

APPLICATION OF THE PRINCIPLES OF FAIR HEARING IN ADMINISTRATIVE (DISCIPLINARY) PROCEEDINGS IN NIGERIA: SCOPE AND LIMITATIONS*

Abstract

The principles of fair hearing stand out as fundamental human rights. This is why it finds expression in section 36 of the Constitution of the Federal Republic of Nigeria. This paper considers and examines the scope and limitations of the application of the principles of fair hearing in administrative (disciplinary) proceedings in Nigeria. The paper holds the view that administrative disciplinary tribunals/panels/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. This is, however, subject to certain limitations provided for by the law. 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); National Assembly Gazettes, Local and International Journals as primary and secondary sources of material on the subject matter.

Keywords: Administrative Adjudication, Administrative Tribunal, Disciplinary Proceedings, Fair Hearing, Human Rights, Right to Fair Hearing, Principles of Natural Justice

1. Introduction

The increase in the regulatory powers of public authorities provides an opportunity for administrative adjudication and the need to apply the principles of natural justice in disciplinary roles.¹ Delegation of powers has become a convenient tool to meet the responsibilities of the modern complex nature of governance, warranting delegated legislation and empowering administrative bodies to take up some of the traditional judicial functions of the courts and sit as Disciplinary Committees, Tribunals, Panels, or Commissions of Inquiry and etc. These administrative adjudicatory bodies adjudicate on any matter brought before them; make determinations on rights and obligations of individuals and parties before them and perform such other functions as may be assigned to them.² As these administrative tribunals assume quasi-judicial responsibilities to determine issues of rights and obligations of individuals brought before them; just like the regular courts, these administrative tribunals and adjudicatory bodies are bound by the principles of natural justice (fair hearing) in the determination of the rights and obligations of individuals appearing before them.³ This study examines the extent of the applicability of the principles of fair hearing in such administrative adjudication in Nigeria.

2. The Principle of Fair Hearing

The principles or doctrine of fair hearing in its statutory and constitutional sense is derived from the principles of Natural Justice and its twin pillars, namely *audi alterem partem*, which means ‘hear the other side’, and *nemo iudex in causa sua*, which means ‘no one should be a judge in his own cause’. The principle is of general application not only in Nigeria, but also in other Common Law countries to the extent that a presumption has now evolved that whenever any power is conferred by any statute on any authority or body to make a determination, such a determining power shall be exercised judicially and in accordance with the rules of natural justice. Therefore, a breach or otherwise of fair hearing is regarded or treated as very fundamental and a *sine qua non* to any proceedings, hearing, or trial which is subject to an adjudicatory process.⁴ Consequently, any proceedings conducted in breach of a party’s right to fair hearing, no matter how well conducted, would be rendered a nullity.⁵ In *Inogha Mfa & Ors. v Mfa Inogha*⁶ the Supreme Court, Per Kekere-Ekun, J.S.C., observed that:

The law is indeed settled that fair hearing within the meaning of section 36 (1) of The Constitution of the Federal Republic of Nigeria, 1999, means a trial or hearing conducted according to all legal rules formulated to ensure that justice is done to the parties. It requires the observation of the twin pillars of the rules of natural justice, namely, *audi alterem partem* and *nemo iudex in causa sua*. These rules, the obligation to hear the other side of the dispute or the right of a party in dispute to be heard, is basic and fundamental a principle of our adjudicatory system in the determination of disputes that it cannot be compromised on any ground... the effect of denial of fair hearing is trite in law. In other words, once there is a breach of the right of fair hearing, the whole proceedings in the course of which the breach occurred and the decision arrived at by the court, becomes a nullity.

The principle of natural justice is linked to Natural Law, but historically, the principle of natural justice has its foundation in Genesis 3:9-13; 16-19.⁷ There, the Bible reports that the Lord God did not condemn Adam & Eve without first giving

*By **Reginald Anosike UZOECHI, BL, LL.M, PhD**, Lecturer, Department of Clinical Legal, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria., Email: ra.uzoechi@unizik.edu.ng or reginalduzoechi@nigerianbar.ng

¹L Atsegbua, *Administrative Law, An Introductory Text* (3rd edn, Benin City: Filters Lane Publishers 2010) 115.

