

THE INTERFACE BETWEEN THE NIGERIAN COURTS AND UNIVERSITIES: A CRITICAL APPRAISAL*

Abstract

This paper examines the interface between the courts and the nation's universities. It considers the domestic affairs and courts' intervention into the domestic domains of the universities, the visitorial powers of visitors of universities, the rights of the universities in meting out disciplinary measures on erring students and the procedure for dismissal of their staff. This is achieved through the use of judicial authorities embedded in law reports, books and workshop paper presentation. It finds that courts have no jurisdiction to interfere in the domestic matters of universities as such matters are within the exclusive province of the senate of the universities and visitors. The paper also finds that visitors of universities have overriding powers and authorities over the affairs of the nation's varsities. The study further finds that nation's varsities in meting out disciplinary measures on erring students must have regard to the rights of the students and staff. The paper observes that universities, students and staff must abide by the ethics, rules and regulation as laid down in the statutes creating them. The paper therefore recommends that in the exercise of disciplinary measures by the universities on the students and staff, fair hearing must be observed.

Keywords: Universities, Visitors, Governing Councils, Students, Staff.

1. Introduction:

The Nation's universities are famously referred to as the citadels of learning; centres of robust, open and engaging academic *cum* scholastic disputations: unbridled disputations that shape and mould policies; that interrogate hypotheses which, almost always engender paradigm shifts in attitudes, tendencies and societal goals.¹ University training is the key to many doors, doors of both knowledge and wisdom. The years spent in the university may be the most remarkable years of one's life. In a university, the world of thought, of ideas, of history, and the treasures of learning are thrown open to the students.² It is therefore worrisome that our universities have turned out to be the beehives of so many untoward acts and activities that are anathema to the rules and regulations governing them. Students perpetrate and perpetuate crimes and criminalities through their unlawful societies in the campuses, Staff (academic and non academic) are also not left out in turning our citadels of learning into citadels of decadence. The Ivory Towers have always risen to occasion in meting out disciplinary measures within their domestic confines to curtail those activities and sometimes exceed the limits or remit of their powers thereby necessitating the intervention of the courts as rights are being ventilated by students, staff (academic and non academic). This work therefore captures judicial pronouncements on the activities of our citadels of learning.

* **CLETUS OJUMU**, LL.B (Hons) (Unizik), LL.M (OAU, Ife), BL, Lecturer College of Law, Salem University, Lokoja, Kogi State, Head of Litigation, U.O. Sule (SAN) & CO, GRA, Lokoja, Kogi State. Email: cletusojumu4all@gmail.com, Phone NO: 08067009160

¹See the dictum of Nweze JCA, (as he then was) in *Akinyanju v. University of Ilorin* (2011) ALL FWLR part 569, p.1080. Pp.1207-1208, paras F-F.

²Justice Oputa, C.A, "The Role of a University and the Blessings of Education", in Chris Okeke (ed.), *Towards Functional Justice: Seminar Papers of Justice Chukwudifu A. Oputa*, Published by Gold Press Limited, Ibadan.2007, P.296, PP.297-298.

2. The Powers of Visitors and the Domestic Affairs of the Nigerian Universities.

The Statutes of Nigerian Universities in line with the British Universities tradition provide for the office of a visitor. This feature of the Nigerian Universities governance has established its distinctive character today. The institution of the visitor itself was developed at common law to provide oversight for ecclesiastical and eleemosynary corporations.³ The principal function of the visitor was to ensure that the corporation adheres to its proper purposes and to settle internal disputes so as to avoid the delay, expense and unseemliness of litigation in the courts.⁴

The powers of the visitor of universities are overriding, unquestionable, immutable, inviolate and inviolable and once he makes pronouncements it would be like words made in granite. Statutorily, Acts or Laws establishing universities mandatorily make provisions for the powers of the Visitors of Universities.⁵ In the case of *University of Ilorin v. Akinola*,⁶ the Apex Court elucidated the visitorial powers of the Visitor of the University, in this case, the President⁷ of the Federal Republic of Nigeria, to include the following: (a) appointing other persons to act on his behalf. (b) To deal with any affairs of the University (c) To overrule any decision of the Council of the University. (d) To overrule any decision of the Senate of the University.

