



Due Process of Law: A Mechanism for Achieving Administrative Effectiveness In Nigeria Universities

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ABSTRACT

The paper looked at due process of law in resolving the crisis or conflicts both externally and internally in the university community. Crisis or conflict is inevitable in the university setting. The key to success is based on the mutual trust, understanding and effective decision making achievable through proper compliance and adherence to "due process mechanism". The application of due process of law in administration will reduce the level of crisis or misunderstanding arising from various universities. The paper discussed the element of due process of law, educational administration, university education and its objectives. Finally, the paper concluded by saying that if proper adherence to the policies, rules and regulations through proper procedures that guided the establishment of universities are adhered to by the administrators and its members in implementing programmes within the university, the environment will always be conducive for effective administration.

Keywords: Due process, law, procedural and substantive due process and Administrative Effectiveness.

INTRODUCTION

In every organization there must be a manner in which things are done in order to achieve the organizations goals for establishment. University as an organization must do things that will ensure equity, fairness and justice to all, thereby reducing crisis to its minimum. The term due process of law refers to the guaranteed right that ensure that an individual cannot be deprived of life, liberty, or property without due process being followed. According to Anan (2004:5) has stated due process is the procedure for doing anything or taking necessary action. It is a standard set to enable any actor follow the part of honor, diligence and integrity.

The universities in Nigeria are established by law statutes, policies, decrees, edicts and act of government which have stated conditions guiding the management of the various universities in the implementation of these laws and policies for effectiveness in administration.

Universities must employed ideas and policies that will promote political stability, fairness and wellbeing in their environment. Universities as a citadel of learning harbour intellectuals, as a community, acceptance of the supremacy of logic and reason, desire for impartial and objective truth, and concern for the common good of all. Bmpiu (2005), due process is defined as the mechanism for ensuring strict compliance with the openness, competition, cost accuracy, rules and procedures that should guide contract awards within the federal government of Nigeria.

Due process of law in the universities is very essential and fundamental because of the different social, economic and political background of all that constitute our universities, reducing mistrust. Due process of law is acting totally in conformity with laid down laws, regulations and administrative procedures in order to ensure transparency, justice and fairness in the management of the activities of the university in

line with the laid down laws and regulations guiding the university. The law gives a person the total protection of his right, fair hearing and a manner in which things has to done.

In general term due process of law connotes what is fair, right, proper, due, or ought to be done in a stipulated manner, administrative or constitutional provision. It is the lawful way of doing a particular thing in a giving area of life, through the fundamental rights spelt out.

The Origin of Due Process of Law

Due process of law originated in English common law. The rule that individuals shall not be deprived of life, liberty, or property without notice and opportunity to defend themselves predates written constitutions and was widely accepted in England. The magna Charta arrangement signed in 1215 that defined the right of English subjects against the king, is an example of a constitutional guarantee of due process. That document includes a clause that declares, “No free man shall be seized or imprisoned except by the lawful judgment of his peers or by the law of the land. This concept of the law of the land was later transformed into the phrase “due process of law” by seventeenth century.

The Concept of Due Process of Law

The notion of due process of law arises from the premise that law should be fair, predictable, and transparent. Perhaps more importantly, a guarantee way to ensure that whenever the sovereign or government interacts with an individual, it is bound by the law from both a substantive and procedural perspective.

Thomson (2008), the term due process of law refers to the guaranteed rights that ensure that an individual cannot be deprived of “Life, Liberty, or Property, without due process of law” due process of law has to do with the observance of the rules, policies, laws, statute, act of parliament stipulated to guide the functioning of an organization which attracts respect for all the fundamental right, human rights or civil liberties of a person in an establishment, which university is included.

Due process of law thus gives pre-eminence to the rule of law and emphasis that things must be done according to the stipulated rules and regulations guiding the organization.