²E Malemi, *Administrative Law* (3rd edn, Lagos: Princeton Publishing Co. 2008) 181.

³Constitution of Nigeria of the Federal Republic of Nigeria 1999, s. 36 (1) (hereinafter “CFRN 1999”); *Ridge v Balwin* (1964) AC 40.

⁴*Tamti v Nigerian Custom Service Board* [2009] 7 NWLR (Pt 1141) 636.

⁵*Tsokwa Motors (Nig.) Ltd. v UBA PLC* (2008) All FWLR (Pt 403) 1240, 1255, paras A-B; *Abubakar Audu v FRN* (2013) 53 NSCOR 456, 469.

⁶(2014) LPELR-22010 (SC); see also *Chime v Onyia* [2009] 2 NWLR (Pt 1124) 18.

⁷The New King James Version.

them an opportunity to be heard.⁸ The natural law concept or principle of fair hearing, which is, of course, fundamental and bedrock of adjudication or administrative inquiry, is as enshrined in section 36 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, the Nation's *grundnorm* so deeply rooted there is no escape from.⁹ The principle's constitutional impetus reads thus:

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

These twin pillars form the bedrock of the concept of fair hearing, even as extended to administrative (disciplinary) adjudication. This is because justice is fairness. To achieve justice, there should be to every party appearing before any court or tribunal an opportunity to appear without fear or favour, affection or ill will. Denial of justice is bad and outrageous, so much so that such denial inflicts pains, grief, and untold hardship upon those who tend to naturally resort to and rely on the administration of justice in the pursuit or defence of their inalienable rights.¹⁰

What follows here is a discussion of these twin pillars of fair hearing, as they are applicable in administrative adjudication in various administrative institutions like the disciplinary committees of professional bodies, corporate establishments, civil/public service, and even educational institutions. We shall also take a look at the classifications of administrative powers for the purposes of fair hearing, and some demerits of administrative adjudication. We will take a tour through these two pillars of fair hearing, one after the other, so as to show how these administrative tribunals comply with their tenets, and how non-compliance of any of those influences the regular courts in the cause of judicial review.

Audi alterem partem: Hear the other Side

This is an arm of the principles of fair hearing, which dictates that before any administrative tribunal could reach a decision affecting any individual's rights or obligations, such an individual must be given the opportunity to present their own side of the matter before the tribunal. This ambit of fair hearing envisages an instance of adequately informing the person summoned before the tribunal, of the case against him; giving him/her ample chance to correct or contradict the accusation(s) against him/her; affording the person the opportunity to challenge the evidence against him; and an opportunity to fairly state his own case at the hearing.¹¹ It denotes basic fairness, and it is a canon of natural justice. It is the duty of anyone in control of proceedings to allow both parties to be heard and should listen to the points of view of each. Even God, as reported by the scripture, saw Adam eat of the forbidden fruit, which He warned him (Adam) never to eat, but the Lord still gave Adam a fair hearing when the Lord asked, '[D]id you eat the fruit I told you not to eat?'¹² It was after Adam was unable to give a satisfactory answer that God pronounced punishment. That is said to have marked the origins of the principles of fair hearing.¹³

The cases that follow show that failure of an administrative (disciplinary) tribunal to adhere to these tenets or principles of fair hearing leads to the regular court setting aside such a decision by way of *certiorari*. In *Federal Civil Service Commission v Laoye*,¹⁴ the respondent was employed as an executive officer (accounts) in September 1964. At a time during the respondent's years of service, he worked at the Consulate General Office in the Nigerian Embassy in New York. On his return to Lagos, the Ministry of External Affairs queried him twice over allegations which included that he colluded with some persons to defraud the Federal Government. Mr. Laoye cleared himself, denied the allegations, and challenged his accusers to prove them. Unfortunately, in 1981, the Federal Civil Service Commission dismissed him. The Supreme Court held, upholding the quashing of Mr. Laoye's dismissal, that the Court's inclination towards fair hearing is strong, hard, and solid. The duty of the court is to protect the rights of the individual in a democratic society governed by the rule of law. It is consequently well settled that the decision reached thereby will be set aside. Thus, the 1st appellant is a creature of the Constitution and is subject to it, and is thereby bound by the provisions of section 33 (1) of the 1979 Constitution,¹⁵ which has incorporated the common law fundamental rules of *audi alterem partem*.

