



## **The Role Of Fair Hearing In The Dispensation Of Justice In Nigeria - A Legal Perspective**

**CHIGOZIE NWAGBARA, LL.M**

**Law Author & Lecturer, Faculty of Law**

**Nigeria Police Academy, Wudil, Kano State, Nigeria**

**Email: hichibaby@yahoo.com; +2348033335091**

### **ABSTRACT**

This paper analyses the critical role of the concept of fair hearing in the dispensation of Justice from the Legal Perspective as the title portrays. The nature of Fair Hearing is that it is a Constitutional Right guaranteed to all persons coming before every Court of Law. Fair hearing is founded on the twin pillars of Natural Justice couched in the maxims *audi alteram partem* and *nemo iudex in causa sua*. These two tenets of fair hearing are entrenched in Section 36 of the 1999 Constitution of the Federal Republic of Nigeria. Once there is an infringement of the principles of natural justice, the trial cannot be fair. Hence, it is suggested in the conclusion to this work that there should be no infringement on any Party's right to fair hearing, as the effect would be that the entire judgment will be set aside as null and void on Appeal. Judges and those sitting over disputes in their respective capacities should do away with bias and myopic sentiments which are the worst obstacles towards the achievement of any fair hearing, so that the dispensation of justice will be a Reality rather than a Myth. In the absence of justice being achieved, the establishment of the Law Courts and Tribunals will be a waste of time and Resources on the part of any Government. Where the Law Courts cannot achieve their aim of giving sound judgments, anarchy can easily be foreseen. It is also bad that at times, the Law Courts get pressurized by certain forces to give biased judgments. This is absolutely wrong. The Judiciary is an Independent arm of Government, and it has always been this way in most civilized Jurisdictions of the world. Therefore, it is desirable that it should equally be left to perform its functions without threat or any hindrance from any other Arm of Government, Quarters or Law Enforcement Agencies, as this will help the Judges get less biased over Issues brought before them. Any erring member of the Judiciary will be disciplined according to the laid down Rules. This Paper addressed certain questions such as: Does the principle of fair hearing necessarily mean an Oral Hearing? What are the criteria and attributes of fair hearing? What are the determinants of compliance with criteria for fair hearing or fair trial? Who is a Reasonable man or person for the purpose of the test of fair hearing? This work elaborates on the major Duty of Administrative Bodies or Tribunals to strictly observe the principles of Fair Hearing when acting judicially, the Burden on the Party alleging breach of fair hearing, the advantages of having a Constitutional Fair Hearing provision as part of the Nigerian Constitution. It also tells us when an Administrative Body acts judicially, and of course, the interests that may disqualify a Judge from adjudicating over a Matter.

**Keywords:** *Fair Hearing, 1999 Constitution of the Federal Republic of Nigeria, Judges, Law Courts, Administrative Body, Tribunals, Fair Trial, Adjudication, Judiciary, Bias*

## INTRODUCTION

### What is a Hearing?

In the context of Administration of Justice, to *hear* a Matter means to listen to a Matter attentively, consider and decide on it. In the case of *Akoh v. Abuh*<sup>1</sup>, the Supreme Court of Nigeria held that to hear a Cause or Matter means to hear and determine the Cause or Matter. A Matter is in the process of being heard from its commencement up to, and including the delivery of final judgment.

A hearing can only be *fair* when all the Parties to a dispute are given an opportunity to be heard. If one of the Parties is not given an opportunity to be heard, the hearing cannot qualify as a fair hearing. The concept of Fair hearing postulates a hearing in which the authority is fairly exercised, that is, consistent with the fundamental principles of justice embraced within the concept of the Due Process of Law. Contemplated in fair hearing is the right to present evidence, to cross examine and to have Findings supported by evidence. Thus, it implies that both sides be given an opportunity to present their respective cases, and that each side is entitled to know that a case is being made against it and be given an opportunity to reply thereto. See *Olugbenga Daniel v. Federal Republic of Nigeria*<sup>2</sup>.

The Right to be heard is such an important radical and protective right that the Courts strain every nerve to protect it and even imply it where a statutory form of protection will be less effective if it did not carry with it the right to be heard. See *UBA v. Oranuba*<sup>3</sup>.

