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RESEARCH ARTICLE

An Appraisal of Audi Alterem Partem Principle in an Economically Depressed Country: Nigeria in Focus

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Abstract

This paper critically examines the Audi Alterem Partem doctrine, a pillar of natural justice, in the context of Nigeria, an economically depressed country. The examination is particularly important due to the controversy surrounding Nigeria's judiciary following the February 25, 2023, General Election, considered by many as the worst in the country's history. The mishandling of the electronic transmission of election results and the declaration of a winner have raised concerns among Nigerians. The paper emphasizes the need to uphold the Audi Alterem Partem rule in both tribunals and courts involved in the legal proceedings. The study adopts an exploratory approach and relies on secondary sources to analyze the concepts related to the research topic. The findings highlight that government interference in the electoral process poses a significant challenge to the integrity of natural justice and judicial independence. The paper emphasizes the importance of judges maintaining a distance from politicians to ensure impartiality. Corruption is identified as a major obstacle to justice delivery, with some judges succumbing to political pressure while others resist. The judiciary is under scrutiny both domestically and internationally, as reflected in the hashtag #alleyesonthejudiciary. The paper underscores the implications of a compromised judicial system, asserting that a nation with such a system is on a dangerous path. It emphasizes the crucial role of justice as the last hope of the common man and its connection to broader issues such as insecurity, terrorism, and conflicts in West African countries. The value of the paper lies in its amplification and discussion of the Audi Alterem Partem principle and its application as a confidence builder in the justice system, promoting cohesion and trust in government policies. It also contributes to filling the knowledge gap in this area of law, making it beneficial for scholars in the field of law and other social sciences.

Keywords	*Natural Justice; Audi Alterem Partem; Nemo Judex in Causa Sua; The Bangalore Principle*
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Introduction

Nigeria akin to other developing country is currently undergoing numerous trials and challenges in the development of her so-called nascent democracy even when the judiciary should act as the beacon of hope through a vibrant and exponential judicial system. The outcome of the just concluded 2023 General Elections in Nigeria has bought the need to amplify the principles and practice of the legal maxim *Audi Alterem Partem* to the front burners. The Independent National Electoral Commission (INEC) has just delivered what many regard as flawed elections despite the huge sums of money spent on information and communication technology. They said that they needed the funds and confidence of Nigerians to deliver credible free and fair elections but despite the fact that they had all the asked for, the outcome fell below the expectations of the general public. Assurances from the electoral body was at its highest, insisting that the election results would be transmitted electronically in (real time) through INEC portal (server) IREV and that any result not so transmitted would be discountenanced. Nigerians trooped out *em masse* to update and secure voters card with enthusiasm. When the "D" day came on the 25th February 2023 during the Presidential and National Legislative Assemblies Election, INEC literally flopped. Opposition Parties cried foul claiming that All Progressive Congress (APC) was being favoured. The INEC Chairman, Professor Mahmud Yakubu remained unperturbed as he flagrantly announced Bola Ahmed Tinubu as the winner of the Presidential election when all Nigerians were still enjoying their sleep around 4 am and brazenly asked those who thought that they feel otherwise to "Go to Court" - more or less on a rhetorical note. The Independent National Electoral Commission through her Spokesperson Barr. Festus Okoye in double speaking blamed glitch as being responsible for failure to transmit the results (real time) of the Presidential election while those of Senate and the House of Representative were spared the glitch. The Amazon – a subpoenaed witness at the Presidential Election Petition Tribunal unequivocally denied any glitch and alleged a deliberate manipulation by an interested party. Legal fireworks are ongoing at the tribunal which may extend even to the Supreme Court. Therefore, an appraisal of *Audi Alterem Partem* is now more pertinent than ever so that the judiciary would have contributed her own quota towards dousing tension in the land. Fortunately, the Right to Fair Hearing is already provided for in the Constitution of the Federal Republic of Nigeria 1999 (as amended). It explicitly stated that "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". Further the Constitution assures that State's Social Order is founded on ideals of Freedom, Equality and Justice. In furtherance, the social order- guarantees that every citizen shall have equality of rights, obligations and opportunities before the law; The independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained" Judges are hereby called to a clarion call to tarry on the side of justice and not trade off the integrity of Nigerian judiciary that is already at its lowest ebb globally. The #alleyesonthejudiciary movement is already trending in the social media. Corruptions in the judiciary debases a country's integrity, foist illegitimate government through poor electoral processes, promote insecurity, marginalization of vulnerable groups, youth restiveness, drives away investors, causes infrastructural and institutional deficits to mention but a few. Our courts must disprove the saying that justice in Nigeria has become transactional; judiciary compromised and dispensers of justice have prize for all categories of cases waiting for cash and carry clients.

