FAIR HEARING IN JUDICIAL ADJUDICATION IN NIGERIA*

Abstract:

The right to fair hearing has been said to be as old as mankind. Fair hearing is very evident in the biblical account of what transpired when God discovered that Adam and Eve have eaten the forbidden fruit. God did to condemn them immediately but sought to know from them what happened. Simply put Fair Hearing means that the other person will be given an opportunity to be heard and that one will not be a judge in his own case. In Nigeria, the doctrine of fair hearing which is one of the twin pillars of natural justice is well enshrined in the constitution. This article x-rays the application of the doctrine of fair hearing under the Nigerian Constitution using the doctrinal method as its tool. The work found out that in most cases especially in administrative tribunals and other quasi tribunals the principles of fair hearing is not adhered to which is the problem that culminated to this work. It is recommended that both judges, magistrates, president of customary and Sharia courts as well as administrative heads in various institutions of public and private nature be exposed to training and awareness of this principle through workshops, seminars , conferences etc.

1.0 Introduction:

What constitutes a fair hearing depends on the circumstances of each case. However, it is the accepted law that the basic procedural and other requirements of the rule of natural justice must be served by every tribunal or authority whose decision will affect the right of another.

The Constitution of the Federal Republic of Nigeria, the 4th alteration provides[1] that in the determination of his civil rights and obligation, including any question or determination by or against any government or

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[1] Constitution of the Federal Republic of Nigeria 1999, 4th alteration, Section 36 (1)

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.

The Black's Law Dictionary[2] defines fair hearing as "Judicial or administrative hearing conducted in accordance with due process. In essence, fair hearing means giving equal opportunity to the parties to be heard in the litigation before the court[3]. It implies that where parties are given opportunity to be heard, they cannot complain of breach of the fair hearing principle[4]. In *Owners MT "Venture" v NNPC*[5] , the court held that the rationale of all binding authorities on the matter is that fair hearing imposes an ambidextrous standard of justice in which the court must be fair to both sides of the conflict.

What constituted fair hearing or lack of it in one case may not necessary apply to another case except the facts and circumstances are the same[6]. In *Eze v FRN*[7], the Supreme Court on the fundamental nature of issue of fair hearing and effects of the breach of it, held that the principle of fair hearing in the process of adjudication and administration of justice is fundamental and so entrenched in the Constitution of the Federal Republic of Nigeria and the common law. The concept is all the more preeminent that once it is established that there is a breach thereof, the entire proceedings no matter how well conducted comes to naught.

In the real essence, fair hearing lies in the procedure followed in the determination of the case, not in the correctness of the decisions[8]. It is only when the party aggrieved has been heard that the trial judge would be seen as discharging the duty of an unbiased empire. It connotes the impression given to an ordinary reasonable person watching the proceedings of a court or tribunal, as the case may be, if he goes away with the impression that the person has not been treated fairly, then the

[2] B A Garner, Black's Law Dictionary, 10th edition (United States of America, Thomson Reuters, 2014) 837.
[3] Okorie v State (2018) All FWLR (pt. 922) 828 at 874
[4] *INEC v Musa* (2003) LPELR – 24927 (SC) and UBN Ltd v Nwaokolo (1995) LPELR – 3385 (SC)
[5] (2014) 2 NWLR (pt 1390) 74 at 105
[6] *Okorie v State* (supra) 875, *Adamu Suleman v COP* (2008) LPELR – 3126 (SC)
[7] (2018) ALL FWLR (pt 923) 123 at 172, *Adeoye v State* (1991) 4 SSC 67
[8] *Akila v Director – General*, SSS (2014) 2 NWLR (pt 1392) 443

mode of hearing and a complaint of its breach is one directed to the manner of the hearing in contradistinction to the content of the hearing.

When a hearing is said to be in breach of the rights of fair hearing, the court does not have to go into the question whether or not the decision itself was correct. What is complained of is the circumstances of arriving at the decision and not the decision itself[9].

In Nigeria legal system, the purport of fair hearing and by virtue of the Constitution[10] is what, in the determination of his rights and obligation, a person is entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. In the words of the noble Lord, Hon. Justice Adekeye, JSC in *Rear Admiral Francis Echive Agbiti v the Nigeria Navy*[11] fair hearing requires the observation of the twin pillars of natural justice namely;

(a) *Audi alteram partem*, that is, hear the other side
(b) *Nemo judex in causa sua*, that is, no one should be a judge in his own cause. This is the rule against bias.

