECEIVE FRESH AND/OR ADDITIONAL EVIDENCE BY WAY OF DEPOSITION ON OATH FROM THE CHICAGO STATE UNIVERSITY FOR USE IN THIS APPEAL, TO WIT: THE CERTIFIED DISCOVERY DEPOSITION MADE BY CALEB WESTBERG ON BEHALF OF CHICAGO STATE UNIVERSITY ON OCTOBER 03, 2023, DISCLAIMING THE CERTIFICATE PRESENTED BY THE 2ND

RESPONDENT, BOLA AHMED TINUBU, TO THE
INDEPENDENT NATIONAL ELECTORAL COMMISSION.

- (B). AND UPON LEAVE BEING GRANTED, AN ORDER OF THIS HONOURABLE COURT RECEIVING THE SAID DEPOSITION IN EVIDENCE AS EXHIBIT IN THE RESOLUTION OF THIS APPEAL.

AND FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in the circumstances

FURTHER TAKE NOTICE that the grounds for the said Application are as follows:

- (1). One of the grounds of the Appellants/Applicants' Petition before the Court below is that the 2nd Respondent was not qualified at the time of the election to contest the election as required by section 137(1)(j) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- (2). Based on facts available to the Appellants/Applicants at the time of filing their Petition, the 1st Appellant/Applicant through his United States of American lawyers, Alexander de Gramont and Angela M. Liu of the law firm of Dechert LLP of 1900 K Street, NW, Washington DC 20006-1110, unsuccessfully applied to Chicago State University for the release of copies of the academic records of the 2nd Respondent.
- (3). Given the strict privacy laws in the jurisdiction of Chicago State University, the request for the release of the academic records and certificate issued to the 2nd Respondent could not be granted without an order of court and for the purpose of use in pending court proceedings.
- (4). The 1st Applicant through his said US-based Attorneys thereupon brought an action in the U.S. District Court for the Northern District of Illinois - *In re: Application of Atiku Abubakar for an Order Directing Discovery*

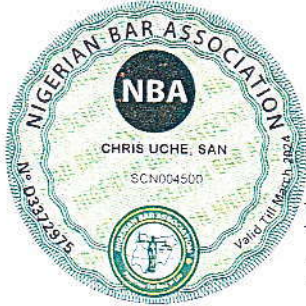
from Chicago State University Case No. 23-CV-05099 for an order for the production of documents and testimony for use in a proceeding in a foreign court, seeking documents and testimony from Chicago State University concerning the authenticity and origin of documents purporting to be the educational records of the 2nd Respondent, Bola A. Tinubu.


- (5). The 2nd Respondent applied and was joined in the matter as an Intervenor, vehemently opposing the application.
- (6). On September 19, 2023, the Court issued an order granting the application.
- (7). Thereafter, the 2nd Respondent applied for an emergency stay of the Court Order, claiming that he would suffer irreparable damage and injury if his educational records were released; which order of stay was granted.
- (8). On September 30, 2023, the Court overruled the 2nd Respondent's Objections and ordered Chicago State University to produce the documents on October 2, 2023, and to produce a witness for deposition on October 3, 2023.
- (9). On October 2, 2023, Chicago State University produced the documents pursuant to the Court's Order.
- (10). On October 3, 2023, also pursuant to the Court's Order, Chicago State University provided a witness to give deposition testimony, in which deposition, Chicago State University **disclaimed ownership and authorship of the document that the 2nd Respondent presented to INEC**, purporting to be "Chicago State University certificate" and also disclaimed issuing any replacement certificate to him.
- (11). The deposition was not in existence or available at the time of filing the Petition or at the hearing of the Petition.

