The Doctrine of Natural Justice as an Arm of the Rule of Law in Nigeria

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I. Introduction

The principle of natural justice has featured prominently in decisions by judicial, quasi-judicial and administrative bodies affecting Nigerian citizens. Yet, in view of the high level of illiteracy in Nigeria coupled with a general lack of enlightenment regarding the rights of the citizen, most Nigerians are hardly aware what these rights and the principles behind them entail. This paper is geared towards shedding some light on those rights and principles.

II. The "Genesis"

Oyewo[1] quotes De Smith as submitting as follows:[2]

> No proposition can be more clearly established than that a man cannot incur the loss of liberty or property until he has had a fair opportunity of answering the case against him.

Oyewo[3] further recounts De Smith[4] as illustrating the tradition of natural justice by reference to scriptural history:

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[1] Oyewo, AT, *Cases and Materials on the Principles of Natural Justice in Nigeria* (Ibadan: Jator Publishing Co, 1987) at p 2.

[2] Evans, JM, *De Smith's Judicial Review of Administrative Action* (London: Stevens & Sons, 4th ed, 1980) at p 158.

[3] *Supra* n 1 at p 2.

[4] *Supra* n 2 at p 158.

> Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God, "Where art thou? Has thou not eaten out of the tree whereof I commanded thee that thou should not eat?"

This reasoning, one might add also formed the basis of the decision in the English case of *R v Cambridge University*[5] where the court also ascribed natural justice to the events leading to the expulsion of Adam from the Garden of Eden.

The story of Cain in the book of Genesis is instructive. God asked Cain, after Cain had killed his brother, "Where is Abel thy brother"?[6] Cain's retort was rather direct, "I do not know; am I my brother's keeper?" The opportunity of a hearing for Cain had clearly been availed him prior to "sentencing".

III. Concept

There are several grounds upon which a court may invalidate the decision of a body or tribunal vested with the duty to take decisions that affect the rights of a citizen as was highlighted in the case of *Head of the Federal Military Government v Public Service Commission & Anor, Ex Parte Maclean Okoro Kubeinje*:[7]

> We think it necessary to state the correct position at law to be that where it is established before the High Court that a statutory body (or may be an inferior court) with limited powers has abused (those) powers and that such abuse does and continues to affect prejudicially the rights of the citizen, *certiorari* will issue at the instance of that citizen. Such abuse may take the form of *non-compliance with the*

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[5] (1723) 1 Str 557.
[6] Genesis 4: 8–12 in *The Holy Bible, Revised Standard Version* (New York and Glasgow: Collins Clear-Type Press, 1971) at p 4.
[7] (1974) 11 SC 79.

> *rule or rules of procedure prescribed for that body; it may be exemplified in the denial of the right to be heard in one's defence; it may consist of irregularities which are tantamount to a denial or breach of the rules of natural justice*; indeed, it may take the form of an assumption of jurisdiction to perform an act unauthorised by law or a refusal of jurisdiction where it should be exercised. The list is not exhaustive ...[8] (Emphasis added.)

Of the five grounds for invalidating the acts of administrative bodies highlighted in that *dictum*, the above three italicised grounds clearly relate to the infringement of the rules of natural justice. That is unarguably substantial. It is easy to see from the foregoing why Oretuyi[9] has observed that "the most frequent cause for judicial interference with the exercise of judicial and quasi-judicial powers is a disregard of the rules of natural justice".

The expression "natural justice" has been described as one sadly lacking in precision because of the various meanings that may attach to the word "justice". This is because it is a loose and abstract phrase. Aristotle observed that natural justice is recognised everywhere by civilised men and that conventional justice is binding only because some law-givers have laid them down. However it must now be accepted that natural justice entails the adjudication of disputes with a detached and dispassionate mind. In the words of the Federal Court of Appeal (as it then was):

> To a very great extent, substantial justice is coterminous with natural justice.[10]

The fact of its looseness has however not dissuaded jurists from attempting a working definition of the concept of natural justice however inadequate. Iluyomade and Eka have offered that it "connotes

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[8] *Id* at p 125.
[9] Oretuyi, SA, "Discipline of Students: A Vice-Chancellor Must Observe the Rules of Natural Justice" (1981) 12(1) *Nig LJ* 82.
[10] *Oliko v Okonkwo*. Unreported, B/1/78, delivered on 17 May 1979.

an inherent right in man to have a fair and just treatment at the hands of the rulers or their agents".[11]

The rules of natural justice, according to a justifiably effusive Obaseki JSC,[12] are common law rules "which are of universal application in the civilised world" and have "provided refuge from oppressive laws and actions over the ages".