As rightly stated, the procedure adopted in our courts, whether customary or English courts must conform to the two fundamental principles of natural justice recognized by the English law. Fair Hearing by a court or other tribunal under section 36 (1) of the Constitution incorporates the *audi alteram partem rule as well as the rule of nemo judex in causa sua*[12].

The Rules of Natural Justice:

Generally, the rules of natural justice apply to require the maker of a decision to give prior notice of the decision to persons affected by it and an opportunity for those persons to make representations.

[9] Victino fixed Odds Ltd v Ojo (2010) 9 NWLR (pt. 1197) 486, Tukur v Government of Gongola State (1989(4 NWLR (pt. 117) 517
[10] CFRN 1999, 4th Alteration, section 36 (1)
[11] (2011) 4 NWLR (pt. 1236) 175
[12] *Transamerica Corp. v Akande* (2014) 15 NWLR (pt. 1431)502, CACN Lamido (2012) 8 NWLR (pt. 1303) 560, *Ishaku v. Kantok* (2012) 7 NWLR (pt. 1300) 457 and Nigeria Arab Bank Ltd v Comex Ltd (1999) 6 NWLR (pt. 608) 648.

Again, it enjoins that any person with direct primary or preparatory interest to disqualify himself or otherwise he might be biased. These rules are historically closely tied to judicial decision making in the courts, but they have been extended to apply to administrative authorities and to administrative decision – making. That is, where a party is not heard at all in a matter which affects his rights or the trial is adjudged unfair, any judgment resulted there from becomes a nullity and of no legal consequence. It is bound to be set aside[13]. The two principles of natural justice are so fundamental to any system of law and are applied to judicial and quasi-judicial hearing. In *Adewunmi v Nig. Eagle Flour Mills14*[14], the Court held:

> *The Rules of Natural justice must be observed in an administrative enquiry. Such was not done in the proceedings leading up to the dismissal of the appellant. A procedure where an accuser is shielded from the accused all through the inquiry is certainly not one in compliance with natural justice. Presence and direct confrontation has a lot of impact and produce different results from a one sided inquisition by an executive of his subordinate.*

Equity, fair play and equal treatment are what constitute justice, which we all clamour for[15]. This principle finds expression in Holy Bible[16] where the Lord God Almighty, after creating all things created man and woman in His own image and gave them authority to rule and dominate all "things" not all the humans. The relationship between other humans all of whom were created in the image of God is to be governed by negotiation not domination or rulership.

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[13] *Akpamgbo – Okadigbo v Chidi* (No 1) (2015) 10 NWLR (pt. 1466) 171 at 232, Mohammed V Olawunmi (1990) 2 NWLR (pt 133) 458, Okafor v A G Anambra State (1991) 6 NWLR (pt. 200) 659.
[14] (2014) 14 NWLR (pt 1428) 443 at 457
[15] *Supra* at 459
[16] Genesis chapter 3 verses 26 and 27

The theory behind the principles was aptly stated in 1723 in R v Chancellor of Cambridge (Dr. Bentley's case)[17] where, Forescue J, held that even God Himself did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God, "where art thou? Has thou eaten of the tree whereof I commanded thee that thou shall not eat".

Fair hearing therefore, is a hearing that does not contravene the principles of natural justice. The principles are easy to proclaim but the difficulty lies in their scope and application to particular facts of a case.

Audi Alteram Partem:

The principle often expressed by the *latin maxin audi alteram partem* which means "hear the other side", has been long enshrined in the Nigerian jurisprudence[18]. The importance of hearing before condemnation has always been recognized and emphasized under our law just like the great judges in English legal history. Lord Kenyon and Blackburn made it clear that it is an invariable maxim of English law that no man should be punished before he has had the opportunity of being heard[19].

In *Imonikhe v Unity Bank Plc*[20], the Apex Court per Rhodes-Vivour, JSC held that the natural justice principle of *audi alteram partem* is a maxim denoting basic fairness. It is a canon of natural justice that has its' root in the Old Testament. The Good Lord heard Adam before he passed sentence. It simply means hear the other side.

The word *audi* means hear. Natural justice within the meaning of the *axin audi alteram partem* means that a person to be affected by the decision must be given opportunity to be heard before the decision is reached. The emphasis is on opportunity to be heard in *Muhammed v. Abu Zaria*[21], the court held that it is the requirement of the law that a

[17] (1723) 1 Str 557 at 567
[18] *Gyang V C.O.P; Lagos State* (2014) 3 NWLR (pt. 1395) 547 at 558
[19] EG Akaniro, Introduction to Nigeria Legal system (Ikeja: Elcoon Press Limited 1998) p. 37.
[20] 20. (2011) LPELR 1503
[21] (2014) 7 NWLR (pt. 1407) 500 at 537

person who has some charges leveled against him or is facing a trial before a regular court or a disciplinary committee is entitled to a fair hearing before he is found guilty and made to suffer. By the principle *audi alteram partem*, no man should be condemned unheard. It means where a person's rights and obligation are affected, there is a duty on the relevant authority to accord him the opportunity to be heard before taking any adverse decision against him[22]. Once the opportunity is given but he or she decides to absent himself or otherwise not to take advantage of it, he cannot complain[23].

