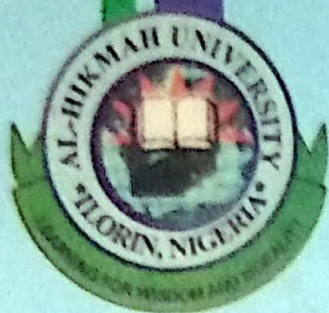




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THE SIGNIFICANCE OF RULES OF NATURAL JUSTICE IN ADMINISTRATION OF JUSTICE

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Abstract

This article examines the significance of rules of natural justice in the Nigerian administration of justice, it traces the historical evolution of the rules of natural justice, the purport and rationale behind the principle, the relationship between the rules of natural justice and fair hearing and contends that fair hearing is an integral part of the rules of natural justice. This article further appraised the two basic rules of natural justice viz: *audi alteram partem* (hear the other side) and *nemo iudex in causa sua* (no one shall be a judge in his own case) in judicial and quasi-judicial proceedings in Nigeria and notes that the breach of the rules of natural justice fundamentally touches on the root of any adjudicatory process by rendering the entire proceedings a nullity. The article concludes that the rules of natural justice is not only to ensure procedural fairness in judicial and quasi judicial proceedings but also a constitutional right/legitimate entitlement of parties and promote public confidence in the administration of justice

Keywords: Natural Justice, Administration of Justice, Fair Hearing

1. Introduction

The basic aim of any legal system or administration of justice is to do justice to all parties in the application of law.¹ Law ensures peace, security and stability in the society and promotes justice between both the government and the governed; as justice must not only be done but manifestly seen to be done. Justice must however be pursued in accordance with the rules of natural justice in any adjudicatory process by affording the parties full and equal opportunity of presenting their cases and challenging the case of the adverse party. Hence the purport of the rules of natural justice like law in any society is to ensure social justice and stability. The Nigerian administration of justice is adversarial in nature because of her colonial historical link

¹ Tobi N. 'A Career at the Bench in Nigeria' in Nwosu K. N. (ed.) *Legal Practice and Skills* (Lagos: IDCON Consulting 2004) pp. 39-40.

with the Britain² and thus the rules of natural justice which concerns procedural fairness to ensure that a fair decision is reached by an independent, neutral, and unbiased decision maker is of utmost significance in judicial and quasi-judicial proceedings that affect the rights of the parties in Nigeria.³ The observance of the rules of natural justice is not only important, but sacrosanct, the breach of which may render the entire proceedings null and void no matter how carefully conducted.⁴

The rules of natural justice is an age long common law principle that encapsulate the twin pillars of justice: *audi alteram partem* (hear the other side) and *nemo iudex in causa sua* (that a person should not be a judge in his own case).⁵ The two pillars are so germane to the determination of any matter or dispute before any court, tribunal or other adjudicatory bodies.⁶ The rules seek to safeguard and protect the right of individuals from arbitrariness of judicial and quasi-judicial bodies as it provides that any person whose rights or interests may be affected by a decision or findings of a court or administrative tribunal must be given adequate and reasonable opportunity of being informed and heard in order to properly present his or her case.⁷

This article examines the rules of natural justice, the purport or significance of the rules in the Nigerian administration of justice, the twin fundamental pillars of the rules as well as the limit of the rules of natural justice. The article further considers the breach and effect of the breach of the rules of natural justice in judicial or quasi-judicial proceedings in Nigeria and concludes that the basis for the rules is not only to protect the parties but also to maintain public confidence in the administration of justice.

Natural Justice, Administration of Justice, Fair Hearing

Introduction

The common law, which is one of the "bequeathed" legacies of colonial rule in Nigeria is adversarial and provides the basis for the application of the adversarial trial system in Nigerian courts. See generally Asein J. O. 'Introduction to Nigeria legal System (2nd edn, Ababa Press Ltd. Lagos 2005) pp. 98-104; Arthur-Worry F. and Osibanjo O. 'Cross Examination Mastering the Trial lawyer's Most Potent Weapon' (lexis Nexis Butter Worthhs 2006) 1; Bukar B. A. 'Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door Arbitration' (2013) 79 (1) 72; Gluckman M. 'Cross-examination and the substantive law in African Traditional Courts' in Mac Cormick D. (ed) *Lawyers in their Social Setting*, 1976 pp. 30-62; Adewoye O. *The Legal Profession in Nigeria 1865-1962* (Nigeria: Longman 1977) 7; Doherty O. *Legal Practice and Management in Nigeria* (London: Cavendish Publishing Ltd. 1998) pp. 6-7; Fashakin Y. 'Right to Legal Practice in Nigeria' in K. N. Nwosu (ed.) *Legal Practice and Skills* (Lagos DCON Consulting 2004) pp. 90-91; Tobi N. *Sources of Nigerian Law* (MIJ Professional Publishers, Lagos, 1996); Obilade A. O. *The Nigerian Legal System* (Spectrum Books Ltd, Ibadan 1979)

Natural justice/ Procedural Fairness
<www.ombo.nsw.gov.au/publication/PDF/factsheets/FS_PSA_14_Natural_justice_Procedural_fairness.pdf>
>accessed 19 July 2014; Principle of Natural Justice
<<http://www.cricketeurope2.net/docs/ECC/TSOP2010/ANNEXURES/C110.pdf>> 203 accessed 21 July 2013;

Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (As amended)

Olorunfoba-Oju v. Abdul-Raheem (2009) 13 NWLR (Pt. 1157) 83 at 142-143 F-B

Olufeargba v. Abdul-Raheem (2009) 18 NWLR (Pt. 1173) 385 at 462-463

Ayinla L.A. 'Fair hearing: Is it a Magic Wand to Cure All Ills in All Milieus?' (2006) 2, 48, *University of Ilorin Law Journal*