Where the visitor of an institution exercises his powers, the institution is obligated or duty – bound to comply with same.⁸ The powers vested on the visitor by statute establishing varsities are delegable. Therefore, the President or Governors can delegate these powers to the Secretary to the Government or any Minister/Commissioners or Aids so acting in his behalf.⁹

Remarkably, the domestic affairs of the universities are the exclusive domains or preserves of the Visitors, Senates and Councils of the varsities and no court of law can encroach into the bowel of same. The first case of reference in this connection is the celebrated case of *University of Lagos v. Dada*.¹⁰ This case has become authority for the broad proposition that the Courts will not interfere in matters within the jurisdiction of the Visitor or which may conveniently be said to be of a domestic nature. The Supreme Court, in that case, dealt mainly with powers vested in the visitor by virtue of Section 15 and 16 of the University of Lagos Decree No. 3 of 1967. Section 14(1) & (2) of the Decree not only gives the visitor the power to decide the meaning of the University Statutes, but also in addition that the visitation power, conferred on him by Section 16 thereof, makes the decision of the visitor on any matter referred to him as binding upon the authorities, staff and students of the university.

³Prof. Popoola, A.O. “*Law and University Administration in Nigeria: Issues, Challenges and Perspectives*” being a paper commissioned for presentation at the Executive Education Programme organized for Vice- Chancellor of Nigerian Universities by the Association of Vice -Chancellor of Nigerian Universities: Le Meredien Hotel, Uyo, Akwa Ibom State: 19-20 November, 2014. P.30

⁴*Ibid*

⁵See Section 6, Obafemi Awolowo University (Transitional Provisions) Act 1975; Section 9, University of Ibadan Act, 1963; Section 16, University of Lagos Act, 1962; Section 14, University of Ilorin Act, to mention but these.

⁶ (2014) ALL FWLR PT 753 p 1917.

⁷The president of the Federal Republic of Nigeria is the visitor of all the Federal institutions in Nigeria, while the Governor of a state is the visitor of state’s own institutions.

⁸ See the case of *University of Ilorin v. Akinola (supra)*, where the Apex Court, *per* Peter-Odili JSC, pronouncing on the supreme and immutable powers of the visitor of an institution, supremely and rightly held that the powers of the head of state and Commander in Chief of Armed Forces are overriding when the occasion warrants it, and I must say the circumstances of this case called for the exhibition of those powers as this court also held in the earlier cases of similar presentation in *Anyia v. Iyayi* (1993) 7 NWLR (pt. 305)290 and *Shitta bey v. Attorney General Federation* (1998)10 NWLR (pt. 570).

⁹ See Peter- Odili at [P.1937, Paras. C-F, P. 1938. Paras. D-G] in *University of Ilorin v. Akinola (Supra)*

¹⁰*Supra*

Interestingly, the case which has brought out most explicitly the judicial attitude of the courts in matters respecting internal or domestic affairs of the varsities is *O.A. Akintemi & ors v. Professor C.A. Onwumehili*.¹¹ In this case, at the Trial Court, it was held:

Per Fakoyade, CJ:

For all that I have said above and having regard to the authorities I have already cited, I come to the irresistible conclusion that the two legs of the Plaintiff claim must fail because the issues of setting, sitting and marking of examination papers and publishing the results of such examination are matters of the domestic dispute within a University and such matters can be looked into by the Visitor. If the visitor, on the demand of the applicants, fails to look into the dispute he can be compelled to do so by an order of mandamus. But no court in the land can compel the visitor to decide the dispute one way or the other. His decision on the dispute cannot be looked into by the Court. The courts cannot perform visitorial duties. (Underlining ours for emphasis)