What has been espoused in the foregoing is the principle of fair hearing, which in civilisations around the world has now been embodied as a requirement of natural justice. Fair hearing is a hearing in which the authority of the judge has been fairly exercised with deference to all parties in line with the fundamental principles of law and justice.

Caution must however be exercised in order not to misconceive the concept of fair hearing. And there are several ways in which this misconception may take place. Take one. The question is asked - is fair hearing synonymous with natural justice or is it merely a rule of natural justice? This seeming contradiction may have been brought about due to the following pronouncements of none other than two justices of the Supreme Court:

> Fair hearing is also a rule of natural justice.
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> - Onu JSC[13]

> There can be no doubt that fair hearing is in most cases synonymous with natural justice.
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> - Iguh JSC[14]

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[11] Iluyomade, BO and Eka, BU, *Cases and Materials on Administrative Law in Nigeria* (Ile-Ife, Nigeria: University of Ife Press, 1980) at p 131.
[12] *Aiyetan v Nigerian Institute for Oil Palm Research* (1987) 6 SCNJ 36 at p 55.
[13] *Ogundoyin & Ors v Adeyemi* (2001) 7 NSCQR 378 at p 391.
[14] *Ojengbede v Esan* (2001) 8 NSCQR 461 at p 470.

There is no doubt that fair hearing is a rule of natural justice, for the concept of natural justice is definitely wider in scope than the doctrine of fair hearing. On the other hand the two views cannot be said to be diametrically opposed to each other. For fair hearing indeed covers a substantial space of the field called natural justice. In that sense it is also accurate to hold the view that fair hearing is *in most cases* but not in all cases synonymous with natural justice. The views of the Supreme Court[15] appear to have in a sense resolved this potential impasse with the fine distinction that hearings before tribunals charged with determining the civil rights and obligations of a citizen require fair hearing, but that on the other hand hearings before what may in fact pass as an inquiry with powers only to make recommendations to an appointing authority require a compliance with the rules of natural justice.

Another misconception, which may well be labelled the layman's misconception, ought to be considered for fair hearing has a specialised connotation that travels beyond the layman's apprehension of it. Thus, in *Uka & Ors v Irolo & Ors*,[16] the allegation of the appellant was that they had raised vital issues before the trial judge, which he had failed to consider and decide and that this amounted to a denial of fair hearing. The Supreme Court held there that the introduction of fair hearing as enshrined in the constitution was a misconception of the correct effect of failure by a trial judge to consider and decide on a vital issue placed before him and that it was not a denial of fair hearing to either of the parties. Rather, it said, it was an abandonment of a duty placed on the judge to adjudicate. The erroneous contention in that appeal is symptomatic of the several misconceptions that lead parties to allege that they have not been availed a fair hearing. The rationale for the above decision is not far-fetched and they are to be found in the words of Karibi-Whyte JSC:

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[15] *Baba v Nigerian Civil Aviation Training Centre* (1991) 7 SCNJ 1.
[16] (2002) 11 NSCQR 307.

> The fact that the issue raised might have been poorly presented by counsel, or misunderstood by the Court cannot and does not affect the fact that the hearing was otherwise fair. Fair hearing does not lie on the correctness of the decision handed down by the court. It lies entirely in the procedure followed in the determination of the case.[17]

Thus, once fair hearing has been ensured in the procedure in arriving at a decision, it is irrelevant that the tribunal arrived at an erroneous, even an unfair, decision. The overriding consideration is for there to have been a fair hearing. The fairness, it would seem, must show in the means, not in the result.

The courts have made the distinction that a breach of the rules of fair hearing resulted at once in the nullification of the proceedings, while failure to consider and decide vital issues placed before it may or may not result in setting aside the decision depending on whether or not a miscarriage of justice had been thereby occasioned.[18] The true test whether a miscarriage of justice has been occasioned is "whether the result of the case would have been the same even if the breach of the principle of fair hearing had not occurred".[19] There the court may hold that the breach had not been fundamental though Ayoola JSC did say that "an unfair method cannot produce a fair result".[20]

Thus the test of "miscarriage of justice" does not come within the contemplation of the time tested principle espoused in the *Kotoye v Central Bank of Nigeria*[21] to wit, once a breach of the principle of fair hearing has been shown, no further damage need be shown and the decision in issue must be set aside.