Karibi-whyte JSC in Adeniyi V. Gov. Council Yabatech (1993) 6 NWLR (PT 300) 426 at 457

1. Historical Evolution of the Rules of Natural Justice

The rules of natural justice presuppose a fair trial.⁸ It requires that individuals should not be penalised by decisions affecting their rights unless they have been given prior notice of the case against them, a fair opportunity to answer it and or present their own case.⁹ The rules of natural justice are a common law principle of both scriptural and medieval history.¹⁰ The Bible in Genesis,¹¹ narrate how God created Adam and Eve and put them in the Garden of Eden with instructions on what to do and what to refrain from doing, particularly an injunction not to eat the forbidden fruit. In spite of God's injunction, Eve having been tricked by Satan ate the forbidden fruit and thereafter, convinced Adam to take same. Despite the fact that God saw and knew what they did, He still gave them fair hearing by asking them why they were hiding and what they had done. He allowed both of them to state their views before passing judgment on them.¹²

The story of Cain is also instructive.¹³ God asked Cain, after he (Cain) had killed his brother, 'where is Abel thy brother?' Cain's retort was rather direct, 'I don't know: am I my brother's keeper?' Clearly the opportunity of hearing Cain had been availed him prior to 'sentencing'. What should be appreciated from this scriptural reference is that God the creator of mankind also value fair hearing (which is a basic component of the rules of natural justice) as God Himself did not pass sentence upon Adam, Eve and Cain before they were called upon to make their defence.¹⁴

Historically the rules of natural justice are segments of human right generally referred to as fundamental human right.¹⁵ Fundamental human rights or natural rights are rights enjoyed by people of all races not because they were prescribed by the

⁸ Natural Justice <www.justice4you.org/natural%20justice.php.html> accessed 8, April 2014 accessed

⁹ Natural justice/ Procedural Fairness <www.ombo.nsw.gov.au/publication/PDF/factsheets/FS_PSA_14_Natural_justice_Procedural_fairness.pdf> accessed 4 August 2014; Principle of Natural Justice <<http://www.cricketeurope2.net/docs/ECC/TSOP2010/ANNEXURES/C110.pdf>> 203 accessed 19 July 2014

¹⁰ See Generally Daibu A. A. 'Application of the Rules of Natural Justice in Arbitral Proceedings in Nigeria' (2013) 1, 61 *Ife Juris Review*; Ayinla L.A. 'Fair Hearing: Is it a Magic Wand to Cure all Ills in All Mellius' 49-51; Etudaiye M.A. 'The Doctrine of Natural Justice as an arm of the rule of law' (2006) 2 (1) *Ilorin Bar Journal*, 103; Chung R.K.L. 'Rules of Natural justice in Arbitration' (2011) 7 (2) *Arbitration*, 167, Mohtashami R. 'The requirement of Equal Treatment with Respect to Conduct of Hearings and Hearing Preparation' (2009) 3 (2) *Dispute Resolution International*, 125

¹¹ see Genesis chapters 1 and 2

¹² The Supreme Court of Nigeria made reference to this scenario in the case of *L.D.P.C. v. Gani Fawehimi* (1985) 2 NWLR (Pt.7) 300 at 347

¹³ Genesis chapter 4 v 9 (the Holy Bible, Revised Standard Version) 3- 4

¹⁴ Daibu (n 10) 61

¹⁵ Human right today is now a universal concept contained in many Charters and Declarations and domesticated in sections 33-46 of the Constitution of the Federal Republic of Nigeria 1999(as amended).

sovereign but innate and inalienable by virtue of being human.¹⁶ Natural Justice is a development of natural rights which in turn is a product of natural law. Natural law entails a lot of principles one of which is natural justice. Jurist through ages conceive natural law as a collection of objective moral principles based on the very nature of the universe discoverable by human reason and designed to serve as a model to which state law i.e positive law must conform.¹⁷ They contend that if positive law does not so conform, it is not genuine law but a corruption of law.¹⁸ These jurists set certain criteria of the validity such as morality and ethics, which positive law must satisfy before it could be accepted as true law.¹⁹ Cicero is of the view that true law is the right reason in agreement with nature.²⁰ He contends that true law is of universal application, unchanging, everlasting and summons to duty by its commands, and prohibits wrongdoing in all ramifications.²¹ He further argued that there will not be different laws for Rome and Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations at all times.²² Sophocles also stated that positive law is not strong enough to overrule the divine law of nature. He argued that he will not fear the wrath of any man and brave God's vengeance for defying it.²³ While Thomas Aquinas insisted that for positive law to be just, it must be virtuous for the common good.

From the above, it is trite that natural law serve as basis for man-made laws and any law that is contrary to natural law especially the principle of natural justice will not only be void but will hardly enjoy the obedience of the people.

The rules of natural justice was applied in the classical case of *R v. Cambridge University*,²⁴ in that case one Dr. Bentley was deprived of his academic degree by the University of Cambridge without been heard, he succeeded in obtaining an order of mandamus and eventually got justice.²⁵ The development of the modern law on the

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See Daibu (n 14) 63; Brian Sang Y.K. 'The Right to Life in International Law: Emanation of a Unitary Concept in International Comparative Adjudicatory Practice' (2015) 3 (1) Africa Nazarene University Law Journal, 1-2; Adaramola F. Basic Jurisprudence (3rd edn, Raymond Kunz communications, 2004) 63; Oba A. A. 'Religious Rights and the Corporate World in Nigeria- Products and Personnel Perspective' (Recht in Afrika, 2004) 196; Nnamani O. 'Human Rights Law and Practice in Nigeria' (CIDJAP Press, 1999) 2; Friedman M., *Rights* (Buckingham : Open University Press) 9; Odigie- Emmanuel, 'Judicial Activism as a Vehicle for Advancing Human Rights, Social Justice and Sustainable Development in Nigeria' in *Nigeria Judiciary : Contemporary Issues in Administration of Justice* (Nigerian Bar Association Ilorin Chapter 2013) 354