- (12). The deposition sought to be adduced is, along with its accompanying documents, such as would have important effect in the resolution of this appeal.
- (13). The deposition is relevant to this matter, having confirmed that the certificate presented by the 2nd Respondent to the Independent National Electoral Commission (INEC) did not emanate from Chicago State University, and that whoever issued the certificate presented by the 2nd Respondent, did not have the authority of the Chicago State University, and that the 2nd Respondent never applied for any replacement certificate nor was he issued any replacement certificate by the Chicago State University.
- (14). The deposition which is on oath and deposed to in the presence of the 2nd Respondent's Attorney is credible and believable, and ought to be believed.
- (15). The deposition is clear and unambiguous, and no further evidence is needed to be adduced on it.
- (16). The evidence is such that could not have been obtained with reasonable diligence for use at the trial, as the deposition required the commencement of the suit in the United States of America before receiving same. It was not possible to obtain the said evidence before the trial at the Court below.
- (17). The deposition was made on October 03, 2023 after the conclusion of trial at the Court below, and was not available to be tendered at the trial.
- (18). Presentation of a **forged certificate** to the Independent National Electoral Commission by a candidate for election to the office of President of the Federal Republic of Nigeria is a **weighty constitutional matter**, requiring consideration by the Courts as custodians of the Constitution.
- (19). The original certified deposition has been forwarded to the Honourable Court by a letter addressed to the Chief Registrar of the Supreme Court.

(20). It is in the interest of justice for the Honourable Court to exercise its discretion in favour of the Appellants/Applicants.

DATED AT ABUJA THIS 5th DAY OF OCTOBER 2023




Chief Chris Uche, SAN ✓
Eyitayo Jegede, SAN,
Prof. Mike Ozekhome, SAN,
Nella Andem-Rabana, SAN
Ken Mozia, SAN,
Dr. Garba Tetengi, SAN,
Mahmud Magaji, SAN,
Joe Abrahams, SAN,
Edward Ashiekaa, SAN,
Prof. Maxwell Gidado, SAN,
Emeka Etiaba, SAN,
Gordy Uche, SAN,
A.K. Ajibade, SAN,
Abdul Ibrahim, SAN,
Paul Harris Ogbale, SAN,
Olusegun Jolaawo, SAN,
Nurueni Jimoh, SAN,
Kemasuode Wodu, SAN,
Prof. Yusuf Dankofa,
M.S. Atolagbe Esq.,
O. A. Dada Esq.,
Olabode Makinde Esq.,
Ahmed T. Uwais Esq.,
Adedamola Fanokun Esq.,
B.F Folorunsho Esq.,
Genevieve A. Okereke Esq.,
Jude A. Daniel Esq.,
Ngozi Princess Dimkpa Esq.,
Olajumoke Olawoyin Esq.,

Nheoma Ndu Asobinuanwu Esq.,
Osilama Mike Ozekhome Esq.,
Mike Uche Esq.,
John Odeh Esq.,
Oshomha Mike Ozekhome, Esq.,
Joshua H. Barka Esq.,
APPLICANTS' COUNSEL,
c/o Chief Chris Uche (SAN) & Co,
Angels Court,
34 Kumasi Crescent,
Wuse 2, Abuja.
uchesan@nigerianbar.ng

Tel: +234-807-853-777 & +234-8037874792.

FOR SERVICE ON:

1st Respondent:

C/o Its Counsel,
Dikko & Mahmoud
No. 10 Seguela Street,
Wuse 11,
Abuja.
08035159424.

2nd Respondent:

C/o His Counsel,
Wole Olanipekun & Co.
God's Grace House,
No. 6 Oshakati Close,
Off Constantine Street,
Wuse Zone 4, Abuja.
0806262779; 08060749219

3rd Respondent:

C/o Its Counsel,
Lateef O. Fagbemi & Co.

2nd Floor, Rivers State Office Complex,
Opp. Federal Ministry of Finance,
Central Area, Abuja.
08033246788; 080615324.

