

**DISCIPLINARY PROCEDURES UNDER THE KANO STATE CIVIL
SERVICE RULES 2004 VIS-A-VIS RIGHT TO FAIR HEARING**

BY

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SPS/15/MLL/00026

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DECLARATION

I hereby declare that this work is the product of my own research efforts; undertaken under the supervision of Associate Prof. Ahmed Rabiou. The research has not been presented and will not be presented elsewhere for the award of a degree or certificate. Equally, all sources have been duly acknowledged.

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CERTIFICATION

This is to certify that the research work for this dissertation by Shamsi Ubale Jibril (SPS/15/MLL/00026) was carried out under my supervision.

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APPROVAL PAGE

This dissertation titled Disciplinary Procedures under the Kano State Civil Service Rules 2004 vis-a-vis Right to Fair Hearing has met the regulations governing the award of the degree of Master of Laws – LL.M of Bayero University, Kano and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to my parents; Alhaji Ubale Jibrin Danjaji and Hajiya Khadija Inuwa.

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LIST OF ABBREVIATIONS

A.C. - Appeal Cases

A.G. - Attorney General

All FWLR – All Federation Weekly Law Report

AIR- All India Law Report

ALL N.L.R- All Nigeria Law Reports

BALR-Butterworths Arbitration Law Report

BLLR- Butterworths Labour Law Reports

C.A. - Court of Appeal

CCHCJ - Certified Judgments of the High Court of Lagos State

Ct. - Court

C.Y.P.L- Children and Young Persons Laws

EHRR - European Human Rights Reports

eKLR - Electronic Kenyan Law Reports

Fordham L. Rev- Fordham Law Review

FSC - Federal Supreme Court

FWLR - Federation Weekly Law Report

I.L.R- Indian Law Report

J.A.M.B- Joint Admission and Matriculation Board

JSC - Justice of the Supreme Court

K.B - Law Reports, Kings Bench

LFN - Laws of the Federation of Nigeria

L.L.R -Lloyd's Law Reports

LPELR - Law Pavilion Electronic Law Report

L.R.N. - Law Reports of Nigeria

MD. L. REV- Maryland Law Review

M.P- Member of Parliament

N.C.L.R - Nigerian Constitutional Law Report

Nig. J. R-Nigerian Juridical Review

N.L.R. Nigeria Law Reports

N.M.L.R - Nigeria Monthly Law Report

N.N.L.R - Northern Nigeria Law Reports

No. - Number

N.S.C.Q.R- Nigerian Supreme Court Quarterly Law Report

NWLR - Nigerian Weekly Law Report

P. - Page

PP -Pages

Pt. - Part

UK - United Kingdom

Para. - Paragraph

Q.B - Law Reports, Queens Bench

Q.L.R.N - Quarterly Law Report of Nigeria

S.C. - Supreme Court

S.C.N.J - Supreme Court of Nigeria Judgments

SCNLR - Supreme Court of Nigeria Law Reports

S.L.R –Service Law Report

V. - Versus

WASH. L. REV- Washington Law Review

WLR - Weekly Law Reports

ABSTRACT

The aim of this research work is to examine the disciplinary procedure under the Kano State Civil Service Rules 2004 vis a vis right to fair hearing with a view to finding out whether the disciplinary procedure is consistent with the 1999 Constitution of the Federal Republic of Nigeria (as amended). The materials for the work have been drawn from both primary and secondary legal sources using doctrinal research methodology. The primary legal sources are Kano State Civil Service Rules 2004, Public Service Rules of the Federation 2014, Constitution of the Federal Republic of Nigeria 1999 as amended, other enactments and judicial authorities. Secondary sources such as books, journal articles seminar papers, conference papers, public lectures, academic theses, projects; dissertations as well as relevant publications have been consulted. The research work found that Rule 04306 of the Kano State Civil Service Rules 2004 which made provision for disciplinary procedure in cases of serious misconduct which may lead to dismissal, but omitted some other necessary features of right to fair hearing. The remaining Rules either completely or substantially but expressly exclude rights of officers to fair hearing in specified cases. The powers of the Permanent Secretary/Head of Extra Ministerial Department to impose the preliminary administrative sanctions arbitrarily were challenged. The research work recommended amendment of the offending Rules to bring them in line with the provisions of the Constitution.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

