APPRAISAL ON THE DOCTRINE OF FAIR HEARING IN THE NIGERIA LEGAL SYSTEM

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CERTIFICATION

I certify that **Thompson Ekiye Oyindoubra** of the School of Foundation studies, Department of Law, Bayelsa State Polytechnic, Aleibiri conducted this project work under the supervision of **Ernest E. Brizibe Esq.** to the best of my knowledge this project has not been submitted anywhere else in this institution, this the very original of this work.

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APPROVAL

This research work on the "Appraisal of the Doctrine of Fair Hearing in the Nigeria Legal System, has been supervised and approved by:

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9. Ortese Yanor v. The State (1965) 1 All NLR 193 or (1965) NMLR P.337
10. Onigbo v. Una (2002) 16 NWLR (pt.792) p.175
11. Ozuluonye & Ors v. The State (1983) 4 NCLR p.204
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15. Sugh v. The State (1988) 2 NWLR (pt.77) p.475 or (1988) 5 SCNT p.58
16. Tolu v. Bauchi Native Authority (1965) NMLR p.87
17. Udo v. The State [1988] 3 NWLR (pt. 82) p.316
18. The State v. Gwanto (1983) 3.S.C p.67 or (1983) 1 SCNLR p.142
19. Uzodinma v. Commissioner of Police (1982) 1 NCRP.27
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5. Constitution of the Federal Republic of Nigeria 1999 (as amended)
6. Evidence Act, 2011

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LIST OF ABBREVIATIONS

1. Constitution of the Federal Republic of Nigeria 1999 (as amended)
2. ACJA – Administration of Criminal Justice Act 2015
3. C.P.A – Criminal Procedure Act, CAP 30, LFN 1990
4. C.O.P – Commissioner of Police

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ABSTRACT

This paper considers and examines the extent of the applicability of the principles of fair hearing in administrative adjudication in Nigeria. The paper holds the view that administrative adjudicatory bodies are compulsorily bound by the principles of fair hearing as most of their functions affect the rights and obligations of individuals appearing before them. Bearing in mind that these principles of fair hearing (and others ancillary to them) are however not straight jacket principles, hence this paper. In achieving this purpose, the paper adopts the thematic and doctrinal methods of research. The paper adopts the analytical, critical, expository and comparative methods of presentation, with copious reference to the 1999 Constitution of the Federal Republic of Nigeria; Textbooks on Constitutional and Administrative Law and Human Rights Law; Statute books; Law Reports (Case Laws) as primary and secondary sources of material on the subject-matter.

Keywords: Administrative Tribunal, Fair Hearing, Human Rights, Right to Fair Hearing, Principles of Natural Justice.

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND TO THE STUDY

Ordinarily, looking at both expressions fair and hearing separately to be fair could mean different things like; been light in complexion, beautiful, just.[1] Later on, in the late sixteenth century, fair began to develop into different new meanings which could describe actions like play, trade, quarrel and so on allowing speakers to comment on people's action as fair, unfair[2]. Meanwhile, Hearing meant to be heard by another while talking or explaining one's actions.

The doctrine of fair hearing is a right which traces back its very origin to the beginning of mankind in the very account of Adam and Eve[3] who were the very first beings God created and kept in the Garden of Eden with a strict instruction and penalty which was disobeyed by them both. God being an Omniscient God knowing what had happened still gave both humans the privilege or let say right to be heard before he passed his mighty judgment on them which binds us till this present time.

Although, a fair trial was not really known by its today essence and as at the 17th century, it would be entirety a mistake to think that it was on important feature of legal discourse as it is today. It was infect exceedingly rarely used between 1674 to 1834 period covered by the Old Barley proceeding (OBP)[4]. The first trial of which this term was used was in 1676 only two years after the OBP's publication in 1674.

The history of fair hearing in a trial can be traced back to its origin in England and Wales Magna Carta Act, 1215 Art 39 of the Act. The first trial was held in 1630 in the American colonies held by Plymouth when John Billington was accused of murdering a fellow colonist John Newcomin. The accused was judged guilty of a willful murder with a reasonable evidence and was hanged as the execution of his punishment[5].

This which is now found in Article 10 of the Universal Declaration of Human Rights, the 6th Amendment to the United State Constitution and Article 6 of the European Convention of Human Rights[6]: which was adopted on the 6th of September, 1985 by the

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Seventh United Nations Congress in the prevention of crime and the treatment of offenders held at Milan from August 26th to September 6th 1985[7] which is binding worldwide.

1.2 STATEMENT OF THE PROBLEM

In Nigeria S.1 (1) has made it clearly known to us that the CFRN 1999 (as amended) is the most supreme law of the country and it is binding on every single individual in the country state. It is also enshrined under S.3 that: *"if any law is inconsistent with the provision of this constitution, this constitution shall prevail, and that other law shall to the extent of inconsistency be void."*

But then, when we take a very good look at our Legal System it operates a very biased one instead of an unbiased one where separate laws are made just to favour the deeds of the rich while separate ones to implicate the poor or less privileged even if the S.17 (2)(a) of the law regards everyone equal before the eyes of the law. In a crime that the rich will be set free, for that same crime the poor will be penalized. Making our CFRN a faulty one as it does not really go all round solving every issue rather favouring the rich and displeasing the poor.

1.3 AIM AND OBJECTIVES

The sole aim of this work is to restate appraisal of the doctrine of Fair Hearing to examine this doctrine under the Nigeria Legal System of which to achieve this aim in the context the following three (3) objectives will be considered: before the end of the work;

a. Identifying if the doctrine of Fair Hearing is provided and guaranteed under the Nigeria Legal System.
b. Identify and discuss why Fair hearing is important to the Nigeria Legal System.
c. Identify the challenges if any faced by the doctrine of Fair Hearing in the Nigeria Legal System and proffering solutions to those challenges.