The Fair hearing provision in the Constitution is the only machinery or locomotive of justice, not a spare part to propel or invigorate the case of the User. It is not a casual principle of Law available to a Party to be picked up at Will in a case and force the Court to apply it to his advantage. On the contrary, it is a formidable and fundamental provision available to a Party who is really denied fair hearing because he was not heard or that he was not properly heard in the case. Litigants who have nothing useful to advocate in favour of their cases should leave the fair hearing Constitutional Provision alone because it is not available to them just for the asking<sup>4</sup>.

Section 36 of the 1999 Constitution of the Federal Republic of Nigeria has the relevant provisions for Fair Hearing and states as follows:

Section 36 (1) - In the determination of his Civil Rights and Obligations, including any question or determination by or against any Government or Authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other Tribunal established by Law and constituted in such manner as to secure its independence and impartiality.

Section 35 (5) - Every person who is charged with a criminal offence shall be presumed innocent until proved guilty.

Section 36 (6) - Every person who is charged with a criminal offence shall be entitled to -

- (a) be informed promptly in the language that he understands, and in detail the nature of the offence;
- (b) be given adequate time and facilities for the preparation of his/her defense;
- (c) defend himself in person or by Legal Practitioners of his own choice;
- (d) examine in person or by his Legal Practitioners the witnesses called by the Prosecution before any Court or Tribunal and obtain attendance and carry out the examination of witnesses to testify on his behalf before the Court or Tribunal on the same conditions as those applying to the Witnesses called by the Prosecution;
- (e) have without payment, the assistance of an Interpreter, if he cannot understand the language used at the trial of the offence.

---

<sup>1</sup> (1988) NWLR PT 85pg 676 (SC); *Ese Malemi: The Nigerian Constitutional Law* (2012) Princeton Publishing Company, Ikeja, Nigeria @ p. 362

<sup>2</sup> (2014) 8 NWLR PT 1410 p. 570 @ 575-576

<sup>3</sup> (2014) 2 NWLR PT 1390 p. 1 @ 10 (*Per Iyizoba, JCA*); *Olatunbosun v. NISER Council* (1988) 3 NWLR PT 80 p. 25

<sup>44</sup> *Per Iyizoba, JCA in First Alstate Securities Ltd & Anor v. Adesoye Holdings Ltd* (2013) 16 NWLR PT 1381, p. 470 @ 477

Section 36 (7) - When any person is tried for any criminal offence, the Court or Tribunal shall keep a Record of the Proceedings, and the accused person or any person authorized by him in that behalf shall be entitled to copies of the judgment in the case within seven days of the conclusion of the case.

Section 36 (8) - No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

Section 36 (9) - No person who shows that he has been tried by any Court of competent Jurisdiction or Tribunal for a Criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence, save upon the order of a Superior Court.

Section 36 (10) - No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

Section 36 (11) - No person who is tried for a criminal offence shall be compelled to give evidence at the Trial.

Section 36 (12) - Subject to otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law of a State, any Subsidiary Legislation or Instrument under the provisions of a Law.

Fair hearing is the very foundation of justice and a prerequisite for a just determination of disputes between Parties. The establishment of the likelihood of bias on the part of a Judge or person exercising judicial function in a Proceeding vitiates the whole proceedings for violation of the legal maxim *nemo iudex in causa sua* which means that *no one should be a Judge in his own cause*. Partiality as a result of bias destroys the very root of a fair adjudication and the administration of justice in any legal system anywhere in the World<sup>5</sup>. It was equally held in the case of *Omoniyi v. Alabi*<sup>6</sup> that the consequence of a successful argument that the appellant's right to fair hearing was breached is that the decision complained of would be declared a nullity and set aside.

Fair hearing is not a technical doctrine, but a rule of substantial justice. To affect a judgment and have it set aside for breach of fair hearing, it has to be shown that:

1. Fair hearing was infringed; or
2. Fair hearing was clearly threatened with infringement; or
3. There was a likelihood of infringement of fair hearing. It is not sufficient that fair hearing was merely suspected to have been infringed<sup>7</sup>.

*Denning MR in Metropolitan Properties Co. Ltd v. Lannon*<sup>8</sup> said *there must be circumstances from which a reasonable man would think it likely or probable that the Justice or the Chairman, as the case may be, would or did favour one side unfairly at the expense of the other. The Court will not enquire whether he did in fact favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence, and confidence is destroyed when right - thinking minded people go away thinking the Judge was biased*<sup>9</sup>.