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

Appeal No: SC/CV/935/2023

Petition No: CA/PEPC/05/2023

BETWEEN:

- 1. ABUBAKAR ATIKU.....APPELLANTS/APPLICANTS**
- 2. PEOPLES DEMOCRATIC PARTY (PDP)**

AND:

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
- 2. TINUBU BOLA AHMED**
- 3. ALL PROGRESSIVES CONGRESS (APC).....RESPONDENTS**

AFFIDAVIT IN SUPPORT

I, Uyi Giwa-Osagie, Nigerian citizen, adult male, Muslim and legal practitioner of Plot 120, Adetokunbo Ademola Crescent, Wuse II, Abuja Nigeria, do hereby make oath and state follows:

1. That I am a legal adviser to the 1st Appellant/Applicant, and I depose to this affidavit with the knowledge and consent of the Appellants/Applicants and on their behalf.
2. That by virtue thereof, I am conversant with the facts of this matter.
3. That the 1st Appellant/Applicant contested the election to the office of the President of the Federal Republic of Nigeria on the platform of the 2nd Appellant/Applicant, which election was conducted by the 1st Respondent on the 25th day of February 2023.
4. That the 1st Respondent returned the 2nd Respondent as the winner of the said election, and hence the Appellants, being dissatisfied with the return, filed a Petition on the 21st day of March 2023 before the Court of Appeal sitting as the Presidential Election Petition Court.

5. That the Court below had by a judgment delivered on 6th September 2023 dismissed the said Petition, whereupon the Appellants/Applicants appealed against the said judgment to this Honourable Court on 18th September 2023.
6. That the Record of Appeal has been transmitted to this Honourable Court and the appeal duly entered, and the said Record of Appeal is now before this Honourable Court, running into over 9,000 pages in 11 Volumes, upon which the Appellants/Applicants are relying in this application.
7. That the Petition is contained on pages 1-225 of the Record of Appeal - Vol. 1), while the Appellants/Applicants' three Replies to the Replies of the Respondents are at pages 1695 to 1764 of the Record of Appeal (Vol. 3).
8. That the judgment of the Court below is contained at pages 7503 to 8298 of the Record of Appeal (Vol. 10), while the Notice and Grounds of Appeal are contained at pages 8299 to 8340 of the Record of Appeal (Vol. 10).
9. That I know that one of the grounds of the Appellants/Applicants' Petition before the Court below is that the 2nd Respondent was not qualified at the time of the election to contest the election and did not meet the constitutional threshold to contest.
10. That at a meeting with the 1st Appellant/Applicant at his office at No. 120 Adetokunbo Ademola Crescent, Wuse II, Abuja on 5th October 2023 at about 1.00 pm, I was informed by him, and I verily believe him, as follows:-
 - (a). That he instructed his United States lawyers, the law firm of Dechert LLP, to apply to the Chicago State University for the release of copies of the academic records and certificates of the 2nd

Respondent for use in the presentation and prosecution of their Petition which challenged the return of the 2nd Respondent.


- (b). That given the strict privacy laws in the jurisdiction of Chicago State University, the request for the release of the academic records and certificate issued to the 2nd Respondent could not be granted without an order of court and for use in pending court proceedings.
- (c). That the need to obtain the academic records and the certificate of the 2nd Respondent for the purpose of presentation and prosecution of the election Petition, prompted him through his US-based Attorneys, Alexander de Gramont and Angela M. Liu of the law firm of Dechert LLP of 1900 K Street, NW, Washington DC 20006-1110 to commence an action in the U.S. District Court for the Northern District of Illinois - *In re: Application of Atiku Abubakar for an Order Directing Discovery from Chicago State University* Case No. 23-CV-05099 for an order for the production of documents and testimony for use in a proceeding in a foreign court, seeking documents and testimony from Chicago State University concerning the authenticity and origin of documents purporting to be the educational records and certificate of the 2nd Respondent, Bola A. Tinubu.
- (d). That despite the fact that the 2nd Respondent submitted to INEC his "certificate" which he claimed to have obtained from Chicago State University, he vehemently opposed the release of his academic records and the certificate he claimed to have obtained from Chicago State University in support of his qualification to contest the presidential election of 25th February 2023.
- (e). On September 19, 2023, the Court issued an order granting the application, and a copy of the judgment of the United States Magistrate Judge is annexed herewith as **EXHIBIT "A"**.