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[17] *United Bank for Africa Ltd & Anor v Achoru* (1990) 10 SCNJ 17 at p 28.
[18] *Uka & Ors v Irolo & Ors. Supra* n 16 at pp 328-329.
[19] *Idakwo v Ejiga & Anor* (2002) 11 NSCQR 232 at p 238.
[20] *Ibid.*
[21] (1989) 2 SCNJ 31 at p 51.

IV. The Twin Pillars

There are two widely acclaimed principles of natural justice which have been hailed as "the twin pillars of the rules of natural justice and indeed the bastion of the rule of law in a civilised and organised society":[22]

a. the *audi alteram partem* (hear the other side) rule; and
b. the *nemo judex in causa sua* (no one shall be a judge in his own cause) rule.

The two principles together entail that a person must be availed a fair hearing. What has become something of a *locus classicus* in Nigeria is the Supreme Court decision in *Garba & Ors v The University of Maiduguri*[23] where many cases dealing with fair hearing were highlighted. In that case, the chairman of an investigating panel which tried the appellants was a Deputy Vice Chancellor of the University who was a victim of the rampage the students were alleged to have committed. The Supreme Court held that a likelihood of bias is discernible since the Deputy Vice Chancellor was not only a witness in this panel but also a judge at the same time. The Supreme Court established that fair hearing in Nigeria is not only a common law requirement, but also a statutory and a constitutional requirement and that when the Deputy Vice Chancellor assumed the disciplinary powers, he became not a court but a tribunal established by law acting in a quasi-judicial capacity. Thus he was bound to act judicially, comply with the constitutional requirements of fair hearing and pass the qualification test to assume judicial functions. The Court went ahead to hold, per Oputa JSC:

> It is my humble view that fair hearing implies much more than hearing the appellants testifying before the Disciplinary Investigation Panel; it implies much more than summoning the appellants before the Panel; it implies more than other

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[22] *Supra* n 12.
[23] (1986) 1 NWLR 550.

> staff or students testifying before the Panel behind the backs of the appellants; it implies much more than the appellants being given a chance to explain their own side of the story. To constitute a fair hearing whether it be before the regular courts or before Tribunals and Boards of Inquiry the person accused should know what is alleged against him; he should be present when any evidence against him is tendered and he should be given a fair opportunity to correct or contradict such evidence. How else is this done if it be not by cross-examination?[24]

Aptly, the 1999 Constitution by its s 36 (1) has imported the two-fold doctrine of fair hearing providing 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.* (Emphasis added.)

For those who wonder about disciplinary tribunals, for instance, set up for the trial of erring employees and their independence, there is also a saving clause. Thus under sub-s (2):

> Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -
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> (a) provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and

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[24] *Id* at p 618.

(b) contains no provisions making the determination of the administering authority final and conclusive.

Thus such administrative authorities may validly conduct their inquiries provided that they do not infringe upon the conditions stated under that sub-section.

It may now be said therefore that the principles of natural justice has its grounding in the Constitution defeating the erroneous argument canvassed in the *Garba* case[25] that the relationship between the students and the university was contractual and that therefore discipline was also an internal matter. The court held the relationship to be statutory indicating that therefore the principles of natural justice applied.[26]

It must be emphasised that the consequence of the breach of the right to fair hearing which admits of no excuses is that any decision reached in breach of the rule must be set aside. In the famous case of *Kotoye v Central Bank of Nigeria*[27] the Supreme Court held that:

> The rule of fair hearing is not a technical doctrine. It is one of substance. The question is not whether injustice has been done because of a lack of hearing. It is whether a party entitled to be heard before deciding had in fact been given the opportunity of a hearing. Once it is concluded that a party was entitled to be heard before a decision and he was not given that opportunity, the order or judgment thus entered is bound to be set aside.

In *Adigun v A-G OF Oyo State & 18 Ors*,[28] the Supreme Court also said:

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[25] *Supra* n 23.
[26] *Id* at p 610.
[27] *Supra* n 21.
[28] (1987) 3 SCNJ 118.

> The Appellants do not have to show injury or prejudice. It is implicit in the very act of denial because the denial is an injury to the right of fair hearing guaranteed by the Constitution and rules of natural justice.