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(7) U.N Human Right Instrument from the office of the Higher commissioner

1.4 RESEARCH METHODOLOGY

This is legal research which involves a systematic, thorough and rigorous process of inquiring to answer special research questions through the use of disciplined methods to increase knowledge[8]. This is divided into two (2) main parts that is;

a. The Doctrinal Legal Research and
b. The Non-doctrinal Legal Research Method

DOCTRINE LEGAL RESEARCH METHOD

This research could be referred to as the theoretical, purely legal, academic method that looks at the systematic study of Rules Principles, Theories, Concepts, Doctrines, Decided Cases, Legal Institutions, and Issues or Questions a combination of all or most of them laying emphasis on the concepts of law as autonomous with clear boundaries between law and other subjects through analyzing court judgment and statutes with little or no reference to the world outside the law[9].

NON-DOCTRINAL LEGAL RESEARCH METHOD

This could also be known as a socio-legal research method. Although the term is self-explanatory even if there is no specially accepted definition. The term non-doctrinal has already proved to be the opposite of the doctrinal research meaning this research does not deal with studying statutes only rather it is the study of law that relates to social phenomena and adopts other methods from social sciences to obtain some kind of empirical data with the aim of providing vital insights from an external perspectives into how the law work in the society.

Data gathering is a very crutial stage for a researcher to ensure they obtained a relevant, and valid data to yield a reliable result and for this purpose. Therefore, this research work will be adopting the doctrinal research method the directing all it focus on the deputes and also referring reduces if necessary to as many law that are not strictly adhered to.

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(8) Combining method in research, Khadija Mohammed University of Law Malaysia
(9) M. Mike and W.H. Chui Research Methods for Law p.246

1.5 ORGANIZATIONAL LAYOUT

This is a research divided into four (4) chapters of the contents of which each chapters. First of which is chapter one that conveys the Background to this study in other words, the history of this very topic. The problem of that is seen to be faced by society that projects this research to be carried out, the objectives which will help the writer to achieve the sole aim of this work. The method used to gather information on this research works.

Secondly, The chapter two of this work carries the different aspects locally and internationally that is backing up this doctrine of Fair Hearing, the various elements that structures it and the pillars of natural justice as part of Fair Hearing all under the Legal and Institutional Frameworks.

Thirdly, The essence of Fair Hearing in the Legal System, how this right can be enforced by a citizen, the various challenges faced by this right and the ways as well to overcome them which is to be seen under chapter three of this work.

And Lastly, The Conclusion and Summary part of this work, conveying the findings discovered through this research, the recommendations referred to the findings and also the spot where all research or point were picked from (i.e) the bibliography

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CHAPTER 2

2. 1 INTRODUCTION

So far studying the concept of a fair hearing it is said to be an opportunity in a trial where both parties are provided the privilege to exercise their right not just orally before a court or higher authority but that right to observe if a trial process has followed through the due and set out standard of a fair trial.

This is a principal that is tied to the Nigeria Legal System as it is described with 4 major elements;

a. **The Law:** as a body of binding rules and regulation, customs and standards established in a community by its legislative and judicial authority.
b. **The Courts:** as a special places or hall where people run to, seeking redress because it is a place established to administer justice.
c. **Personnel of the Law:** In person of the members of the jury, justices, judges, judicial officers, sub ordinate judicial officers, officer and agents of the courts. These are employees that are subject to the judge's control and decision.
d. **Administration of Justice:** The process by which the Legal System of a government is executed with a presumed goal of providing justice to all those that are accessing the Legal System (Court).

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2.2 ASPECTS OF THE DOCTRINE OF FAIR HEARING IN THE NIGERIA LEGAL SYSTEM

The Nigeria Legal System is said to have consist of its totality of laws or the legal rules and machinery which are operational within Nigeria as a sovereign and Independent African Country, Fair trial have special protections that makes sure every accused of a crime gets treated fairly and justly in Nigeria.

The Constitution of the Federal Republic of Nigeria 1999 (as amended), is a book divided into various sections and it is the Grundnorm or the most superior law guiding country state as provided in S.1[10] and it has also been enshrined under S.36 (1)[11] that *"if*

(10) 1999 constitution S.36 (1)
(11) 1999 constitution (as amended)

any law is inconsistent with the provisions of the constitution, this constitution shall prevail, and that other law shall to the extent of inconstancy be void". S.36 (1) has provided that "any person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law to secure independence and impartiality".

2.2.1. RIGHT TO PUBLICITY OF A CRIMINAL TRIAL[12]

This section provides that whenever a person is charged with a criminal or civil offence unless the charges is withdrawn is entitled to an open court room to for trial. Therefore, members of the public are not prohibited from attending criminal trials even when they are not parties to the proceedings but excludes infants from attending a trial except on the grounds that the infant or child is required as a witness. Sub section (4) of S.36[13] further classifies instances where there will be an exception to the right of fair hearing and they are;

a) In the interest of the Defense, public safety, public order and public morality[14].
b) In the protection of the private lives of the party to the proceedings[15].
c) For the welfare of persons who have not attained the age of 18 years[16].
d) Upon the satisfaction of the court by a Minster of Government of the Federation or Commission of a State that it would not be in the public interest for any matter to be publicity disclosed, the court may hear the evidence in relation to such matter in private[17].
e) During Juvenile Trials[18]
f) When an enactment expressly requires/provides that a trial shall not be opened to members of public[19].

However, in all these circumstance when proceedings are being held in camera, except the court expressly states otherwise, bona fide representative of the media, court official and legal practitioners are permitted to appear in the courtroom while in session.