- (f). Thereafter, the 2nd Respondent applied for an emergency stay of the Court Order, claiming that he would suffer irreparable damage and injury if his educational records were released, which order of stay was granted.
- (g). On September 30, 2023, the Court overruled the 2nd Respondent's objections and ordered Chicago State University to produce the documents on October 2, 2023, and to produce a witness for deposition on October 3, 2023, which judgment is annexed herewith as **EXHIBIT "B"**.
- (h). On October 2, 2023, Chicago State University produced the documents pursuant to the Court's Order.
- (i). On October 3, 2023, pursuant to the Court's Order, Chicago State University provided a witness to give deposition testimony, in which deposition, Chicago State University disclaimed ownership and authorship of the document that the 2nd Respondent presented to INEC, purporting to be "Chicago State University certificate", and the deposition is annexed herewith as **EXHIBIT "C"**.
- (j). That the relevant pages of the transcript are pages, 36, 37,39, 40, 41, 43, and 69, and are extracted and annexed herewith as **EXHIBIT "D"**.
- (k). That the deposition was not in existence or available at the time of filing the Petition.
- (l). The deposition sought to be adduced is such as would have important effect in the resolution of this appeal.
- (m). The deposition which is on oath and deposed in the presence of the 2nd Respondent's Attorney is credible and believable, and ought to be believed.
- (n). The deposition is clear and unambiguous and no further evidence is needed to be adduced on it.

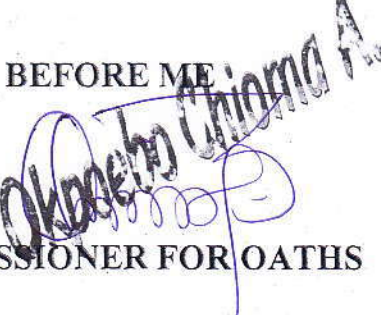
- (o). That he could not obtain the deposition at the time of filing the Petition or during the trial in order to make same available to his lawyers handling the Petition to present same at the trial.
11. That I was informed by Ahmed T. Uwais Esq., a Counsel in the Appellants/Applicants' Legal Team, at a meeting at No. 121 Adetokunbo Ademola Crescent, Wuse 2, Abuja on 5th October 2023 at about 1.30 pm, and I verily believe him, that the certificate presented by the 2nd Respondent to INEC in support of his qualification to contest election, was tendered in evidence at the trial and marked as EXHIBIT PBD1B, and a copy of same is annexed herein as **EXHIBIT "E"**.
 12. That the same document was tendered at the aforesaid deposition in the United States of America as EXHIBIT 6, and I annex a copy hereof as **EXHIBIT "F"**.
 13. That at the trial, a certificate obtained from the Chicago State University was also tendered in evidence as EXHIBIT PBE4, and a copy thereof is annexed herewith as **EXHIBIT "G"**.
 14. That the deposition is a relevant piece of fresh evidence explaining the status of the certificate the 2nd Respondent presented to INEC in support of his qualification to contest the election.
 15. That the evidence is such that could not have been obtained with reasonable diligence for use at the trial, as the deposition required the commencement of the suit in the United States of America before receiving same.
 16. That the deposition was made on October 03, 2023 after the conclusion of trial at the Court below, and was not available to be tendered at the trial.
 17. That it was not possible to obtain the said evidence before the trial at the Court below.
 18. That a certified true copy of the deposition has now been received, and we have written a letter forwarding the original deposition to the Chief

Registrar of this Honourable Court, which letter is annexed herewith as **EXHIBIT "H"**.