Adherence to the fundamentals of ethics by employees in any organization is crucial to development, both commercial and industrial development, international trade and political stability. In other words it is only when members of an institution adhere to ethical standards that their well being, productivity and growth can be easily attained.¹ The work attitudes, integrity, self discipline, teamwork, emphasis on quality, commitment and productivity of Nigerian workers have painted a rather negative picture of an apathetic, uncommitted men and women, who are unresponsive to motivational techniques.²

According to McFarland,³ discipline refers to conditions of orderliness in which members of an organization conduct themselves with respect to the needs and desires of the organization, subordinating to some extent their needs and desires. Discipline is sometimes seen as the imposition of certain restrictions on the behavior of members (e.g. employees of an organization).⁴ The main reasons for indiscipline in the public sector are economic factors, socio cultural factors, management factors, and laxity on the part of managers and supervisors.⁵

¹ Adeyeye, J.O (et. al): (2015) Effects of Workplace Ethics on Employees and Organizational Productivity in Nigeria. International Conference on African Development Issues (ICADI): Social and Economic Models for Development Tract. P.267. See also Adeyeye, J.O Aina, S. & Ige A. (2012) Globalization and the Transitional Economy; Impacts and Effects on African Regional Growth. European Journal of Globalization and Development Research, Vol 9 (1) pp. 176-185

² Salau, O.P. (et al) (2014) Induction and Staff Attitude towards Retention and Organizational Effectiveness. IOSR Journal of Business and Management (IOSR-JBM) 16(4) www.iosrjournals.org

³ McFarland, D.E (1979) Management Foundations and Practices. 5th Edition . New York: Macmillan available at www.pub.co.inc last visited on 20th January, 2017

⁴ Osezua M (et. al) (2009) Staff Indiscipline and Productivity in the Public Sector in Nigeria: African Research Review (An International Multi- Disciplinary Journal, Ethiopia) p. 462

⁵ Ibid p 4

Disciplinary measure could be preventive, corrective or progressive.⁶ Discipline is preventive if it is designed to discourage members from violating the organizational rules.⁷ Corrective discipline on the other hand serves the purpose of sanctioning offenders and preventing reoccurrence of the undesirable behavior among other employees.⁸ Progressive discipline however states that the more a staff commits an offence, the more severe penalty he will be subjected to.⁹ Some of the determinants of organizational effectiveness in disciplinary actions are careful selection of employees, an effective motivational system, necessary rules and regulation and awareness that rules will be enforced.¹⁰ Breach of disciplinary rules manifests itself in many forms, ranging from insubordination to official corruption. Persons liable for any such breach can be punished by demotion, dismissal, job transfer or reprimand.¹¹

It has long been established that administrative officials and bodies have the power to enforce discipline in their respective departments. This is because discipline must be ensured for standards to be maintained.¹² Although the actions of administrative bodies in disciplining their staff is to ensure effective functioning of the institutions, if such actions interfere with the rights of the affected staff, and have a tendency to be prejudicial to their interest, simple logic demands that they must be fairly treated.¹³ Since they are determining the fate of others and are making findings of facts and evaluating evidence, administrative bodies must comply with the rules of

⁶ Idris Sule-Dan (2015) Discipline and Organization Effectiveness: A Study of Nigeria Customs Service. Review of Public Administration and Management. Vol. 4 No 8 p. 93

⁷ Ibid

⁸ Ibid p 94-95

⁹ Ibid

¹⁰ Ibid pp 94-95

¹¹ Idris Sule-Dan (2015) Discipline and Organization Effectiveness: A Study of Nigeria Customs Service. Review of Public Administration and Management. Vol. 4 No 8 p. 95-96

