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PRESIDENTIAL ELECTION PETITION COURT 2023
J.J EKPEROBE Esq

IN THE COURT OF APPEAL/PRESIDENTIAL ELECTION PETITION TRIBUNAL HOLDEN AT ABUJA

ON MONDAY THE 22ND DAY OF MAY, 2023

BEFORE THEIR LORDSHIPS:

HARUNA SIMON TSAMMANI, JCA	-	CHAIRMAN
STEPHEN JONAH ADAH, JCA	-	MEMBER 1
MISITURA OMODERE BOLAJI-YUSUF, JCA	-	MEMBER 2
BOLOKUROMO MOSES UGO, JCA	-	MEMBER 3
ABBA BELLO MOHAMMED, JCA	-	MEMBER 4

PETITION NO: CA/PEPC/05/2023

BETWEEN:

1. ABUBAKAR ATIKU
2. PEOPLES DEMOCRATIC PARTY (PDP) } PETITIONERS/APPLICANTS

AND

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

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RULING

(DELIVERED BY HARUNA SIMON TSAMMANI, JCA)

This Ruling is in respect of a Motion on Notice filed by the Petitioners/Applicants pursuant to Section 36(3) and 39(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Paragraph 19 of the First Schedule to the Electoral Act, 2022, Order 21 rules 1 – 7 and 25 rule 27 of the Court of Appeal Rules and Articles 10, 19 and 21 of the Universal Declaration of Human Rights. By the said Application, the Petitioners/Applicants sought the following reliefs:

CTC - ₦1000/-

PRESIDENTIAL ELECTION PETITION COURT 2023 PAID DATE 24/5/23
RR: 2708-4231-1534

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1. ***AN ORDER of this Honourable Court allowing the televising of the proceedings in this Petition given its Monumental National Import and Significance.***

2. ***AN ORDER of this Honourable Court directing the court's Registry and the Parties on modalities for admission of media practitioners and their equipments into the courtroom.***

AND FOR SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstance of this Suit.

The Grounds upon which the Application is predicated are as follows:

(1) The matter before the Honourable Court is a dispute over the outcome of the Presidential Election held on 25th February 2023, a matter of national concern and public interest, involving citizens and voters in the 36 States of the Federation and the Federal Capital Territory, Abuja, who voted and participated in the said election; and the International Community as regards the workings of Nigeria's Electoral process.

(2) Being a unique electoral dispute with a peculiar constitutional dimension, it is a matter of public interest whereof millions of Nigerian citizens and

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voters are stakeholders with a constitutional right to receive.

(3) An integral part of the constitutional duty of the Court to hold proceedings in public is a discretion to allow public access to proceedings either physically or by electronic means.

(4) With the huge and tremendous technological advances and developments in Nigeria and beyond, including the current trend by this Honourable Court towards embracing electronic procedures, virtual hearing and electronic filing, a departure from the Rules to allow a regulated televising of the proceedings in this matter is in consonance with the maxim that justice must not only be done, but must be seen to be done.

(5) Televising court proceedings is not alien to this Honourable Court, and will enhance public confidence.

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The Motion is supported by a 9 paragraphs Affidavit deposed to by one Nanchang Ndam, a Litigation Secretary to counsel for the petitioners/Applicants.

In opposition to the Motion, the 1st Respondent filed a 14 paragraphs Counter-Affidavit deposed to by one Ayuba Mohammed, a Staff of the 1st Respondent. The Counter Affidavit is supported by some documents marked as Exhibits. A Written Address was also filed along with the Counter-Affidavit. The

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3rd Respondent also opposed the Application by filing a Counter-Affidavit of 18 paragraphs deposed to by one Emmanuel Okon, Litigation Secretary in the Law Firm of lead Senior Counsel for the 3rd Respondent. Some documents were annexed to the Counter-Affidavit and marked as Exhibits. A Written Address was also filed along with the said Counter-Affidavit.