Historical Origin of Rule of Natural Justice

Natural justice concept did not start with modern government; it is as old as the existence of mankind on earth; borne out of disposition of fairness in man's relationship with each another. Sovereign States legal systems also captured the tenets of natural justice as well as major religious books like the Bible and Hadiths. According to the Holy Bible account; when Adam ate the forbidden fruit of knowledge, God did not pass judgement on him unheard, instead he was called upon to defend himself hence God queried;

> "Where art thou"? Have thou not eaten out of the tree whereof I commanded thee that thou should not eat?

In Hadith Number 3575 - it is stated that:

> "When two litigants sit in front of you, do not decide till you hear what the other has to say as you heard what the first had to say, for it is best that you should have a clear idea of the best decision".

Historical accounts of ancient Greeks and Romans are replete with evidence of principles of natural justice also. The rule against bias, like the fair hearing rule, were treated as expression of natural law principles were regarded by Roman legal scholars as "that ideal body of right and reasonable principles which was common to all human beings, which all forms of adjudication shall not derogate from". These principles are said to have emerged from Cicero's Greek Stoic philosophy, written in the first century BC. In 1676, Sir Mathew Hale, the then Chief Justice of King's Bench (1671-76), set out 18 tenets for dispensing of justice. The sixth tenet read as follows,

> *"That I suffer not myself to be possessed with any judgment at all till the whole business of both parties be heard."*

The notion of a natural justice system emerges from philosophical beliefs about how we see ourselves with respect to nature. Kluckhohn's (1953) analysis provides one of the most noted descriptions of the philosophical principles that govern our relationship with nature. He claimed that humans think of themselves as being: (i) subjugated to nature, (ii) an inherent part of nature, or (iii) separate from nature. Each of these views canvassed by Kluckhohn shapes a particular natural justice belief and thus a separate moral stance toward nature. While some cultures accentuate their submissiveness to nature and would tend to adopt a morality of divinity, others emphasize harmonious relationship with nature and would tend to adopt a morality of caring towards humanity and still others stress their control over nature and would tend to adopt a morality of justice. In all, the principles of natural justice were associated with a few 'accepted rules' that have been built up and pronounced over a long period of time.

Concept of Natural Justice

One of the greatest Greek philosopher Aristotle who was described by the Latin poet Dante as the "master of those who know", once argued that every intelligent discussion must start with the definition of terms), *"initio disputandi est definitio nominis"*. Rule of law in its generic sense and its characterizations has been described as lacking any precise definition and is said to mean similar things in slightly different circumstances. The Concept of natural justice is another name for common sense justice, not in codified form but imbedded, ingrained or inbuilt in the conscience of human being. It is derived from the Roman Concept '*jus - naturale*' and '*Lex naturale*' which means principle of natural law, natural justice, eternal law, natural equity or good conscience. Lord Evershed, Master of the Rolls in *Vionet v Barrett* remarked that,

> "Natural Justice is the natural sense of what is right and wrong"

As a concept lacking in any precise definition, Lord Summer (then Hamilton, L.J.) in *Ray v. Local Government Board* described the phrase also as "sadly lacking in precision". The phrase then supplies the omission made in codified law and helps in administration of justice; it is not only confined to 'fairness' it also implies reasonableness, equity and equality. They are neither cast in a rigid mould nor can they be put in legal straitjacket. In its broadest sense, natural justice may simply mean 'the natural sense of what is right and wrong as Evershed captured it. Natural justice embodies two main rules which have been described as 'the twin pillars supporting it' viz; *Audi Alteram Partem*" (hear the other party) and "*Nemo Judex in Causa Sua*" (no one should be a judge in his own case).

However; no matter how ever lacking in precise definition, natural law tenets are entrenched in the Constitution of Nations to safeguard the minimum protection of the rights of the citizens against arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority in making order(s) affecting rights of person(s). The three major necessities of natural justice in every case includes adequate notice, fair hearing and no bias sometimes grouped together as "the right to fair hearing." Natural Justice has been likened to and described as "a last meal before the hanging" and Courts have thus rightly intervened, where procedural fairness is compromised.