### **ADVANTAGES OF A CONSTITUTIONAL FAIR HEARING PROVISION**

Nowadays, many countries in the world have a Bill of Rights or a Fundamental Rights Chapter in their Written Constitution, spelling out in detail the fundamental Human Rights of the People. In Nigeria in particular, the Fair Hearing Provision in Section 36 of the 1999 Constitution has some obvious features

<sup>5</sup> *Ese Malemi: The Nigerian Constitutional Law* (2012) p. 362

<sup>6</sup> (2015) 6 NWLR PT 1456 p. 572 @ 578 (per *Kekere – Ekun, JSC*). It was held further held that a decision that is declared a nullity is as if it was never made. Therefore, the decision reached no matter how well considered, would be declared a nullity, and is bound to be set aside. See *Mfa v. Inongha* (2014) 4 NWLR PT 1397 p. 343; *Adigun v. Att-General, Oyo State* (1987) 1 NWLR PT 53 p. 678.

<sup>7</sup> *Ese Malemi: The Nigerian Constitutional Law* @ p. 363

<sup>8</sup> (1968) 3 All ER 304

<sup>9</sup> *Metropolitan Properties Co. Ltd v. Lannon* @ p. 310

and advantages such as the following:

1. It is a comprehensive representation and codification of the Rules of Natural Justice
2. It is flexible in application
3. It is a fundamental or Constitutional Right which is claimable as of right by any aggrieved Party. It is not a mere principle which Judicial Bodies are directed to observe. It is a mandatory provision every person or Body acting in a judicial capacity or who decides anything is bound to observe
4. It is easier to invoke by an aggrieved Party in aid of his case, because it is enshrined in the Constitution
5. It has a great and binding force of law on all persons and authorities in Nigeria. It has a constitutional force. Rights guaranteed under the Constitution cannot in any way be detrimentally affected nor deferred by Common Law or other Rules, unless as provided by the Constitution itself.

In *The State v. Olu Onagoruwa*<sup>10</sup>, Nnaemeka-Agu, JSC said a man can never have a verdict entered against him on a Matter relating to his Civil Rights or Obligations before a Court or Tribunal without being given an opportunity of being heard. The Rule is in fact, one of the essential cornerstones of our judicial process<sup>11</sup>.

Karibi-Whyte, JSC in this same case held that '... a denial of the right to be heard is a breach of Constitutional Right, natural justice and Rules of Court. It is an elementary and fundamental principle of the administration of justice in Nigeria that no decision can be regarded as valid, unless the Trial Judge or Court has heard both sides of the conflict'<sup>12</sup>.

#### **DOES THE PRINCIPLE OF FAIR HEARING NECESSARILY MEAN AN ORAL HEARING?**

The Principle of Fair Hearing as enshrined in S. 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria does not necessarily mean an oral hearing. What is required is that every party to the dispute is given an opportunity to state his case. Each Party must know the case being made against him, and given an opportunity to react thereto. See *Gyang & Anor v. COP Lagos State & Ors*<sup>13</sup> where it was held that in the circumstances of the case, the need for oral hearing did not arise. In this case, the Orderly Room Trial which provided the material upon which the Police Provost Marshal carried out his Review was well conducted with the appellants given ample opportunity to present their case and challenge the evidence led against them through their Legal Representatives. The Appellants therefore did not show any breach of their Fundamental Rights. See also *Duke v. Government of Cross River State*<sup>14</sup>.

#### **DUTY OF ADMINISTRATIVE BODIES AND TRIBUNALS TO STRICTLY OBSERVE PRINCIPLES OF FAIR HEARING WHEN ACTING JUDICIALLY**

Administrative Bodies, like Tribunals acting judicially in the determination or imposition of a decision that is likely to affect the Civil Rights and Obligations of a person are bound and enjoined to observe the principles of fair hearing. The principle often expressed by the latin maxim ' *audi alteram partem*' which means *hear the other side* has been for long enshrined in the Nigerian Jurisprudence. This was the decision of the Supreme Court in *Gyang & Anor v. COP Lagos State & Ors*<sup>15</sup> where the Appellants commenced an action at the Federal High Court, Lagos by way of an Application of Leave to apply for an Order of Certiorari, seeking a declaration that the Proceedings tagged *CP's Review*, signed by one J.A Alade, a Commissioner of Police and Provost Marshal (FHQ), by which the Appellants were dismissed from the Nigeria Police Force is unconstitutional, illegal, null and void, in that it breached the Appellants' right to fair hearing as enshrined in S. 36 of the 1999 Constitution, an Order quashing the Proceedings and reinstating the Appellants.