Similarly, according to Malemi (2008) define due process of law as the lawful manner of doing a thing, with the full and equal protection of the laws guiding the organization, meaning that it is the total protection offered to a person by the law. The rule of law has respect for all the fundamental right, human rights or civil liberties of a person. Oluchukwu (1998) in Olagboye and Fadipe (1998) identified two kinds of due process substantive and procedural due process.

Substantive Due Process

The modern notion of substantive due process emerged in decisions of the United State (US) Supreme court during the late nineteenth century. In the 1897 case of *Allgeyer v. Louisiana* 165 U.S. 578, 175.ct. 427, 41L.ED. 832, the court for the first time used the substantive due process framework to strike down a state statute. Before that time, the court generally had used the commerce clause or the contract clause of the constitution to invalidate state legislation.

In the *Allgeyer* case concerned Louisiana law that prescribed the entry into certain contracts with insurance firms in other states, the court found that the law unfairly abridged the right to enter into unlawful contracts, so guaranteed by the due process clause of the fourteenth Amendment.

Substantive due process has to deal with the legality of a legislative enactment institution policies, rules and regulations which must stand the test of substantive due process. A situation where a student is punished or denied the right to behave in certain way by the existing laws, decrees, rules and regulations when it is contrary to certain constitutional guarantees has legal resources to set aside the punishment or denial and make the rule invalid.

Procedural Due Process

The phrase “procedural due process” refers to the aspect of the due process that apply to the procedural of arresting and trying persons who have been accused of crimes and to other government action that

deprives and individual of life, liberty, or property. Procedural due process limits the exercise of power by the state, federal government and organizations by requiring that they follow certain procedures in criminal and civil matters. In cases where an individual has claimed a violation of due process rights, courts must determine whether a citizen is being deprived of “life, liberty, or property” and what procedural protections are “due” to that individual.

Procedural due process also protects individuals from government actions in the civil, as opposed to criminal, sphere.

Thus for example, the court has ruled that the federal government must hold hearing before terminating welfare benefits (*Goldberg v. Kelly*, 399 U.S. 254, 90S. ct. 1011, 25L.ED. 2D 287 (1970)). Court decisions regarding due process have exerted a great deal of influence over government procedures in prisons, schools, social security, civil suits, and public employment.

The procedural due process ensures genuine commitment in building an organization which universities is one, and stress the principles of leading by fairness and transparency, which has resulted to impartial and just settlement of conflict in the various organizations.

Concept of Educational Administration

Effective decision making in an organization is dependent on the quality of administrative services available. According to Koko (1999) only who have through understanding of the provision in the rules and regulations are able to relates them to their subordinates that can achieve a cordial and well organized workforce.

According to Okeke (2007) educational administration is the activity that concerns itself with the survival and maintenance of the educational establishment and with the direction of the activities of people working within the organization in their reciprocal relations to the end that the purposes may be achieved.

Specifically, administration is concerned with the performance of executive duties in carrying out of policies or decisions to fulfill a purpose, and the controlling of the day to day running of an organization.

According to Okoroma (2016), administration is an integral part of an organized society. It is crucially needed for maintaining and expanding the relevance, effectiveness, and productivity of complex institutions.

The survival of organizations is dependent on the quality of administrative services available. Nwankwo (1985), the main emphases of educational administration is on being men and materials to facilitate the achievement of the overall objectives of formal school education.

Educational administration can be defined as the process of bringing men and materials together for effective and functional teaching and learning in school as to achieve the goals of establishing the school.

According to Okeke et al (1985:2) It is a process concerned with using methods, principles, and practices to establish, develop and execute the goals, polices, plans and procedures necessary to achieve the objectives of education.

University Education and its Objectives

Universities in Nigeria are part of the higher institutions of learning, in fact is the highest at the educational pyramid, offer specific training for their students at the various levels of programmes. Koko (2011), universities are centres for learning characterized by the constant quest for new ideas, knowledge pragmatic solutions to societal problems.