In arguing the sole issue raised for determination, Chief Chris Uche, SAN for the Petitioners/Applicants cited the cases of **Sun Publishing Ltd. v. Aladinma Medicare Ltd. (2016) 9 NWLR (Pt. 1518) 557 at 609 Para. H** and **610 para. D** and **Edibo v. State (2007) 13 NWLR (Pt. 1051) 306** to submit that, those authorities read along with paragraph 19 of the Rules of Procedure for Election Petition (1st Schedule to the Electoral Act, 2022) indicate that the proceedings of this court should be in public or made open to all. That media coverage of proceedings of court has become the norm in western climes where a large portion of Nigeria's jurisprudence evolved. He then opined that, time has come for us to expand the frontiers and allow coverage of the entire proceedings. That to do so would curtail the negative effect of social media and eliminate to a large extent the dissemination of fake news on the proceedings since the public will have firsthand knowledge and appreciation of the Court's proceedings.

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In response, A. B. Mahmoud, SAN of learned Senior Counsel for the 1st Respondent argued that, from the Counter-Affidavit filed, there is the special need to protect the bench, the bar as well as witnesses that may be called to testify. That while Section 36(3) of the Constitution relied upon by the Applicants provides that proceedings shall be held in public, paragraph 19 of the First Schedule to the Electoral Act provides that proceedings in election Petition shall

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be held and determined in an "Open Court". That in determining the case of **Edibo v. State (supra)**, the Supreme Court relied on **Oviasu v. Oviasu (1973) 11 S.C. 315** to hold that:

> ***"Public" means, for the use of everyone without discrimination; anything, gathering or audience which is not private is public".***

Learned senior counsel then contended that, what the constitution require is that a proceeding of court should not be done in private or privately. The case of **Kosebinu & Ors. v. Alimi & Ors. (2005) LPELR – 11442 (CA)** was cited in support where the word "public" in Section 36(3) of the constitution was defined as follows:

> ***"A place qualifies under Section 36(3) of the Constitution to be called "Public" and which a regular court room is, if it is outrightly accessible and not so accessible on the basis of the permission or consent of the Judge".***

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The learned senior counsel then urged us to hold that televising the proceedings will obviously take the proceeding from the court and place it in the hands of the media practitioners whose impartiality and independence cannot be guaranteed. We were accordingly urged to dismiss the Motion.

The learned senior counsel for the 2nd Respondent, in opposing the Application contended that this Motion is alien to this proceedings and has no nexus with this Petition. In other words, that there are no facts directly related or contiguous to the cause of action before the court. That Section 39(9) of the

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Constitution and all other regulations do not empower the court to televise the proceedings of the court. The case of **Adewale v. IBWA (1991) 7 NWLR (Pt. 204) 498 at 507** was then cited to argue that an interlocutory application must have a direct bearing with the substantive cause of action as no court will grant a relief to a party who does not stand to derive any benefit therefrom. The cases of **Nyako v. Adamawa State House of Assembly (2017) 6 NWLR (Pt. 1562) 347 at 379** and **Olaniyan v. Adeniyi (2007) 3 NWLR (Pt. 1020) 1 at 25 – 26** were also cited in support.

Learned senior counsel for the 2nd Respondent went on to submit that, the entire prayers of the Petitioners/Applicants seek orders of this court on a policy issue or subject matter that is strictly reserved for the Honourable President of the Court of Appeal by virtue of Section 248 of the 1999 Constitution. The cases of **Olaniyan v. Adeniyi (supra), Adesanya v. President of the Federal Republic of Nigeria (1981) 5 S.C. 112** at **152** and **158 – 159** and **Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669** were then cited to submit that, a person who brings an action for determination by the court must seek a relief which brings some benefit to him otherwise, the action will be an exercise in futility. That, the mere fact that the Applicants are petitioners does not invest them with the role of "Archivists" (sic) to build a shrine around the purported issue of global fair hearing on behalf of the general public in Nigeria and in the Diaspora.

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Learned senior counsel for the 2nd Respondent also raised the issue of security which the grant of the Application may generate thus endangering the lives of all involved in the proceedings. That when the law requires proceedings to be held in public, it means a place where members of the public have

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unhindered access. The cases of **Nuhu v. Ogele (2003) 18 NWLR (Pt. 852) 251** and **Alimi v. Kosebinu (2016) 17 NWLR (Pt. 1542) 337 at 356 – 357** were cited in support.