In *Olaniyan & Ors v University of Lagos & Anor*,¹⁶ the University of Lagos Council acted on the visitation report and the comments of the Visitor and terminated the appointment of the plaintiffs/appellants without giving them the opportunity to make a representation or to be heard. The Supreme Court held that the Council had not followed the legal principle of *audi alterem partem*. Thus, the decision of the Council terminating the appointment of the plaintiffs/appellants as professors was quashed, and they were reinstated in their respective positions. More interesting is the case of *Judicial Service Commission of Cross Rivers State v Young*,¹⁷ where the respondent, as the Chief Registrar of Cross Rivers State, was, by an order of the

⁸Kayode Eso, *Thoughts on Human Rights & Education* (Ibadan: St. Paul's Publishing House 2008) 267.

⁹*Judicial Service Commission of Cross Rivers State v Young* [2013] 11 NWLR (Pt 1364) 1.

¹⁰Atsegbua (n 1) 139.

¹¹CFRN 1999, s 36 generally.

¹²Genesis 3:11.

¹³*Federal Civil Service Commission v Laoye* [1989] 2 NWLR (Pt 106) 652.

¹⁴*ibid*.

¹⁵Now s. 36 (1) of the CFRN 1999

¹⁶[1985] 2 NWLR (Pt 9) 599.

¹⁷[2013] 11 NWLR (Pt 1364) 1.

court, appointed the Receiver of the estate of one Chief Effiom Okon Effiom, who died intestate. Following a friction between the respondent and the Chief Judge of Cross Rivers State over the management and administration of the proceeds of the said estate, the respondent was redeployed from her office as the Chief Registrar to Head, Department of Planning, Research and Statistics, which posting the respondent rejected, even though she still maintained the same salary grade Level 17 which she held as the Chief Registrar. The respondent refused to resume to her new office but rather petition the Chief Justice of the Federation, accusing the Chief Judge of abuse of office, fraud, etc. Though she withdrew the said petition, she was suspended and retired from the Cross Rivers State Judicial Service Commission without trial. Consequently, the respondent took out an application at the High Court of Calabar for an Order of certiorari to quash the proceedings and decision of the Judicial Service Commission retiring her from the service. Quashing the decision of the Judicial Service Commission, and reinstating the respondent, the Supreme Court held, inter alia:

...it follows therefore that when an administrative or domestic tribunal is to determine whether an office is guilty of misconduct or of a breach of the regulations, then a '*lis inter partes*' arises and so thrown up the necessity for hearing before deciding and in such a case, the administrative body is acting judicially and the principle of fair hearing binding on judicial bodies would by same token bind such administrative body.

On the attributes of the principles of fair hearing in administrative proceedings, the court cited the case of *BABA v N.C.A.T.C*¹⁸ and observed that:

In a judicial or quasi-judicial body, a hearing in order to be fair must include the right of the person to be affected, i) to be present all through the proceeding and hear all the evidence against him; ii) to cross examine or otherwise 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; v) to know the case he has to meet at the hearing and have adequate opportunity to prepare for his defence; and vi) to give evidence by himself, call witnesses if he likes and make oral submission either personally or through counsel of his own choice.