In *Eze v FRN*[24], the Apex court held that right to fair hearing can be waived. Thus, where a court has given every opportunity to a party to be heard but that party decides not to utilize it, he will be deemed to have waived the right, hence, he cannot be heard to complain that his right to fair hearing was breached. This rule applies equally to a defendant refusing in a criminal trial to utilize the opportunity of fair hearing given to him.

The reasoning of the court was based on the precedent set up in *News-Watch Communications Ltd. v. Attah*[25], wherein the principle was laid down. The principle here is a two-edged sword to the plaintiff to be heard timeously and for the defendant to avail itself of the rights, constitutional rights extended to it by the court to present its side of the case.

In *Owner's Mt "Ventures" v. NNPC*[26] wherein the approach of the trial court on the proceedings of November 5, 2003 was declared a nullity as the court upheld a preliminary objection that was not moved, and the court dismissed the Plaintiff's case without more, which was an affront to the inviolable canon of fair hearing.

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[22] Nat. Palm Prduce Ass. (Nig.) Ltd V Udom (2014) 8 NWLR (pt. 1410) 479, *Ceekay Trading Ltd. V General Motors C. Ltd*. (1992) 2 NWLR (pt. 222) 132, *Yakubu V Gov. Kogi State* (1997) & NWLR (pt. 511) 66

[23] *Okorie v State (supra)* at 874

[24] (2018) All FWLR (pt. 923) 123, *Arino v Elemo* (1983) ISCNLR 1, First Bank of Nigeria PLC v TSA Industries Ltd (2010) All FWLR (pt. 537) 633, *Olufeagba v Addu – Raheem* (2010) All FWLR (pt. 512) 1033 at 1019; *Chukwuma v FRN* (2011) 13 NWLR (pt. 1264) 391 at 418 - 419

[25] (2006) all FWLR (pt 318) 580 at 600-601, per Tobi JSC (Rtd) "Counsel quite a legion, found the fair hearing principle duly entrenched in the constitution as a pathway to success whenever they are in trouble on the merits of the case before the court. Some resort to it as if it is a magic wand to cure all ills of the litigation .

[26] *(Supra)* at 106 to 108. *Odutola v. Kayode* (1994(2 NWLR (pt. 324) *"Obimonure v Erinosoho* (1966) 2 SCNLR 228, Okoye V CPM Bank Ltd. (2008) 15 NWLR (pt. 1110) 335

The denial of the right to be heard in one's defence which may consist of irregularities that are tantamount to a denial or breach of the rules of natural justice; is one of the grounds that can invalidate the acts of an administrative tribunal or bodies as held in *Muhammed v. Abu Zaria*[27]. In *Fut Mina v. Olutayo*[28], it was held that the principles of natural justice demand that a student accused of examination misconduct and expelled for that misconduct must be afforded an opportunity by the body statutorily empowered to take such decision, either judicially or quasi-judicially to:

a. Know the allegation against him;

b. Be present when the case against him is heard and;

c. Not only to state his side of the allegation, but also to contradict the case against him by the cross-examination of the witnesses called by his accusers.

In an administrative tribunals, natural justice dictates that a person liable to be directly affected by an administrative decision, acts or proceedings, must be given adequate notice of what is proposed so that he may be in a position:

a. To make representations by himself or through someone else on his behalf; or

b. To appear at the hearing or inquiry;

A good number of counsels resort to the principle even when it is inapplicable in the case. The constitutional principle of fair hearing is for the parties in the litigation. It is not only for one of the parties. In other words, fair hearing is not a one-way traffic but two-way traffic in the sense that it must satisfy a dual carriage way, in the context of both the plaintiff and the defendant or both the appellant and the respondent. The court must not invoke the principle in favour of one of the parties to the disadvantage of the other party undeservedly. That will not be justice. That will be injustice.

c. Effectively prepare his defence and to answer the case he has to meet.