¹² Ogbuabor C.A and Obinne. O (2014) Exercise of Delegated Power in Disciplinary Proceedings in Nigerian Administrative Law- Morenkeji V Osun State Polytechnic & Ors Revisited. Nigerian Judicial Review. Vol 12 p. 83

¹³ Re H. K. (an Infant) (1967) 1 All E. R. p. 226

fair hearing.¹⁴ Fair hearing is quite a wide area, and it composes among other things, the principles of natural justice. The principles of natural justice comprises the following two limbs:

- a. The rule against bias (*nemo judex in causa sua*- no one should be a judge in his own cause); and
- b. The right to fair hearing (*audi alteram partem*- hear the other side).¹⁵

Aptly put, the Constitution of the Federal Republic of Nigeria (1999) (as amended) has imported the principles of natural justice, thus;

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.¹⁶

As if to answer the nagging poser as to whether administrative committees or tribunals trying allegedly erring employees can be said to be constitutional, subsection (2) came to the rescue by providing:

without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law-

¹⁴ Ogbuabor C.A and Obinne. O (2014) Exercise of Delegated Power in Disciplinary Proceedings in Nigerian Administrative Law- Morenkeji V Osun State Polytechnic & Ors Revisited. Nigerian Judicial Review. Vol. 12 p. 85

¹⁵ Muhammad Z and Sadia K. (2014) The Fundamental Principles of Natural Justice in Administrative Law. Journal of Applied Environmental and Biological Sciences P. 69. Also available at www.textroad.com

¹⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended)

- a. Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes decision affecting that person; and
- b. Contains no provision making the determination of the administering authority final and conclusive.

The rule against bias can be summarized as follows: the impartiality of the adjudicating body must not be in question. No one should be a judge in his own cause. Justice should not only be done, but it must manifestly and undoubtedly be seen to have been done.¹⁷ Bias can be official, personal or pecuniary.¹⁸

The criteria and attributes of “*hear the other side*” were expounded by the Supreme Court of Nigeria in *Olugbenga Daniel v. Federal Republic of Nigeria*.¹⁹

- a. The court should hear both sides not only in the case, but also in all material issues before reaching a decision which may be prejudicial to any party in the case;
- b. The court shall give equal treatment, opportunity and consideration to all concerned;
- c. The proceedings shall be held in public and all concerned shall have access and be informed of such public hearings; and
- d. Having regard to all the circumstances in every material decision in the case, justice must not only be done, but must manifestly and undoubtedly be seen to have been done.

¹⁷ Lord Atkin J in *R. V. Sussex Justices Ex parte McCarthy* (1924) 1 KB p. 256

¹⁸ Muhammad Z and Sadia K. (2014) the Fundamental Principles of Natural Justice in Administrative Law. *Journal of Applied Environmental and Biological Sciences* P. 69. Also available at www.textroad.com. More explanation on this point can be found in Chapter Two.

¹⁹ (2014) 8 NWLR pt. 1410 p. 570 at p. 576

What this means in part is that in any disciplinary proceedings, no party should be subjected to any form of punishment or any other form of measure that may be prejudicial to his interest unless he is given the opportunity to make representations on that issue, or upon the conclusion of the case.²⁰ The opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceedings. Later on, this principle was applied to other quasi-judicial and other tribunals and ultimately it is now clearly laid down that even the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary.²¹

All Federal public servants in Nigeria are subject to the Public Service Rules of 2014.²² The Rules made ample provisions on recruitment, probation, appointment, transfer, allowances, insurance, emoluments, promotion, leave and discipline. The Rules apply to all ministries and extra-ministerial offices under the Federal Government. It is a revised edition of the Public Service Rules, 2007. The current Rules applicable to Kano State of Nigeria is the Kano State Civil Service Rules, 2004. It made provisions for almost every aspect of employment of persons employed in the Kano State Civil Service and extra-ministerial departments. One of the areas covered by the Kano State Civil Service Rules is discipline.

Rule 04403 provides as follows:

- (i) When a serious case that may lead to dismissal has been instituted against an officer, the Permanent Secretary/Head of Extra Ministerial Department may interdict him on not more than half pay pending the determination of the case...