The Applicants lost at the trial court and lower court and, not deterred by the judgment of the Court of Appeal, went to Supreme Court and the Court Per IREKEFE JSC (as he then was) held *inter alia*:

On the whole, it seems to be incontestable that the issues with which this appeal is concerned belong to the domestic domain of the University as enshrined in the Statute establishing it and are as such not justifiable in a court of law. On the totality of the facts prescribed in this appeal I have no doubt that the respondents were justified in law to have, as it were, staged a pre-emptive environmental stroke, against those students suspected of examination malpractices in order to preserve from being polluted the university's channel of academic excellence. After all, a University is all about academic excellence.

Concurring with this lead judgment, Obaseki JSC¹² (as he then was)¹³ summed it up all, *inter alia*, thus:

From an examination of the above provisions of the University of Ife Law and Statute (i.e Section 17) the Senate and the Council of the University have each a say in the academic fortune or misfortune of any student, governing authority of the University and the senate is the Supreme Academic Authority of the University and since no decision has been taken by these authorities on the recommendations by the faculty board on the result of each of the applicants in their part IV law examination, the application for an

¹¹(1985) 1 NWLR pg. 68. In this case, three female students amongst eight of the University of Ife brought in the High Court, Oyo State a joint application against the Vice-Chancellor and the Registrar of the University of Ife as well as the university itself praying for an order of mandamus to compel the respondents to publish and communicate the applicants the result of the part IV final LL.B degree examinations taken by them in June 1981 at the faculty of law among other remedies. During the examination the university got wind of allegation of leakages of examination and examination malpractice involving some students in the faculty of law of the university. The Vice Chancellor, thereupon set up an investigation panel to inquire into the matter. The appellants were among the students who were invited to testify before the panel. At the end of the fact finding exercise, it was found that the applicants, along with others, had pre-knowledge of the examination question in the law of evidence. Consequently the applicants were suspended forthwith for the rest of the session and they were not to return to the university until the beginning of the 1981/82 session. Whereupon, they commenced certiorari proceedings in the High Court to have the suspension order quashed.

¹²At page 85.

¹³(Now of the blessed memory)

*order of mandamus is misconceived and cannot be granted. The Learned Jurist continued inter alia, thus:*¹⁴

*“The courts cannot and will not usurp the function of the Senate, Council and the Visitor of the University in the selection of their fit and proper candidate for passing and for the award of certificates, degrees and diplomas. If however, in the process of performing the function under the laws, the civil rights and obligations of the students or candidates is breached, denied or abridged it will grant remedies and reliefs for the protection of those rights and obligations. In the instant case, it has not been established that there was such a breach or denial or abridgement. The appeal therefore fails”*¹⁵

In the relatively recent case of *Magit v. University of Agriculture Makurdi*,¹⁶ the Supreme Court held that an application to court to quash the University senate’s decision about the award of a degree without first appealing to the University’s Governing Council was premature and affirmed the decision of the two lower courts dismissing the application.

One point that must be drummed home under this discourse is that where the matters involve the award of degrees, diplomas and certificates and other matters incidental thereto, an aggrieved party, must first exhaust all the internal machineries for redress before recourse to court. Where he/she rushes to court without first exhausting all the remedies for redress available within domestic forum, he/she would be held to have jumped the gun and the matter will be declared bad for incompetence.¹⁷

3. Instances where Courts can encroach into the Internal Affairs of the Universities

Circumstances or exceptions however exist where courts can encroach, dabble and flirt into the domain, bowel or internal affairs of the universities and *id est*, where it becomes glaringly obvious that in resolving domestic disputes, the university is found to have breached the civil rights and obligations of the students, thereby raising issues of public import. For examples, release of or publication of results are matters adjudged to be within the domestic forum of the universities, for which no court can interfere. But where an institution refused to release results on flimsy grounds or no ground at all, the jurisdiction of courts is activated.¹⁸

Another germane point that must be treated with no less attention is where the visitor of the university through its visitorial powers wades into the wrangling between students and university, the resolution

¹⁴At page 86.