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[27] *Supra*

[28] *Supra* at 1284 - 1285

A person may be present at the hearing and may present his own case and yet can successfully complain on ground of fair hearing in an aspect of the case or decision against him which he had no due notice. In *Matthew v State*[29], the appellant was alleged to have conspired with others at large to commit armed robbery and had attempted to rob PW3 in her shop of money with the aid of an iron rod. The appellant had been caught in the act when PW3 raised an alarm and he was subsequently arrested. He was therefore arraigned in the High Court of Ogun State on a 2 count charge of conspiracy and attempted robbery. There was a trial-within-trial and a confessional statement was admitted. The appellant was found guilty and sentenced accordingly. On appeal, the Court of Appeal held:
In my considered view supported by a plethora of legal authorities, if the principles of natural justice are violated in respect of any decision, it is immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice.

The appellant was represented throughout the trial by the Citizens Right Department despite the order of the trial court on 14th January 2007 that assigned his representation to Legal Aid Council, Ogun State. There are also several instances where the Court orders solicitors to pay costs personally, without first hearing from them, there is a remedy here[30].

Anything that will facilitate parties in the presentation of their cases should be done, where not done will be regarded as a breach of the rule[31].

[29] (2017) All FWLR (pt. 868) 663 at 690. Again see Sheldon v Bromfield Justices (1964) 2 Q B 573 at 578, where the person was charged to court for assault. At the end of the proceedings, he and two of the witnesses were bound over to keep the peace. Those witnesses had no idea that they would be bound over and were never asked to show cause why they should not be bound over. On appeal, the bonding over against them was set aside. See also *Adigun v Attorney – General of Oyo State* (1987) INWLR (pt. 53) 678, *Salu v Egeibon* (1994) 6 NWLR (pt. 348) 23, *Chingworm kim v the State* (1992) 4 NWLR (pt. 233) 17

[30] *Abraham v Juston* (1963) 1 WLR 658, *R v Smith (Martin)* (1975) Q B 531

[31] 31. Constitution of the Federal Republic of Nigeria 1999, section 36 (6) (b)

In *Nweke v State*[32], the Supreme Court held that the fair hearing includes the facilities that must be afforded the defendant or anything which would aid the defendant in preparing his defence in the crimes for which he is charged. These include the statements of witnesses interviewed by the Police in the course of their investigation which have absolved the defendant of any blame or which may assist the defendant to subpoen such favourable witnesses that the prosecuting counsel may not want to put forward to testify. Today in our criminal jurisprudence this right is not self – executory[33].

Any request for facilities for the preparation of the defence of defendant must be made to the court. Once he becomes aware that he has a charge hanging over his neck for an infraction of the law and makes a request either orally or in writing for the prosecution to oblige him with the "facilities" that would have enabled him to prepare his defence, the court must accede to his request and the prosecution has to comply[34].

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[32] (2017) all FWLR (pt. 899) 323, Okoye v commissioner of Police (2015) All FWLR (pt. 799) 1101

[33] The Supreme Court per Nweze JSC said undoubtedly, counsel for the appellant misread the principle re-established in Okoye & Ors v. Commissioner of Police & Ors (2015) All FWLR (pt. 799) 1101, a principle that actually dates back to the decisions in R v Adebanjo (1935) WACA 315, Layonu & Ors v. State (1967) 1 All NLR 198, Gaji v.State (1975) 5 SC 61, FRN v. Wabara (2013) 5 NWLR (pt. 1347) 331, Ohwovoriole v. FRN (2003) FWLR (pt. 141) 2019, Ikomi v State (1986) 3 NWLR (pt. 28) 340 and Uwazurike v Attorney General Federation (2013) LPELR - 20392

[34] See further the reasoning by Nweze JSC in *Nweke v State (supra*) at 353 to 354 that the explanation for this requirement could be found in the jurisprudence of the European Court of Human Rights (ECtHR) which, in interpreting Article 6 (3) (b) (supra) in pari materia with section 36 (6) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), has held that, at that stage, the entitlement to disclosure of such facilities, like statements of prosecution's witnesses, is not an absolute right. Thus, in criminal proceedings, there may be competing interests, such as national security or the need to protect witnesses who are at risk of reprisals or to keep secret, the methods used by the police in the investigation of crimes, Van Mechelen and Ors. v. The Netherlands, (Reports of Judgments and Decisions, 1997-11). These, however, must be weighed against the rights of the accused person, Van Mechelen and Ors. v. The Netherlands (supra). In effect, only such measures restricting the rights of the defence which are, strictly, necessary are permissible under Article 6 (that is, section 36 (6) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Van Mechelen and Ors. v. The Netherlands (supra). Moreover, in order to ensure that the accused person receives a fair trial, any difficulties caused to the defence by a limitation on the said right must be sufficiently counter-balanced by the procedure which the judicial authorities followed, Doorson v. The Netherlands, (Reports and Decisions of the ECtHR, 1996-11, Van Mechelen and Ors. v. The Netherlands (supra); see generally, European Court of Human Rights: Guide on Article 6 of the European Convention on Human Rights, (NP: Council of Europe, 2014) 44 *et seq*.