In opposing the Application, Prince Lateef O. Fagbemi, SAN of learned senior counsel for the 3rd Respondent submitted that by Section 6 of the 1999 Constitution, this Court is a superior court of record. Learned senior counsel went on to submit at page 6 of the 3rd Respondent's Written Address that:

> ***"Raw testimonies of witness as delivered in the witness box do not form part of the record of the proceedings – it is only when and only as admitted into evidence and recorded by the court that they constitute binding and reportable proceedings of court. A live broadcast of raw testimonies on live television and radio and on the internet without any distortion in the court record is next to inconceivable. That testimony ought to be duly certified as official record of court in the manner provided for under the Evidence Act. 2011 and Court of Appeal Act, 2004 (as amended). They are different from processes duly filed in court and prepared rulings and judgments of court which must be vocally pronounced in open court, but only after or simultaneously as it is being written. See Section 294 of the Constitution on mandatory requirements for court to deliver judgments in***

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writing. Not surprisingly, this court has hitherto adopted the procedure of having such written judgments delivered and broadcast live".

The above quoted argument captures in practical terms the norm of our court practice as decreed by the ground norm which is the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Learned counsel then concluded by urging us to dismiss the Application.

I have carefully considered and soberly reflected on all the arguments of court both parties in their Written Addresses and in adumbration in court. Before I proceed to pronounce on the fate of the Application, it should be noted that the Motion under consideration is an Interlocutory Application. Like all interlocutory application must be rooted or anchored on the cause of action or claim before the court. Therefore, for the purposes of this proceedings, it must take root from Petition filed before this court. See **Saraki v. Kotoye (1990) 4 NWLR (Pt. 143) 144** and **Anazonnu Iloegbu & Ors.** Thus in **Ohonuwa v. Oshodin & Anor. (1985) LPELR – 2654 (SC)**, the Supreme Court held that:

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"Interlocutory applications and proceedings are but a handmaid and aid to enable the court to reach the ultimate goal of doing substantial justice between the parties in the issues in litigation between them".

The Petitioners/Applicants have brought this application praying that this Court makes an order permitting the televising of the proceedings in this Petition given the monumental national import and significance. Therefore, I find it necessary to consider what the relationship of this application and the

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substantive dispute before us is. The Petitioners/Applicants brought this Motion principally under Sections 36(3) and 39(1) of the 1999 Constitution. To that extent, I find it expedient to reproduce the provision of Section 36(3) of the Constitution. It stipulates as follows:

> ***"The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in sub-section (1) of this Section (including the announcement of the court or tribunal) shall be held in public".***

The phrase to be "held in public" simply means that the proceedings shall not be held in secret. It does not mean that the court must sit in a stadium or market square. Conducting proceedings in public is no more than holding same in a place designated as "a Court" where the parties, their counsel, witnesses and members of the public including the press can have unhindered access. See **Edibo v. State (2007) 13 NWLR (Pt. 1051)306 and Dododo v. E.F.C.C (2013) NWLR (Pt. 1336) 468.**

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This application, to my knowledge is a novel or unprecedented one in this country. The fundamental right of fair hearing under Section 36 of the 1999 Constitution is essentially enshrined to ensure that all parties in every case are heard. The right is created as a fundamental right created for the parties in dispute. The nature and essence of such fundamental right to fair hearing was lucidly explained by Ariwoola, JSC (as he then was) in **Okanlawon v. The State (2015) LPELR – 24838 (SC)** as follows:

> ***"The principle of fair hearing as constitutionally guaranteed in Section 36 of the 1999 Constitution, no doubt is derived from***

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the principle of Natural Justice with its twin pillars of "audi alterem partem" and "nemo judex in causa sua". This principle of fair hearing is no doubt fundamental to the administration of justice. The court is required to conduct trial or hearing of a case with all fairness to both parties to the suit and without bias or partiality in favour of or against either party. It is note worthy that complaint of breach of fair hearing is usually against the court or tribunal, whether the parties before the court were afforded equal opportunity to fully ventilate their grievance. See Peters Pam & Anor. v. Mohammed & Anor. (2008) 5 – 6 SC (Pt. 1) 83; Deduwa v. Okorodudu (1976) NMR 236 at 246; (1976) 9 – 10 SC 329".