19. That it is in the interest of justice to grant this application to allow the reception of this evidence.
20. That I swear to this Affidavit in good faith conscientiously believing same to be true and correct and in accordance with the Oaths Act.


DEPONENT

Sworn to at
the Supreme Court Registry,
Three Arms Zone,
Abuja.
This.....day of October 2023.

BEFORE ME

COMMISSIONER FOR OATHS

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

Appeal No: SC/CV/935/2023

Petition No: CA/PEPC/05/2023

BETWEEN:

- 1. ABUBAKAR ATIKU.....APPELLANTS/APPLICANTS**
- 2. PEOPLES DEMOCRATIC PARTY (PDP)**

AND:

- 1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
- 2. TINUBU BOLA AHMED**
- 3. ALL PROGRESSIVES CONGRESS (APC).....RESPONDENTS**

WRITTEN ADDRESS IN SUPPORT OF MOTION

1.0 INTRODUCTION:

- 1.1** My Lords, this is the Appellants/Applicants' Written Address in support of their motion on notice for fresh and/or additional evidence.
- 1.2** The application is brought pursuant to Order 2, Rule 12(1) of the Supreme Court Rules 1985, Section 137(1) (j) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), and under the inherent jurisdiction of the Honourable Court as granted by Section 6(6)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).
- 1.3** The application is supported by a 20 paragraph affidavit deposed to by Mr. Uyi Giwa-Osagie on behalf of the Appellants/Applicants. Attached to the Affidavit are relevant documents marked as Exhibits. The Applicants are relying on the Record of Appeal already transmitted and in the well of this Honourable Court, which the Honourable Court is entitled to look at. See **APC V. ENWEREM & ORS (2022) LPELR-57816(SC); EZE & ORS V. GOV OF ABIA STATE & ORS (2014) LPELR-23276(SC).**

2.0 **STATEMENT OF FACTS:**

2.1 My Lords, we most humbly adopt the facts as presented in the supporting affidavit, and same will be referred to in the course of the argument.

3.0 **ISSUE FOR DETERMINATION:**

We humbly submit that the issue for determination in this Application is as follows:

Whether this Honourable Court ought to exercise its discretion in favour of the Appellants/Applicants by granting the prayers sought.

3.1 **LEGAL ARGUMENT:**

3.2 We humbly submit that this Honourable Court has the power, the jurisdiction and the discretion to grant an application for adducing fresh or additional evidence on appeal.

3.3 Order 2 Rule 12 (1), (2) and (3) of the Supreme Court Rules provide as follows:

“(1) A party who wishes the Court to receive the evidence of witnesses (whether they were or were not called at the trial) or to order the production of any document, exhibit or other thing connected with the proceedings in accordance with the provisions of section 33 of the Act, shall apply for leave on notice of motion prior to the date set down for the hearing of the appeal.

(2) The application shall be supported by affidavit of the facts on which the party relies for making it and of the nature of the evidence or the document concerned.

(3) It shall not be necessary for the other party to answer the additional evidence intended to be called but if leave is granted the other party shall be entitled to a reasonable opportunity to give his own evidence in reply if he so wishes.”

3.4 My Lords, we submit that the requirements for the grant of applications to adduce fresh or additional evidence on appeal have been established by this Honourable Court in a plethora of cases, and they are as follows:

- (a). It must be shown that the evidence sought to be adduced in evidence could not have been obtained with reasonable diligence for use at the trial.
- (b). The fresh evidence must be such that if given, it would probably have an important effect on the result of the case, although it need not be decisive; and
- (c). The evidence must be such as is presumably to be believed, in other words it must be apparently credible.