¹⁵His Lordship rammed his point home, when he said: “it can only mean that until the remedies available in the domestic forum are exhausted, any resort to court action would be premature.

¹⁶(2006) ALL FWLR pt. 298, pg.1313.

¹⁷ See the cases of *Magit V. University of Agriculture, Maiduguri (supra)*, *University of Ilorin V. Oluwadare* (2009) ALL FWLR pt. 452 pg. 1172, p. 1207, paras B-D.

¹⁸See the case of *University of Ilorin V. Adesina* (2014) ALL FWLR Pt. 758, Pg 819, wherein, the respondent, a student of the applicant was allegedly involved in a student’s demonstration as a result of which she was indicted and referred to the student’s disciplinary committee. Rather than appear before the committee, the respondent commenced an action in the Federal High Court, Kwara State, claiming declaratory and injunctive reliefs to the effect that having completed her course in chemistry as required, the appellant was illegally holding on to her result, an order of mandamus, compelling the appellant to release her academic records and exemplary damages. The Trial Court granted the reliefs sought and, dissatisfied, the appellant filed an appeal to the Court of Appeal. While the appeal was pending, the President of the country set up a committee to reconcile the parties. The resolution of the committee included a recall of the respondent who had been rusticated after an apology and payment of damages by her. Despite her recall, appellant failed to release her results and the respondent returned to the court. The case rose to the Supreme Court and the court dismissed the appeal by the appellant.

resulting there from, is inviolate and no university has the *vires* to run counter of such resolution. In the case of *University of Ilorin V. Akinola*¹⁹, the Supreme Court held that once the visitor of the university (the President of Federal Republic of Nigeria) either acting by himself or through appointees, had directed that a putative erring student should be reinstated that should be final irrespective of whether the university gives its own pardon or not, and therefore the student should accordingly be reinstated.²⁰ Given the above legal expositions, festooned with *ex cathedra* authorities, we submit that the palpable corollary deducible from the above, is that, in as much as the universities have the final *vires* over their domestic affairs and no court can flirt into those affairs, care must be taken that, in the exercise of those powers, the rights of the students must not be encroached upon. And for students to properly have locus to litigate over those affairs, efforts must be made to explore and exhaust every internal remedies before rushing to court, otherwise, it may be heard to say that they jumped the gun or that the suit is premature or inchoate.

4. Universities and Disciplinary Measures on Erring Students

University is an academic nursery; a convergence, where all communities of good virtues are cultivated and harvested. It is an institution governed by rules and regulations and students conforming to these rules. Where and when the University Vice-Chancellor and others who administer the body with him clearly conceived or more appropriately discovered to their chagrin that a particular student by the mysterious activities in the campus and also being in possession of materials that did not advance the cause of academic knowledge but were more likely to cause mayhem and crisis or turbulence, they should not wring their hands in desperation and do nothing.²¹

A university has the authority within its premises to discipline any erring or misbehaving student. The principle of fair hearing as envisaged in the constitution must however be the guiding principle in applying any action against a misbehaving student.²² If the act of the student amounts to crime, the normal report should be lodged with the police but this will not preclude the university exercising its power under its statute to punish misconduct by any student.²³ Where universities in meting out punishment or investigating erring students or misbehaving students, refuse, fail or neglect to be guided by the principle of natural justice, courts have pronounced that such action is null and void.²⁴ In the celebrated case of *Garba V. University of Maiduguri*,²⁵ there was a riotous behavior in the university involving 500 students. There was arson, properties destroyed and looted and assaults on persons. There was an administrative inquiry set up and headed by the Deputy Vice-Chancellor whose house and properties were destroyed or looted. The report showed that although the allegation against the students included arson, stealing and indecent assault there was nothing to show that the appellants who were among those against whom the allegations were made were given the opportunity to examine witnesses or that they were even present. The appellants were expelled. They initiated an action at the Borno State

¹⁹*Supra*.