2.2.2. PRESUMPTION OF INNOCENCE[20]

Every person who is charged with a criminal offence, no matter how heinous shall be presumed to be innocent until proven guilty. That is the accused is not to be declared as criminal until has been proven beyond reasonable doubt by the opposition. In the case

(12) S.36 (4) 1999 constitution (as amended)
(13) S.36 1999 constitution
(14) Constitution of Federal Republic of Nigeria S.36(4) (a) and S.203 CPA
(15) Proviso (a) to S.36(4)
(16) Proviso (a) to S.36 (4) and S.204 of CPA
(17) Proviso (b) to S.36 (4)
(18) S.6(5) C.Y.P.L Delta State 2008
(19) S.13 (1) Recovery of Public Property Special Military Tribunal Decree 1984

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of Okoro v. The State[21], seven persons where charge of murder before the high court and at the end of the prosecution one but only the first accused was proven to be guilty of the crime while the rest were discharged as they were proven not to have any connection to the case.

2.2.3. THE ACCUSED INFORMED OF THE OFFENCE CHARGED AGAINST HIM[22]

This section requires that every person who is charged with a criminal or civil offence is entitled to be informed promptly and in details the nature of the offence in a language the he can understand. This essence is to promptly inform an accused on the nature or description of the offence filed against him to enable him know what he has done and is likely going to face so as to be prepared.

In Maja v. State[23] the accused was charged with attempted murder and wounding with an intention to cause grievous harm. However, the evidence before the court revealed that the accused wasn't provided with the information of a law suit promptly on time so relying on S.179 (1) CPA the judge convicted the accused of a lesser offence of unlawfully doing grievous harm.

2.2.4. ADEQUATE FACILITIES AND TIME TO THE PREPARATION OF DEFENCE[24]

`This section hereby grant the accused counsel access to the defendant on remand to enable counsel to interview the defendant and prepare the case for his defence. A counsel can apply to court for adjournment if not granted or denied access to client that is to enable him to properly prepare his defence. However the grant for adjournment defends on the circumstances of each particulars case and the accused is not entitled to a continuous adjournment without a reasonable cause. In Ortese Yanor v. State[25] the accused counsel filed for several adjournment grants which was awarded to him and on resumption further adjournments were filed which the court later refused to grant.

The counsel appealed after the trial proceeded where he was made the current and on appeal the Supreme Court held that: the refused of the court to grant this application

(20) S.36 (5) 1999 Constitution (as amended)
(21) 1999 Constitution (as amended), see also Okoro v State (1988) 12 SCNJ 191
(22) Ordinary counsel to be present at the trial proceedings
(23) 1980 (1) NCR p.212
(24) 1999 Constitution (as amended), see also Francis Ibrahim v. State (2008) 12 SCNJ 1 and ACA 2015, S6 (1), Esaiy v State [2006] 11 FWLR (pt.309) 1535
(25) (1965) 1 All NLR p.193 or (1965) NMLR p.337

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was a proper exercise of discretion and therefore not a violation of the accused's right to a fair trial.

Also in Udo v. The State[26] the court held that in the trial of all capital offence, if an accused person applies for an adjournment in order to secure the services of a defendant counsel the court must grant the application.

2.2.5. RIGHT TO A DEFENCE COUNSEL[27]

This provides that every accused is entitled to have a defence counsel (i.e) to be defended by a legal practitioner[28] of his own choice and if he does not have a legal defender of his own then it is a responsibility resting on the shoulders of the government to provide one for the accused. Both parties are entitled to the right of being represented in court by a legal counsel of their choice[29]. This right is re-echoed by S.211 of the CPA which provides that *"both the complainant and defendant shall be entitled to conduct their respect cases in person or by a legal practitioner and where the defendant is in custody or on remand, he shall be allowed the access of the legal practitioner at all reasonable time".*

A defendant who takes the risk of defending himself in person would be deemed to have waived his right and cannot be heard to contend that he was denied a fair trial. In Uzodima v. Commissioner of Police[30], this right is fair hearing was tested where the accused person was charged before an area court for an offence of theft and was not granted or provided a learned counsel to defend him as the then S.309 of the CPC was denying the accused of a defence counsel as it operational in the Area Court Judicial division. On appeal to the Supreme Court held that S.309 of the CPC and S.28 of the Area Court were contradictory to S.33 (6) (c) of the Constitution of 1979 and the judgment was made null and void.

Also, in Josiah v. The State[31] the accused was charged with the offence of armed Robbery and Murder. Without the presence of a defence counsel the trial court convicted him and on further appeal, the Apex Court held that failure of the appellant to be defended by a defence counsel amount to a denied of fair hearing.

(26) [1988] 3 NWLR (pt. 82) p.316 or (1988) N.S.C.C. p.1163
(27) S.36 (6) (c) 1999 Constitution (as amended)
(28) ACJA 2015, Ibid, see general S.349 containing elaborate provision for non-representation and appearance of a legal practitioner
(29) See Ajayi v. A.G. Ondo State (2002) 18 NWLR (pt.798) 307 or Okotogbo v. Governor of Delta State (2006) All FWLR (pt.310) 1703 @ 1720, Williams v Nwosu (2001) 3 NWLR (pt.700) 376
(30) (1982) 1 NLR p.27, see also Ikpana v Regd. Trustees, Presbyterian Church of Nigeria & 5 ors. (2006) All FWLR (pt.310) 1703 @ 1720, Williams v Nwosu (2001) 3 NWLR (pt.700) 376
(31) [1985] 1 NWLR (pt.1) 125 also Okotogbo v State (2004) All FWLR (pt.222) 1652 @ 1659 – 1660

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2.2.6. EXAMINATION ON WITNESS[32]

This is a right preserved under this section of the constitution that every accused in a criminal trial is entitled to the following:

i. Call witness in his defense and
ii. Cross- examination of witness called by the prosecution.