It further held that if the rules of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice.

No authority illustrates this position more than the one of *Adedeji v Police Service Commission*[29] where the Supreme Court expressed the following view:

> We are therefore not satisfied that when the circumstances of this case are looked into, adequate opportunity was given to the appellant to meet the case or the facts of the case known to the Commission. It is possible that the appellant is corrupt and did commit the offence alleged against him, that is not what we have to consider. Was the case against him sufficiently brought home to him that one can say that the requirements of natural justice were sufficiently observed on the facts and circumstances? ... We hereby order that the writ should go and the letter dismissing the appellant is hereby declared inoperative, void and of no effect.[30]

The above decision followed on the heels of *Ceylon University v Fernando*[31] in which the Privy Council opined:

> What are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly that he

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[29] (1968) NMLR 102.
[30] *Id* at pp 107-108.
[31] (1960) 1 WLR 223.

> should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith.[32]

The true test of fair hearing, as it has been severally expounded, is the impression it creates on a reasonable man:

> The true test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation justice has been done in the case. The reasonable man should be a man who keeps his mind and reasoning within the bounds of reason and not extreme. And so if in the view of a reasonable man who watched the proceedings, the principle of fair hearing was not breached, an appellate court will not nullify the proceedings.[33]

The above *dictum* accords well with the principle that justice must not only have been done but must be seen to have been done. If the reasonable man cannot see that justice has been done, then invariably justice has not been done.

It is such a fundamental issue that the apex court of the land has held that when a breach of the rules of natural justice occurs, a court cannot shut its eyes to it or fail to give effect to its implications simply because it has not been raised in the pleadings. The popular rule of pleading in a court of law is that parties are bound by their pleadings and any fact not pleaded goes to no issue. Thus the courts have said that rather, being a fundamental vice, the courts will yet go into the matter though it has arisen incidentally, provided that if in an appeal, there is sufficient material upon which it can reach a fair decision in the matter without any need for further evidence and that both parties to the conflict have had due notice of the material facts from which the alleged breach has arisen.[34] If the breach of the rules

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[32] *Id* at p 232.
[33] *Orugbo & Ors v Una & Ors* (2002) 11 NSCQR 537 at p 550.
[34] *Oyeyemi v Commissioner for Local Government, Kwara State & Ors* (1992) 2 SCNJ (Part II) 266.

of natural justice arises accidentally, the court, if seised of the relevant materials for reaching a decision on the issue, must consider it and decide it on appeal. If it is not in possession of those materials or relevant record of evidence, then it must remit it to the lower court for a decision on it.

What is clear then is that any administrative body which fails to observe these rules acts contrary to the principles of natural justice with the resultant effect that any judgment grounded on this breach will not stand even where it is palpable that the accused is wrong or guilty and the determination of that administrative body will be held to be null and void and of no consequence.

A. *The Audi Alteram Partem Rule*

This is the doctrine that in coming to a decision the deciding authority must hear all the parties. This doctrine was formulated with precision in the case of *Ridge v Baldwin*[35] where Lord Hodson said:

> No one, I think, disputes that three features of natural justice stand out: (1) the right to be heard by an unbiased tribunal; (2) the right to have notice of the charges of misconduct; and (3) the right to be heard in answer to those charges.[36]

The rule now seems to have been summarised as follows:

a. that a person knows what the allegations against him are;
b. that he knows what evidence has been given in support of such allegations;
c. that he knows what statements have been made concerning these allegations;
d. that he has a fair opportunity to correct and contradict such evidence; and

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[35] [1963] 2 ALL ER 66.
[36] *Id* at p 114.

e. that the body investigating the charge against such person must not receive evidence behind his back.

Without much ado, the Supreme Court has evolved a set of principles, standards so to say, by which the test of fair hearing may be said to have been met and these are not too dissimilar to the above. One of those cases is *Baba v Nigerian Civil Aviation Training Centre*[37] where the Supreme Court formulated the following standards for a fair hearing before a judicial or quasi-judicial body. In order to be fair, the hearing must include the right of the person to be affected:[38]

a. to be present all through the proceedings and hear all the evidence against him;
b. to cross examine or otherwise confront or contradict all the witnesses that testify against him;
c. to have read before him all the documents tendered in evidence at the hearing;
d. to have disclosed to him the nature of all relevant material evidence, including documentary and real evidence, prejudicial to the party, save in recognised exceptions;
e. to know the case he has to meet at the hearing and have adequate opportunity to prepare for his defence; and
f. to give evidence by himself, call witnesses if he likes, and make oral submissions either personally or through a counsel of his choice.