²⁰ Chigozie N. (2016) The Role of fair hearing in the Dispensation of Justice- A Legal perspective. International Journal of Innovative Legal & political Studies 4(4) p.3

²¹ Justice Brijesh K. (1995) Principles of Natural Justice: J.T.R.I Issue 3. P. 4

²² Federal Republic of Nigeria: Public Service Rules 2014

- (ii) ...When the charge against him is such that continued performance of his present duties is against public interest or prejudicial to the investigation of the charge against him, consideration shall be given to putting him on alternative duties.
- (iii) When an officer is interdicted he shall cease to report for duty and shall receive such proportion of his emoluments, not being less than one half, as the Commission may determine.
- (iv) If proceedings under Rule 04406 reveal that he is not guilty of the charge made against him, the officer shall immediately be reinstated and shall receive the full amount of his emoluments denied him during the interdiction.
- (v) If he is found guilty but is not dismissed, he may be refunded such portion of the emoluments denied him as the commission may determine.

By Rule 04405, any person who appears to have committed any serious misconduct, may be suspended and his emoluments stopped.

It is clear from the above provisions that a person charged with a case of serious misconduct, and undergoing disciplinary hearing can be subjected to any of the following measures before conclusion of the hearing;

- a. Interdiction. (He can be placed on half salary or half pay)
- b. Suspension (without pay)
- c. Placement on alternative post.²³

Based on the above provisions, the researcher is of the view that the Kano State Civil Service Rules has made it possible for the Permanent Secretary/Head of Extra Ministerial Department to

²³ See Rules 04403 and 04405

tamper with the civil rights and obligations of a civil servant subject to disciplinary hearing before having the opportunity to hear both sides of the story and arrive at a decision as to whether the affected person has truly breached the provisions of the Civil Service Rules. Some of the measures include suspension and interdiction. If an officer will be subjected to the above punitive measures before the conclusion of hearing, his fundamental right to fair hearing is in jeopardy in the sense that his civil right and obligations are tempered with in the form of temporary loss of salary, deprivation of discharging his duties under his contract of employment, advancement, etc.

Similarly, while the Kano State Civil Service Rules, 2004 contains provisions protecting officer's right to fair hearing in disciplinary proceedings in cases involving serious misconduct which may lead to dismissal on the one hand, it on the other hand authorized the Civil service Commission to dispense with most of the requirements of fair hearing except right to make representations and defend oneself before the Board of Inquiry in cases involving misconduct which may not lead to dismissal, but may lead to demotion, withholding or deferment of promotion, increment or otherwise.²⁴ The germane question is; are disciplinary measures such as demotion, withholding or deferment of promotion or increment not decisions which have a tendency to affect the civil rights and obligations of an officer entitling him to the enjoyment of the right to fair hearing?

The researcher has also identified a provision²⁵ empowering the Civil Service Commission to completely dispense with disciplinary proceedings and therefore the concept of fair hearing in cases where a Judicial Commission of Inquiry submitted a report of disciplinary nature against

²⁴ See generally Rules 04305 and 04306 of the Kano State Civil Service Rules, 2004

²⁵ Rule 04303 of the Kano State Civil Service Rules, 2004

an officer and the report was accepted by the government. As a result of this provision, an inquiry into nature and functions of Judicial Commission of Inquiry and a determination as to whether their function is quasi-judicial or merely investigative and to see whether they are bound by the principles of fair hearing is also significant.

In the same vein, the Rules provide:²⁶

*Where it is **considered** that the conduct of an officer is prejudicial to the security of the State, and where a committee comprising members from the State Ministry of Justice, Office of Head of Service and Special Services office is satisfied that an officer has committed an act of misconduct involving the security of the state, **the normal disciplinary procedure need not be followed by the Commission in taking any disciplinary action it may deem fit.***[emphasis mine]

The above provision also contemplates a total departure from the normal disciplinary proceedings in cases of allegations of misconduct involving the security of the State.