<sup>10</sup> (1992) 2 NWLR PT 221 p. 33; (1992) 2 SCNJ 1

<sup>11</sup> *Opcit* @ p. 58

<sup>12</sup> (1992) 2 NWLR PT 221 p. 33 @ 56

<sup>13</sup> (2014) 3 NWLR PT 1395 p. 547 @ 552 (per *Galadima, JSC*)

<sup>14</sup> (2013) 8 NWLR PT 1356 @ p. 347; *Hart v. Military Governor of Rivers State* (1976) 11 SC Report 109

<sup>15</sup> (2014) 3 NWLR PT 1395 p. 547 @ 550

The grounds upon which the Reliefs were sought were that the Appellants and others were earlier discharged and acquitted of one count of corrupt practice brought against them in an orderly room Trial. However, the Review Panel headed by the Force Provost Marshal which reviewed the earlier proceedings and dismissed the Appellants from the Nigeria Police Force did not give the Appellants a right to represent themselves and be heard, thereby denying them their Constitutional Right to fair hearing. The Appellants attached to the verifying affidavit in support of the application, the Proceedings and judgment of the orderly room Trial as Exhibit A, the Proceedings of the Review as Exhibit B, and the Letter of Appeal as Exhibit C.

At the conclusion of hearing, the Trial Court in its Ruling observed that in the Review proceedings conducted by the Provost Marshal, no new evidence was adduced, no witness testified both for the Prosecution and the defence, and there was no trial. The Reviewer merely reviewed the Proceedings of the orderly Room Trial.

The Appellants appeal was dismissed, and Ruling of the Trial Court was affirmed. The Court of Appeal held that the Commissioner of Police did not go outside the totality of the evidence as reflected in the printed materials; that oral hearing was at the orderly Room Trial and the Appellants did not complain; that it was the Review by the Commissioner of Police which is akin to an Appeal that they were attempting to discredit by contending that the principles of fair hearing were not observed. The Court of Appeal further held that the Review did not go outside the totality of the evidence led at the Orderly Room Trial.

Dissatisfied, the Appellants appealed to the Supreme Court. In determining the appeal, the Supreme Court considered the provisions of section 36 (4) of the 1999 Constitution which states that *whenever any person is charged with a criminal offence, he shall, unless the Charge is withdrawn, be entitled to a Fair Hearing*; and unanimously dismissed the Appeal. It held that in the instant case, the Review Panel acted administratively, and the right of fair hearing of the appellants under Section 36 of the 1999 Constitution was not breached. The Appellants were heard in full during the Trials, and the Review Panel had no need to hear fresh or further evidence, nor was any such evidence called in the absence of the Appellants. See *The State v. Ajie*<sup>16</sup>; *Akande v. Nigerian Army*<sup>17</sup>.

An Administrative Body in ascertaining facts, may be under a duty to act judicially notwithstanding that its Proceedings have none of the formalities of and are not conducted in accordance with the Practice and Procedure of a Court of Law. It is enough if it is exercising judicial functions in the sense that it has to decide on the materials before it between an allegation and a defence. However, the modern concept is that the duty placed on such a Body is to act fairly in all such cases. It is not a question of acting or being required to act judicially, but of being required to act fairly<sup>18</sup>.

An Administrative Body has the option to decide whether to deal with a Matter before it by oral hearing or by written evidence and argument(s) provided. Dealing with an appeal on written or printed evidence or communications only, is not itself a breach of the principles of Fair Hearing. In *Gyang & Anor v. COP Lagos State & Ors*, it was not disputed that the Review Panel of the Commissioner of Police merely evaluated the oral evidence which had been accepted before the Orderly Room Trial. The Proceedings at which the Appellants complained that they were denied fair hearing was a Judicial Review<sup>19</sup>. In the instant case, the purport of the Review of the Commissioner of Police was intended to re-examine administratively the decision of the Orderly Room Trial. The Review panel did not try the appellants. It simply examined the proceedings and judgment of the Orderly Room Trial<sup>20</sup>. Therefore, a Party who has been given ample opportunity to be heard, or has in fact been heard, cannot complain of denial of fair

