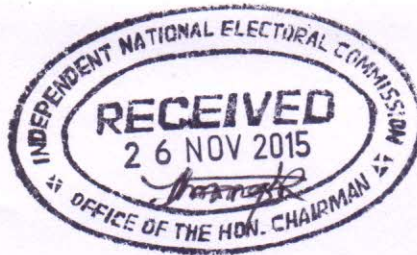


26th November, 2015
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VERY URGENT

The Chairman
Independent National Electoral Commission (INEC)
INEC National Headquarters
Abuja.



ATTENTION: PROF. MAHMOOD YAKUBU

Dear Respected Chairman,

RE: JUST CONCLUDED GOVERNORSHIP ELECTION IN KOGI STATE

We act as counsel to **Honourable James Abiodun Faleke** ('our client'), the **APC** deputy governorship candidate in the just concluded governorship election in **Kogi State**, and we have his instruction to write the **INEC**, through your highly distinguished self, on the above subject as follows:

- (i) The **Independent National Electoral Commission (INEC)** conducted election to the office of **Governor of Kogi State** on **Saturday, 21st November, 2015**. The election was held in all the **21 Local Government Areas** of the **State**; and to the best of our client's knowledge, information and belief, the said election was peaceful, and also in substantial conformity and compliance with the provisions of the **Electoral Act, 2010 (as amended)**.
- (ii) In accordance with the **Electoral Act** and **INEC Guidelines/Regulations**, results of the election were declared, first at the polling unit level, then at the ward level, and later at the **Local Government level**. As the declarations were being made by **INEC**, same were also being relayed and announced on radio and television stations (both private and public), as well as the social media. The necessary **INEC Forms**, including but not limited to **Forms EC8A, EC8B, EC8C** etc. have also been duly filled, signed and made available to the respective parties who participated at the elections. The front page of each of the **national dailies** (or most of them) of **November 23rd, 2015** highlighted in painstaking details the results of the election; **Local Government Area by Local Government Area**, as released by **INEC**.
- (iii) Despite (i) and (ii) *supra*, **INEC** curiously announced that the election was inconclusive, and that a supplementary election would hold in some polling units on **December, 5, 2015**.



- (iv) The election to the office of Governor is regulated by **sections 178 and 179** of the **Constitution** of the **Federal Republic of Nigeria, 1999 (as amended)**, while nomination to the office is regulated by **section 187** of the same **Constitution**. Our client believes that election to the office of **Governor of Kogi State** had been conducted and completed in accordance with the provisions of the **Constitution**. Therefore, **INEC** has no alternative or discretion other than to announce the result of the election and declare our client as the winner. With much respect to **INEC** under your very distinguished chairmanship, the reasons given by **INEC** for declaring the election as inconclusive are alien to the **Constitution** and, therefore, unconstitutional. With further respect to **INEC**, cancellation of election results by it cannot be a ground for declaring any election as inconclusive. **INEC** is enjoined to declare a winner of an election based on lawful votes cast. Thus, the cancelled results by **INEC**, for whatever reasons, and assuming without conceding that **INEC** could legitimately cancel such results, amount to unlawful votes. In effect, **INEC** cannot declare a well conducted election as inconclusive based on unlawful votes.
- (v) Although an unfortunate and saddening incident had occurred after the announcement of results of the election and the subsequent pronouncement of **INEC** that the election was inconclusive. The point must quickly be made that **INEC's** wrong declaration has no nexus with the passing on of the respected politician. In other words, **INEC's** declaration of inconclusiveness of the election and ordering a supplementary election in **91** polling units was arrived at, according to the Returning Officer, on the basis **'that the number of cancelled votes outnumbered the number with which the candidate of APC led the candidate of the PDP'**. With much respect to **INEC** and the highly distinguished Chairman, this reasoning of **INEC** is *non sequitur*. While as at **Monday, 23rd November, 2015**, **INEC** still insisted that it was not aware of **Prince Abubakar Audu's** transition, however, **INEC** later on directed the APC to go and conduct another primary election to nominate its candidate for the supplementary election in **91** polling units. With much respect to **INEC**, this new directive as well, is unfounded, both legally and constitutionally. It can also not be reasonably or rationally defended. Our client is of the opinion that **INEC** is inadvertently prompting an avoidable political and legal crisis. What **INEC** should do is to obey, respect and comply with the letters, spirit, intendment and tenor of the **Constitution**, by not only declaring **APC** as the winner of the election, but by also declaring our client as the Governor-elect.
- (vi) May we draw Mr. Chairman's attention to the clear and mandatory provision of **section 68(1)(c) of the Electoral Act** to the effect that any result declared by Returning Officer shall be final and binding, and can only be



reviewed or upturned by an Election Tribunal. In effect, the results already announced by INEC are binding, not only on all the parties, but also on INEC itself. We want to believe that INEC is not unaware of binding decisions of our appellate courts on this issue. Furthermore, by the provision of **section 181(1)** of the **Constitution**, our client, who was the deputy governorship candidate or the associate of Prince Abubakar Audu at the already concluded election constitutionally and automatically becomes the governor-elect of the State. With much respect, **INEC** has no discretion in this matter. May we advise, most humbly, that INEC should not confuse this situation with what is intended in **section 33** of the **Electoral Act** because the situation on ground has nothing to do with changing or substitution of the name of a candidate before election. In fairness to **INEC**, it had already announced the results of the election, and, as at the time it so did, it honestly claimed ignorance of the death of Prince Abubakar Audu.

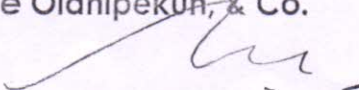
- (vii) In law and logic, no new candidate can inherit or be a beneficiary of the votes already cast, counted and declared by **INEC** before that candidate was nominated and purportedly sponsored. Assuming without conceding that **INEC** is even right to order a supplementary election, the votes already cast, counted and declared on **Saturday and Sunday, 21st and 22nd November, 2015** were votes for the joint constitutional ticket of **Prince Abubakar Audu** and our client. Therefore, no new or 'supplementary' candidate can hijack, aggregate, appropriate or inherit the said votes. Assuming further, without conceding, that supplementary election in **91** polling units can hold as being suggested by **INEC**, it is our client who should be the automatic candidate of the party, since **APC** cannot conduct primary election for the supplementary election in **91** polling units.

Mr. Chairman sir, this is a rather simple and straight forward matter which does not need any delay, foot dragging or procrastination. It is a constitutional imperative. Put in another way, **INEC** has a bounden duty to declare our client as the winner of the election. Any attempt to conduct any supplementary election in any unit whatsoever and howsoever will amount to **INEC** breaching and flouting the **Constitution**, and our client would definitely challenge it.

Mr. Chairman, accept the assurances of our highest regards.

Yours faithfully,

Wole Olanipekun, & Co.


Chief Wole Olanipekun, OFR, SAN, LL.D, FCI Arb, FNIALS