Similarly in **Inakoju v. Adeleke & Ors. (2007) LPELR – 1510 (SC)**, Niki Tobi, JSC (of blessed memory) situated the issue in the following words:

"Section 36 of the 1999 Constitution provides for the fair hearing in the determination of the civil rights and obligations of a person. The constitutional provision mainly stems or germinates from two common law principles of natural justice. They are audi alteram partem and nemo judex in causa sua.

It is the first of the two that is relevant to this appeal. The meaning of the Latinism is "hear the other side; hear both sides. No man should be condemned unheard". See Black's Law Dictionary, 6th Edition, page 131.

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What the rule or doctrine means is that the parties must be given equal opportunity to present their cases to the court and that no party should be given more opportunity or advantage in the presentation of his case. See generally LPDC v. Fawehinmi (1985) 2 NWLR (Pt. 7) 300; Onwumechili v. Akintemi (1985) 3 NWLR (Pt. 13) 504; Garba v. The Univesity of Maiduguri (1986) 1 NWLR (Pt. 18) 550".

It is clear to me therefore, that the fundamental right to fair hearing is not intended to be applied at large. It cannot be said to be advanced by the televising of the Court's proceedings. The right to fair hearing cannot therefore advance any utility value to the parties' case in the manner presented before the Court. In other words, the reliefs sought by this Application are clearly outside the substance of the Petition of the Applicants presented before this Court. It has not been established that by televising the proceedings, the rights or claims that is specific and peculiar to the parties to the Petition will be advanced. The only utility value of this Application is the mere sentimental claim that it will benefit the voters that voted in the 36 States of the Federation and the Federal Capital Territory, Abuja.

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I wish to reiterate that, the request for televising of Court proceedings is novel and has no utilitarian value to add to the conduct of proceedings in this Petition. In any case, televising of court proceedings is not provided for in any of our Laws, substantive or procedural. This Court does not exist in a cloud. It is a creation of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Its original jurisdiction in election disputes has been donated by Section 239(1) of the 1999 Constitution. Therefore, this Court constituted to hear

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and determine this Petition can only be guided and act as far as this Application is concerned, in accordance with the practice and procedure made by the President of the Court of Appeal in the exercise of the powers granted by Section 248 of the 1999 Constitution. For the moment no such procedure permitting the televising of Court proceedings has been made. Though learned senior counsel for the Applicants has encouraged us to embark on such proceeding on the ground that if we do not accede to the Application on the ground that it has never been done before, the world will leave us behind, we wish to remind counsel that this Court is guided by Rules and Procedure. This Panel sitting as a Presidential Election Court only have the power to hear and determine the Petition before us and not to act as avant-garde, zealous to experiment with the procedure suggested.

I find it necessary to remind us that, the requisite Legislations made by the National Assembly, dealing with the practice and procedure of this Court in Election matters are Section 140 of the Electoral Act, 2022. Section 140 of the Electoral Act, 2022 stipulates that:

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"140. (1) The rules of procedure to be adopted for election petitions and appeals arising therefrom shall be as set out in the First Schedule to this Act.

(2) The President of the Court of Appeal may issue practice directions to the –

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(a) Court of Appeal, in respect of pre-election and post-election appeals; and

(b) Election Tribunal, in respect of post-election matters".