Where any of these requirements is breached, the decision of the administrative (disciplinary) tribunal must be quashed. In *Young's case*,¹⁹ the defence of the appellants that they sent queries to the Respondent and her answers were used to reach their conclusion was held to be: 'An insult on the sensibilities of all rational minds as the respondent had her natural rights violated while being presented with a *fait accompli* already pre-determined before the so-called investigations and deliberations.' It must be emphasized that some line of authority tends to suggest that the hearing of a party need not be oral, as the same could as well be by any means of making a representation.²⁰ In the case of contract of employment, the position of the law is that where it is a mere master/servant relationship, no procedural protection is guaranteed and the servant is not entitled to fair hearing; unless the contract of employment specifically provides for fair hearing in disciplinary or such administrative adjudicatory proceeding, in which case parties must comply with same because parties are bound by the contract they willingly entered into.²¹ That notwithstanding, such an employee's remedies may lie in damages for breach of contract. Since the court cannot impose a willing employee on an unwilling employer, however, where it is a contract of employment with a statutory flavour, this principle of fair hearing applies, and the aggrieved employee may be reinstated.²²

***Nemo judex in caus sua: No One Should be a Judge in His Own Cause* (The Rule against Bias and Interest)**

This is the second principle of fair hearing. Under this rule, an administrative adjudicator who has any interest, howsoever in the matter before it must disqualify himself,²³ else, any decision taken by such a tribunal will be quashed for want of fair trial at the instance of the party who protests against such an alleged partial adjudicator. The rules against bias does not only play out where an adjudicator manifestly has an interest in the matter, it also plays out where either of the adjudicator is related to any of the parties to the dispute, or somehow affected, connected or concern with the subject-matter of the dispute, so as to raise doubts as to the impartiality of the tribunal bring about reasonable suspicion or real likelihood of bias. In *Tamti v Nigerian Customs Service Board*,²⁴ the appellant appeared before the management meeting in which the decision to retire him on grounds of service misconduct and dereliction of duty was reached. The prosecutor, who prosecuted his case, remained behind with the members of the management committee when the appellant was asked to leave so that the Committee could make a decision. On the above findings, the court, in setting aside the decision of the panel, concluded that:

This singular act, therefore, of the prosecutors remaining behind in the room and thereafter, an adverse decision was given against the appellant, creates suspicion that there has been an improper interference with the course of justice; it thus creates a shadow of bias in the panel. This no doubt offends the 2nd arm of the twin pillars of natural justice, *nemo judex in causa sua*. The prosecutors being a judge in its own case.

¹⁸[1991] 5 NWLR (Pt 192) 388, 423, per Nnaemeka-Agu, JSC.

¹⁹*Judicial Service Commission of Cross Rivers State v Young* (n 9).

²⁰*Udo v CSNC* [2001] 14 NWLR (Pt 732) 116; *Sokwo v Kpongbo* [2003] 2 NWLR (Pt 803) 111.

²¹*Egharevba v Osagie* (2009) 40 NSCQR 469

²²*Federal Civil Service Commission v Laoye* (n 13); *Judicial Service Commission of Cross Rivers State v. Young* (n 9).

²³*Atsegbua* (n 1) 139.

²⁴[2009] 7 NWLR (Pt 1141) 636 CA.

In *Garba & Ors v University of Maiduguri*²⁵ the students of the University of Maiduguri went on a rampage during a students' unrest. They destroyed various properties and burnt the house of the Deputy Vice Chancellor (DVC). The management of the University set up a disciplinary investigating board to probe the students' unrest. The DVC whose house was burnt down was made the chairman of the Board. Following the board's findings and recommendations, some students were expelled. They went to the court contending that their right to fair hearing had been breached by the board. The Supreme Court, in upholding their claim, held *inter alia*, that since the chairman of the board that tried the appellants was the same DVC who himself was a victim of the rampage, there was a real likelihood of bias. Consequently, the students were reinstated. Also, in *Legal Practitioners Disciplinary Committee v Fawehinmi*,²⁶ Chief Gani Fawehinmi succeeded in getting the court to stay proceedings of the Legal Practitioners Disciplinary Committee, which was to try him for professional misconduct in the nature of 'Advertising, Touting and Publicity.' The reason being that the Office of the Attorney-General of the Federation appeared to be the complainant, prosecutor, and the judge in the same matters. The Court, in disqualifying the Disciplinary Committee, as constituted, from trying Chief Fawehinmi for professional misconduct, held that: '...not only must the LPDC not be biased against a legal practitioner whose conduct is being questioned, but also it must not place itself in a position in which it may appear that there is a real likelihood of bias.'