It is imperative to consider each of the requirements of natural justice as set out in the *Nigerian Civil Aviation Authority Training Centre* case[39] with case law if possible.

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[37] *Supra* n 15.
[38] The Supreme Court decision in *Oyeyemi v Commissioner for Local Government, Kwara State & Ors*, *supra* n 34, also bears this out.
[39] *Supra* n 15.

1. *To be present all through the proceedings and hear all the evidence against him*

In *Denloye v Medical and Dental Practitioners Disciplinary Tribunal*,[40] the sole issue was whether the Medical and Dental Practitioners Investigation Panel had denied the appellant a fair hearing. The panel met and received evidence from certain persons but neither the appellant nor his witnesses were called at the meeting. The appellant was subsequently summoned to appear before the panel. The evidence taken prior to this date was not made available to him or his counsel and when the counsel asked for it, the Chairman of the panel refused to produce it. He stated categorically that they were confidential and for the exclusive use of the panel. In the circumstances of the case the court set aside the decision of the disciplinary committee. The court held that the procedure adopted by the panel was unknown to law as the panel had deprived the appellant of his right to be present at the hearing and did not make available the evidence taken against him in his absence to him or to his counsel on repeated request.

2. *To cross-examine or otherwise confront or contradict all the witnesses that testify against him*

The court in *Denloye v Medical and Dental Practitioners Disciplinary Tribunal*[41] held that a breach of the rules of natural justice had ensued when the respondent (nor his counsel) was given the evidence taken against him in his absence in spite of repeated request. Further witnesses were not made available for cross-examination.

In *Jalo Guri & Anor v Hadejia Native Authority*[42] the appellants, who were convicted under "hiraba" (highway robbery) law of Maliki, were set free by the Supreme Court because the lower court adopted not only an inquisitorial procedure but also failed to

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[40] (1968) 1 ALL NLR 306.
[41] *Ibid.*
[42] (1959) 4 FSC 44.

some extent to observe the principles of natural justice, equity and good conscience. The "hiraba" law was declared inoperative as the exposition of its application forbade any accused person to be given either an opportunity of defending himself or any chance of questioning any of the witnesses for the prosecution.

Oputa JSC, arguably the most erudite and eloquent jurist to have travelled through the Supreme Court, put this rule in its proper perspective in his observation in *Garba v The University of Maiduguri*:[43]

> To constitute a fair hearing whether it be before the regular courts or before Tribunals and Boards of Inquiry the person accused should know what is alleged against him; he should be present when any evidence against him is tendered and he should be given a fair opportunity to correct or contradict such evidence. How else is this done if it be not by cross-examination?[44]

3. *To have read before him all the documents tendered in evidence at the hearing*

In *R v Director of Audit (Western Region) & Anor Ex Parte Oputa & Ors*,[45] the Director of Audit wrote to the appellants and certain other councillors calling on them to show cause why they should not be surcharged in respect of a certain sum in accordance with the provisions of a certain law. Many of the councillors failed to reply and those who did reply failed to satisfy the Director that a surcharge should not be made and were accordingly surcharged though given a right of appeal to the Minister. Though the appellants exercised this right they challenged the Minister's final decision upholding the surcharges by *certiorari* on the ground that the Minister came to his decision without hearing them or giving them a further opportunity to be heard. The trial judge came to the conclusion that a fair inquiry

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[43] *Supra* n 23.
[44] *Id* at p 618.
[45] (1961) ALL NLR 659.

had been held. On appeal the Federal Supreme Court held that the appellants' petition was forwarded to the Ministry without any intimation that the appellants wished to supplement the document, and no further submissions were received before the decision of the Minister was communicated to the appellants. All relevant documents were forwarded to the Minister and there was nothing to show that the Director of Audit made further representations, which required a further explanation from the appellants.