This appraisal is important not only because the rules in question affects the lives of tens of thousands of civil servants in Kano State, but also because most of the disciplinary procedure rules are similar to that contained in the Federal Public service Rules 2014.²⁷ It is important to note that apart from the areas identified, there are some provisions of the disciplinary procedure that are fair and have somehow scaled the constitutional test of fair hearing.

In the light of the above observations, this research critically examines the disciplinary procedure under the Kano State Civil Service Rules 2004, with a view to seeing what provisions contravene

²⁶ Rule 04501 of the Kano State Civil Service Rules, 2004

²⁷ Public Service Rules 2014

the age long principles of fair hearing. It is submitted that a holistic treatment of the area will entail a study of those portions that were crafted, and indeed succeed in ensuring a conducive atmosphere for the protection of employees' right to fair hearing. It is only through this in-depth research that this feat can be achieved.

1.2 Statement of the Problem

Generally, the resolve to conduct a research in the chosen area is of constitutional importance and the need to harmonize industrial relations with the provisions of the Constitution and long established principles of fair hearing and natural justice. It is trite that the Constitution is the *grundnorm* of the land. It is the yardstick used in gauging the validity of any code or legislation applicable in Nigeria.

A cursory look at Rules 04403,04405,04406 and 04501 the Kano State Civil Service Rules shows some tendency to put the individual rights of employees in jeopardy. Under the Rules, a person faced with disciplinary proceedings that may lead to dismissal, can before the commencement or in some cases before conclusion of hearing be subjected to some punitive measures in the form of interdiction and suspension. What consolidates the fear is that Rules 04403 which provides that if after interdiction it is established that the officer is innocent of the charge made against him, he shall be reinstated and shall receive full amount of his emoluments denied him during the period of interdiction. Similarly, an officer can be suspended if a *prima facie* case of serious nature is made against him, pending the outcome of the investigation. If the officer is exonerated, all salaries due to him for the duration of the suspension shall be paid to him. The main problem with the above provision is that during the period of interdiction or suspension which could take as long as the Permanent Secretary/Head of Extra Ministerial

Department may determine, the affected officer will have to live without collecting his salary and other perquisites attached to his office even though at time of the imposition of such sanctions, disciplinary proceedings might not have been commenced against him.

It is difficult at this juncture to determine how the above provisions affect fair hearing. However, at a glance, the civil rights and obligations of a staff undergoing disciplinary proceedings under the Rules seem to be severely affected through interdiction and suspension or even before hearing is commenced on the alleged wrongs. From a literal interpretation of the Rules, it seems that the Permanent Secretary/ Head of Extra Ministerial Department is given a discretion to take these decisions as he deems fit. No provision mandates the Permanent Secretary/ Head of Extra Ministerial Department to conduct a preliminary hearing, similar to one for interlocutory injunction in conventional courts, before arriving at a decision. It is difficult to determine whether a particular suspension or interdiction is done in accordance with the law, or meted out to victimize the officer.

Some questions can be raised on dispensing with the provisions of the Rules dispensing most of the principles of fair hearing in cases of misconduct²⁸ and total denial of fair hearing in case where a Judicial Commission of Inquiry submits a report of a disciplinary measure against an officer²⁹ or where his conduct is suspected to be prejudicial to State security.³⁰

There is, therefore the need to make an enquiry in this area, with a view to seeing the extent to which the disciplinary procedure under the Kano State Civil Service Rules 2004 complies with the constitutionally guaranteed right to fair hearing.

²⁸ Rule 04305 of the Kano State civil Service Rules, 2004

²⁹ Ibid, Rule 04303

³⁰ Ibid, Rule 04501

1.3 Research Questions

From the research problems identified above, the following have been identified as the research questions:

1. How consistent are the disciplinary procedure Rules under the Kano State Civil Service Rules with the provisions of Section 36 1999 Constitution of the Federal Republic of Nigeria (as amended) and what are the legal issues arising there-from?