<sup>16</sup> (2000) 11 NWLR Pt 678 p. 434

<sup>17</sup> (2001) 8 NWLR PT 714 p. 1

<sup>18</sup> *Gyang & Anor v. COP Lagos State & Ors* (2014) 3 NWLR PT 1395 p. 547 @ 551; *Hart v. Military Governor, Rivers State* (1976) 11 SC Rep 109; *Falomo v. Lagos State Public Service Commission* (1977) All NLR 102

<sup>19</sup> Review in this context refers to a judicial re-examination of the case in certain specified and prescribed circumstances.

<sup>20</sup> (2014) 3 NWLR PT 1395 @ pp 551 - 552

hearing<sup>21</sup>.

### **WHEN DOES AN ADMINISTRATIVE BODY ACT JUDICIALLY?**

This issue was considered by *Oputa, JSC in Legal Practitioners' Disciplinary Committee v. Fawehinmi*<sup>22</sup> where he said ' *the debate over what constitutes a Judicial Tribunal, quasi-Judicial Tribunal, a domestic Tribunal, a Tribunal Simpliciter, Arbitrament, Forum competens, etc, will certainly go on as an academic exercise, but once a Body of persons by whatever name called, are invested with authority to hear and determine particular issues or disputes, either by consent of the disputants or by an Order of Court, or by the provision of a Statute, such a Body will be required to carry out its function with that fairness and impartiality which the Rules of Natural Justice dictate. Therefore, the Legal Practitioners Disciplinary Committee which exercises under the Legal Practitioners Act of 1975 the important function of considering and determining cases of misconduct alleged against Legal Practitioners, should in every step they take in this important sphere of human activity, be guided by the important principles of eternal or natural justice. That seems to be elementary enough*<sup>23</sup>.

### **CRITERIA AND ATTRIBUTES OF FAIR HEARING**

According to the Supreme Court of Nigeria in *Olugbenga Daniel v. Federal Republic of Nigeria*<sup>24</sup>, there are certain basic criteria and attributes to gauge whether a trial or hearing is fair or not. These are:

- a. The Court shall hear both sides not only in the case, but also in all material issues in the case before reaching a decision which may be pre-judicial to any Party in the case;
- b. The Court or Tribunal shall give equal treatment, opportunity and consideration to all concerned;
- c. The Proceedings shall be held in Public and all concerned shall have access to and be informed of such Public Hearings; and
- d. Having regard to all the circumstances in every material decision in the case, justice must not only be done, but manifestly and undoubtedly be seen to have been done<sup>25</sup>.

### **DETERMINANTS OF COMPLIANCE WITH CRITERIA FOR FAIR HEARING OR FAIR TRIAL<sup>26</sup>**

To determine whether the basic criteria and attributes of a fair trial are satisfied, the Court must ensure that the person to be affected by the Proceedings is given the following rights:

- i. to be present throughout the Proceedings and hear the evidence against him
- ii. to cross examine or otherwise confront or contradict all the witnesses that testify against him;
- iii. to have all documents tendered in evidence at the trial read before him;
- iv. to have disclosed to him the nature of all relevant materials of evidence, including documentary and real evidence prejudicial to him;
- v. to know the case he has to meet at the hearing and to have adequate opportunity to prepare for his defence; and
- vi. to give evidence by himself, call witnesses, if he chooses to, and make oral submissions, whether personally or through a Counsel of his choice.

Once a Trial is conducted in accordance with the above requirements, it will be said to be fair<sup>27</sup>. Per

---

<sup>21</sup> See *Agbaso v. Iwunze* (2015) 11 NWLR PT 1471 p. 527 @ 537-538 where it was held that the appellant was given opportunity to be heard and was in fact heard. In this case, the Appellant cannot complain of denial of Fair Hearing.