²⁰ Per Peter-Odili at P.1937 paras C-F.

²¹ See the *dictum* of Pats – Acholonu, JSC in the case of *Chiekwe Ikwunze Esiaga v. University of Calabar* (2004) ALL FWLR Pt. 206, pg. 381, particularly at [p. 398, paras. C-F].

²² See *University of Uyo V Essel* (2006) ALL FWLR pt. 315 pg.80, where the Court of Appeal held that before a decision to discipline a student in a University is taken, he or she is entitled to a fair hearing right from the inception to the end of the investigation. The students must know the type and nature of the allegation against him and the kind of statements made against him/her so that he or she can be accorded time and opportunity to correct them in his or her defence.

²³ See the *dictum* of Belgore, JSC at Pp. 403-404, paras. E-A, in *Esiaga V. University of Calabar* (*supra*).

²⁴ See the case of *Yesufu Amuda Garba V. University of Maiduguri* (1986) 1 NWLR (pt. 18) 550, (1986) NSCC Vol.17.

²⁵*Supra*.

High Court for the enforcement of their fundamental rights. The court granted their reliefs. The University's appeal to the Court of Appeal was successful. The applicants' appeal to the Supreme Court was allowed. The Apex Court held *inter alia*, that the applicants, being accused of misconduct amounting to wanton destruction of property, looting, arson, stealing and indecent assault, were entitled to a court trial. The Disciplinary Investigation Panel and Senate Disciplinary Board were incompetent to adjudicate on allegations of criminal offences made against the applicants. The expulsion of the applicants was a violation of the rules of natural justice and of their constitutionally guaranteed fundamental rights.

The net result of the above is that such action violates the hallowed *nemo iudex in causa sua* (one cannot be a judge in his own cause) principle.²⁶ Note that where there is allegation of examination malpractices, it should not be treated as matters within the bowel of the universities for which no court can impede. Any accusation or allegation of examination malpractices is a serious charge under section 3(16), Special Tribunal Miscellaneous Offences Act Cap.40, Laws of the Federation of Nigeria, 1990 and it is punishable with 10 years imprisonment. Therefore, it is definitely not within the domestic jurisdiction of a university. It can only be tried in a competent criminal court or tribunal set up under the constitution.²⁷

5. Universities and Disciplinary Measures on the Staff.

Discipline is resorted to by university authorities to punish a breach of university rules and regulations by a member or members of staff: For minor offences, a member of staff can be warned or reprimanded, or suspended, but for serious offences, his appointment could be terminated or he could be dismissed²⁸. But, in all of these, fair hearing must be the guiding principle.²⁹

In the case of *University of Ilorin V. Adeniran*³⁰, the Court of Appeal, in no unclear terms, delineates the procedures for the termination of the appointment of staff of the universities, the Court per OGUNWUMIJU, JCA,³¹ held *inter alia*:

The issue at stake here is whether or not the appellant took the appropriate statutory steps in terminating the appointment of the respondent. The learned trial judge in my view was right in his decision that the appellant did not give the requisite notice of misconduct to the respondent to provide the legitimate foundation for the subsequent disciplinary decision to terminate his appointment. Section 15(1) of the Uniilorin Act, provides for a mandatory procedure to be followed by the university. If a formal query is issued, the Senior Staff Disciplinary and Appeals Committee must be called into the issue to examine the defence of the respondent and make appropriate recommendation to the Council. Section 15(1) of the Uniilorin Act provides us follows-

²⁶See also *Nnamdi Azikiwe University V. Nwafor* (1999) INWLR (pts. 584-588) 166. Here, the disciplinary action against the respondent for examination malpractice was quashed by the Court of Appeal because the members of the Examination Committee who allegedly caught the respondent took part in the meeting of the University Senate which met and ratified the disciplinary action. The members of the Committee acted as judges and complainant which is against *nemo iudex* rule. See *University of Uyo V. Essel* (*supra*), where Mr. G.A. Umoh who sat as a member of Examination Malpractice Panel also sat on the Senate Appeal Committee in respect of the same matter concerning the respondent.