1.4 Aim and Objectives

The sole aim of this research work is to examine the disciplinary procedures under the Kano State Civil Service Rules 2004 vis-a-vis right to fair hearing with a view to achieving the following objectives:

1. To find out whether the disciplinary procedures under Kano State Civil Service Rules, 2004 is consistent with the 1999 Constitution of the Federal Republic of Nigeria (as amended) by examining Rules 04403(i),(ii),(iii),(iv), (v), 04404,04405, 04406 and such other rules that border on fair hearing.
2. To find out any other legal issue arising from the provisions of the Kano State Civil Service Rules, 2004, using the 1999 Constitution of the Federal Republic of Nigeria (as amended), case law and scholarly write-ups as yardsticks.

1.5 Justification

Considering the problems highlighted in the background and expounded in the statement of the problem and the questions formulated there-from, this research work is indispensable in solving the identified problems. The research work would be helpful to the Kano State Civil Service

Commission which superintends over tens of thousands of employees. Useful inputs will be forwarded to the relevant bodies so that employees will be treated fairly by disciplinary tribunals and justice will not only be done, but will also be seen to be done.

1.6 Methodology

This research has been conducted using the doctrinal research methodology. The research work, by the questions raised and the objectives sought to be realized, does not in any way attempt to examine the impact or utility of the subject of study in which case field work is needless. Through the dictates of this research methodology, the needed materials for the work have been drawn from both primary and secondary legal sources.

Primarily, Kano State Civil Service Rules and relevant codes have been consulted. In addition to this, the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other enactments were of great use in this work. Equally, judicial authorities are part of the primary materials. Secondary sources such as text books, journal articles, seminar papers, conference papers, public lectures, academic theses, projects, dissertations as well as relevant publications have been consulted.

1.7 Scope and Limitations

The research has two main areas of focus. The first is on the origin, scope and application of the principles of fair hearing, now encapsulated under section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Although the Federal Civil Service and other states of Nigeria apply disciplinary procedure in disciplining their civil servants, the focal point is on the Kano State Civil Service Rules, 2004.

The research work revolves around subjecting the rules under review to constitutional validity test based on authorities found in primary and secondary legal sources earlier mentioned.

1.8 Literature Review

In carrying out this research work, some preliminary study in the area has been undertaken essentially to give the work a good shape in terms of its correlation with works already undertaken in the area.

A study of related literature consulted and outlined below indicates that the writers either discussed the general attributes of the principles of fair hearing or how the principles apply to administrative bodies exercising quasi-judicial functions, especially that of discipline. None of the sources, literature and scholarly discussions reviewed below however, raised questions on the validity or constitutional propriety of taking actions that affect the civil rights and obligations of an officer before the final determination of disciplinary proceedings. There is also paucity of literature on the propriety of dispensing with substantial requirements of right to fair hearing in cases of misconduct or total denial of such right in cases where a Judicial Commission of Inquiry submits a report of disciplinary nature against an officer, or where the Civil Service Commission is of the view that the conduct of an officer is prejudicial to state security. Worthy of note is that there is no work that specifically studied the disciplinary procedure under the Kano State Civil Service Rules, 2004 with a view to discovering the extent to which it complies with the principles of fair hearing. Below is a review of some of the contributions made by scholars on aspects relevant to this research and the gaps which this study intends to fill.

Towards Fair Hearing for all Nigerian Employees³¹

This is a journal article. The article is divided into 7 parts, namely, Introduction, the Law as it Stands, Contract Regime, Natural Justice Regime, International Instruments, Advantages to Employees and Conclusion. Although it is clear that fair hearing is a *sine qua non* in any disciplinary proceedings in the public service, Nigerian courts have overwhelmingly held that an employee in the private sector, is not entitled to fair hearing. The paper suggested a shift from this attitude, and recommended that all Nigerian employees, irrespective of the nature of their employment, should be accorded fair hearing in any disciplinary case. The paper emphasizes on fair hearing in private employment. The above article placed no emphasis on fair hearing in relation to employment with statutory flavour as the case of officers subject to the Kano State Civil Service Rules, 2004.

This research work, apart from studying the mandatory nature of fair hearing in employments with statutory flavour, went ahead to critically study each of the disciplinary provisions of the Kano State Civil Service Rules, 2004 with a view to seeing how they comply with established principles of fair hearing.