The right affords the defendant an opportunity to cross examine the witnesses to testify on its behalf. In Tolu v. Bauchi Native Authority[33], the Trial Court did not allow the accused person to cross examine the prosecution witness. And on appeal the Supreme Court held that the court's decision has amounted to an infraction of the accused person's right to examine witness. Also, in Idirosu v. The State[34], the report of a Medical Doctor was received as an evidence in a culpable homicide charge and the accused defendant counsel applied for adjournment is that the doctor will be standing as a witness, which was refused by the trial court and ground that the adjournment will not serve the interest of justice. Then on appeal the Supreme Court held that such an application should not be lightly refused as the defense uses the maker of a statement regarding the case as a witness.

2.2.7. RIGHT TO AN INTERPRETER[35]

Where the accused does not understand the language of the court an interpreter must be provided for the accused without any expense[36] as the language of the courts in Nigeria is English[37]. The interpreter must interpret correctly to the accused person anything said in the language that is not understood by the accused[38]. However, if the accused understands a language used in the course of criminal proceedings which is not in English (as the Area and Customary Court proceedings are not usually done in English) then he cannot complain that he has been denied of this right to an interpreter.

The State v. Gwonto[39], the appellant contended the he spoke only Hausa language and therefore did not understand the proceedings of the court as it was conducted in English and the proceeding were not interpreted. Then the Supreme Court held that:

(32) S.36 (6) (d) 1999 Constitution
(33) (1965) NMLR p.343 also Ayonnde v Fayoyin (2001) FWLR (pt.75) 483/499
(34) Oganye v State (supra) p.568
(35) s.36 (6) (a) 1999 Constitution (as amended)
(36) [1987] 1 SCNLR p.32
(37) S.241 CPC
(38) Zaria Native Authority v Baraki (1964) NNLR 25 at 29, see also Ajayi v Zaria Native Authority [1964] NNLR p.61
(39) (1983) 3 S.C. p.67 or (1983) SCNLR p.142

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a. The record of proceedings disclosed that neither the accused person nor their counsel informed the court that they did not understand the language used in the court therefore needing the assistant of an interpreter.
b. And no complaint was raised consequently that they have been denied a fair trial due to the absence of an interpreter.

This is often expressed under the common law maxim, *Omnia rite esse acta praesumuntur,* meaning all things presumed to have been done in due form[40].

2.2.8. ENTITLEMENT TO A COPY OF THE JUDGMENT[41]

The Trial Court or tribunal is enjoined to keep record of the proceedings of a tried person in a criminal offence for further reference. And a concomitant right is afforded to a defendant to obtain directly or through any person authorized by him in that behalf a copy of the judgment within seven (7) days after the conclusion of the case. S.294 (1) [42] further stresses the time limit for proceeding the parties with duly authenticated copies of judgment. Failure to comply with this provision is a more irregularity since such failure could never lead to a miscarriage of justice.

In Ifezue v. Mbadugba[43], the Supreme Court while considering a similar provision under S.258 (1) of the 1999 Constitution held that *"non-compliance with the second limb (i.e the supply of duly authenticated copies of the decision within 7 days therefore) was a more irregularity and it would not invalid date a judgment delivered".* It is not a compulsory thing that authenticated copies of the decision must be delivered to the parties when not asked for except on the ground of an appeal or judicial procedure.

2.2.9. NO TRIAL ON RETROACTIVE LEGISLATION[44]

S.36 (8) of the counsel form against a retroactive penal legislation as the accused shall not be convicted of any crime, act or omissions that did not constitute a crime at the time the accused committed it and no penalty should be imposed on any criminal offence heartier than the penalty in force at the time which the offence was committed. Therefore in penalties any person held guilty of a crime shall not be penalized with a sentence that is above the prescribed one in law.

(40) Black Law Dictionary 8m Edition p.1743 also Jimoh Adekoya Odubeko v Victor Fowler [1993] 9 NWLR (pt.308) 637 @ p.655, [1993] 85 CNJ 685
(41) 1999 Constitution of Nigeria (as amended)
(42) 1999 Constitution (as amended)
(43) [1984] 1 SCNLR 427 also Akubuike v Okeke (1983) 4 SC (pt.1) 214 and Adekeye v Akin-Olugbade (1989) 6 SC 268
(44) S.36 (8) 1999 Constitution (as amended)

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2.3.0 PROHIBITION OF DOUBLE TRIAL[45]

The counsel has guaranteed that criminal proceedings shall not be conducted against any person in respect of a crime for which the accused has previously been tried by a court of competent jurisdiction whether he was discharged of the offence or convicted of the offence base on the same facts from a previous case. A defendant may plead "autrefois acquit or autrefois convict meaning a plea in bar of arraignment that the defendant has been convicted of the offence[46]. But on the ground where the trial court has adjourned for judgment this plea or objection cannot be raised[47].

The underlining idea in the doctrine to the rule against double jeopardy or trial is to make sure me state in all its power, resource at its disposal should not be permitted to try and convict an individual for an alleged offence that has already been dealt and concluded with before. However, before the plea of autrefois acquit or convict can be discharged, the court must be satisfied by certain qualifications that are to be provided by the defendant through the following measures;

a. The First Trial must have been on a Criminal Charge as only a trial that is known to law will entitle an accused person to a plea of autrefois acquit or convict respectively. In R.v. Jinadu[48] the accused was charged before the Police Orderly Court Room for the use of unnecessary violence and was degraded in rank. Later, he was charged for assault on the facts of the criminal code and a plea for autrefois convict was raised but rejected on the grounds that "the previous trial before the police orderly court room was based on indiscipline as a breach of regulation" therefore making the plea to be of no avail to the appellant on appeal[49].