In Nigeria, the rule of law is ensured by some strategic Constitutional provisions. Section 17 (1) clearly stated that the State social order is founded on ideals of Freedom, Equality and Justice. Subsection (2) (a) states that in furtherance of the social order- every citizen shall have equality of rights, obligations and opportunities before the law. Under the fundamental right provisions Section 36, subsection (1) stipulates that "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". Section 36 (2) (a) provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person while Section 36 (3) states that in "The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public. Section 36 (4) states that "Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. Though with qualifications on grounds of public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice; albeit never derogated from the principles of rule of law in themselves. Section 36 (5) provides for every person who is charged with a criminal offence to be presumed to be innocent until he is proved guilty. In furtherance of the concept of rule of law, Section 36 (6) provides that every person who is charged with a criminal offence shall be entitled to - (a) be informed promptly in the language that he understands and in detail of the nature of the offence; (b) be given adequate time and facilities for the preparation of his defense; (c) defend himself in person or by legal practitioners of his own choice; (d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and (e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence. These copious provisions present in itself a tool on the hands of Counsels and other concerned stakeholders in justice delivery in Nigeria to promote equality and equity before our laws.

The Founding Fathers of The United States of America has implicit commitment to the rule of law as well by stating that the rule of law is a fundamental first principle of a free and just government. John Adams explained the Founders' understanding when he wrote that "good government and the very definition of a Republic is an empire of laws."

In India, the rule of natural justice was derived from article 14 and article 21 of the Constitution. Article 14 says about equality while article 21 enshrines right to life and personal liberty. It was concretized and further clearly defined in the case of, *Maneka Gandhi vs. Union of India* Justice Bhagawati in this case saw natural justice to be, *"a great humanizing principle"*, holding that procedural fairness is implied even in situations where the statute does not provide for it.

For the United Nations (UN), the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. The rule of law is fundamental to international peace and security and political stability; to achieve economic and social progress and development; and to protect people's rights and fundamental freedoms. It is foundational to people's access to public services, curbing corruption, restraining the abuse of power, and to establishing the social contract between people and the state.

Noel B. Reynolds in his work "Legal Theory and the Rule of Law

> "maintains that the rule of law can be understood as a set of conditions - that rational actors would impose on any authority they would create to act in their stead in creating and administering legally binding rules……."

Universally, the right to a fair hearing connotes that an affected person has the right to a fair and public hearing that; (i) is held within a reasonable time, (ii) is heard by an independent and impartial decision-maker, (iii) is given all the relevant information, (iv) is open to the public (although the press and public can be excluded for highly sensitive cases) (v) allows representation and or an interpreter where appropriate, and (vi) is followed by a public decision including the right to an explanation of how the court or decision-making authority reached its decision. Rule of law is a principle which governs all persons, institutions and entities, public and private, including the state itself. They are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights principles.

Nemo Judex in Causa Sua

Development of the Rule Against Bias

The modern rule against bias may be said to have debuted in 1610 in the case referred to as Dr. Bonham's Case where Chief Justice Coke went on to insist that

> "The Court could declare an Act of Parliament void if it made a man as judge in his own cause, or otherwise against common right and reason"

This was one of his grounds for disallowing the claim of the College of Physicians to fine and imprison Doctor Bonham for practicing in the city of London without license. The Statute under which the College acted contrary to the rule of natural justice provided that fines should go half to the King, half to the College, making it glaring that the College had financial interest in its own judgment and worse still, a judge in its own cause. Dr. Bonham was a Doctor of Physics of Cambridge University,

The natural or the constitutional limiting force even upon parliamentary authority was asserted by Lord Chief Justice Hobart in the case of *Day v Savadge*, when he said;

> "That a statute 'made against natural equity, as to make a man Judge in his own case, is void in itself, for *jura naturæ sunt immutabilia* (the laws of nature are unchangeable), and that they are *leges legum* (laws that apply to law)."

In *Dimes v Grand Junction Canal,* The House of Lords in 1852 set aside a decision involving a canal company in which the Lord Chancellor, Lord Cottenham, had presided, even as a shareholder. There was nothing to suggest that he was influenced by his pecuniary interest in the case but the appearance of bias sufficed and so it was held. Lord Campbell, after affirming that no-one could suppose that Lord Cottenham would be biased in the remotest degree or influenced by his interest, took the opportunity to deliver what appeared like a stern warning even to lesser dispensers of justice thus

> "This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of laboring under such an influence."