4. *To have disclosed to him the nature of all relevant material evidence, including documentary and real evidence, prejudicial to the party, save in recognised exceptions*

In *Adedeji v Police Service Commission*,[46] the appellant who was an assistant superintendent of police was served with a letter by the respondent in which he was accused of corruption and contraventions of certain general orders. He was required to make representations why he should not be dismissed for the offences. He wrote a reply but was eventually dismissed. He challenged his dismissal but was confronted at the High Court with a four foolscap page counter affidavit which contained allegations which were not in the letter querying the appellant. The Court dismissed his case. He appealed to the Supreme Court which held that the letter did not sufficiently appraise the appellant of the case against him giving him sufficient opportunity to state his case in rebuttal in view of the fresh allegations in the counter affidavit and that adequate opportunity was not given to the appellant to meet the case or the facts of the case known to the Commission.

5. *To know the case he has to meet at the hearing and have adequate opportunity to prepare for his defence*

In *Aiyetan v Nigerian Institute for Oil Palm Research (NIFOR)*,[47] the appellant, an employee of the respondent, a statutory corporation was invited before a board of inquiry testify as a witness to testify as

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[46] (1968) NMLR 102.

[47] (1987) 6 SCNJ 36.

to the loss of some money with which a fellow employee absconded. The appellant testified as a witness and gave useful suggestions in regard to how such an occurrence can be avoided in future. The respondent later dismissed the appellant from his employment on the ground that the board found him guilty of negligence. The Supreme Court held his dismissal to be a serious and fatal breach of the rules of natural justice since there was nothing on the face of the invitation which could have given the appellant the notion that he was in the line of fire, or that his conduct was to be probed particularly as he must have felt that he had been discharged and acquitted by a court. The appellant was not informed of the case against him or given an opportunity to defend himself as he had been invited to testify to the loss of money, not to his role in the loss. The exchanges between him and the board of inquiry were no more than could be expected between a mere witness, which is what the appellant was, and a Panel.

Authorities abound too for the other requirements such as that the person to be affected must be availed the right to give evidence by himself, call witnesses if he likes,[48] and make oral submissions either personally or through a counsel of his choice.[49]

B. *The Nemo Judex in Causa Sua Rule*

The Latin maxim *nemo judex in causa sua* is the shorthand expression for the rule against bias and interest. This means that a man must not be a judge in his own cause. The actual bias or the real likelihood of bias, prejudice, partiality or unfairness that arises from that anomaly would decimate public confidence in the administration of justice by the courts or tribunals. It has been defined as follows:

> Bias in its ordinary meaning is opinion or feeling in favour of one side in a dispute or argument resulting in the

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[48] *Sadau of Kunya v Kadir of Fagge* (1956) 1 FSC 39. See also *Kano NA v Obiora* (1960) NNLR 42.

[49] *Ogboh & Anor v The Federal Republic of Nigeria* 10 NSCQR 498 at pp 508-509.

> likelihood that the judge so influenced will be unable to hold an even scale.[50]

In *Bamigboye v University of Ilorin & Anor*, Ogundere JCA considering the term offered a more illustrative definition. He defined it to mean that the trial or proceedings has been influenced, *inter alia*, by corruption or favouritism or by the tribunal descending into the arena, and thereby discarding the role of an arbiter, and participating in the battle.[51]

Bias has been compartmentalised into two: pecuniary[52] and/or proprietary bias on the one hand and non-pecuniary bias on the other. It would appear, following the decision in *Metropolitan Properties Co (FGC) Ltd v Lennon*,[53] that a direct pecuniary interest in a matter automatically disqualifies a judge from his role as such. In practice, however, the decisions upturned owing to pecuniary bias are not so prevalent in the Nigerian jurisdiction. This is due to the practice in this country where litigants can petition the National Judicial Council where they are aggrieved. In *Umanah v Attah & Ors*[54] for instance, the judges against whom the allegation of corruption was made had actually been dismissed from service upon investigation. But because the Federal High Court had no jurisdiction either to review the judgment of the Court of Appeal or to entertain an election matter which would have been the implication of the appellant's suit at the Federal High

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[50] *Kenon & Ors v Tekam & Ors* (2001) 7 NSCQR 147 at p 168.
[51] CA/K/203/90 delivered on 14 May 1991, at pp 44-45.
[52] In *Umanah v Attah & Ors*, SC 255/2005, a judgment delivered on 29 September 2006, the Supreme Court sought to clarify the distinction when it is said that a judgment has been obtained by fraud and when it is said that it has been tainted by bias as a result of its pecuniary interest. For the latter the Court said, "means that the judgment so obtained is induced by bias or real likelihood of bias not that it was obtained by fraud". This authority can also be accessed at http://www.nigeria-law.org/Dr%20Ime%20Sampson%20Umanah%20%20v%20Obong%20(ARC.)%20Victor%20Attah%20&%20Ors.htm which was last visited on 7 April 2008.
[53] [1969] 1 QB 577 at p 598.
[54] *Supra* n 52.