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Adaramola (n 16) 15

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ibid

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Cicero in his book *De Re publica: De Legibus* (Laws of Republic) tr. C. W. Keyes. (Cambridge, mass: Harvard University press, 1928) quoted in J. Feinberg and J. Coleman eds, *Philosophy of Law*, (7th edn, Belmont C A Wads Worth Publishing, 2003) 9

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ibid

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ibid

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ibid

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Antigone was written in the 5th century B.C see Richard A. Posner, 'The Problem of Jurisprudence' (1990) 9; Adaramola (n 16)

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(1723) 1 STR 557

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In the Judgment, the Judge alluded to the event in the Garden of Eden. When He said: "God Himself did not condemn Adam and Even without first calling upon them to answer allegation of disobedience to the divine command

rule of natural justice was enunciated by Lord Hewart C.J. in *R v. Sussex*²⁶ when the learned Chief Justice stated that: *It is not merely of importance but it is of fundamental importance that justice should only not be done, but should manifestly and undoubtedly seen to be done.*²⁷

The principle of natural justice has been in existence in Nigerian communities from time immemorial. The elders, family heads, chiefs and other person saddled with the responsibility of settling disputes among the people will insist on hearing all the feuding parties before giving their verdict to ensure fairness and justice.²⁸ This is because the notion of justice which is the hallmark of the traditional communities' system of adjudication placed greater importance to the fact that parties to a dispute must be heard. Thus the indigenous communities in pre-colonial era believed in the spirit of Fair hearing. For example, the Yoruba people of western Nigeria would say: *"Agbo ojo tenikan da agba osika ni (who ever passes judgment based on one-sided evidence is indeed a wicked person)."*²⁹ The Effik of the southern Nigeria will say *"moguniidikutisu ye edem"* (I wish to see face {or front} and back i.e. to hear both sides of dispute).³⁰ Other communities have their various ways of ensuring the strict observance of the rules of natural justice in the process of settling disputes among their people.

One can therefore safely conclude that African philosophy of law encompasses the rules of natural justice as the above quoted proverbs are interjected by elders when an adjudicator wants to hear from parties in a given dispute.³¹ It is thus submitted that the foregoing proverbs expressed the acknowledgment of the principle of natural justice in Nigerian communities even before the advent of the British colonialist. Hence in the case of *Ademola v. Thomas*³² West African Court of Appeal held that the customary method of deposing a chief in Abeokuta otherwise known as 'drumming out' which do not allow the chief to be deposed an opportunity to be heard is not only contrary to the *audi alterem partem*-rule but also the rules of natural justice.³³ Judicial and quasi-judicial bodies in Nigeria are bound to observe the rules

²⁶ (1924) 1 KB 256 or (1923) All E. R., 233

²⁷ See also lord Denning M.R in *Kaunda v. Govt. of Federation of Malaya*, *Judicial Review of administrative Action* (3rd edn, S.M Evans Steven, 1973) where it was held that: 'if the right to be heard is to be a real right which is worth of anything, it must carry with it a right in the accused man to know the case against him and what statements have been pleaded affecting him, and then he must be given a fair opportunity to correct or contradict them'

²⁸ Aremo U. A. 'The Principle of Fair Hearing in Nigeria: Challenges and Prospects' (2013) 5 (1) Kogi State University Bi-Annual Journal of Public Law, 39

²⁹ See Adewoye O. 'Proverbs as a Vehicle of Juristic Thought among the Yoruba' (1987) Obafemi Awolowo law Journal, 3-4 and 6; Ayinla (n 10) 52; Oseni U. A. 'The Inextricability of Law and Morality: An Appraisal of the Nigerian Legal system' (2003) 8, The Jurist (Law Students' Society University Of Ilorin) 126

³⁰ Oseni (n 29) 126

³¹ Ayinla (n 10) 52-53

³² (1946) 12 WACA 81 at 87

³³ See also the case of *Lagunu v. Olubadan* in - Council (1950) 2 WACA 406

of natural Justice; a colonial heritage³⁴ which has been enshrined in the Constitution of the Federal Republic of Nigeria as right to fair hearing.³⁵ Section 36(1) of the constitution is intended to apply, but not limited to all judicial determinations of rights and obligations in Nigeria.³⁶ The section was derived from Article 10 of the Universal Declaration of Human Rights and has semblance with Article 6 (1) of the European convention on Human Rights.³⁷ The section provides thus:

*In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.*³⁸

Civil rights are rights enforceable as against persons; authorities and government in courts, tribunals or any other judicial or quasi-judicial body in democratic societies and whether a person in a case has got fair hearing depends on the impression a reasonable person or independent observer who was present at the proceeding; whether from his observation justice has been done to the parties in the proceeding he has witness.³⁹ Adjudicatory bodies are therefore under obligation to hear all parties to a case without any hindrance from commencement to conclusion⁴⁰ failure of which may result in setting aside the entire proceedings for breach of right to fair hearing.⁴¹

2. The Rules of Natural Justice and Fair Hearing

Natural Justice requires that every party to a cause be given the opportunity to put forward his case fully and freely and to apply to the court, tribunal or any other body acting in judicial capacity to hear any material witnesses and consider relevant documentary evidence with a view to reaching a fair and just decision in the matter.⁴² Fair hearing on the other hand means fair trial and a fair trial of a case consists of the

³⁴ Ogbu N.O. 'Fair Hearing and Contracts of Employment: The Discordant Views of Nigerian Courts' (2006) 1 (1) Journal of Private & Comparative law Ahmadu Bello University Zaria, S 139

³⁵ See 36 (1) of the 1999 Constitution of Federal Republic of Nigeria 1999; see also Article 7 of the African charter on Human and peoples' (Ratification and Enforcement) Act Cap. A9 Laws of Federation of Nigeria 2004; *WAEC v. Akinkunmi* (2002) 7 NWLR (pt 766) 327 at 341 para. A-B; *Garba v. University of Maiduguri* (1986) 1 NWLR (pt. 18) 550 at 584-585.