Uvieghara E. Fair Hearing³²

In Chapter One of his book titled The Contract of Employment, six pages were dedicated to fair hearing in contract of employment. The first strong statement in the section is that the principles of fair hearing do not apply to disciplinary cases in private employments. The employer is not obliged to give reason for the termination unless required to do so. In the event that the employee's contract is terminated without hearing, he is only entitled to damages for wrongful

³¹ Emeka C. (2007) Towards Fair Hearing for all Nigerian Employees. CALS Review of Nigerian Law and Practice Vol. 1(1) pp 29-61

³² Uvieghara, E E , Labour Law in Nigeria, Lagos, Malthouse, 2001, 89-94.

dismissal. In the so called employments with statutory flavour, however, the courts have consistently held that the employee's side of the story must be heard before he is condemned and also the tribunal and its members must not be seen to be biased or have a premeditated decision on the case.

A major deficiency of the write up is that it is too sweeping in the sense that it does not examine the scope and import of fair hearing of employees whose contract enjoys statutory flavour. It does not, consequently look at the application of the principles of fair hearing under the Civil Service Rules. This is a gap that this work intends to fill. This research work has also seen how misconduct and serious misconduct were classified and cases of simple misconduct arbitrarily may be tried without complying with most requirements of fair hearing.

Termination of Contract of Employment in Nigeria³³

This is an article published in several online outlets. The author is a Managing Partner in Ese Oladumare Chambers, and special counsel to the Lagos State Attorney General. The paper opines that the principles of law governing the termination of employment depend on whether the contract is ordinary master and servant relationship or a contract with statutory flavour. An ordinary master and servant relationship can be brought to an end without justification for so doing. An order of specific performance cannot lie against an employer who terminates his servant's employment, unless if the contract is one with statutory flavour. The article relied on *Olarewaju V Afribank*³⁴ where the Supreme Court held that an employer can terminate an employee's contract without giving reasons. The article then expounds on contracts with statutory flavour, and why they cannot be terminated without following the procedure laid down

³³ Akintunde E: (2014) Termination of Contract of Employment in Nigeria. Available at <https://akintuneesan.blogspot.com> visited on 10/01/2017

³⁴ (2001) 6 M.J.S. 68 at 77

by law. The writer then proceeded to supply authorities to establish that where an employee is to be dismissed for gross misconduct, whether the contract is that of master and servant or one with statutory flavour, he must be given fair hearing. Reliance is placed on *University of Calabar V Essien*³⁵ and *Yusuf V UBN*.³⁶ Attention was then turned to termination of employment on ground of commission of criminal offences.

Although the article discussed terminations of employment and how fair hearing comes to play in such termination, it did not explain the principles of fair hearing or look at fair hearing in relation to Kano State Civil Service Rules, which is the focus of this research.

Fair Hearing and Contracts of Employment: the Discordant Views of Nigerian Courts³⁷

This work examines the meaning and scope of the right of fair hearing under both the Common Law and as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria as amended) especially as it applies to contracts of employment. The work further seeks to challenge the notion that where an allegation against an employee involves a crime, only a court of competent jurisdiction can try the matter. The writer opined that so long as the tribunal or disciplinary committee dealt only with misconduct and does not purport to convict the staff of a crime, he cannot argue that his right had been breached.

The work drew a line of distinction between judicial/quasi judicial proceedings on the one hand, and domestic or administrative enquiry on the other hand. While in the former, the person must be given opportunity to be present all through the proceedings, hear all evidence against him and

³⁵ (1996) 10 NWLR (pt 447) 225 at 262

³⁶ (1996) 6 NWLR pt. 457

³⁷ Ogbu O.N (2006) Fair Hearing and Contracts of Employment: the Discordant Views of Nigerian Courts, Journal of Private and Comparative Law (J.P.C.L) Vol. 1 ABU Zaria p. 139

right to cross examine or contradict evidence against him among others, in the latter, the requirement is satisfied by an opportunity to make oral or written representation. The writer of the article under review relied on some cases. The writer proceeded to argue that employment by a public authority does not inject element of public law into the relationship except where there is statutory “underpinning” of the employment such as statutory restrictions on dismissal, which will support a claim of *ultra vires*.