3.5 In the case of **UZODINMA vs. IZUNASO (2011) 17 NWLR (Pt. 1275) 30, @ 53 para G – H**, the Supreme Court considered a similar application for leave to adduce additional evidence on appeal, and noted as follows:

“Learned counsel for the Appellant, Chief W. Olanipekun SAN observed that trial took just three days and judgment was delivered on 28/1/2011, he thus had very little time to assemble relevant documentary evidence, including exhibit HU2. He further observed that it was on 7/4/11 that he obtained from the PDP Secretariat the extract of the NWC meeting of 5/1/2011 - exhibit HU2. He submitted that the documentary evidence (exhibit HU2) is clear and unambiguous and no further evidence is to be adduced on it.”

3.6 The Court in granting the application as prayed, held as follows at page 55 paragraphs B – C thereof:

The discretion to grant leave to admit new evidence, fresh evidence or additional evidence is properly exercised if it is for the furtherance of justice. Judges must exercise that

power sparingly and with caution. This is so because granting the application could amount to allowing the applicant to reopen his case or present a new case. The application should be granted if the applicant is able to satisfy the court that it was extremely difficult or not possible to obtain the evidence before trial and it is in the interest of justice that the said evidence is led."

- 3.7 Not too long ago, the Supreme Court in the case of **NIGERIA CUSTOMS SERVICE BOARD & ANOR v. INNOSON NIGERIA LIMITED & ORS** (2022) 6 NWLR (Pt. 1825) page 82 at 98; (2022) LPELR-56659(SC) *per* Abubakar JSC, while allowing an application for leave to adduce fresh evidence, held as follows:

"Similarly, this Court in ADEGBITE & ANOR V. AMOSU (2016) LPELR-40655 (SC) held as follows: "Thus, documents not tendered at the trial Court due to inadvertence of counsel, can be tendered on appeal as fresh evidence in the interest of justice. See: Jadesimi v. Okotie-Eboh (1986) 1 NWLR (Pt.16) 264. Further, in Adeleke v. Aserifa (supra). The law was restated by Karibi-Whyte in his contribution in the above case as follows: "Hence where evidence is available and could with reasonable care and diligence be made available to the applicant at the time of the trial, as in the instant case, the Court of Appeal will refuse to exercise its discretion to receive such evidence. However, if applicant referred to the document in his pleadings or evidence but did not tender it, the appellate Court can admit it. See Latinwo v. Ajao (1973) 2 SC 99'. See also; ELUGBE V. OMOKHAFE (2004) 18 NWLR (Pt.905) 319; OLALOMI LND. LTD. V. NIDB LTD. (2009) 16 NWLR (Pt.1167) 266; TIAMIYU V.

OLAOGUN (2008) 17 NWLR (Pt.1115) 86. From the applicant's supporting affidavit, the evidence sought to be adduced is the payment of the sum of N700,220,000.00 to the 2nd Respondent as full and final payment of the entire judgment debt after making of the decision of the trial Court in the garnishee proceedings. From the record, the said evidence was not in existence at the time the proceedings in the trial Court took place."

"From the authority cited herein, this Court is empowered to allow an applicant raise fresh points on appeal where refusal to allow the new points will occasion miscarriage of justice. It is obvious from the materials before us that the Respondent herein obtained Judgment of the lower Court concealing material facts, and the facts alleged by the applicant are such that may have the effect of swinging the decision of this Court one way or the other, the issues sought to be raised are therefore fundamental, justice of this case therefore demands that the application be granted as prayed."

- 3.8 Also, in *DIKE-OGU VS AMADI (2020) 1 NWLR PART 1704, p 45@65*, the Supreme Court held as follows:

"Allowing fresh evidence to be adduced in this appeal by a requesting or desiring party is not the exclusive preserve of the applicants. The respondents may as well have taken benefit by applying to adduce any such fresh but relevant evidence. Whichever way one looks at it, what should be paramount in the mind of the court is whether permitting fresh evidence to be adduced will be in furtherance of the course of justice to the extent that it would assist the court to resolve the issue before it fairly, justly and equitably."