³⁶ There is a presumption that when the legislature confers power or authority on a body to make determinations, it intends that the power shall be exercised judicially and judiciously in accordance with the rules of natural justice. See for example sect 15(1) of University of Ilorin Act Cap U 7 Laws of the Federation of Nigeria 2004. See also the cases of *Garba v. University of Maiduguri* (1986) 1 NWLR (Pt. 18) 550; *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt.9) 559; *Ekperokum v. University of Lagos* (1986) 4 NWLR (Pt.34) 162; *Adeniyi v. Gov. Council Yabatech* (1993) 6 NWLR (Pt. 300) 426; *Oloruntoba-Oju v. Abdul-Raheem* (2009) 13 NWLR (Pt.1157) at 83 142 Para C-G

³⁷ Ogbu (n 34) 150-151

³⁸ Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999(as amended)

³⁹ *Mohammed V. Kano Native Authority* (1968) 1 All NLR 424; *Gaji v. The State* (1975) 5SC61; *Omoniyi v. Central Schools Board* (1988) 4NWLR (Pt.89) 448 and *Onaguruwa v. IGP* (1991) 5 NWLR (Pt.193) 593 at 640

⁴⁰ See Sect 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria(as amended)

⁴¹ *Oloruntoba-Oju v. Abdul-Raheem* (2009) 13 NWLR (Pt.1157) 83 at 143 F-H

⁴² See *Ekiyor & Anor. v. Bomor* (1997) 9 NWLR (Pt. 519) 1 at 14

whole hearing.⁴³ Fair hearing is therefore synonymous but not conterminous with natural justice.⁴⁴

In the case of *Ori-Oge v. A.G. Ondo State*,⁴⁵ the court maintained that the two principles of natural justice are inherent in the provision of fair hearing but that the later goes beyond the rule of natural justice. The distinction between the duo of natural justice and fair hearing was succinctly made by Lord Denning in *Breen v. A.E.U.*,⁴⁶ when he stated thus:

It will be seen that they are analogous to those required by natural justice but not necessarily identical. In particular a procedure may be fair although there has not been a hearing of the kind normally required by natural justice. Conversely, fairness may sometimes impose a higher standard than that required by natural justices. Thus the giving of reasons for decisions is probably not required by natural justice, but, it has been said, may be required by fairness because the giving of reasons is one of the fundamentals of good administration.

It is submitted that the rules of natural justice is broader and wider than the concept of fair hearing. In fact, the principle of natural justice encompasses the concept of fair hearing although both concepts are sometimes used interchangeably in Nigeria.⁴⁷ The basic criteria and attributes of fair hearing were highlighted by the Supreme Court of Nigeria in the case of *Kotoye v. C.B.N & Ors.*⁴⁸ Nnameka Agu (JSC) stated that there are certain basic criteria and attributes of fair hearing, some of which include:

- (i) *That the court shall hear both sides not only in the case but also on all material issues in the case before reaching a decision which may be prejudicial to any party in the case;*
- (ii) *That the court or tribunal shall give equal treatment, opportunity, and consideration to all concerned;*
- (iii) *That the proceedings shall be held in public and all concerned shall have access to and shall be informed of such a place of public hearing; and*
- (iv) *That having regard to all the circumstances, in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done.*

⁴³ That is, from preliminaries to conclusion. See Salami JCA (as he then was) in *Isamade v. Okei* (1998) 2 NWLR (Pt. 538) 455 at 466-467.

⁴⁴ Ogbu (n 34) 153

⁴⁵ (1982) 3 NCLR 743

⁴⁶ (1971) 2 QB 175 at 191

⁴⁷ See the cases of *SBN Plc. v. Crown Star and Co Ltd* (2003) 6NWLR (Pt. 815) 1 at 15; *Ogundoyin v. Adeyemi* (2001) 7NSCQR 378 at 391; *Ojengbade v. Esan* (2001) 8 NSCQR 461 at 470; *Unogo v. Aku* 1983 2 SCNLR 32

⁴⁸ (1989) 1 NWLR (Pt. 98) 419

3. The Twin Pillars of the Rules of Natural Justice

Broadly speaking, *audi alteram partem* (hear the other side) and *nemo iudex in causa sua* (no one should be a judge in his own case) are common law doctrine encapsulated in Nigerian Constitution to the effect that in the determination of his civil rights and obligations, a person is entitled to fair hearing within a reasonable time by a court or tribunal established by law.⁴⁹ The duos are considered below;

i. Audi Alteram Partem Rule

One of the basic pillars of the rules of natural justice is the *audi alteram partem* rule which requires a court, judicial tribunal or any other adjudicatory body acting in judicial or quasi judicial capacity to hear the other party to a dispute.⁵⁰ The rule demands that a party must be heard before a decision is taken against him. It is a good logic and good sense that before arriving at a decision, the adjudicatory authority must hear all parties without interference or hindrance as reasonably guaranteed by law.⁵¹

A person who is entitled to the protection afforded by the *audi alteram partem* rule must not only be given reasonable opportunity to know the case against him, he must also be given adequate opportunity to answer it.⁵² The rule is of great antiquity and universality although it assumes different nomenclature in different legal system.⁵³ For instance, the requirement of fair hearing is accommodated within the Due Process Clause of State and Federal Constitutions in the United State and incorporated under section 36 of the constitution of the Federal Republic of Nigeria 1999 (as amended).⁵⁴ Attesting to the universality of the *audi alteram partem* rule and the rules of natural justice the Supreme Court of Nigeria in the case of *Adeniyi v. Governing Council of Yaba College of Technology*⁵⁵ stated that:

*...The principle of Natural Justice is a universal principle of ancient origin and common to mankind. They were recognized by the ancient Greeks and Romans, enshrined in the Holy Bible, and recognized as part of our indigenous and other African Cultures and Philosophy of Justice and . It is, indeed, as asserted by Coke, a principle of Divine Justice.*⁵⁶

⁴⁹ Constitution of the Federal Republic of Nigeria 1999(as amended); *Oloruntoba-Oju v. Abdul-Raheem* (2009)13 NWLR (Pt.1157) 83 at 142 F- H; *Olufeagba v. Abdul- Raheem* (2009) 18 NWLR (Pt. 1173) 385 at 462-463 H-A

⁵⁰ See the Supreme Court of Nigeria decision in *Alfa v. Atanda* (1993) 5 NWLR (Pt. 296) 729 at p. 739
⁵¹ *Ayinla* (n 10)54; *Etudiaye* (n 10)111

⁵² *Sesegbon D. Sasegbon's Laws of Nigeria* (1st edn, DSC Publications Lagos, 2005) vol16, 339. See also *Adedeji v. Police Service Commission* (1967) N.LR 67 71-72

⁵³ *Ogwuche A.S. Compendium of Laws under the Nigeria Legal System* (2nd edn, Tama Production) vol.1,829; *Ayinla* (n 10) 52

⁵⁴ *Ogwuche* (n 53) 828 see also Article 10 & 11 Universal Declaration of Human rights 1948; Article 7 African Charter on Human and People's Rights, 1981; Article 6 of European Convention on Human Rights; *Nigergate Ltd v. Niger State Government* (2005)1 NWLR (Pt. 903) 342 CA.

⁵⁵ (1993) 6 NWLR (Pt. 300) 426
⁵⁶ *Karibi-Whyte JSC* at 449

Similarly the right to fair hearing (*audi alteram partem* rule) has been held to be essential right for a person to secure justice⁵⁷ in *R v. Cambridge University*⁵⁸ one Dr Bently was removed from the University of Cambridge and deprived of his academic degrees. He was not heard nor given any opportunity to defend himself. Fortescue J. nullified the decision of the Cambridge University removing Dr Bently as a violation of right to fair hearing and a breach of the rules of natural justice to which he assigned a divine origin thus:

*The objection of want of notice can never be got over. The Laws of God and man both give the party an opportunity to make his defence if he has any. I remember to have heard it observed by a very learned man upon such an occasion 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? Hast thou not eaten of the tree whereof I commanded thee that thou should not eat? And same question was put to Eve also.*⁵⁹

In *Kaunda v. Government of Malaya* one inspector Kaunda was dismissed on the basis of a report he had not seen. He consequently challenged his dismissal on the ground that his right to be heard had been breached. The court upheld his claim and nullifies his dismissal in the following words:

*If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must be shown what evidence has been given and what statements have been made affecting him and then he must be given fair opportunity to correct or contradict them.*⁶⁰

The *audi alteram partem* rule appears to have been formulated with precision in the case of *Ridge v. Baldwin*,⁶¹ wherein the plaintiff, a Chief Constable was prosecuted for the offence of conspiracy but acquitted. However in spite of his acquittal, his employer, a local authority dismissed him from his post without been heard or given any opportunity to defend himself of whatever allegation that might have been made against him. The House of Lords eventually granted him a declaration to the effect that his dismissal was a nullity as the *audi alteram partem* rule had been neglected. Lord Hudson stated that:

No one, I think, disputes that three features of natural justice stand out: (1) the right to be heard by an unbiased tribunal; (2)

⁵⁷ *R V. Cambridge University* (1723) 1 Str. 557

⁵⁸ *ibid*

⁵⁹ Fortescue J. in *R V University of Cambridge* quoted in Ogwuche A.S. 830

⁶⁰ *Kaunda V Government of Malaya* (1962) AC 322

⁶¹ (1963) 2 All ER 62 at 66

the right to have notice of the charge of misconduct; and (3) the right to be heard in answer to those charges.⁶²

The Supreme Court has evolved a set of standards by which the test of fair hearing may be said to have been met in the case of *Baba v. Nigerian Civil Aviation Training Centre*.⁶³ Audi alterem partem is therefore a maxim and canon of natural justice denoting basic fairness that a judge should allow both parties to be heard by listening to the point of view of both sides before resolving the issue in dispute.⁶⁴

ii. **Nemo Judex In Causa Sua Rule**

The second principle of natural justice is the rule against bias generally expressed in the Latin Maxim *nemo judex in causasua* (meaning that a person should not be a judge in his own case or in a case in which he is interested). The rule states that no one ought to be a judge in his or her case.⁶⁵ It also requires that the deciding authority must be fair and unbiased in hearing and all procedures connected with the making of a decision.⁶⁶ The court, tribunal or any other adjudicatory body must be able to show that it has conducted a fair enquiry into the circumstances involved before making his decision as to whether a breach of the rules of conduct has occurred and if so, what sanction should be imposed. There should be no suggestion in the conduct of the hearing that prior to its commencement, the adjudicating authority has irrevocably decided the outcome.⁶⁷

The rule has two main aspects:

- i. That an adjudicator must not have any direct pecuniary or proprietary interest in the outcome of the proceedings and
- ii. To ensure the impartiality of a Judge, tribunal or any adjudicatory body acting in judicial or quasi judicial capacity, the adjudicating authority must not be interested in the matter financially, emotionally and or sentimentally. The slightest inkling that a judge has an interest in the matter either financially or in kind should be avoided; That is, anything which might engender suspicion or distrust of his impartiality capable of promoting a feeling of distrust and lack of confidence in the administration of justice.