<sup>22</sup> (1985) 2 NWLR PT 7 p. 300

<sup>23</sup> *LPDC v. Fawehinmi* @ p. 387

<sup>24</sup> (2014) 8 NWLR PT 1410 p. 570 @ 576

<sup>25</sup> *Olugbenga Daniel v. FRN* @ p. 576

<sup>26</sup> *Olugbenga Daniel v. FRN* @ pp 576-577

<sup>27</sup> *Olugbenga Daniel v. FRN* @ p. 577; *Adigun v. Attorney-General, Oyo State* (1987) 1 NWLR PT 53 p. 678; *Maikyo v. Itodo* (2007) 7 NWLR PT 1034 p. 443; *Usani v. Duke* (2004) 7 NWLR PT 871 p. 116; *Kotoye v. CBN* (1989) 1 NWLR PT 98 p. 419; *Deduwa v. Okorodudu* (1976) 10 SC 329

*Tsammani, JCA @ p. 617 paras E - G, In that respect, once from the observation of a reasonable person, the trial Court has followed the procedure laid down for such hearing and has not violated any of the principles of natural justice, it can hardly be argued that an accused person has not had a fair hearing or Trial as intended by the Constitution. I say so because the Supreme Court had stated in several of its decisions that a fair hearing in relation to a case means that the trial of a case was conducted in accordance with the relevant Laws and Rules of Court. This Right commences from the time the accused person is brought before the Court, and his plea taken and continues to avail the accused until delivery of judgment.*

However, where a Party who has been given adequate time to present his case at the Trial Court fails to adduce proper evidence in support of his case, he should not complain of lack of fair hearing on appeal<sup>28</sup>.

In *First Alstate Securities Ltd v. Adesoye Holdings Ltd*<sup>29</sup>, *Iyizoba, JCA* held as follows: *there is no better description for the conduct of learned Counsel for the appellants in the brazen he attempted to introduce the principle of fair hearing by his blatant refusal to file their response until the eleventh hour, knowing fully well that they had no answer to the case of the Respondent in order to create the opening for the defence of lack of fair hearing. The Courts are no fools, and cannot be that easily deceived. Learned Counsel did not even bother to get a Medical Report to support the alleged ill health of the second appellant that prevented them from putting in their defence timeously. The days of such technical application of the law are gone, and gone forever. The justice of the case must always prevail*<sup>30</sup>. ... *It is the duty of the Court to create the atmosphere or environment for a fair hearing of a case, but it is not the duty of the Court to make sure that a Party takes advantages of the atmosphere or environment by involving himself in the fair hearing of the case. A Party who refuses or fails to take advantage of the fair hearing process created by the Court cannot turn around to accuse the Court of denying him fair hearing. A Trial Court can indulge a party in the Judicial Process for some time, but not for all times. A Trial Court has the right to withdraw its indulgence at the point the fair hearing principle will be compromised or will not really be fair as it affects the opposing party. At that stage, the trial court will rightly too, for that matter, retrace its steps of indulgence and follow the path of fair hearing as it affects the opposing party who equally yearns for it in the judicial process. The Party who is not up and doing to take the advantage of the fair hearing principles put at his door steps by the trial court cannot complain that he was denied fair hearing.... The Fair hearing principle formerly entrenched in S. 33 of the 1979 Constitution, and now S. 36 of the 1999 Constitution is not for the Weakling, the Slumber, the Indolent or the lazy Litigant, but it is for the Party who is alive and kicking in the judicial process by taking advantage of the principle at the appropriate time. The principle is not available to a Party who sets a trap in the litigation process against the Court and accuses the Court of assumed wrong doing, even when such so-called wrong doing is as a matter of fact, propelled or instigated by the Party through his Counsel*<sup>31</sup>.

It is to be noted that the question of fair hearing is a matter of fact which must be established by evidence<sup>32</sup>.

### **BURDEN ON PARTY ALLEGING BREACH OF FAIR HEARING**

Any Party alleging the breach of Fair Hearing has the burden to prove the breach, and he must do so in the light of the facts and circumstances leading to the alleged breach. This is because the facts only, determine acts which constitute non-compliance with the principles of Fair Hearing. In *Nicholas Ukachukwu v. Peoples Democratic Party & Ors*<sup>33</sup>, it was held by the Supreme Court that the Appellant who was given full opportunity to defend the Appeal at the Court of Appeal as the Respondent, but

<sup>28</sup> *Transamerica Corporation v. Akande* (2014) 15 NWLR PT 1431 p. 502 @ 505

<sup>29</sup> (2013) 16 NWLR PT 1381 p. 470

<sup>30</sup> Per *Iyizoba, JCA @ p. 477*

<sup>31</sup> Per *Iyizoba, JCA @ pp 478 - 479*

<sup>32</sup> *Nicholas Ukachukwu v. PDP* (2014) 17 NWLR PT 1435 p. 134 @ 146

<sup>33</sup> (2014) 17 NWLR PT 1435 @ 146 (per *kekere – Ekun, JSC*)

decided to throw away that opportunity through his learned Counsel who decided to abandon the case, cannot now turn round to claim that he was denied Fair Hearing by the Court of Appeal.