The Rule Against Bias

Bias is a condition or state of mind, an attitude or point of view, which sways or colours judgment and renders a judge unable to exercise his or her functions impartially in a particular case. *R v Bertram* quoted by Cory J in *R v S, Supreme Court of Canada*. The rule against bias strikes against those factors that may improperly influence a judge against arriving at a decision in a particular case. This rule is based on the premise that it is against human psychology to decide a case against own interest. The bias rule demands that the decision should be disinterested and/or unbiased in the matter to be decided. Bangalore Principle on Judicial Conduct - Application 2.1 states that;

> "A judge shall perform his or her judicial duties without favor, bias or prejudice".

Bias or prejudice was defined as

> "a leaning, inclination, bent or predisposition towards one side or another or a particular result".

The application of the bias rule is mostly established when the person who is in the position of the accuser is also the decision maker or participates in the investigation, decision or gives advice throughout the course of the matter. *Nemo Judex in Causa Sua* like other legal principles have exceptions yet the minimum requirement of justice delivery must be maintained. Some of those exceptions are mentioned here for ease of reference. (i) Doctrine of Necessity (ii) Contempt Proceedings (iii) Statutory Authority (iv) Academic Evaluation (v) Relaxation in cases of interim preventive action (vi) Waiver (vii) Purely Administrative Duty (viii) Interdisciplinary Action etc.

Audi Alteram Partem Perspectives

Audi Alteram Partem', is a Latin expression well ingrained in the common law legal system means 'no one should be condemned unheard. It has come a long way since it first debut and it has found favour before the English Courts since the inception of the Common Law system.

In 1215, the first statutory recognition of this principle found its way into the "*Magna Carta.* In 1215, England's King John was facing down a possible rebellion by the country's powerful barons. Under duress, he agreed to a Charter of Liberties known as the *Magna Carta* (or Great Charter) that would place him and all of England's future sovereigns within a rule of law. Though it was not initially successful, the document was reissued (with alterations) in 1216, 1217 and 1225, and eventually served as the foundation for the English system of Common Law when the historic document was made at Runnymede. To Sir Edward Coke natural justice requires to "vocate, interrogate and adjudicate".

It was Lord Kenyon who coined the Latin term *'audi alteram partem'* to encapsulate the rule, of which he said:

> "Is to be found at the head of our criminal law that every man ought to have an opportunity of being heard before he is condemned".

Audi Alterm Partem evolved in Common Law system in *R v Gaskin when it was held that*

> *"Audi alteram partem* rule requires that actions or decisions affecting the rights of individuals may not be taken until the persons affected have been given an opportunity of been heard".

The opportunity of hearing before making any decision was considered to be a basic requirement in court proceedings. In the case of *Punjab National Bank v All India Bank Employees Federation*, the notice contained certain charges but the penalty was imposed on the charges other than those mentioned in the notice. Thus, the charges on which the penalty was imposed were not contained in the notice served on the person concerned. The notice was not proper and, therefore, imposition of penalty was invalid.

In the celebrated case of *Cooper v. Wandsworth Board of Works*, it was stated that stated thus about the principle:

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

Later in Bagg's case (1615) A*udi Alterm Partem* was equally extensively considered. The fact of the case was that the Mayor and Chief Burgesses of the Borough of Plymouth had removed one of their members; James Bagg from the office of Chief Burgess on the grounds of his misconduct. A number of allegations were made against him thus; James Bagg, a Chief Burgess of Plymouth had been disfranchised for unbecoming conduct as it was alleged that he had told the previous Mayor, Mr. Trelawney you are a cozening knave. I will make thy neck crack and by turning the hinder part of his body in an inhuman and uncivil manner towards the mayor, sconffing, contemptuously and uncivilly, with a loud voice, said, ('come and kiss'). Mr. Bagg dissatisfied with his removal, commenced proceedings in the Court of Kings Bench challenging his removal from office by the mayor and other Burgesses. The Court ordered the Mayor and the Burgesses to either restore Mr. Bagg to office or to show cause why he was removed. To this, an answer was given referring to Mr. Bagg's very bad behavior and malversation. The Court was albeit not satisfied that the reasons adduced in the return to the writ justified his removal. On the question of how and by whom and in what manner a citizen or burgess should be disenfranchised, Coke C J said: …

> …. although they have lawful authority either by charter or prescription to remove any one from the freedom, and that they have just cause to remove him; yet it appears by the return, that they have proceeded against him without … hearing him answer to what was objected, or that he was not reasonably warned, such removal is void, and shall not bind the party.