²⁷ See *Uni Uyo v. Essel* (*supra*); per Adamu JCA, at p. 100, paras. D-H. See also the cases of *Egwu v. Uniport* (1995) 8 NWLR (pt.414) 419; *U.N.T.H.M.B V.Nnoli* (1994) (pt 363) 317 p.105.

²⁸*Ibid* fn1

²⁹ See the case of *Olaniyan v. University of Lagos* (1985) 2NWLR (PT.9)599.

³⁰(2007) ALL FWLR part 382 pg.1871.

³¹At [pp.1910-1911, paras. D-E].

15(1) if it appears to the Council that there are reasons for believing that any person employed as a member of the academic or administrative or professional staff of the university, other than the Vice-Chancellor, should be removed from his office or employment on the ground of misconduct or of inability to perform the functions of his office or employment, the Council shall

- a) Give notice of those reasons to the person in question
- b) Afford him an opportunity of making representations in person on the matter to the Council, and
- c) If he or any three members of the Council so request within the period of one month beginning with the date of the notice, make arrangements -
 - i. For a joint committee of the Council and the Senate to investigate the matter and to report on it to the Council, and
 - ii. For the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter³².

And if the Council, after considering the report to the investigating committee, is satisfied that the person in question should be removed as aforesaid, the Council may so recommend him by an instrument in writing signed in the directions of the Council. The peremptory termination of the respondent's appointment by the Council, side stepping the full disciplinary procedure stipulated by section 15(1) of the Uniilorin Act in my opinion amount to lack of fair hearing.³³

From the above battery of decided authorities, one would have thought that a provision which deals with the removal of key functionaries in a University ought to contain detailed grounds that could amount to misconduct. To leave this to the whim or caprice of officials is to toy with the reputation of some important members of the society.³⁴ This is inconvenient and should be rectified.³⁵

As for members of staff of the university, if it appears to the Council that there are reasons for believing that any of such people should be removed from his employment on the ground of misconduct or of inability to perform the functions of his office, the Council³⁶ shall;

- a. Give notice of those reasons to the person in question;
- b. Afford him an opportunity of making representations, in person on the matter to the Council, and

³²See also *Imasuen v. University of Benin* (2010)3 NWLR Part 1182,p.591,pp.613-614.G-G.

³³See the cases *Akinyanju V. University of Ilorin* (2011) ALL FWLR pt. 569 p. 1080; *Oloruntoba-Oju V. Abdul-Raheem* (2009) ALL FWLR (Pt. 497) (2009) 13 NWLR (pt. 1137) 83., *Olufeagba & 43 Ors V. Abdul- Raheem* (2010) ALL FWLR (pt. 512) 1033; *Bamgboye V. Unillorin* (1999)10 NWLR (pt. 622) 290.

³⁴Curious to note that where the dismissal of an employee of institution is based on an allegation of crime, the allegation must first of all be proved before the dismissal can stand. This is to give employee adequate opportunity to explain himself before a tribunal vested with criminal jurisdiction before his employer takes any disciplinary action against him. The focus is primarily on the right to fair hearing rather than on a vindictive exposure of the erring employee to the punitive sledge of the criminal law. See the case of *Azenabor v. Bayero University Kano* (2009)17 NWLR part 1169, p.96. However, it is not in every case that an employee must be arraigned before a court before disciplinary action can be taken against him. Once the offence committed by the employee is within the domestic jurisdiction of the employer, disciplinary action in such a case can be taken without recourse to a criminal charge. All the employer needs to do is to afford the employee an opportunity of being heard before exercising his power of summary dismissal, even where the allegation for which the employee is being dismissed involves accusation of crime.