### **WHO IS A REASONABLE MAN OR PERSON FOR THE PURPOSE OF TEST OF FAIR HEARING?**

There is a legal personality known as a reasonable man. He is sometimes also known as a reasonable person or a reasonable citizen. His opinion is usually consulted in Courts to solve legal problems. He is a ubiquitous fictional figure of the Law. The test of a reasonable person in Nigerian Courts is not that of a person whose mind and thoughts are colored by political, sectional or other primordial considerations. A reasonable person is one who is able to weigh his observations objectively. Fundamentally, such reasonable person is one who was present in Court, and not based on other events outside the court. He does not base his conclusion about pending Court Proceedings on what he reads in a newspaper. He must be one who was in Court and observed the Proceedings from the beginning to the end, before he arrived at the conclusion as to whether despite the publication in the Newspaper, the Party before the Court had a fair hearing<sup>34</sup>.

### **INTERESTS THAT MAY DISQUALIFY A JUDGE FROM ADJUDICATING OVER A MATTER<sup>35</sup>**

Some interests or circumstances that may disqualify a Judge or a person from adjudicating a Matter are as follows:

1. Pecuniary Interests, that is, financial interests or doing a favour<sup>36</sup>
2. Relationship<sup>37</sup> with a Party or Parties, such as kinship, Family, Friendship, enmity, special association, etc.
3. Previous participation, decision or involvement in the Matter<sup>38</sup>
4. Foreknowledge or previous knowledge of the facts of the case
5. Hobnobbing with a Party
6. Biased, partisan or unbecoming comment in support of a Party
7. Unwarranted verbal or other attack on a Party
8. Descending into the arena in support of one side
9. Combining the function of a Judge with that of a Prosecutor, Witness or other Party
10. Inhibiting or denying a Party from effectively stating his case<sup>39</sup>
11. Personal attitude, hostility, preference or one side inclination of the Judge, and a host of other interests or circumstances from which the inference or suspicion of a real likelihood of bias may be drawn.

### **CONCLUSION**

The Right to a Fair, just and impartial hearing according to Natural Justice or the Fair Hearing Provisions of the Nigerian 1999 Constitution cannot be ousted by any Law, whether during a Civil or Military Rule. It is the only fundamental or Constitutional Right that cannot be denied by law, even in the worst of times. It is an inherent right of every person who is called in any adjudication of dispute to have a fair

---

<sup>34</sup> Per *Daniel – Kalio, JCA in Olugbenga Daniel v. FRN* (2014) 8 NWLR PT 1410 p. 570 @ 580; *Ibori v. Federal Republic of Nigeria* (2009) 3 NWLR PT 1128 p. 283; *Archibong v. Cross River State Newspaper Corporation* (2001) 22 WRN 53; *Okafor v. Attorney – General, Anambra State* (1991) 6 NWLR PT 200 p. 659; *Olumesan v. Ogundepo* (1996) 2 NWLR PT 433 p. 628; *Mohammed v. Kano Native Authority* (1968) SCNLR 558

<sup>35</sup> *Ese Malemi: The Nigerian Constitutional Law* (2012) pp 363 - 364

<sup>36</sup> *Dimes v. Grand Junction Canal Co.* (1852) 10 ER 315

<sup>37</sup> *Secretary, Iwo Central LG v. Adio* (2000) 8 NWLR PT 667 p. 115; *Abiola v. Federal Republic of Nigeria* (1995) 7 NWLR PT 405 p. 1

<sup>38</sup> *Eriobuna v. Obiorah* (1999) 8 NWLR PT 616 p. 622 (CA)

<sup>39</sup> *Olaye v. MDPDT* (1997) 5 NWLR PT 506 @p. 550 (CA); *Okoduwa v. The State* (1988) 2 NWLR PT 176 p. 333 (SC); *Omoniyi v. Central Schools Board* (1988) 4 NWLR PT 89 p.448



hearing. The principles enshrined in section 36 of the 1999 Constitution represent an indispensable cornerstone of the well settled Rules of Natural Justice which must be observed in every determination of the Rights and obligations of a person.