Court, the opportunity to set aside the judgment of the Election Petition Tribunal for being tainted by pecuniary bias was missed. In cases of non-pecuniary bias, it appears that what is paramount is the propensity of the fact, in its appearance to the reasonable man, to becloud and taint the judgment of a judicial arbiter.[55] Thus all forms of non-pecuniary bias, be they policy bias or bias formed on the basis of personal animosity, family or professional relationship, will be measured against the yardstick of its reasonable likelihood to taint a judgment.[56]

It follows then that a person who is a party to dispute or who acted as counsel for one of the parties may not sit in judgment over the same matter in view of the apparent likelihood that his emotions may tilt. In *Umenwa v Umenwa & Anor*,[57] a lawyer appeared for a party in a case and on becoming a judge also sat to decide the dispute. He was held to have descended into the arena. In such cases, the whole decision of the court is vitiated and the judgment would be void.[58]

Similarly it has been held that foreknowledge of the primary facts of a case is an aspect of bias for "where a judge has foreknowledge of the facts he does not come to the dispute with an openness of mind that would enable him to hold an even scale", and therein "lies the unfairness".[59] There the court however drew the line between that situation and one in which the parties and the subject

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[55] The Court of Appeal called it "what may raise reasonable doubt as the ability of the judge to be fair" in *Mohammed v Nigerian Army* [2001] 1 CHR 470 at p 482.

[56] As the courts have said in *Oyelade v Araoye* (1968) NMLR 41 and *Kenon & Ors v Tekam & Ors* (*supra* n 50 at p 167), once a person has a duty to give a judicial decision, he must approach that duty with an open mind and he ought not to presume in advance that a particular decision is the right one. Thus if it would appear to a reasonable man that the fact in issue has the propensity to leave this impression in the mind of the arbiter, the form of non-pecuniary bias in issue would vitiate a decision.

[57] (1987) 4 NWLR (Pt 67) 407.

[58] *Sandy v Hotogua* (1952) 14 WACA 18.

[59] *Kenon & Ors v Tekam & Ors. Supra* n 50.

matter are different and came to the conclusion that would not amount to a foreknowledge of the facts.[60]

Decisions in *Oyelade v Araoye*[61] and *Obadara v President Ibadan West District Grade B Customary Court*[62] show that in the rare cases where it could be proved that a decision had actually been affected by the bias of the person making it would no doubt be conclusive, but that while suspicion was enough, the courts did not appear to require proof that actual bias operated on the mind of the person making the decision and that a real likelihood of bias might be shown. Similarly, Ogundere JCA has also observed that "bias is always difficult to prove save in proven cases of bribery; and that is why the law stipulates that a mere likelihood of bias suffices".[63]

The rationale for this is exemplified in the *dictum* of Lord Hewart CJ in *R v Sussex Justices, ex parte McCarthy*[64] that:

> ... it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

Some of the most definitive restatements of the law have been occasioned by the Supreme Court which has held in the *Garba* case[65] that since the chairman of the Investigating Panel which tried the appellants was the Deputy Vice Chancellor of the University and was a victim of the rampage, the necessary inference to be drawn was that there was a real likelihood of bias since the Deputy Vice Chancellor was thus a witness and a judge at the same time:

> There is another pillar of natural justice which was also rudely shaken in this case. The Chairman and Vice-Chairman

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[60] *Id* at p 168.
[61] (1968) NMLR 41.
[62] (1965) NMLR 39.
[63] *Bamigboye v University of Ilorin. Supra* n 51 at p 45.
[64] [1924] 1 KB 256 at p 259.
[65] *Supra* n 23.