(45) S.36 (9) 1999 Constitution (as amended)
(46) Black's Law Dictionary, Third Edition 5277 ACJN 2015
(47) The State v Dushie (1957) NNLR p.82; S.224 CPC
(48) Jinadu (1958) NRNLR p.68
(49) See C.O.P v Johnson (1955) LLR p.55
(50) NLR p.56. See also Ameze v The State [1973] 6 SC p.33

b. The First Trial must have been done in a court or tribunal of competent Jurisdiction. If the court that decided the case lacked requisite jurisdiction, the verdict of the court cannot be pleaded in a subsequent charge for the same offence or an offence that the accused could have been convicted of the first trial.

   In R. v. Hodge[50], this plea was rejected as the case was earlier on presided over by a magistrate court lacking jurisdiction over the case causing the proceedings

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to be null and void therefore the court dismissed the plea on grounds that the conviction is quashed because the trial court lacked jurisdiction making the case to take a fresh start.

c. The First Trial must have ended with a conviction or acquittal and not in suspension of the case but in conclusion (i.e) the case must be a conclude one. Withdrawal of a police prosecutor before an accused person has commenced his defence lead to a more discharged but if the accused person has commenced his defence before the police prosecutor is withdrawn it leads to an acquittal[51]. Similarly, a discharged by a court, on its own volition, or after a successful submission of no case to answer is a discharge on merit and therefore an acquittal[52].

d. The offence for which the accused person is now charged must be the same as the first offence which he was tried for convicted or acquitted of though presently not charged with that offence. This decision no longer represent the law of the light of the recent Supreme Court decision in Uguru v. State[53], where the conviction and sentence of the accused person for murder was substituted with a conviction and sentence for unlawful assault[54].

e. Enjoyment of Pardon Similar to S.9, S.10 which provides that "No person who shows that he had been pardoned for a criminal offence can again tried for that offence". S.211 (1) (b) of the CPA also contains for a similar provision. This is a plea different from autrefois acquit or convict. In a plea of pardon, the accused is saying that the appropriate authority has pardoned his conviction while a plea of autrefois acquit or convict says that having been judged by a court of competent jurisdiction he should not be tried for the same offence and the appropriate authority that can grant pardon to a convict in a Federal Republic of Nigeria while the State Government Pardons State offences[55]. The President is also rested with the power to pardon a court Marshal Case. A convict who successfully pleads autrefois convict is still saddled with the legal disabilities of a convict while a convict who has been pardoned is free from all the legal disabilities of a conviction.

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(51) S.179 (1) and 211 of the 1999 constitution
(52) Inspector General of Police v Market (1957) NRNLR p.97 also S.287 CPA and 191 CPC
(53) [2002] 4 S.C (pt.II) p.13
(54) See R.Agumadu (1963) 1 All NLR p.203
(55) S.175, 1999 constitution S.221 (6) CPA

In Falae v. Obasanjo[56] the court of appeal pointed out that a pardon is an act of grace by the appropriate authority with their intention of making the offender a new man (novus Homo), to acquit him of all corporal penalties and for features annexed to the offence therefore restoring all his rights and privileges. The court further went on to point out that in the Nigeria Law a "pardon" and "full pardon" has no distinction.

The issue of prerogative of mercy or "State Pardon" should be exercised cautiously as was clearly illustrated. In the case of Anthony Isibor v. The State[57] where the S.C strongly castigated the attitude of granting amnesty to the appellant by the then Head of State and Commander-in-Chief of Armed Forces, General Abdul-Salam Abubakar when the appellants appeal against his conviction was still pending before the Supreme Court. Presently, Amnesty is granted to persons who are alleged to have committed on offence but have not been charged to court for the said offence.

2.3.1. RIGHT TO SILENCE[58]

This is a right aspired under S.36 (11) of the 1999 constitution which provides that during a trial no person shall be compelled to give evidence be it a witness or a party to the case before trial.

The Evidence Act, Criminal Procedure Act and the Criminal Procedure Code[59] also supports the constitution on this account. When an accused exercises this right to silence, the prosecutor may comment on the person's failure to give evidence to this defense not asserting that the failure or refusal of the accused person to testify is an admission or evidence of guilt.

(56) [1990] 4 NWLR (pt.599) p.475 @496
(57) See Okongidu v State [1985] 5 NWLR CPE.44 (p.721) @ 740 also Okeke v State (supra)
(58) S.36 (11) 1999 Constitution (as amended)
(59) S.180(1) The Evidence Doctrine 2011 IFN 222.236 (1) (a) CPC and S.287 (1) (a) (iii) CPA
(60) [1988] 2 NWLR (pt.77) p.475 or (1988) 5 SCNJ, p.58

In Sugh V. State[60] the accused was charged with culpable homicide punishable by death, during the course of trial the accused refused to talk, remaining silent on the cause of the deceased death therefore the court passed on its judgment then on appeal, the court held that a person cannot be forced to talk on the charges prepared against him but this does not stop the court from drawing any necessary interference from the evidence before it which is why an accused in police custody being beaten up just to get him

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talking, is contrary to the provisions of the constitution thereby helping the accused to plead that the statement was based on threat, assault and battery.

2.3.2. OFFENCE MUST BE KNOWN TO LAW[61]

Sub-section 12 of section 36 has provided it clearly that no matter how great an offence is, if it is not written or recorded in the criminal laws then that offence cannot be taken up in court as it is not recognized and backed up by any statute.

S.36 (12) [62] strictly provides that "A person shall not be convicted of an offence unless it is undefined in a law and its penalty is prescribed[63].

Due to the duality of criminal codes in Nigeria, an act or omission may be an offence in one part of a country while it is not in the other part. For instance, the Southern region of Nigeria does not recognize Adultery as an offence to be punished by law but the Northern part Adultery is defined as an offence punishable by canning[64].