In *Arobieke v. NELM.com*[35], the court held that where parties are given opportunity to be heard and the charge or complaint against the party standing trial or being charged or investigated made available to them, they cannot complain of breach of fair hearing principles. A party in a matter must not only state his side of the allegation but also contradict the case against him by the cross-examination of the witnesses called by his accusers[36]. The law requires that the charge against the appellant be proved by evidence. Where conviction is secured based on lawful evidence and the appellant as required by law, had the opportunity of cross-examining the witness(s), neither the proceedings nor the conviction therefrom would be adjudged perverse[37]. It is the law that a party who had an opportunity of being heard but failed to utilize it, cannot be heard to complain of lack of fair hearing thereafter[38]. Basically, it is the role of the judge to hold the balance between the contending parties and to decide the case on the evidence brought by both sides. Under no circumstances must a judge under the adversary system do anything which can give the impression that he has descended into the arena, as obviously his sense of justice will be obscured[39].

A counsel whose fees have not been settled can lawfully refuse service of a process on him. In that case, the litigant must personally be served with the process in questions before a decision is taken against him, failing which would amount to a breach of the right of fair hearing. Also if a party changes his counsel but service of a court is nevertheless effected on his former counsel, the consequent proceedings based on that process are null and void for breach of the fair hearing rule, the fact

[35] (2018) All FWLR (pt 948) 1380, Darma v Ecobank (Nig) Ltd (2017) LPGLR – 41663 (SC) and *Shyllon v Asein* (1994) LPELR – 3071 (SC)

[36] FUT Mina v Olutayo (2018) All FWLR (pt. 935) 1255 at 1284

[37] *Ado v State* (2017) all FWLR (pt. 897) 1938 at 1961, *Manawa Ogbodu v State* (1987) 2 NWLR (pt. 54) 20 and *Sunday v State* (2010) all FWLR (pt. 548) 874

[38] *Ado v State (supra) Darma v Ecobank* (2007) LPELR 41663 (SC). *Okike v Legal Practitioners Disciplinary Committee* (2005) All FWLR (pt. 266) 117, *Att. General, Rivers State v Gregory Udeh* (2006) 17 NWLR (pt. 1008) 436.

[39] However, see the dissenting judgment in *Okorie v State (supra)* at 905 – 908 per Eko JSC, wherein a witness to the defence, Dr. Egejuru (DW7) was giving his testimony without any objection from the prosecutor, the learned trial judge, so motu, intervened and stopped the witness from giving evidence to explain and or throw light on his medical report exhibit D4 which was recorded at page 256 of the records of proceedings, stating that ex facie the record is res ipsa spelling. *Jones v National Coal Board* (1957) 2 All ER 155

that no formal notice of change of counsel has been filed notwithstanding[40]. Adjournments should be granted when necessary, however an adjournment is not granted as a matter of course, but a court has to strike a medium in determining whether to grant adjournment or not, taking into account the justice of the matter[41].

However, if counsel is aware of a date of adjournment but takes ill before or on that date, he should either write a letter to the court or ask another counsel in his chambers, failing which he shall not be heard to complain of breach of fair hearing if a decision is taken in his absence. In *Eze v. FRN*[42], wherein the appellant exercised his right to conduct proceedings in the absence of his counsel, the court rightly upheld his conviction. If a party or counsel is embarking deliberately on dilatory or delay tactics, the court can lawfully stop him in his tricks and take action against his interest without flouting the provision of the constitution. Also any person who unduly and deliberately absents himself from the proceedings of the court will have himself to blame if the court takes any adverse decision against him based on such unnecessary delay. Court should not refuse counsel the right to address it on the facts. In *Kalu v. State*[43] the court held that by the provisions of section 294(1), 1999 Constitution (as amended) the right to final address is consecrated. It is the last address before the delivery of the judgment. It is the penultimate part of the three most important portions of the trial period, the first, being the hearing of the evidence, while the last is the judgment.

When counsel or party is denied this right, the trial court is equally deprived of its enormous benefits. Its inevitable consequence is that a miscarriage of Justice has been occasioned.