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Quoted in Etudaiye (n 10) 112

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(1991) 5 NWLR (Pt.192) 388 and they include; To be present all through the proceedings and hear all the evidence against him; To cross-examine or otherwise confront or contradict all the witnesses that testified against him; To have read before him all the documents tendered in evidence at the hearing; To have disclosed to him the nature of all relevant material evidence, including documentary and real evidence, prejudicial to the party, save in recognized evidence, prejudicial to the party, save in recognized exceptions; To know the case he has to meet at the hearing and have adequate opportunity to prepare for his defense; To know the case he has to meet at the hearing and have adequate opportunity to prepare for his defense. See also *Denloye v Medical and Dental Practitioners Disciplinary Committee* (1968) 1 All NLR 306; *Adedeji v Police Service Commission* (1968) NMLR 102; *Fawehimi v Legal Practitioners Disciplinary Tribunal* (1985) 2 NWLR (Pt.7) 300; *Garba v University of Maiduguri* (1986) 1 NWLR (Pt.18) 550
Emeka v Okadigbo (20012) 18 NWLR (Pt.1331) 55 at 93

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'Natural Justice' <[http://www.justice4you.org/natural%20 justice.php](http://www.justice4you.org/natural%20justice.php)> accessed 8 April 2014; Etundaiye(n 10)116; Ogbu (n 34)141

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'Natural Justice' <<http://www.justice4you.org/natural%20 justice.php>> accessed on 12 April 2014
 See also Ayinla (n 10) 56 wherein he warned that 'A judge should therefore be over bearing in his adjudicatory function to using the function of counsel or be tainted with the likelihood of bias'.

The Judge must not be biased whatsoever in respect of the subject matter in dispute; he should not be seen to be unduly interfering with course of the proceedings between the parties. Instead, he should act as an umpire and allow the proceedings to run its course.⁶⁸

Nemo iudex in causa sua rule is to the effect that the adjudicating authority must hold the scale of justice impartially and disinterestedly between the two sides, his only interest being that justice is done. Thus a court, tribunal and any other adjudicatory body must avoid anything that may engender suspicion or distrust in the adjudicating authority and the administration of justice.⁶⁹ A decision maker must therefore be impartial and make a decision based on the balanced and considered assessment of facts or evidence before it without any fear or favour.⁷⁰ An adjudicating authority must not be over bearing in its adjudicatory function by descending into the arena as this will amount to usurpation of the function of counsel and tainted with the likelihood of bias.⁷¹ Bias or partiality must be avoided by an adjudicatory body. Bias in its ordinary meaning is an inclination, pre-conceived opinion and a predisposition to decide a cause or issue in a certain way, which does not leave the mind perfectly open to conviction.⁷² Bias sways judgment and renders a Judge unable to exercise his functions impartially in a case. Actual bias or the real likelihood of bias, prejudice, partiality or unfairness that arises from the aforementioned anomalies would decimate public confidence in the administration of justice and therefore should be avoided by judicial and quasi-judicial bodies. Bias or interest may arise from the adjudicating authority having direct pecuniary or proprietary interest or simply from bias against one of the parties.⁷³

4. Protecting the Rules of Natural Justice

One fundamental way of ensuring that the principles of fair-hearing and natural justice are seen to be adhered to by an adjudicatory body is that all processes in the case including hearing notice must be served on parties to case.⁷⁴ The service of hearing notice on the parties especially the defendant will enable him appear to defend the claims and relief sought against him in person or through his counsel is a fundamental condition precedent to the jurisdiction and competence of any adjudicatory body.⁷⁵ It is trite law that service of writ of summons and other processes is a condition precedent to the exercise of jurisdiction of the court out of whose registry, the writ is issued, and to hear a cause without serving the necessary

⁶⁸ Ayinla (n 10) 55.

⁶⁹ Ogbu (n 34) 140-141

⁷⁰ 'Natural Justice' < [http://www.justice4you.org/natural%20 justice.php](http://www.justice4you.org/natural%20justice.php) > accessed 8 April 2014

⁷¹ Ayinla (n 10) 56

⁷² See *Black's Law Dictionary* (67th edn, West Group Publishing Co. 1990) 161

⁷³ Ogbu (n 34) 140-141

⁷⁴ See *Savannah Bank of Nigeria Plc. v Crown Star & Co. Ltd* (2003) 6 NWLR (Pt.815) 1 at 16

⁷⁵ See *Ene v. Asikpo* (2010) 10 NWRL (Pt.1023) 477 at 15; *Sken Consult (Nig) Ltd v Sekondy Ukey* (1981) SC 6;

Savannah Bank v Crown Star & Co. Ltd (2003) 6 NWLR (Pt.815) 1 at 16

processes on parties except in proper *ex parte* proceedings would render the whole trial a nullity.⁷⁶

It is thus submitted that a court cannot give a valid judgment against a defendant who has not been given an opportunity to defend the suit by way of hearing notice, which will bring to his knowledge the date, time and place of trial.⁷⁷ It would amount to grave error on the part of a *judex* to enter judgment or make an order against a party who is shown not to have been given the opportunity to appear in court. However where a party fails, neglects and or refuses to appear in court, the court is under a duty to examine its records to determine whether such a party was served with hearing notice but deliberately absented himself from court and thereby ignoring the opportunity of being heard. It is also the responsibility of the court after it is seized of a cause to notify the defendant of any date fixed for the hearing of the matter or any other related issue therein. If the court shuts its eyes on that exercise or derelict on such duty, the court is committing a blunder which shall be liable to be reversed *ex debito justitiae* by an appellate court. A trial court cannot begin to hear a matter before it unless it is abundantly satisfied that the other parties especially the defendant(s) is duly served and aware that the case is fixed for hearing on that date.⁷⁸ This is because a party who will be affected by the result of a judicial or quasi judicial enquiry must be given reasonable opportunity of being heard otherwise any action taken following the enquiry will be unconstitutional and illegal. It is also incumbent on any adjudicatory body to notify the parties of the date, place and time of hearing through the issuance of fresh hearing notice if for any just cause it is impracticable for the court to sit on an adjourned date.⁷⁹