³⁵*Ibid*, fn 1

³⁶See Section 16(1) and (2) of the University of Benin Act 1990 and the case of *Imasuen v. University of Benin* (*supra*).

- c. If he or any three members of the Council so request within the period of one month beginning with the date of the notice make arrangements:
 - i. For a joint committee of the Council and the Senate to investigate the matter and to report on it to the Council, and
 - ii. For the person in question to be afforded opportunity of appearing before and being heard by the committee with respect to the matter.³⁷

If the Council after considering any representative and the report made in pursuance of this subsection, found the person guilty of misconduct, the person affected may be removed by an instrument in writing, signed on the directions of the Council³⁸

Again, as for the removal of members of the Council, it is stipulated that the recommendation for such removal should emanate from Council to the President or Governor, who might by an instrument in writing signed by him remove the person in question from office. However, one feels that this provision should only apply to those members of the University Council who are appointed by the President or Governor or those officials representing some federal ministries/state ministries. However, if the person concerned is a Senate or convocation or congregation representative, the best bodies to remove such people should be the bodies responsible for their appointment.³⁹

Exultantly, where the staff terms of employment is one governed by laws, rules and regulations, *Id est*, having statutory flavour, the employment cannot be terminated by way of discipline, except in accordance with rules and regulations governing the employment.⁴⁰

6. Lessons for Varsities, Staff and Students.

Universities, staff (academic and non-academic) as well as students have got some hard lessons to learn from the above avalanche and volley of decided authorities respecting our ivory towers-citadels of learning.

First, universities should note that where their rights stopped, the students' rights begin in matters within their territorial jurisdiction or domain. The rock solid position of law is that it is inappropriate for courts to dabble into the domestic affairs of the universities. However universities seem to have stretched these powers (territorial powers) so far and courts have risen to the occasion and taken bold steps to clip universities' wings in the event of abuses or excesses of these powers. For instance, the issues of publication or release of results, award of degrees, diplomas and certificates and other matters incidental thereto, are within the domestic forum of universities which courts are not expected to interfere. But where student/students has/have exhausted or explored all avenues and entreaties, within the bowel of universities, and the latter is adamant, intransigent as in neither releasing the result of the students, award degrees, nor giving good, substantial and verifiable reasons for withholding same, the student is entitle to approach the court for redress.⁴¹

³⁷See *Olufeagba V. Abdul-Raheem (supra)* *Akinyanju V. University of Ilorin (supra)*; *Oloruntobe –Oju V. Abdul – Raheem (supra)* to mention but these.

³⁸*Bangboye V. University of Ilorin (Supra)*.

³⁹*Ibid.*

⁴⁰See *Raji v. University of Ilorin* (2008) All FWLR part 435, p.1832, See also *Olaniyan v. University of Lagos (supra)*.

⁴¹*University of Ilorin V. Adesina (Supra) S.C, University of Ilorin V. Oluwadare (Supra) C.A, University of Ilorin V. Akinola (Supra) C.A, Magit V University of Agric Makurdi (Supra) S.C, Chiekwe Ikwanzé Esiaga V. University of Calabar (Supra) S.C.*

To students, domestic domain of the universities must be explored and exhausted before the jurisdiction of the courts could properly be activated to redress the breached civil rights, if not, it would be adjudged that they jumped the gun or that the action is premature or inchoate.⁴²

Where there is allegation or accusation of examination malpractice, universities must desist from treating same as though it were matters within their domestic jurisdiction⁴³. This is because accusation or allegation of examination malpractice is a criminal offence or charge under section 3(16) Special Tribunal Miscellaneous Offences Act Cap 40, Laws of the Federation of Nigeria, 2004, and is punishable with 10 years imprisonment. It can only be tried in a competent criminal court or tribunal set up under the constitution.⁴⁴ Ditto where an act of a student or students amounts to other criminal offences such as stealing, assault and arson.⁴⁵ In all of these, the proper and just thing for the institution to do is to hand the student/students over to the police for criminal prosecution. Anything short of this, the institution would be held to have laboured where it did not have jurisdiction.