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[40] *Eze v FRN* (2018) All FWLR (pt. 923) 123 at 165.

[41] *Sani v State* (2008) All FWLR (pt. 950) 1622 at 1666.

[42] *Supr*a at 165 to 166, *Chidoka v First City Finance Ltd* (2013) All FWLR (pt. 659) 1024, *Bamgboye v University of Ubrom* (1999) 13 CNJ 295, *FBN Plc v TSA Industries Ltd* (2010) All FWLR (pt. 537) 633m *Governor of Zamfara State v Gyalange* (2013) 8 WWLR (pt. 1357) 642

[43] *Supra* at 1770, *Okafor v Attorney – General Anambra State* (1991) LPELR-2414 (SC), *Obodo v Olomu* (1987) 3 NWLR (pt. 59) III, *Mustapha v Governor Lagos State* (1987) 2 NWLR (pt. 58) 539, *Okeke v State* (2003) FWLR (pt. 159) 1381, *Adigun v AG Oyo State (supra)* and *Sodipo v Leminkainen* (1985) 2 NWLR (pt. 8) 547.

In a complicated case, depriving a party of the benefit of the services of counsel is a breach of the rule[44]. However, in a simple or straight forward case, no general right to counsel arises save in criminal cases. In *Mathew v State*[45] where the trial Court allowed the learned Attorney – General of Ogun State to act as the prosecutor and at the same time as the appellant's counsel through his officers that were prosecuting the case and the court allowed the appeal. It is trite that justice must not only be done but should be seen to be done. Any reasonable man or any ordinary man would be correct to feel that the trial could not have been fair and correct to imagine the likelihood of bias in the trial of his case.

In most cases of dismissal from certain employments done without giving the employees opportunity to defend the charges against them are in breach of this principle. In *Eze v University of Jos*[46] the appellant, a lecturer was alleged to have been demanding and receiving money from newly admitted students unlawfully, was queried and suspended. Based on the report of the Disciplinary Committee, he was dismissed. Further, in *FUT Mina v Olutayo*[47], the Respondent was placed on suspension until the final determination of her case by the student Disciplinary Committee. The committee report showed that the allegations against her were unfounded. Instead of reinstating the respondent, who had lost a session due to the misunderstanding, the senate of the appellant expelled the respondent from the University without affording her the right to be heard or allowing her the right to exercise her right of appeal as provided by the Act[48].

Nemo Judex in Causa Sua

The maxim means that no man shall be a judge in his own cause. It therefore, implies that the judge must decide the matter impartially and without bias.

[44] *Saka v. the State* (1981) NSCC 474

[45] *Supra* at 6861 *Sawodu v NPC* (2000) 6 WRN 116 at 124 and *Isiaku Mohammed v Kano Native Authority*. (1968) 1 NLR 242, *Orugbo v. Una* (2002) All FWLR (pt. 127) 1024, *Funduk Engineering Ltd v Mc Arthur* (1995) 4 NWLR (pt. 392) 6401, *Col. Yakubu (Rtd) v. The Governor of Kogi State* (1995) 8 NWLR (pt. 414) 386.

[46] (2017) All FWLR (pt. 898) 101

[47](2018) All FWLR (pt. 935) 1255

[48] Federal University of Technology Act (FUTA) 2004, Sections 17(1), 17(2) and 7(16)

The Constitution[49] provides that the court or tribunal established by law shall be constituted in such a manner as to secure its independence and impartiality. The rule prohibits or restrains the judge or court of law from being a judge in his own cause in order to actualize his or its impartiality[50]. It also binds persons, bodies or tribunal exercising judicial functions or whose acts, decisions or report will affect the rights of other persons.

In our legal system, it is the role of the judge to hold the balance between the contending .parties and to decide the case on the evidence brought by both sides. Under no circumstance must a judge under the system do anything which can give the impression that he has descended into the area of conflict, as obviously, his sense of justice will be obscured[51]

A judge who violates the principles of *nemo judex* rule does not incur civil liability but prohibition may issue against him to retrain him from acting or certiorari may issue to quash his decision or it may be a ground of appeal.

One is said to be a judge in his own cause when he is likely to be biased for reasons of interest or for fund. It is to be noted, that it is either the judge has pecuniary or proprietary interest in the subject matter of litigation. The court do not look for actual bias, they ask whether there was a real likelihood or reasonable suspicion of bias.

The Rule against Interest.

Interest could be pecuniary or proprietary, favour arises out of relationship with a party or witness in the case. Any direct financial interest no matter how minute, is sufficient to disqualify a person from acting as a judge in a case. In *Dimes v Grand Junction canal*, the court had opportunity of illustrating the kind of interest that will disqualify a judge for so acting.