Thus when an adjournment is at the instance of the court, the proper step is to cause hearing notices to be served on the parties so as not to breach the fundamental requirement of fair hearing and the rules of natural justice which entails affording the parties reasonable opportunity and time to prepare for their case and be represented by counsel of their choices as guaranteed by the constitution.⁸⁰ A court is therefore obliged to grant an adjournment when an application for such is made especially where the reasons adduced is cogent, convincing and appears that the interest of justice requires the court to do so.⁸¹ Adjournments of cases fixed for hearing are not

⁷⁶ *Auto Import Export v Adebayo* (2002) 18 NWLR (Pt.799) 554; *Essien v Edet* (2004) 5 NWLR (Pt.867) 519 at 536; *Mark v Eke* (2004) 1 SCNJ 245 at 262-263; *Omabuwu v Owhofatsho* (2006) 5 NWLR (Pt. 972) 40 at 67; *S PDC v Esowe* (2009) ALL FWLR (Pt.467) 120 at 131; *Olorunyolemi v Akhagbe* (2010) ALL FWLR (Pt. 525) 246 at 255

⁷⁷ *Savannah Bank of Nigeria Plc v Crown Star & Co. Ltd.* (2003) 6 NWLR (Pt.815) 1 at 16

⁷⁸ See *Mail Sonka Co. (Nig) Ltd v Adzege* (2001) 9 NWLR (Pt. 718) 312; *Ene v Asikpo* (2010) 10 NWLR (Pt. 1203) 477

⁷⁹ *Mankunu v Salman* (2005) 4 NWLR (Pt.915) 270 at 292-293; *Agena v. Katseen* (1998) 3 NWLR (Pt.543) 560 at 566

⁸⁰ *Scott Emankpor v EhiWario* (2004) 13 NWLR (Pt.889) 105; *Ene v Asikpo* (2010) 10 NWLR (Pt.1203) 477 at 516. See also sect 36(6) (b) and (c) of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁸¹ *Ayinla* (n 10) 58

however granted as a matter of cause but at the discretion of the court which must be exercised judicially and judiciously.⁸² An Applicant seeking for an adjournment is therefore expected to place material facts, cogent reasons and good cause before the court to enable the court to exercise its discretion in his/her favour.

Where the reasons adduced is frivolous, flimsy, unsupportable or motivated to cause delay and injustice on the other party the court has the inherent jurisdiction and discretion to refuse such an application for the adjournment.⁸³ Thus where an application is made for adjournment, the court should bear in mind the requirement that justice must be done to both parties and that it is in the interest of justice that the hearing of a case should not be delayed unduly. Hence unnecessary adjournments which will lead to delay and miscarriage of justice would be refused.⁸⁴ In the case of *Latisco Pet. (Nig.) Ltd. v. UBN Plc*, the court stated that:

Again to be noted is that where a party is indulging in delay tactics as has been shown in this case it cannot be said that such a party is aiming at a fair hearing but the party is using the due process of court to defeat justice... that was the situation the trial court found itself and had to exercise the courage and stood firm in refusing such an application for adjournment.

From the above, it is obvious that the rules of natural justice and fair hearing cannot be used as an instrument of delay or to cause injustice on the other party merely because it is a fundamental right. Although section 36(1) of the constitution gives a party right to fair hearing, the constitution only creates an opportunity for the party to be heard before a decision is taken against his interest. The opportunity does not last forever as it is enjoyed subject to the Rules of Court and dictate of justice.⁸⁵ The right to fair hearing is expected to be enjoyed and exercised within reasonable time as court are obliged to provide the enabling atmosphere for the enforcement of individual rights within a reasonable time.⁸⁶ Thus in the case of *Chijtoke v Soetan*⁸⁷ the court observed that:

...it is true that the 1999 constitution in section 36(1) gives the appellant the right to fair hearing. The lingering misapprehension must be corrected out rightly. The constitution only creates an opportunity for the appellant to be heard before decision is taken against his interest. The opportunity does not last forever and is enjoyed subject to the rules of the court and dictates of justice. Where the appellant chose to enjoy his opportunity of being heard

⁸² *Latisco* (pt.1127) 22 at s52

⁸³ *Okon Udo Akpan v The state* (1991) 3 NWLR (Pt.923)1; *Latisco pet. (Nig) Ltd. v UBN Plc* (2009) 3 NWLR (Pt.1127) 22 at 47

⁸⁴ *Ceckay Traders Ltd v General Motors Co. Ltd.* (1992) 2 NWLR (Pt.222) 132; *Ojukwu v Nnoruka* (2000) 1 NWLR (Pt.990) 1979; *Latisco Pet. (Nig.) v. UBN Plc.* (supra) 47

⁸⁵ *Latisco Pet. (Nig.) Ltd v UBN Plc* (Supra) at p.48

⁸⁶ *ibid*

⁸⁷ (2006) 11 NWLR (Pt.900) 174 at 214

as guaranteed by the constitution responsively (SIC) and in a manner that constituted injustice to his adversary, he lost and rightfully too the right and opportunity. Justice is not for the appellant alone. It is his as much as it is for the respondent and the court...

A party cannot blame the court if he fails to take advantage of the enabling atmosphere created by the court for the exercise of his fundamental right of fair hearing and natural justice. In the case of *Bill Construction Co. Ltd V. Imami & Sons Ltd*,⁸⁸ the Supreme Court held thus:

It is settled law that where a party is given ample opportunity to present his case within the confines of the law but fails... he cannot later be heard to complain that his right to fair hearing has thereby been breached.