In Aoko V. Fagbemi & Anor[65] the accused was charged, tried and convicted for adultery and on appeal his conviction was quashed because the offence of adultery is not defined and penalized under the criminal code.

There are also good number of inter-national statutes that guides the principle of fair hearing and which they are:

i. Article 10 of the Universal Declaration of Human Rights,
ii. Amendment 6 of the United states Constitution,
iii. Article 6 of the convention on Human Rights 1985,
iv. Article 14 of the International Convention on Civil and Political rights (a treaty ratified in Australia 1980).

Therefore, the doctrine and right to fair hearing is one that is recognized, guaranteed and protected in so many other countries including Nigeria.

(61) S.36 (12) 1999 Constitution
(62) 1999 Constitution (as amended)
(63) Kalu V. Nigeria Army [2010] 4 NWLR pt 1185 CA 433, 446-447
(64) S.378 and 388 penal code
(65) (1961) 1 All NLR p.400, see A.G Federation v Isong (1986) 1 QLRN p.75

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2.4 ELEMENTS OF A FAIR HEARING.

A fear hearing must provide a reasonable opportunity for an accused to be present at the designated place and time during which he or she may offer evidence, cross – examine oppositions, witnesses and offer a defence.

The supreme court in Effiom v. State[66] prescribe some essential elements for a fair hearing;

2.4.1. Easy access to the Court.

As an individual residing within the country whether a citizen or not he or she has a right to gain access to the court to seek redress as it is the place established for this very purpose in maintenance of the due method set out to be heard.

2.4.2. The Right to be heard.

As prescribed in S.36 (4) [67] every accused is entitled to a public hearing within a reasonable period of time by an independent and impartial Court. In other words, every party to the case must be listened to by the court with proper backup evidence before judgment is to be passed on.

2.4.3. Impartiality off the adjudicating process.

As earlier said, the various process of adjudication that is provided by the constitution should and must be strictly adhered to and if not adhered to causes the nullity of a court decision. The principle of Nemo Judex Incausa Sua must be strictly maintained and observed as it is a cardinal principle in the administration of justice which should not just be done but be manifestly and undoubtedly seen to be done.

2.4.4. Whether there is an inordinate delay in delivering judgment.

It is said that, a justice delayed is a justice denied. Most cases takes up to 10 years to be concluded on grounds that either the judge has been transferred leaving the case as it was or taken afresh again from the beginning, which might cause a judge to lose track of the facts of the case and can lead to passing an unfair judgment.

(66) (1995) 1 NWLR (pt.373) p.507-575
(67) 1999 constitution (as amended)
(68) (1995) 1 NWLR p.207

In Ozuluonye & Ors v. State[68], the trial took four years to conclude accommodating more than 10 accused persons. The judge was transferred to another judicial division and later on being transferred back found this case just as he had left it so he at once

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concluded it. But on Appeal, it was held that*; "due to the defluxion of time the judge could not recollect the evidence given at the trial which has caused the trial judge of the lower court to lose track of the facts in the case and the accused where not provided a reasonable time to prepare for the trial"*[69].

2.5 PILLARS TO THE DOCTRINE OF FAIR HEARING.

The Principle and doctrine of fair hearing in its statutory and constitutional sense is derived from Natural justice that consists of 3 main parts:

i. An Adequate Time,
ii. Fair Hearing,
iii. No Bias.

And then backed up by Latin maxims called the Twin Pillars of Natural Justice which are AUDI ALTAREM PARTEM and NEMO JUDEX INCAUSA SUA.

2.5.1 AUDI ALTAREM PARTEM

The first pillar of a natural justice which means "Hear the both sides" or "No one should be condemned unheard" in the field of administrative action. In the resolution of a dispute, the high authority or court sitting over the dispute is entitled duly with the responsibility of hearing the other parties side of the case with a review or concern on their evidences. "The Almighty gave us two ears to hear from both sides[70].

But the court can decide in a case where the parties to the case refuses to speak or defend his own part of the story and he/she cannot say he has been robbed of his right to be heard and given a fair hearing.

(69) See Okeke v The State (supra)
(70) S.28 CFA @ Per Justice Oputa

2.5.2 NEMO JUDEX INCAUSA SUA.

This is the second Pillar of Natural justice that means "No one is allowed to be a judge in his own case". In order for justice to be seen to have been manifested and undoubtedly served this maxim must be maintained as the legal system should be far from any form of biasness. The judge must not be seen to be having a personal interest on the case,

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(i.e) being personally related to the case, as it is substantial that he was not influenced by the case.

These twin Pillars works hand in hand to offer a natural justice through fair hearing and if any is proved not to have manifested then the judgment passed on the case will not be binding on appeal as it will be overruled by the higher authority.

Akpata J.S.C in Yabugbe v. C.O.P[71] he said "In considering whether there was a real likelihood of bias the court does not look at the mind of the chairman of the tribunal or who so ever it may be sitting on the judicial capacity. But the court looks at the impression, which would be given by other people. Even if he was as impartial as could be, nevertheless, if right minded persons would think that, on the circumstances, there was a real likelihood or bias on his part, then he should not sit. And if he does sit, his decision cannot stand".

However, in the civil case of Orugbo v. Una[72], the S.C held that: "The constitutional provision of fair hearing has no tribal insinuation to the composition of the bench vis-a-vis the tribes of the parties". (i.e) A convicted party should not be heard saying that judgment was passed in favour of the other as they are people of the same tribe because things like tribalism, favoritism, nepotism and the rest is not supported by the constitution to be found in the Legal System.