According to Koko (2011), universities in Nigeria in particular, are vital instruments of national state progress and are therefore expected to contribute to national development through diverse functions geared towards the impartation of manpower skills, pursuant of knowledge in organized research and publication as well as contribute to national and international dialogue.

Snada (1992), described universities as microcosms of the larger society. Koko (1997) in a practical term, universities are in a world of their own as a result of their administrative composition and structure.

The National policy on Education (2013) spelt out the objectives of higher education in Nigeria as:

- a) To contribute to national development through high level relevant manpower training,

- b) Develop the intellectual capacity of individuals to understand and appreciate their local and external environments;
- c) Develop and inculcate proper values for the survival of the individual and society;
- d) Acquire both physical and intellectual skills which will enable individuals to be self-reliant and useful members of the society.
- e) Promote and encourage scholarship and community service.
- f) Forge and cement national unity; and
- g) Promote national and international understanding and interaction.

Universities are organizations established by law, statute and decrees, acts of government and edicts and all these prescribed conditions that guide the actions of those involved in the management of the various universities in Nigeria.

The instrument establishing the Nigerian university endows them with power that recognizes them as corporate organization. The statutes endow the universities with certain qualities in accordance with the Rivers State University acts, decrees, and laws or edicts for its corporate existence, thus they can commit offence like an ordinary person and can be sued or may sue anyone who contravene its laws. The university objectives and the powers conferred on it by law are very important which enable them to achieve its purposes without hindrances if the due process of law principle is adhered to by the administrators of the various universities.

The Due Process of Law and University Administration

The due process clause, asserts that no person shall “be deprived of life, liberty, or property, without due process of law”. It restricts the powers of the federal, states, or organizations from adherence to the stipulated laws governing the university to avoid conflict and confusion. The due process of law mandates the administrators and managers of these universities to abide to the rules and regulations establishing these universities.

According to (FGN 1997:2), posits that, the main features of university’s organization are laid down in the law establishing the university. The act, law, status, decrees and edicts establish the framework within which the university is to be administered, but these should be dynamic in order to accommodate changing circumstances. Basically, the instrument establishing the universities endow them with certain status powers, this enable the universities exhibit attributes that portray them as a person.

In other words, the university based on the assessment of its members and stake holders, can commit offences which can attract external interference and interpretations. As a result, the university can be sued by any person or group of persons and organization that believe their fundamental human rights have been tampered with and in the same vein, where due process of law was not adhered in the discharge of duties this can also attracts legal actions.

In an attempt to achieve an organized and peaceful school environment and maintain law and order, university management should be guided by the laws establishing them. Appointment, admission and discipline of staff and students are critical area of friction between staff and students on one side and the administration on the other side.

Discipline and appointment in the universities is governed by the law establishing the university. Koko (1998) contends that a lot of lapses are created as a result of lack of adequate understanding of the laws in staff discipline. Decisions that require urgent and spontaneous action are delayed as a result of procedural mandates. Conversely too, irrational decisions are taken which negates the principles of fair justice and fundamental human rights of individuals in the process of handling cases.

The university management sometimes does not explore and exhaust all administrative processes before pronouncing punishment, thereby ignoring the due process of law which is enshrined in the various Acts and conditions of service (Koko, 1998). On no account should a staff be arbitrarily disciplined without due process. The administrator must apply fairness in any disciplinary procedure. According to Koko (1998), the Law of justice stipulates an opportunity for fair learning and frowns at the denial of such right.

There are specified procedural requirements and rights to discipline which the law courts will see as fair and just which will be considered as due process in eyes of the law governing every university. They include:

- Adoption of specific rules on conduct
- Presentation of proper notice to affected persons
- The right to fair hearing
- The right to counsel
- The right to cross-examine and confront witness
- The right to impartial trial of facts
- The right to protection against self incrimination (Okonkwo 1996); Koko 1998).