An institution of higher learning cannot outrightly expel student/students without actually constituting a disciplinary committee to hear the particular student/students involved⁴⁶but can suspend the student/students pending investigation into the alleged offence. While the former amounts to unfair hearing, the latter, is an internal affair of the university to enhance good administration and not necessarily a disciplinary measure.⁴⁷ Therefore where a university rises to occasion whenever it perceived that the atmosphere within its domain is threatened and there is a reasonable possibility that if the rampaging act of a student or students is not nipped in the bud by the act of suspending the perpetrators of the seeming ignoble act, it cannot be adjudged to have gone outside its remit. The aim of suspending the student is to abort any likelihood of the threatened disturbing atmosphere snowballing into an uncontrollable situation.⁴⁸ And student/students who is/are suspended or expelled by a university should not at all time put themselves in the garb or dress of the imitable “Garba”, in the *Garba’s case* (*supra*) and cry blue murder for the suspension or outright expulsion. A university should be capable of enforcing ultimate and extreme disciplinary measures of expulsions where the facts and circumstances of the case demand that it so act.⁴⁹ Note that the celebrated case of *Garba V. University of Maiduguri*⁵⁰ is not intended to be a court given license and judicial umbrella to provide students of unbridled, recalcitrant and impetuous behaviors in the university system who have no sense of ethics and acceptable level of decency in a civilized society to cause to the educational institution by their uncouth and display of primitive characterizations. No, it is not. It is equally not intended to tie the hands of the college authority and debar it from making an effort temporarily to arrest a perceiving evil that is seen rearing its head which if not nipped in the bud might conceivably raise Cain.⁵¹

Therefore, the gravamen of the above discourse is that if the act of student/students amounts to crime, the normal report should be lodged with the police but this will not preclude the university exercising its power under its statute to punish misconduct by any student. The case of *Garba v. University of*

⁴²See *Akintemi and Ors V. Onwumechili and Ors* (*supra*) S.C; *University of Ilorin V. Oluwadare* (*supra*) S.C.

⁴³See *University of Uyo V. Essel* (*supra*) C. A.

⁴⁴See *Egwu V. University of Port Harcourt* (*supra*); *U.N.T.H.M.B. V. Nnoli* (*supra*).

⁴⁵ See *Garba V. university of Maiduguri* (*supra*).

⁴⁶ *Ibid*, fn9

⁴⁷*Esiaga v. University of Calabar* (*supra*).

⁴⁸ See the dictum of pats-Acholonu JSC, at [P. 403, Paras A-E] in the case of *Esiaga V. university of Calabar* (*supra*).

⁴⁹*Ibid*, see also *University of Calabar V. Ugochukwu&9 Ors* (2008) ALL FWLR Pt. 422.

⁵⁰ *Supra*.

⁵¹*Ibid*.

*Maiduguri*⁵² has not precluded the university taking action against the misconduct of students within its campus.⁵³

7. Conclusion

Universities are clothed with some rules, regulations and powers by Act/Laws establishing them. Students or undergraduates and staff must endeavor to reconcile themselves with the ethics of the university environment. That is to say, abide by the rules and regulations as laid down by statute. Universities have rights within their domestic jurisdiction to enforce discipline on the erring students but in the exercise of these powers of discipline within its premises, fair hearing must be reckoned with. Therefore, universities must know their limitations in the exercise of their authorities as they are not citadels of oppression, intolerance and capricious exercise of powers to the detriment of staff and students. For if a nation's varsities can always act within their bounds and staff and students abide by the rules and regulations, varsities will continue to be a peaceful place devoid of any wrangling occasioning mayhem, thereby activating the intervention of the courts.

⁵² *Supra*.

⁵³ See the dictum of Ogbuagu JSC (at 1334 – 1336, paras. F-A) in the *Esiaga V. university of Calabar (Supra)*.