- 3.9 We submit that discernable from the above decisions is one single requirement, that is the need to do justice fairly, equitably and justly.
- 3.10 We humbly submit that the grant of the present Application will certainly be in furtherance of the course of justice in this matter. This is a case in which the 2nd Respondent was returned purportedly as the winner of the said election to the office of the President of the Federal Republic of Nigeria, and the Appellants/Applicants have amongst other grounds, challenged the election of the 2nd Respondent on the ground of his qualification to contest the said election and more especially on the basis that the 2nd Respondent's presented a forged document to the Independent National Electoral Commission. The Appellants/Applicants have also in their appeal challenged the striking out of their pleadings raising the issue of qualification of the 2nd Respondent to contest the said election.
- 3.11 The evidence required to establish that the certificate presented by the 2nd Respondent to the 1st Respondent in support of his qualification to contest the said election is the deposition from the Chicago State University, which deposition did not become available until after the determination of the case by the lower Court. The said evidence is now available, and forwarded to this Honourable Court.
- 3.12 We submit that the Appellants/Applicants have successfully explained the delay and difficulties in obtaining the said evidence earlier than now, and all the necessary steps taken to obtain the evidence and to present same to this Honourable Court.
- 3.13 We submit that a successful proof of the said allegation will render the 2nd Respondent unqualified to have contested the said election *ab initio* for presentation of forged certificate to the Independent National Electoral Commission (INEC) pursuant to the provisions of Section 137(1)(j) of the Constitution, being a weighty matter of constitutional importance. The Supreme Court had the opportunity in the case of

SALEH vs ABAH & ORS (2017) LPELR-41914(SC) page 1 at 28 to declare in respect of such situations as follows:

“The intention of the Constitution is that anyone who had presented a forged certificate to INEC should stand automatically disqualified for all future elections if, as in this case, a Court or tribunal finds the certificate to have been forged, and it matters not whether or not such fact is further fraudulently or desperately concealed in subsequent elections or declaration forms. No decent system or polity should condone, or through judicial policy and decisions, encourage the dangerous culture of forging certificates with impunity to seek electoral contest.”

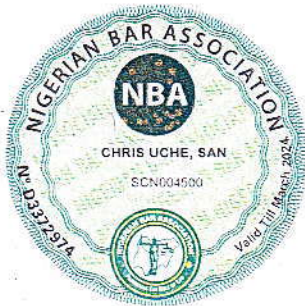
3.14 We submit that a weighty constitutional issue as the one raised in this matter is akin to a jurisdictional issue which is so fundamental and important that it can be raised at any time and in any manner in the course of the proceedings or on appeal.


4.0 **CONCLUSION:**

4.1 In the light of the foregoing argument, we most respectfully urge the Honourable Court to resolve this issue in favour of the Appellants/Applicants and grant this Application.

4.2 May it so please your Lordships.

DATED AT ABUJA THIS 5th DAY OF OCTOBER 2023




Chief Chris Uche, SAN ✓
Eyitayo Jegede, SAN,
Prof. Mike Ozekhome, SAN,
Nella Andem-Rabana, SAN
Ken Mozia, SAN,
Dr. Garba Tetengi, SAN,

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B.F Folorunsho Esq.,
Genevieve A. Okereke Esq.,
Jude A. Daniel Esq.,
Ngozi Princess Dimkpa Esq.,
Olajumoke Olawoyin Esq.,
Nheoma Ndu Asobinuanwu Esq.,
Osilama Mike Ozekhome Esq.,
Mike Uche Esq.,
John Odeh Esq.,
Oshomha Mike Ozekhome, Esq.,
Joshua H. Barka Esq.,
APPLICANTS' COUNSEL,
c/o Chief Chris Uche (SAN) & Co,
Angels Court,
34 Kumasi Crescent,

Wuse 2, Abuja.

uchesan@nigerianbar.ng

Tel: +234-807-853-777 & +234-8037874792.