Similarly in *Akinduro v Alaya*,⁸⁹ Niki Tobi JSC stated Inter-Alia that:

I have said it in the past and I will say it again that the duty of the court is to create the environment for fair hearing and it is the decision of a party to take advantage of the environment created. A party cannot blame the court if he fails to take advantage of the environment created by the court. I see such a situation in this matter. The appellant should not blame the court of appeal. He has himself to blame.

5. Breach and Effect of Breach of the Rules of Natural Justice

There is no gainsaying that the rules of natural justice is built on the twin pillars of justice known as *nemo judex in causasua* and *audi alteram partem*. Therefore once a body of persons by whatever name it is called is invested with authority to hear and determine issues or disputes that will affect civil rights of another person, such a body is be expected to strictly adhere to the observance of the two cardinal rules of natural justice.⁹⁰

The legal position is that when the principle of fair trial or one of the rules of natural justice has been violated, it does not matter whether without the violation, the determination or decision would have been the same, the determination or decision will be null, void and of no effect no matter how beautifully conducted.⁹¹

⁸⁸ (2006) 19 NWLR (Pt.1013) 1 at 14

⁸⁹ (2007) all FWLR (Pt. 381) 1653 at Pt.1672-1673 or (2007) 15 NWLR (Pt.1057)312

⁹⁰ *Olapo v Summonu* (1987) 2 NWLR (Pt. 58) 586; *Aiyeta v NIFOR* (1987) 3 NWLR (Pt. 59) 48; *WAEC v. Mbamalu* (1992) 3 NWLR (Pt.230) 481 at 493 – 494; *Garba v University of Maiduguri* (1986) 1 NWLR (Pt.18) 550

⁹¹ Per Adio J.C.A in *Anum (Nig.) Ltd. v Leventis Motors Ltd.* (1990) 5 NWLR (Pt.151) 458 at 469-470

Thus the basic effect of breach of the rules of natural justice is that the decision so reached will be set aside.⁹² In the case of *Salami v. Odogun*,⁹³ the Court of Appeal held that:

*A right to fair hearing being a fundamental constitutional right granted by the constitution, the breach of it in any trial or investigation or inquiry nullifies the trial.*⁹⁴

Similarly in *Salu v Egeibon*,⁹⁵ the Supreme Court stated thus:

*The consequence of breach of the rule of Natural Justice or fair hearing is that the proceedings in the case are null and void. If a principle of Natural Justice is violated, it does not matter, whether if the proper thing had been done the decision would have been the same. In other words, it is immaterial, whether the same decision would have been arrived at in the absence of the essential principles of natural justice; for in such circumstances the proceedings will still be null and void. The decision must be declared to be no decision at all.*⁹⁶

In *Oyeyemi v. Commissioner for Local Government*,⁹⁷ it was held that the effect of breach of any of the rules of natural justice leading to denial of fair hearing is to render the whole proceedings of hearing a nullity, including ruling no matter how it was vigorously argued by the Appellants. It is submitted that the breach of the rules of natural justice will manifest injustice on the party affected and may erode confidence in the administration of justice. A denial of the rules of natural justice is a legally recognised injury under the constitution to which remedy may be granted if proven to be as alleged.⁹⁸

6. Conclusion

The article examined the history of the rules of natural justice, the relationship between natural justice and fair hearing, the *audi alterem partem* and the *nemo iudex in causa* rule were also appraised vis-à-vis the pecuniary interest and other forms of bias on the part of the adjudicatory body. The article also considered the limit of the

⁹² *Adigun v AG Oyo State* (1987) 1 NWLR (Pt.53) 678; *Buzugbe v Civil Service Commission* (1989) 2 NWLR (Pt.106) 652 at 699; *Kaunda v Government of Federation of Malaya* (1962) A. C. 322 at 337; *Glynn v Keele University* (1971) 2 All E.R. 89 at 95-96; *Denloye v Medical and Dental Practitioners Disciplinary Committee* (1968) 1 All NLR 306 and *Legal Practitioners Disciplinary Committee v GaniFawehinmi* (1985) 2 NWLR 300 at 307

⁹³ (1991) 2 NWLR (Pt.173) 295

⁹⁴ Per Sulu Gambari JCA at 302

⁹⁵ (1994) 6 NWLR (Pt.348) 23

⁹⁶ See also *Iwunoha v Okorike* (1996) 2 NWLR (Pt.429) 231 at 249

⁹⁷ (1992) 2 NWLR (Pt.226) 661 at 685

⁹⁸ See Obaseki JSC and ESO JSC at 708 and 721 respectively in the case of *Adigun v A.G Oyo State* (1987) 1 NWLR (Pt.53) 678 see also the court of Appeal decision in *Onuzulike v Commissioner for special duties* where the court of Appeal, for Uwai for JCA (as he then was) stated that 'a right or opportunity to put an end to or prevent that type of injury as a result of breach of natural Justice is, I think, a res in itself which the court can preserve in appropriate circumstances either by injunction or stay or execution'.

rules of natural justice as well as the breach and effect of breach of the rules of natural justice. The article notes that the rules of natural justice is sacrosanct to adjudication and that it is incumbent on an adjudicatory body to ensure that parties to a case are given adequate and reasonable opportunity of presenting their case and answer any allegation against their interest by an independent umpire as anything short of this will be a breach of the right to fair hearing and natural justice. The article further observed that although the rules of natural justice is sacrosanct and mandatory, it is not an absolute right as a party afforded the opportunity of presenting his case but fail, refuse and or neglect to take the advantage without just, cogent and convincing reasons cannot be heard to complain of denial or breach of his rights to fair hearing. This is because justice is a three edged sword: justice to the parties, the court and the society.