Having perused the provisions of the Court of Appeal Practice Directions on pre-election, and political parties' Leadership Matters, 2021, I can find no stipulation therein where this Court is given the power to permit televising of its proceedings. Thus in the case of **Gbaniyi Osaafile & Anor. V. Paul Odi & Anor. (1990) LPELR – 2783 (SC),** the Supreme Court per Nnaemeka Agu, JSC explained the purport of Rules of Court as follows:

> ***".....the "practice" of a Court ordinarily means the rules that make or guide the cursus curiae, and regulates procedure, within the precincts of the court. So, in the technical sense, rules of practice denote the mode of proceedings by which a legal right is determined and enforced, as distinguished from the law, which gives or defines the right. See Lush, L. J. in Poyser v. Minors L.R. 7 Q.B.D. 325 at p. 333; Lever Brothers Ltd. V. Knede & Bagnall (1937) 2 K.B. 87; and Re Shoe Smith (1938) 2 K.B. 637".***

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It is clear therefore, that rules of court govern the practice and procedure of Court, including this Court. There is nowhere in the First Schedule to the Electoral Act, 2022 or other Rules of this Court, that provision is made for televising of the proceedings of this Presidential Election Petition Court. Furthermore, the issue is a policy matter which can only be established by the

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custodians of the judiciary. Since no such practice and procedure has been established, this Court set up to hear and determine this Petition has no power to set up that policy. In any case, we cannot permit a situation that may lead to dramatization of our proceedings and impairment of the dignity of the hearing of the Petition. A casual look at the information in the documents annexed to the various Counter-Affidavits of the Respondents gives us a glimpse of what to expect if this Application that is craved by the Petitioners/Applicants is granted.

Having found as above, I am of the firm view, that this Application is devoid of any merit. It is accordingly dismissed.

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HARUNA SIMON TSAMMANI, JCA
(CHAIRMAN).

J.J EKPEROBE Esq

COUNSEL:

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Chief Chris Uche; SAN, Eyitayo Jegede, SAN, Prof. Mike Ozekhome, SAN, Nella Adem-Ewa Rabana; SAN, Ken E. Mozia; SAN, Joe Abrahams; SAN, Emeka Etiaba; SAN, Edward Ashiekaa; SAN, A. K. Ajibade; SAN, Olusegun Jolaawo; SAN and Andrew M. Malgwi; SAN with Ifeanyi Iboko; Esq, Prof. Yusuf Dankofa; Esq and M. S. Atolagbe; Esq for the Petitioners.

A. B. Mahmoud; SAN, Dr. Kami Pinheiro; SAN, Miannaya Essien; SAN, A. Aliyu; SAN, T.M. Inuwa; SAN, A. A. Umar; SAN, Abdulaziz Sani; SAN and S. O. Ibrahim; SAN with Nasara H. Auta; Esq; Aminu Sadauki; Esq and Patricia K. Obi; Esq for the 1st Respondent.

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Chief Wole Olanipekun; SAN, Yusuf Ali; SAN, Adebayo Adelodun; SAN, Mike Igbokwe; SAN Olatunde Busari; SAN, Dr. Muiz Banire; SAN, A. U. Mustapha; SAN, Prof. L. Fagbohun; SAN, A. A. Malik; SAN and M. O. Adebayo; SAN with Tafa Ahmed; Esq, Hellen Usenekong; Esq and AKintola Makinde; Esq for the 2nd Respondent.

L.O Fagbemi; SAN, Chief A. Akintola; SAN, A. J. Owonikoko; SAN, Prof. Dakas Dakas; SAN and Rotimi Oguneso; SAN with Ahmad EL-marzuq: Esq, Seun Ajayi; Esq and Omosanya Popoola; Esq for the 3rd Respondent.

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APPEAL NO: CA/PEPC/05/2023
STEPHEN JONAH ADAH, JCA

RULING

I was privileged to read in draft the Ruling just delivered by my lord Presiding **Hon Justice Haruna Simon Tsammani, PJCA.**

I am in complete agreement with the lead Ruling and I too do hold that the issue of Televising live, the proceedings of this court is a policy decision which can only be put in place by the Judiciary. This policy has not yet been legislated or set in place by the Judiciary so this court as the Presidential Election Petition court has no authority to draw up the policy. I too do agree with the lead Ruling that the motion has no merit. It is hereby dismissed by me.