From the foregoing, the Courts have established that, where there is any such likelihood or reasonable suspicion of bias, the decision of such a panel must be set aside, or the panel must be disqualified where it is yet to start setting or taking a decision

3. Allegation of Misconduct Touching on Crime

One other interesting aspect of fair hearing is that aspect that prescribes that, generally speaking, where the offence or misconduct for which an individual is brought before the administrative (disciplinary) tribunal amounts to a crime under any written law in Nigeria, it is only a regular court that can try and convict on such crime, after which the administrative or disciplinary tribunal can then reach a decision based on the outcome of the criminal trial.²⁷ It appears that such an allegation touching on crime under any written law in Nigeria is tried by the regular court; thus, section 36 (4) of the CFRN 1999 prescribed 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.' Thus, in *Garba v University of Maiduguri*,²⁸ the Supreme in applying the above provision, held that: '...the offence for which the appellants were undoubtedly liable by the Board and the Panel included looting, arson, destruction of property, and indecent assault. These are offences under the Penal Code and therefore are triable only by the regular courts of law.' The court went further by referencing the *dictum* of Fatayi-Williams, CJN, in the case of *Sofekun v Akinyemi*,²⁹ where the then erudite CJN stated in clear terms the position of the law, thus:

It seems to me that once a person is accused of a criminal offence, he must be tried in a 'court of law' where the complaints of his accusers can be ventilated in public and where he would be sure of getting a fair trial as set out in subsections (4) to (10) of section 22 of the Constitution of Nigeria.³⁰ No tribunal, investigation panel, or committee will do.³¹

Also, in *Federal Judicial Service Commission & Ors v Laoye*,³² the Supreme Court stated the law clearly and simply that, '...if the allegation is one that touches the commission of a crime, it is only a Criminal Tribunal that could convict him.' And in *Okocho v Civil Service Commission (Edo State) & Anor*,³³ the Court of Appeal, referring to both *Garba's & Laoye's cases*, posited thus:

When a person is accused of committing a criminal offence, he must be taken before a court of law for trial and not merely by a disciplinary tribunal. By virtue of s. 33(1), (4) & (13) of the 1979 Constitution,³⁴ only a court of law or a judicial tribunal is competent to hear and determine a criminal charge against a person accused of committing a criminal offence.

It must be pointed out that the above principle is not as generic as stated in the cases reviewed above. It must be emphasized that the principle that it is only a regular court that can try an allegation of crime before an administrative tribunal will act on the same is not applicable where such an act of criminality is indicated as misconduct in the contract of employment. In such an instance, the administrative tribunal can adjudicate on the matter, and the employer can discipline the employee without recourse first to prosecution in a law court.³⁵ In *Arinze v First Bank of Nigeria Ltd*,³⁶ the Supreme Court clarified that:

²⁵[1986] 1 NWLR (Pt 18) 550.

²⁶[1985] NWLR (Pt 7) 300.

²⁷This appears to be the purport of s 36 (4) of the CFRN 1999.

²⁸(n 24).

²⁹(1980) 5-7 SC 1.

³⁰This is s 33 (4) to (10) of the CFRN 1979 (at the time of *Garba's case*), but now s 36 (4) to (10) of the CFRN 1999.

³¹*Sofekun v Akinyemi* (n 28) 18.

³²*Laoye's case* (n 13).

³³[2004] 3 NWLR (Pt 861) 494.

³⁴Now s 36 (1), (4) & (13) the CFRN 1999.

³⁵*Yusuf v Union Bank of Nigeria Ltd* (1996) 6 NWLR (Pt 457) 632.

³⁶[2004] 12 NWLR (Pt 888) 663.

In statutory employment, as well as in private employment, the employer can dismiss an employee where the accusation against such employee is of gross misconduct involving dishonestly bordering on criminality, and in such a case, it is not necessary nor is it required under section 36 (1) of the 1999 Constitution that the employee must first be tried in a court of law.