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CHAPTER 3

(71) [1992] 4 NWLR (pt.234) p.152 @174

(72) [2002] 16 NWLR (pt.792) p.175; see also Guri v Hadija Watie Authority

DISCOURSE

3.1 ESSENCE OF FAIR HEARING RIGHTS

The importance of fair hearing cannot be over emphasized because

a. It is a fundamental right that helps checkmate judgment, for any form of manipulation, partiality, bias etc.

b. It is a right provided to citizens by law to prevent the lives and properties of innocent citizens from being jeopardized and endangered. Which is of a very critical importance in every country[73].
c. It ensures that the Government cannot convict someone or just take away someone's liberty without following a fair and just process in both a civil and a criminal situation[74], causing everyone to have equal access to justice and fairness.
d. It helps to unvail and establish the truth as it is vital for everyone involved in case, be it a victim, witness or the accused. For instance, not all murderers will be punished because some murder cases were committed accidentally and unwillingly making it a manslaughter while some on the ground of defence which is self-defense and where this right and doctrine is not made Known/ exercised then how will punishment be prescribed on these different types of murder[75]? This is where people would say a justice rushed is a justice crushed.
e. Fair hearing makes it easier for a fair Judgment to be passed after both parties displayed their part of the stories along soles evidence proven beyond a reasonable doubt.
f. It helps the court to maintain the 3 major principles of law which are: supremacy of the law, equality before the law are fundamental human rights[76].
g. It is important to be known by every citizen or individual in a country state at it will help them understand their way around the legal system.
h. Fair hearing, if maintained in the legal system, is essential because it guides and protect its reputation from being messed up by the less privilege in the society[77], as destroying their trust on the legal system and leads them into more jungle justice which is frowned at by law is as it is punishable by either death, imprisonment exceeding a year as a felony depending on as the case may be.

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(73-76) Hussain, W., An appraisal of the meaning and importance of Fair Hearing in the Legal Parlance.
(77) Propounded by Albert Venn Dicey

3.2 ENFORCEMENT OF FAIR HEARING RIGHTS.

A right cannot just be given to anyone without allowing it to function or be enforced or even taught on how to make good use of it.

Before a right can be enforced or emphasized on, the concerned individual must have a full knowledge or must be fully aware of these rights and how they can operate, as most times people think they are working or doing the right thing as it is their right unknown to them that they are just adding up to their problems and haven't solved the one still pending.

One of the ways a person can enforce his or her write to a fair trial is:

a. Ensuring that the case is filed at a court with competent and independent jurisdiction within the defined period of time, that if not adhered to can cause an objection to be raised by the opposition on the grounds that the court lacks the jurisdiction to sit over that case and the time and period for it to be redressed has expired and elapsed.
b. Where any of the provisions of a fair hearing is about been breached by the court, either of the party can object to it using the section of the law that proves the hearing is going contradictory with to the right,
c. Where an aspect of fair hearing has been breached and judgment is already passed, then a person can file for an appeal to a higher court.

Note: if any aspect of branch of Fair Hearing has been breached by a lower court and on appeal it is identified and redressed that will not make the real criminal filing for the case on appeal to be granted or declared the winner of the case.

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3.3 CHALLENGES FACED BY FAIR HEARING RIGHTS IN THE NIGERIA LEGAL SYSTEM.

Just as humans face different challenges so also is our fair hearing or trial. Aside from the technical challenges which have been recognized and reviewed within, there is a lingering problem in the absence of a strong civic knowledge and culture, regarding fundamental rights and its enforcement[78]. Most Nigerians do not have the access to education particularly in good civic education which they are to be fed with. On the

other hand, the few that are well informed use such knowledge mostly in an abusive manner, for instance the use of law enforcement agencies as instrument of harassment, threat to rights or liberty and debt recovery.

The political elite of the country appear to be included in this trend as much as corporate individual bodies who feel they are too influenced with power to be troubled by a low class citizen therefore teaching them a lesson by possibly bribing the judge with a good deal to make sure the other party's right is trampled upon. In many cases of infringement of fundamental rights people resort to self-help more often than even seeking for redress from the court as they trust it no more as perpetrators of fundamental rights abuses go unpunished.

Finally, Poverty is also another good challenge to the enforcement of Fundamental Right. A good percentage of Nigerians are living in abject poverty and thus unable to afford the basic necessities of life making them victims of fundamental rights abuse and causing them to be unable to enforce their rights due to the extreme poverty culmination and in their disability to afford legal representation. Even if NGO's have consistently risen to cover these set of people, considering the massive population of the people and limited funds they can't dispose their services properly[79] to cover them al leaving some to lag behind.

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3.4 WAYS TO OVERCOME THE CHALLENGES FACED BY FAIR HEARING RIGHTS.

(78-79)) O. Kalu, E. O. Otojahi, P. Edokpayi and C. Ene, Challenges in Enforcement of Fundamental Right in Nigeria (Port Harcourt Attorneys & Solicitors, publishing Company, 2020).

It is said that there is no problem without a solution. There are many ways to overcome this challenge but the primary way to overcome this challenge is when the sincere fear of God is found in the lives of all the personnel and administrators of justice. This is seen as a major pattern because when the sincere fear of God is found in these personnel's they will be so conscious of their deeds so as to not be a victim of God's wrath like in the early days of mankind when God destroyed the earth with water[80] and

Sodom and Gomorrah later with fire[81] due to the increase of sin that was seen by God to be done by men who he created. This is a fact that cannot be denied because the origin of fair hearing began from the days of creation and everyone in the Government and legal system are aware of who God is and what he can do. Well to this account the Bible itself already stated that "For this, people are willingly ignorant of…" [82] knowing fully well the benefit a fair hearing will be awarding the low class people in the society, yet for their own selfish desires they do things that will be causing the others infringement to their rights by sampling their authority that was vested in them by the people as it is a democratic society.

Secondly, if a period is spelled out for the passing of a judgment to avoid delay in judgment. In Ozuluonye & Ors v. The State[83], the case was pending for about 10 years and on final judgment the rest accused were discharged from the case of murder except the first accused.