[49] CRFRN, 1999, sections 17(2) (e) and 36(1)
[50] *FUT Mina v. Olutayo (supra)* at 1287
[51] *Okorie v. State (supra), Okoduwa v. the State* (1988) 2 NWLR (pt. 76) 333.

It was a case between the Canal[52] Company, Grand Junction canal and Dimes, the Lord of the Manor. Lord Cottenham, the Lord Chancellor who owned 90 shares in the canal company gave judgment for the company. There was however, no evidence or suggestion that his share holding interest in the company influenced him or even crossed his mind. Yet the House of Lords setting aside the judgment per Lord Campbell summed up the Principle thus:

> "No one can suppose that Lord Cottenham could be in the remotest degree, influenced by the interest that he had in the concern: but, my lords, it is of the least importance that the maxim no man is to be a judge in his own cause be held sacred. And this is not to be confined to a cause in which he has an interest".

It is commonly believed that Lord Cottenham who resigned while the appeal is on died of the shock from the revelation. The general principle as established in *Deduwa v. Okorodudu*[53] is that a breach by a court of the right to fair hearing is crucial and goes to the root of the trial Court's Jurisdiction. If established, it nullifies the entire proceedings in which the breach occurred.

The Rule against Bias

Black's Law Dictionary[54] defines bias to mean a mental inclination or tendering; prejudice; predilection. This could be inclination, bent, prepossession, a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction. It is further said to be a condition of mind, which sways judgment and renders judge unable to exercise his functions impartially in a particular case. It also refers to mental attitude or disposition of the judge towards a party to the litigation and not to any view that he may entertain regarding the subject matter involved.

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[52] (1852(3 HLC 759

[53] (1976) 9 – 10 SC 329 *Adigun v. Attorney – General, Oyo State* (1987) 1 NWLR (pt. 53) 678.

[54] BA Garner (ed) Black's Law Dictionary 10th edition (United States of America Reuters, 014) 192

In *Ibrahim v. Ojonye*[55] the court restated the Supreme Court dictum in *Adefulu v. Okulaja*[56] that a judge would be precluded from hearing a case when:

a. He has personal interest and would seem to be a judge in his own matter or
b. Having dealt with the same issue and it comes or resurfaces when he is in a superior court and is being called upon to decide an appeal against his own decision, or
c. Because of some obvious or latent connection of him with either of the parties or all of them, it will not be conscionable of him to participate in hearing the case; or
d. Generally his being a member of the tribunal would not appear to be in the interest of justice as he will not be seen to do justice.

The rule against bias intends that when there is no personal or financial interest, the facts may nevertheless give the appearance or impression that the adjudicator might be biased. A challenge for favour may arise from such circumstances as personal relation or very high degree of friendship between the judge and one of the parties, prior to the participation by the judge in any proceedings leading to the hearing, such as where he has acted as counsel for one of the parties or had earlier expressed an opinion prejudicial to either of the parties so that he cannot be expected to approach the case with an open mind and cannot give to both parties a fair hearing. But where a judge offered to withdraw from a case because he had previously acted as counsel for one of the parties, he cannot be said to be biased after both the counsel for the parties, had expressly told him to go on with the case as was the case in *Olue v. Enenwali*[57].

[55] (2012) All FWLR (pt. 654) 129 at 149-156, *Mbaji v. Amobi* (2012) All FWLR (pt. 613) 1915
[56] (1998) 5 NWLR (pt. 550) 435, *Onigbede v. Balogun* (2002)
[57] (1976) 2 SC 23. *Okoebor v. Police Council* (2003) FWLR (pt. 164) 189

In *Mbaji v. Amobi*[58], one of the issues on appeal was the relationship of Iguh J, and his elder brother Anthony Iguh JSC as a result of the appellant's application for him to disqualify himself from determining the case on the ground of real likelihood of bias based on the fact that his elder brother acted as counsel for the plaintiff/Respondent before his elevation to the bench. In resolving the issue in favour of the appellant, the Court held that Iguh J. does not have to 'guarantee' that Iguh JSC cannot and did not issue standing orders to him over the case. But we live in a society where respect for elders is of paramount importance and a Justice of the Supreme Court is a highly venerable figure in any society. As long as a reasonable man will think it likely that Iguh J, can find in favour of the respondent because of his brother's previoius involvement in the case, then there is a likelihood of bias and he must step aside, that is all it takes, what a reasonable man would think not what the Judge knows.