Where this means is that, where a misconduct touches on an allegation of crime, the employer will not be breaching the law or violating the employee's right to fair hearing if such misconduct touching on crime is referred to an administrative tribunal to try, without the same being first determined by a court of competent jurisdiction.³⁷

The question of whether or not an administrative (disciplinary) tribunal is competent to determine cases of misconduct touching on criminality does not arise where the individual concerned and affected by the allegation admits the misconduct/crime. Where the person affected by misconduct, touching on an allegation of crime, admits the commission of such a crime, it will become unnecessary to consider whether or not the tribunal is competent to entertain the matter. In such a case, the administrative tribunal can proceed and dish sanctions for such admitted 'offence.'³⁸ Hence, the Supreme Court went further in *Laoye's case*³⁹ to clarify that: '...it is not so difficult where the person so accused accepts his involvement in the act complained of, and no proof of the criminal charge against him would be required. He has, in such a case, been confronted with the accusation, and he admitted it.' He could face discipline thereafter. In *Jubril v Military Administrator of Kwara State*,⁴⁰ the Court of Appeal stated the law in clear terms when it held that: 'A domestic tribunal is competent to take action against an officer accused in respect of his conduct where the officer admits the commission of the misconduct or crime on which the allegation is founded.'

4. Classification of Administrative Powers for the Purposes of Fair Hearing

Conventionally, administrative powers are classified as Legislative, Executive, or Administrative and Judicial or Quasi-Judicial.⁴¹ These classifications are not without any legal significance, especially as they relate to the application of the principles of natural justice. De Smith once observed that:

The manner of classifying the functions performed by the institutions of government is far more important than the manner of classifying the institutions themselves, and that the scope of judicial review of administrative actions, and the remedies available to persons aggrieved frequently depend upon the appropriate classification of the particular statutory function.⁴²

For the purposes of fair hearing, where an administrative body's power is classified as legislative, executive/administrative, the principles of fair hearing do not apply, but if, however, such power is classified as judicial/quasi-judicial, such a body will be strictly bound by the principles of fair hearing.⁴³ In *Arzika v Governor of Northern Nigeria*⁴⁴ the applicant, Mallam Arzika sought the remedies of, *inter alia*, *certiorari* to quash the Order of the Governor removing him as District Head, and prohibition restraining the Governor from further exercising such powers. The Court held that the governor in making the said Order was acting administratively and not judicially, hence fair hearing does not apply and consequently, *certiorari* does not lie. In *Nwaoboshi & Ors v Military Governor of Delta State & Ors*,⁴⁵ the Supreme Court supremely observed that: 'No legislative or executive act is subject to the controlling jurisdiction of the writ of *certiorari* on the ground that it was not an act performed judicially... and a legislative or executive act cannot, by rational thinking, come within acts which are to be performed judicially.' The case of *Judicial Service Commission of Cross Rivers State v. Young*⁴⁶ provides a clear illustration of the attitude of the courts toward the classification of administrative powers. At the trial court and the Court of Appeal, the courts erroneously held that the Judicial Service Commission was acting administratively; hence, Mrs. Young was not entitled to a fair hearing. The Supreme Court, in reversing the rulings of the lower courts, held that the Commission was acting quasi-judicially, being an investigative disciplinary panel, hence bound by the principles of fair hearing.

Though there has been this ragging argument as to when a body could be said to be acting judicially or administratively, but a presumption has now evolved that whenever any power is conferred by any statute on any authority or body to make a determination on rights and obligations of individuals, such a determining power shall be exercised judicially and in accordance with the rules of natural justice.⁴⁷ Therefore, a breach or otherwise of fair hearing is regards or treated as very fundamental and a *sine qua non* to any proceedings, hearing or a trial which is subject to an adjudicatory process.⁴⁸ As noted by the Supreme Court in *Legal Practitioners Disciplinary Committee v Fawehinmi*,⁴⁹

³⁷*Eigbe v NUT* [2008] 5 NWLR (Pt 1081) 604.

³⁸*Okocha v Civil Service Commission (Edo State) & Anor* (n 32).

³⁹(n 13).

⁴⁰[2007] 3 NWLR (Pt 1021) 357.

⁴¹*Atsegbua* (n 1) 26 – 29.

⁴²Quoted in *Atsegbua* (n 1) 26.

⁴³*ibid* 29-30.