According to *Karibi-Whyte, JSC in LPDC v. Fawehinmi*<sup>40</sup>, *In the circumstances of this country, fair hearing is an entrenched provision of the Constitution which cannot be displaced by legislation, however unambiguously worded*<sup>41</sup>. Therefore, the right of a person to fair hearing is so fundamental to the concept of justice that the right can neither be waived nor taken away, whether expressly or by implication. A denial of fair hearing by Law or by a partial hearing is an act of injustice.

This right to fair hearing concept gets abused when there is an allegation of bias on the part of a Judge or any person heading a Tribunal or an Administrative Panel to adjudicate over a certain Matter. This even extends to any person playing a leadership role in any other capacity. In *Eriobuna v. Obiorah*<sup>42</sup>, *Tobi, JCA*<sup>43</sup> while explaining the meaning of bias said *'In a charge of bias, the integrity, honesty or fidelity of purpose and the Judge's traditional role of holding the balance in the Matter are questioned. He is branded or seen as one who leaves his exalted, respected and traditional arena of impartiality to descend unfairly on one of the parties outside all known canons of judicial discretion. The Judge is said to have a particular interest, a propriety interest which cannot be justified on the scale of justice, as he parades that interest recklessly and parochially in the adjudication process to the detriment of the Party he hates, and to the obvious advantage of the Party he likes. The Judge at that level, is incapable of rational thinking, and therefore rational judgment. His thoughts are blurred against the party he hates. He is poised for a fight, an uninstigated fight in which he is the main Participant. The conduct of the Judge invariably and unequivocally points to one trend - and it is that he will give judgment to the Party he favours at all cost, come day, come night, come rain or sunshine. Such is the terrible state of mind of the biased Judge or one who is likely to be biased.... This arises when the Judge at one time or the other had done something in the Matter to the extent that he cannot be said to be a completely neutral person or stranger to it'*<sup>44</sup>.

Now the question is this - are Judges all over the World really free from the guilt of bias? This question is meant to strike the minds of all those who adjudicate over one dispute or the other, as they are in the best position to answer this question. However, in my humble opinion, the answer is **NO**. It is advisable that persons that have been guilty of bias for one reason or the other should stop this very unjust practice for the dispensation of justice to be a Reality, rather than a Myth. Many suspects suffering and dying in Prisons all over the World without being tried after spending over twenty four hours in detention, months and years, equally stems from the abuse of the Fair Hearing principle. In this regard, the Law Enforcement Agencies are not left out of the frustration of those detained, as they take sides with one of the Parties and get the other Party arrested and detained without any immediate prosecution of the case. The worst obstacle to achieving a fair hearing in any dispute remains the factor of *bias*, and no other. In every Society, this should be put to a stop, while objectivity as a test should be adopted towards the hearing of any case in order to arrive at the best possible judgment or decision obtainable. The Law provides for the right to fair hearing, and nobody should feel he/she is above the law to sweep this important right aside for others who crave it.

The right to fair hearing should also apply to all Parties to Civil Cases<sup>45</sup>. The 1999 Nigerian Constitution of the Federal Republic of Nigeria should also be reviewed in such a way that the pronoun *him* should refer to *him/her*. It appears as if every Nigerian is of the male gender, going by most Sections or provisions of the 1999 Constitution. Generalizing both sexes with the pronoun *him* is not desirable for a

<sup>40</sup> (1985) 2 NWLR PT 7 p. 300

<sup>41</sup> *opcit* p. 370

<sup>42</sup> (1999) 8 NWLR PT 616 p. 622

<sup>43</sup> as he then was

<sup>44</sup> (1999) 8 NWLR PT 616 p. 622 @ pp 628-629; *Ese Malemi: The Nigerian Constitutional Law* (2012) pp 360 - 361

<sup>45</sup> In my humble opinion. The 1999 CFRN laid emphasis mostly on criminal cases.

Constitution. Every other good Law should equally be devoid of any ambiguity. This suggestion for a review of the pronoun *him* equally applies to the different Law Reports all over the World being used by Lawyers for Research and other good purposes.

*The Author, **Barrister (Miss) Chigozie Ifeoma Nwagbara, LL.M** is also a Solicitor & Advocate of the Supreme Court of Nigeria.*