> of the Disciplinary Investigation Panel were themselves victims of the arson and malicious damage which followed in the wake of the rampage. They have to be super human to be able to obliterate from their minds their personal plights and to be able to approach their assignment with the impartiality, objectivity and fairness required of those acting in a judicial or quasi-judicial capacity. Even if they achieved this extra-ordinary feat, the appearance of justice having been done by their Panel will be seriously compromised. It will ever remain a matter of grave concern in the minds of the appellants and ordinary citizens whether they, the Chairman and Vice-Chairman of the Disciplinary Investigation Panel, were not biased, for as Lord Hewart CJ emphasised "justice must not only be done but manifestly and undoubtedly be seen to be done ... "[66]

It is to be observed that when it comes to the evenhandedness of administrative tribunals, decisions usually reflecting on the standard of impartiality of judicial officers are freely cited. This is not without justification. This justification was to be found in the Court's holding regarding the Panel:

> ... the standard of impartiality required of full time Judges is the same as those required of persons who adjudicate in administrative Boards (like the Disciplinary Investigation Board) entrusted, may be not with a final decision but all the same with some decision albeit preliminary ...[67]

Bias then may be inferred from a number of things and more - a compelling personal animosity or hostility, personal friendship, family or professional relationship.

Proof must be substantial. For in cases involving allegations of bias or the real likelihood of bias:

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[66] *Id* at p 619.

[67] *Ibid.*

> ... there must be cogent and reasonable evidence to satisfy the court that there was in fact such bias or real likelihood of bias as alleged. In this regard it has been said, and quite rightly too, that the mere vague suspicion of whimsical, capricious and unreasonable people should not be made a standard to constitute proof of such serious complaints.[68]

Thus, the determination whether fair hearing has been complied with depends on the facts of each case.[69] It is said that no two sets of facts are the same. Each set must be examined to determine whether fair hearing has been employed or not.

There is a tendency now, arising from the decision in the *Ceylon University* case[70] to include *mala fides* or bad faith on the part of the employer in the genre of interest or bias. This attitude is not entirely correct as Warrington LJ has held:[71]

> My view then is that the only case in which the court can interfere with an act of a public body which is, on the face of it, regular and within its power, is when it is proved to be in fact *ultra vires*, and that the references in the judgments in the several cases cited in argument to bad faith, corruption, alien and irrelevant motives, collateral and indirect objects and so forth, are merely intended when properly understood, as examples of matters which, if proved to exist, might establish the ultra vires character of the act in "question". This way of describing the effect of bad faith should not be used to blur the distinction between *ultra vires* act done *bona fide* and an act on the face of it regular but which will be held to be null and void if *mala fides* is discovered and brought before the court.[72]

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[68] *Ojengbede v Esan & Anor* (2001) 8 NSCQR 461 at p 471.
[69] *Orugbo v Una & Ors* 11 NSCQR 537 at p 563.
[70] *Supra* n 31.
[71] *Short v Poole Corporation* (1926) Ch 66.
[72] *Id* at p 91.

It is suggested that the *ultra vires* act done *bona fide* may refer to certain kinds of decisions taken by a disciplinary tribunal but that the latter refers to the administrative acts of a public body. The implication is that a decision, once it is established, has been adequately guided by the principles of natural justice in the circumstances will not be affected by *mala fides*. This is different from the acts of a public body, which though on the face of them may be regular but proof of *mala fides* will leave them tainted. The two therefore must not be confused.

V. Conclusion

The principles of natural justice, going by the law that it is dependent on the facts of each individual case, cover a very wide scope. The foregoing has been an attempt to prune it down to manageable limits for a better comprehension while also pointing out its pitfalls arising from ignorance of fundamental principles by litigants; and all these against the background of a nation governed under a supreme constitution as well as a common law tradition.

List of Legislation

The following list of Laws passed in Malaysia is a continuation of the list contained in (2006) 33 *JMCL.*

FEDERAL ACTS

Bil Akta **Act No**	**Tajuk Ringkas** **Short Title**
660	Akta Garis Pangkal Zon Maritim 2006 Baselines of Maritime Zones Act 2006
661	Akta Kewangan 2006 Finance Act 2006
662	Akta Kumpulan Wang Persaraan 2007 Retirement Fund Act 2007
663	Akta Bangunan dan Harta Bersama (Penyenggaraan dan Pengurusan) 2007 Building and Common Property (Maintenance and Management) Act 2007
664	Akta Pihak Berkuasa Wilayah Pembangunan Iskandar 2007 Iskandar Regional Development Authority Act 2007
665	Akta Suruhanjaya Koperasi Malaysia 2007 Malaysia Co-operative Societies Commission Act 2007
666	Akta Industri Biobahan Api Malaysia 2007 Malaysian Biofuel Industry Act 2007