For example, in the case of state universities, the Governor is the visitor. The power of the visitor is clearly set out in the respective university laws. For instance, section 12 of the University of Calabar Act, empowers the visitor to dismiss, retire or compulsory retirement. Surprisingly, section 3(3) of the Act and chapter iv of the constitution excludes the court to intervene.

Case to buttress this provision is in the case of Anya vs. Ijayi (1988) 3 NWLR 118, 700, clearly indicate the flagrant abuse of the power of the visitor in disciplining or terminating university staff from employment. However, in the case of Ndili's removal which was based on a visitation panel report, section 15 of the university of Nigeria Act Cap 459 LFN 1990, stated the visitor had no such power to remove him. Yet, he was removed before suit and counter-suits prevailed. Disciplinary matters that negate outlined procedures stipulated by the Acts establishing the university we yield injustice and disagreement within the university environment and management.

What is Misconduct? According to Daramola (1998) could be an improper behavior or bad management. In the case of academic and non academic staff it could be leaking of official information for financial benefit. Academic dishonesty e.g. plagiarism, examination malpractice etc. an error of judgment could be interpreted as misconduct. These depend on the persons involved especially the person's motive. However, the interpretation that is given, the source of the problem between the academic staff and the governing authorities is affording the said offender an opportunity of appearing and being heard by investigating panel. One of the cardinal principles of natural justice is that of fair hearing.

This cardinal principle of law is often than not observed in breach then in observance and this has resulted to the observation of the credibility of most administrators in court most of the time. In *OLANIYAN AND ORS versus UNIVERSITY OF LAGOS*, the Supreme Court held: By the University of Lagos Act amounting to misconduct, that employee should be given an opportunity to defend the allegation before he/she can be terminated.

In situation where a contract has been properly terminated, intention and motive both become irrelevant, but where a defendant pleads that a plaintiff is being removed for misconduct, his removal cannot be justified in the absence of an adequate opportunity being offered to him to explain.

In a general rule, it's the concerns of administrative laws to ensure that any procedure, or condition precedent, which is stipulated by law, is fulfilled, before action is taken. For instance, the judicial proceedings, it is necessary that the requirement of natural justice and fair hearing be fulfilled before judgment is pronounced on an accused person. Based on these scenario, statutory powers are not to be exercised arbitrary, but properly, fairly, reasonably, judiciously and in conformity with the led down laws or other relevant statute regulating a given case that is due process.

Administrative decisions in the universities are issues that affect two or more parties that needs the administrations to observe some procedures and rules in other not to allow decisions taken to result to injustice. According to Koko & Okeke, (1998) contends that administrators who are responsible for seeing to the effectiveness of its bureaucratic organization, need to work within complicated mechanism of consultation concerning academic matters and due process for the protection of individuals.

Staff and students in the university are now becoming conscious of their rights and privileges. Underserved applications of rules and regulations in the system are being opposed through the proper channel of due process in getting the required justice in any matter.

CONCLUSION

Adoption of the concept of due process of law in the university administration in Nigeria will highly reduce crisis, which naturally facilitate growth and effective performance of statutory functions and trust. Since administration and law are instruments for development of wellbeing of human society and human existence, and for adequate conducive environment within which people can operate and live optimally. According to Nwagwu (2004), for effective university administration there must be respect of rules and regulation and allow the procedures guiding the establishment of an organization to be implemented in its full scale without alteration. Put it that those who organize and administer the education system must operate it within the limits of the prevailing laws.

The statutes and laws of the universities are very clear on its membership structure and those endowed with the powers of governance. This is as a matter of fact, the necessity of clause due process of law should be adhered as contained in the Act, law, statutes establishing the university.

RECOMMENDATIONS

1. University Administrators should adopt judicial proceedings that are designed to safeguard the legal rights of the individual in conflicts resolution and allow for appropriate discipline.
2. Proper hearing should be given to defaulters before judgment that attracts any kind of disciplinary measures.
3. University Administrators must administer justice in accordance with the rules and regulations guiding the rules and regulations guiding the university.

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