⁴⁴(1961) All N.L.R. 379.

⁴⁵[2003] 11 NWLR (Pt 831) 305; (2003) 5 SC 120.

⁴⁶(n 9).

⁴⁷*Ridge v Balwin* (n 3).

⁴⁸*Tamti v Nigerian Customs Service Board* (n 4).

⁴⁹(n 25).

The debate over what constitutes a judicial tribunal, quasi-judicial tribunal, a domestic tribunal, a tribunal *simpliciter*, arbitrament, forum *conpotens*, etc, will certainly go on as an academic exercise; but once a body of person of persons by whatever name called, are invested with the authority to hear and determine particular issues, or disputes either by consent of the disputants, or by an order of court, or by the provision of the statute, such a body will be required to carry out its function with that fairness and impartiality, which the rules of natural justice dictate.⁵⁰

5. Conclusion and Recommendations

Following the rise in the functions of administrative authorities, the need for administrative adjudication has not only become desirable but also inevitable. Not minding that these tribunals are bound by the principles of fair hearing, some of their attributes threaten the individual's right to fair hearing. This paper has painstakingly examined and stated the law in Nigeria as regards the extent of applicability of the principles of natural justice (fair hearing) in administrative adjudication. It is the view of this paper 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. These principles are, however, not straitjacket principles, hence the expositions and the discussion that form the fulcrum of this paper. Considering the importance and imperative for the observance of the principles of fair hearing by administrative adjudicatory bodies, and flowing from the discussions, observations, and analysis of the principles of fair hearing so far discussed, this paper recommends thus:

Adherence to Clear Legal Procedure in Administrative Adjudication: One of the banes of administrative adjudication is that most administrative panels and tribunals do not observe the principles of fair hearing. As this paper exposed through some of the cases it reviewed, administrative tribunals/panels hardly observe principles of natural justice, especially the *audi alterem partem* rule. Individuals are hardly heard before a decision is reached on their matters. And where there is a laydown procedure, administrative tribunals fail to observe their legal procedures aimed at guaranteeing human rights. To checkmate this unpleasant trend, administrative adjudicatory bodies should have and adhere to clear and unambiguous legal procedure to regulate their proceedings. Such a legal procedure should highlight and emphasize the principles of natural justice (fair hearing) and mandate the panel to strictly observe the same.

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, let alone granting a party with fair hearing opportunity. Granted that one cannot literally give what he does not have, it has become commonplace that these administrative tribunals hardly adhere to the tenets of fair hearing. Little wonder, then, that their decisions are often challenged and set aside by the courts. It therefore becomes necessary that members (or at least one member) of administrative adjudicatory panels/tribunals must have a good or fair knowledge of law and the concept of human rights (most especially, the right to fair hearing).

Adequate Opportunity and Facility for Defence: It is commonplace that these administrative tribunals set a time frame to conduct their proceedings, not minding, at times, that such time frame might not be sufficient for the preparation and presentation of a party's defence contrary to the stipulation of 'a reasonable time' prescribed by s. 36 (1) & (6) (b) of the 1999 Constitution of Nigeria. Where the opportunity is denied, it most often results in denial of fair hearing. It is therefore recommended that, as part of the requirement for legal procedure, individual appearing before administrative tribunals/panels should be afforded an adequate opportunity to prepare and present their case/defence to any allegation of any malfeasance against them.

Enlightenment and Reorientation: Administrative tribunals are often nothing but a tool of the authorities that set them up to achieve a 'witch-hunting' purpose. They are usually misused and abused by the appointing authorities in persecuting targeted individuals.⁵¹ There is therefore a need for enlightenment and reorientation. Those who are appointed to administrative adjudicatory panels/tribunals are to be enlightened that they have a legal obligation to ensure that the justice of the case is met. They are also to be educated on the rights of the individuals appearing before them.

⁵⁰Per Oputa, J.S.C. at p. 387.

⁵¹*Judicial Service Commission of Cross Rivers State v Young* (n 13); *Obot v CBN* [1993] 8 NWLR (Pt 310) 140; *Aiyetan v NIFOR* [1987] 3 NWLR (Pt 59) 48