However, in the Secretary, *Iwo Central L.G. v Adio*[59] Chief Bola Ige as Governor of Oyo State had signed into law the Oluwo of Iwo Chieftaincy declaration that was being challenged by the plaintiff and the matter was heard by Ige J. (as she then was) who was the governor's wife. The issue of likelihood of bias was raised and it was contended that she should not have sat over the case. The Supreme Court per Iguh JSC held that when Chief Ige assented to exhibit "CI" he was only performing a constitutional duty. If Chief Ige had been sued in his personal capacity or in respect of a matter over which he had a private, personal or family interest and such a dispute found its way into the court presided over by Ige J., prudence surely, would have demanded that she should disqualify herself from adjudicating on the matter. But where, as in the present case, the act being challenged is not that of chief Bola Ige in his personal capacity or as an interested party but that of the Government of Oyo State. I cannot see my way clear why it will become necessary for Ige J., to disqualify herself from hearing the case for the simple reason she is the wife of the Governor.

[58] (2012) All FWLR (pt. 613) 1915 at 1931
[59] (2000) FWLR (pt. 7) 1142

But in *Okoebor v. Police Council*[60] the Supreme Court pointed out the situation where the judge will refuse to decline hearing the matter. In law, if a party raises objection as to the likelihood of bias on the part of the judge, it is safer and more in the interest of justice for the judge to refuse taking the matter, unless it is clear that the party is raising the objection qua opposition lacking merit and is designed to delay the court process or an outright abuse of the judicial process.

A judge cannot adjudicate and act as a prosecutor in the same cause[61]. He does so when he descends from the arena of justice into the arena of conflict or litigation by taking over or appearing to take over the case of one party. In *Akinfe v. State*[62] a judge by asking too many questions on one party or making too many interruptions? Furthermore, when a son is appearing before his father as the counsel for one of the parties, the judge must disqualify himself.

The test for determining bias or real likelihood of bias is objective in nature and not subjective[63]. The court examines the judge's conduct and then looks at the impression that would be given to other people when there is an allegation of breach of fair hearing against a judge. The law is that no matter how impartial a judge could be, if right-minded people would be of the opinion that in the circumstances of the case, there was a real likelihood of bias on the part of the judge, then he should not sit over the case. There must be a real likelihood of bias and not a conjecture or a figment of a person's imagination.

[60] (2003) 12 NWLR (pt. 834) 444
[61] *Igwe v. Queen* (1959(4 FSC 206
[62] (1988) 3 NWLR (pt. 85) 729
[63] *Agbiti v the Nigerian Navy* (2011) LPELR – S9275/208, *Abalaka v Ministry of Health* (2006) 2 NWLR (pt. 963) 105, *LPDC v Fawe hinmi* (1985) 2 NWLR (pt. 7) 300, *Aguomba v Uwais* (2007) All FWLR (pt. 346) 440, *Wowiloju & Ors v Anibere & Ors* (2010) LPELR – SC 211/2002.

Finally, a substantial possibility of bias which may arise because of personal attitudes, personal hostility, personal friendship, family friendship, employer relationship, partisanship in relation to the issues at stake and a whole range of other circumstances which include hostility of strong personal animosity towards a party, personal friendship or professional relationship might form urgent issues from which an inference may be drawn, in deciding whether there is a breach of fair hearing.

CONCLUSION

In *Ndulue v Ibeh*[64] it is summarized thus:

> Fair hearing within the meaning of section 36(1) of the constitution of the Federal Republic of Nigeria, 1999, means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties. It requires the observance of the twin pillars of the rule of natural justice namely *audi alteram partem* and *nemo judex in causa sua*. The principles of *audi alteram partem* is not a massive shield which a litigant can cover himself with, with a view of circumventing the due process of law or shielding himself from the consequences of litigation of his whims and caprices. A party seeking to invoke the principle of *audi alteram partem* in his favour must show that he was deliberately by-passed and excluded from proceedings before he can succeed.

The concept of fair hearing under section 36 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, appears to comprehend compliance with the three basic tenets of the rules of natural justice used in both sense of the twin pillars of justice and the broad sense of what is right and fair in the circumstances of each case; any rules of practice and procedure laid down by any law and the rules of adversary system of administration of justice.

[64] 64. (2016) All FWLR (pt. 822) 1684 1 *Eshenake v Gbinije* (2006) 1 NWLR (pt. 96) 228, *Muhammed v Kpelati* (2001) FWLR (pt. 69) 1404, *Folbod Investment Ltd v Alpha Merehant Bank Ltd* (1996) 6, Nnanah v Usoro (2013) LPELR – 20822