Bagg's Case represents one of the most notable occasions also on which *mandamus* was used as a tool for judicial review of administrative action. In justifying the issue of the writ, Coke asserted in sweeping terms as to the use of mandamus thus:

> "Not only to correct errors in judicial proceedings, but other errors, and misdemeanors extra-judicial, tending to the breach of peace, or oppression of the subjects, or to the raising of faction, controversy, debate, or to any manner of misgovernment; so that no wrong or injury, either public or private, can be done but that it shall be (here) reformed or punished by due course of law".

The Court of King's Bench issued another *mandamus* in the year 1723 against the University of Cambridge for restoration of one Dr. Bentley of the Degrees of Bachelor of Arts and Doctor of Divinity of which he had been deprived by the University without a hearing. Fortescue J said:

> "The laws of God and man both give the party an opportunity to make his defense; if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defense".

After Dr. Bentley's Case, the fair hearing rule was reinforced in 1799 by Lord Kenyon CJ in *R v Gaskin.* Finally, Fortescue J's words in Bentley's case in *R v Chancellor of Cambridge University* in 1716 was reechoed by Justice Kayode Esho, J. S, C in *Fawehinmi v LPD Committee with* both Justices saying that laws of God and man both gives the party an opportunity to make his defense.

In *Lapointe v. L'Association* it was observed that 'the rule *(audi alteram partem)* is not confined to the conducts strictly legal tribunals, but to every (or) body of persons invested with authority. Lord Wright in the *Board of Education v. Rice where* Lord Loreburn, L.C. observed as follows:

> "Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds…… the Board of Education will have to ascertain the law and also to ascertain the facts. I need not and that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything….. or have not determined the question

> which they are required by the Act to determine, then there is a remedy by mandamus and certiorari".

Lord Wright also reiterated the same decision via the observation of the Lord Chancellor that:

> "The Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". See also *Spackman v. Plumstead District Board of Works*.

According Prescott (2001) Fair-hearing is not a technical doctrine or principle, but a rule of substantial justice. In *Metropolitan Properties Co. Ltd v. Lannon* Per Lord Denning MR submitted that it is not sufficient that fair hearing was merely suspected to have been breached; he said that

> "There must be circumstances from which a reasonable man would think it likely or probable that the Justice or the Chairman, as the case may be, would or did favour one side unfairly at the expense of the other. The Court will not enquire whether he did in fact favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence, and confidence is destroyed when right -thinking minded people go away thinking the Judge was biased."

Under the 1999 Constitution of the Federal Republic of Nigeria as amended, pre-trial rights include right to life, subject to exceptions under (Section 33); right to dignity of human person (Section 34) and right to personal liberty (Section 35). The intra - trial rights of an accused person are mainly contained in the right to fair hearing provision (Section 33). The post-trial rights of a person who has been convicted are numerous because it is an amalgam or a collection of the three rights viz; (pre-trial rights, trial rights and post-trial rights), other constitutional rights include right of appealing the decision of the court as applicable.

Audi Alteram Partem Principle under Nigerian Law

Audi Alteram Partem means ''fair hearing' or 'hear the other side'. Nigerian courts have made tremendous revolutions in entrenching the audi alterem artem rule. In the case of *Akoh v. Abua* (1970) 1 WLR 937, the Supreme Court stated that

> "To hear a cause or matter means to hear, consider, and determine a matter".

Hearing a matter can only be considered fair when all the litigants to a dispute are offered an unfettered opportunity to confront the witnesses against him, have a fair opportunity to challenge the evidence adduced by the other party, summon his own witness(s) and present his evidence unhindered. The rights of a person in legal proceedings or quasi-judicial proceedings comprise of three main sets or groups of rights, namely; pre-trial rights, trial-rights and post-trial rights. These trio sets of rights are primarily, adequately and collectively protected by the constitution. The two main requisite or ingredients of natural justice have been adequately incorporated into the Nigerian Constitution by the words "fair hearing" (*audi-alteram partem*), and "impartiality" (*nemo judex in causa sua*). In *Federal Civil Service Commission v Laoye,* the learned Justices of the Supreme Court of Nigeria sitting unanimously frowned at the serious failure of persons exercising judicial and quasi-judicial powers to hear the other side before condemning and passing judgment.

Under our criminal jurisprudence, this elementary principle of justice is expressed in the saying that no one ought to be condemned unheard. Ademola, CJF, (as he then was) in *Kano Native Authority v. Raphael Obiora stated* that

> *"*Natural justice requires that as accused person must be given the opportunity to put forward his defense fully and freely and to ask the court to hear any witnesses whose evidence might help him".