Thirdly, the legal practitioners should stand at the top of their game and b independent not relying on the government in order to water down any form of technicalities all in the bid to do justice. A solution where an applicant will not have any court to seek redress for the violation of his fundamental right definition cannot be intendment of the law makers in view of the common law principle that there is a wrong there must be a remedy[84].

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(80) The Holy Bible, Genesis 6v11-13, 7v10,17 (Old Testament)
(81) The Holy Bible, Old King James Version, Genesis 19v24 (Old Testament)
(82) The Holy Bible, Old King James Version, 2 Peter 3v5 (New Testament)
(83) (1983) 4 NCR 1
(84) C.A decision in Theme v Chief of Defence Staff

CHAPTER 4

4.1 CONCLUSION

In conclusion, it is paramount to now that no matter how serious an offence is, its lighter in the court of law and the accused person will be presumed to be innocent unless proven guilty[85].

However, in the course of this research it has been discovered that fair hearing as a Fundamental Right is an inalienable right that is tied to every citizen of a country and it

is one that deserves a maximum level of protection from oppressions and infringement by the legal system. We have also seen from the ongoing discussion that in every criminal trial, the country's grundnorm and other statutes has provided that both party to a case must be awarded a fair hearing. And after any long trial where the basic concepts, or constitutional safe guards for a fair hearing has been breached then the decision passed will be rendered null no appeal, no matter how conducted the proceeding was. But where a party to the case consciously and intentionally after been aware of this right decides not to corporate with it cannot declare that he was not accorded his fair hearing rights.

4.2 SUMMARY

In summary, Fair Hearing is seen from two angles which is first as a Principle or Doctrine Established under Natural Justice, backed up by Latin maxims *"Andi altarem partem and Nemo judex in causa sua".* Secondly, as a fundamental right backed up, protected and established under different international and local statutes which is tied to the hands of the Nigerian Legal System.

Having said that, just as humans face challenges so also is this right which faces a whole lot of challenges in our society such as ignorance due to illiteracy, poor judicial and legal system, corruption, poverty and so on. It also is bound with various limitations like that of a public hearing can be unachieved depending of the Caliba of the parties in order to reduce public shame or embarrassment, also on the part of attendance to a trial an infant is not permitted by law to be seen in a court of law.

(85) See also S.36 (5) 1999 Constitution (as amended) and State v Ajie (2000)

The sole aim and most primary aim of a Fair Hearing and Trial right is that it is out to ensure that a person is not just swept of their privileges without a reasonable reason therefore protecting the lives of innocent citizens.

4.3 RESEARCH FINDINGS

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In our today world, everyone in the society comes across certain challenges by which majority of these challenges are brought before the special of walls of the courtroom to seek redress or a befitting resolution as the court is a place established specifically for the purpose of feeding people with justice easily, but where a court is unable to render this services correctly then that places is considered a kangaroo court which will start losing its value see Ezuma v. Nkwo Market Community Bank Ltd (NMCB)[1] where the judge said "a court where a real justice isn't offered to the parties brought before it then it is automatically known as a Kangaroo Court".

During the course of discussion in this project work, it is discovered that majority of the lower courts in Nigeria slacks in maintaining the doctrine of fair hearing causing their judgments to be turned into a nullity. It is also discovered that the Legal System in Nigeria works in a bias form as it recognizes some prominent people in the society than the lower class set of people that are swallowed and covered in poverty as they cannot really provide the needed principle assistance to carry up a good case. But for the political elites in the country, they can just silence justice with the palm of their hand, as the Legal System presently has been discovered by people to be very slack.

Lastly, the lack of awareness to this right (ignorance) has been seen in a massive number of citizens, thereby not allowing them to be able to take certain steps to enforce their rights to fair hearing.

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4.4 RECOMMENDATIONS

As long as the nation remains, both normal and abnormal tragedies will occur but can only be handled adequately when the law is allowed to run its course by regulating the life and prospects of the people independently[86]. Old laws in the nation should be revised and reworked on to give them modern impact which will cover all areas of the society. Also, the following must be observed for a better Legal System.

a. Clear Legal Procedure[87]

b. Expertise
c. Enlightenment and Reorientation.

a). Clear Legal Procedure

One of the banes of administrative adjudication is that most administrative panels and tribunals, do not observe the principles of fair hearing, as exposed by the paper especially the audi altarein partem rule. And where are laydown procedures, administrative panel's fails to observe their legal aim at guaranteeing human rights. To checkmate this unpleasant trend, the administrative adjudicatory body should have a clear and unambiguous legal procedure to regulate their proceedings. Such legal procedures should highlight and emphasize on the principles of National Justice (Fair Hearing) and mandate the panel to strictly observe same.

b). Expertise

In most, if not all administrative tribunals, members of the panel lack, the basic legal knowledge to appreciate what fair hearing is all about, not to talk of according if to a party. As a person cannot give what he does not have if becomes common that the administrative tribunals hardly adhere to the tenets of this fair hearing rights. Therefore, it is necessary that members of the administrative adjudicatory tribunals/panels have a good/fair knowledge of the law and its concepts of fair hearing.

c). Enlightenment and Re-orientation

(86) Judicial Service Commission of Cross Rivers State v. Young (supra);
(87) R.A Uzoechi, Esq, The extent of the Applicability of the principle of Fair Hearing in Administrative Adjudication in Nigeria

Most Administrative tribunals are often nothing but a tool of the authority that set them up to achieve a "witch humting" purpose they are usually misused and abused by the appointing authority in persecuting targeted individuals[88]. Therefore, those who are been appointed into the administrative adjudicatory panel tribunals have to be enlightened, and re-oriented on their legal obligation of ensuring justice and also on the rights of the parties appearing before them.

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