STEPHEN JONAH ADAH
JUSTICE, COURT OF APPEAL
24th/05/2023

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MISITURA OMODERE BOLAJI-YUSUFF

I have read in advance the lead ruling just delivered by my learned brother, HARUNA SIMON TSAMMANI, JCA. I agree with his reasoning and conclusion therein. Allowing cameras in the courtroom for live televising of court proceedings is a major judicial policy which must be provided for by the law and/or rules of court. There is none yet. Since we are in search of truth and justice, we must avoid all extraneous influences which tend to or may increase tension inside and outside the court room and have adverse effect on fair trial guaranteed by the Constitution. No one can predict or guarantee the effect of presence of cameras in the courtroom on the witnesses, counsel and all those involved in the trial during or after the proceedings. Avoidance of trial by ordeal of camera will better serve the interest of justice in this case. For these and the fuller reasons ably stated in the lead ruling, I too dismiss this application.

MISITURA OMODERE BOLAJI-YUSUFF

JUSTICE COURT OF APPEAL

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J.J EKPEROBE Esq

CA/PEPC/05/2023

BOLOUKUROMO MOSES UGO, J.C.A.

I had a preview of the ruling just delivered by my learned brother, the Presiding Justice of the panel, the Hon. Justice **Haruna Simon Tsammani (PJCA)**. I agree with his reasoning and conclusion. I am also of the humble opinion that the decision to live-stream or broadcast live the proceedings of this Court is one purely of policy and so subject of administrative decision for the leadership of this Court nay the Judiciary.

Besides, it is even highly debatable if live-streaming of the proceedings of this Court, with all the baggage it will bring, is suited for the very special ***sui generis*** proceeding that an election petition trial is. An election petition trial is undoubtedly one of very high stakes, especially in these climes. In fact, to the best of my knowledge, the only court proceeding that has specific time stipulated by the Constitution of this country for its disposal is election petition proceeding. It is also the only proceeding under our laws in which parties are allowed to mask the identity of their witnesses until they enter the witness box.

All the foregoing underlines the sensitive and very delicate and emotive nature of election petitions. Not even criminal cases of the most sensational type enjoy these additional safeguards provided by the laws. We should therefore be careful not to expose witnesses to unnecessary risk.

Election Petition proceedings should not be ALSO equated with the Hollywood trials of O.J. Simpson of the United States of America or even the famous Bladerunner Oscar Pistorius of South Africa of few years back that were referenced by the applicant.

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In any case, there is also no provision in our Laws and Practice Directions guiding the conduct of such live-broadcast.

For all these reasons and those adumbrated in the lead ruling of the Presiding Justice, I also see no merit in this application and hereby dismiss it.

BOLOUKUROMO MOSES UGO
JUSTICE, COURT OF APPEAL
MEMBER 3

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ABBA BELLO MOHAMMED, JCA

I had the privilege of reading a draft of the lead ruling just delivered by my learned brother, HARUNA SIMON TSAMMANI, JCA. I agree and adopt as mine all the reasons and conclusions stated therein.

I must emphasize that one of the fundamental features of a court of law is that it remains accountable only to the Constitution and the law. It is for this reason that adjudication by our courts requires independence in its exercise, including independence from public opinion and/or public pressure. Although it may be desirable that court proceedings be live-streamed for the public, particularly in public interest litigations, such live-streaming must only be done after appropriate safeguards are put in place by way of judicial policy or other regulatory framework, in order to prevent such court proceedings from being unduly influenced by public opinion and/or public pressure. It needs no equivocation that election petitions, which is the subject of this proceedings, rank highest among public interest litigations that are susceptible to public pressure. Indeed, it is for this reason that they are treated as *sui generis.*

Although our Constitution and our laws mandate that court proceedings be conducted in public, none of them provides for the live-streaming of court proceedings. In all the countries stated by the Petitioners/Applicants as having embarked on live-streaming of court proceedings, appropriate policies and regulatory frameworks were first put in place before doing so. In our case, there is no judicial policy or any regulatory framework for live-streaming of the proceedings

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of this Court. Hence, this Court has no vires to order same. It is for this and the fuller reasons espoused in the lead ruling that I also dismiss this application for lack of merit.

ABBA BELLO MOHAMMED
JUSTICE, COURT OF APPEAL

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