Kayode Eso JSC pointedly referred to the *Audi alteram partem* in *Buhari Akande v. The State Government of Oyo-State***,** that

> Audi alteram partem means please hear the other side, not that the other side had been heard once and need not again be heard, especially when the decision taken after that previous hearing was in favor of that party.

Jibowu, F.J (as be then was) stated in *Malam Saadu of Kenya v. Abdul Kadir of Faggo*.

> "It is a fundamental principle of the administration of natural justice that a defendant and his witnesses should be heard before the case against him is determined, and it is, in my view, a denial of justice to refuse to hear a defendant's witnesses."

The Supreme Court of Nigeria evolved a set of principles in *Baba v. Nigerian Civil Aviation Training Centre* where it formulated the following standards for a fair hearing before a judicial or quasi-judicial body. It stated that in order to be fair, the hearing must include the right of the person to be affected

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

In England, this doctrine was formulated with precision in the case of *Ridge v. Baldwin* where Lord Hudson 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 charge of misconduct; and (3) the right to be heard in answer to those charges.

The rule now seems to have been summarized as follows:

i. that a person knows what the allegations against him are;
ii. that he knows what evidence has been given in support of such allegations;
iii. that he knows what statements have been made concerning these allegations;
iv. that he has a fair opportunity to correct and contradict such evidence; and,
v. that the body investigating the charge against such person must not receive any evidence behind his back.

Related Case Analysis

The under listed conditions are excerpts that will further elucidate instances where Nigerian courts have conveyed the full import of the principles of *audi alterem partem*.

i. Full disclosure of the nature and all relevant material evidence, including real and documentary prejudicial to the party, save in recognized exceptions. *Adedeji v. Police Service Commission*,
ii. Presence all through the proceedings and hear all the evidence against one. *Dr. E.O.A. Denloye v. Medical and Dental Practitioners Disciplinary Tribunal*. See Oputa JSC, in *Garba v. The University of Maiduguri*. *Jalo Guri & Anor. v. Hadejia Native Authority*, *R. v. Director of Audit (Western Region) & Anor. Ex Parte Oputa & Ors.*
iii. Knowing the case one is to meet at the hearing and have adequate opportunity to prepare for his defense. See *Edward Aiyetan v. Nigerian Institute for Oil Palm Research (NIFOR).*
iv. Adequate opportunity to present his case but fails to adduce sufficient and proper evidence to prove his case; he should not be heard to complain of lack of fair hearing on appeal. *Trans America Corporation v. Akande*.
v. On Counsel's blatant refusal to file response until the eleventh hour, in order to create the opening for the defence of lack of fair hearing …. *First Alstate Securities Ltd v. Adesoye Holdings Ltd* per Iyizoba, JCA held as follows: ……(Section.33) of the 1979 Constitution, and now (Section. 36) of the 1999 Constitution is not for the *Weakling*, the Slumber, the Indolent or the lazy Litigant, but it is for the Party who is alive and kicking.
vi. The burden of proof of denial of breach of fair hearing rest on the party alleging it. Fair hearing is a matter of fact which must be established by evidence. *Nicholas Ukachukwu v. PDP* and must do so in the light of the facts and circumstances alleged. *Nicholas Ukachukwu v. Peoples Democratic Party & Ors.* 33.

Conclusion

This work has effectively articulated the fact that in dispensation of justice, the fundamentals of audi alterem partem are indispensable ingredients so as to maintain the confidence the society has on the judiciary as an arm of government. The advice of Late Justice Niki Tobi once more resonates thus; "…..while politics as a profession is fully and totally based on partiality, judgeship as a profession is fully and totally based on impartiality; the opposite of partiality…." Where the society doubt the impartiality of judges in justice delivery, humanity suffers tremendously as the necessary safe guard to ensuring peace, justice equity is eroded and the tendency for individuals to take laws into their hands heightens. The resultant effect will be chaos, insecurity, social strife, under development to mention but a few.

Recommendation

in view of the fact that Caesars wife must be above board, Nigerian judiciary must come to the rescue of herself and our nascent democracy by deliberately accepting to engage in a disruptive transformation that will mark a paradigm shift from the gloating perception of African judiciary as an appendage of the executives through her naked dance in the public with politicians that only serves the purpose of denigrating on the sanctity and independence of the judiciary.

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