It is obvious that some of the conclusions of the writer are contestable, as to the applicability of fair hearing in domestic administrative enquiry.

Labour Laws in Nigeria: A Case Study of the Disciplinary Procedure in the Federal Polytechnic Act³⁸

The article is divided into 7 parts namely, Introduction, Employment Terms, Employment Rights and Duties, Equality and Process, Job Security, Polytechnic’s Disciplinary Powers on its Employees, Function of each Polytechnic and Conclusion.

According to section 17 of the Polytechnics Act, where there are grounds for believing that a person has committed an act of misconduct, he shall be given fair hearing. However, by subsection (2) the Rector may suspend an academic staff, if he deems fit, before the outcome of the disciplinary process. A person suspended is to be placed on half pay, and if exonerated, he will be reinstated and be paid arrears. Despite the glaring breaches, the writer argued that section 17 of the Polytechnic Act sufficiently protects the staff’s right to fair hearing.

³⁸ Malachi E.B. (2015) Labour Laws in Nigeria: A case Study of the Disciplinary Procedure in the Federal Polytechnic Act. S.C.S.R. Journal of Educational Research Vol 1 Issue 1 P. 42-49

The failure of the of the writer of the article under review to advert his mind to the principles of common law and the Nigerian Constitution on the principles of fair hearing leaves a gap that can only be filled by this research. Apart from analyzing the Constitutional provisions relevant to fair hearing, this work had also studied judicial authorities expounding the provision. Similarly, subjecting the Kano Civil Service Rules, 2004 to these principles will remedy the literature gap created.

Defining the Limits of Employer's Disciplinary Powers in Industrial Relations³⁹

The article is divided into several parts, namely, Background, Hire & Fire, Fair Hearing and Disciplinary Procedures, Categories of Employer-Employee Contracts, Statutorily Protected Employment and conclusion. Relying on the cases of *Dedeji V Police Service Commission*⁴⁰ and *Katagum & Others V Roberts*,⁴¹ even though an employer can dismiss the employee, the only condition is that in the process, employers must comply with the rules of natural justice. Although in *Falomo V Lagos Public Service Commission*,⁴² it is stated that the parties to a contract of employment may expressly exclude the application of the rules of natural justice, it is doubtful if such contention can stand with the coming into force of section 33 of the 1979 (and now 36 of the 1999) Constitution. In *Kotoye v CBN*,⁴³ the rule of fair hearing was held by the Supreme Court not to be just a “technical” doctrine. The most important issue is whether the party entitled to be heard before deciding had in fact been given fair hearing. The position of the article under review is that the rule of natural justice applies to disciplinary action taken against

³⁹ Fred. A. (2007) Defining the Limits employer's disciplinary powers in industrial relations: Labour Law Review. N.J.L.I.R Vol. 1 No 1 (3) pp 83-10

⁴⁰ (1967) 1 ALL N.L.R P 67

⁴¹ (1967) 1 ALL N.L.R p. 127

⁴² (1977) 5 S.C P. 51

⁴³ (1989) 11 NWLR (pt.572) 145

employees in the public service. The article contended that such luxury is not available to employees in the private sector.

This research work has, in addition to studying the Kano State Civil Service Rules, 2004 with particular reference to fair hearing in disciplinary proceedings, has also examined whether the requirements of fair hearing can be discountenanced in cases of allegation of misconduct that is prejudicial to the security of the State.

Exercise of Delegated Power in Disciplinary Proceedings in Nigerian Administrative Law- Morenkeji V Osun State Polytechnic & Ors Revisited ⁴⁴

This is a case review of *Morenkeji V Osun State Polytechnic & Ors*.⁴⁵ Summarily put, the court upheld the delegation of the disciplinary power which is statutorily vested in the Rector of the Polytechnic to the Registrar, without such delegation being supported by the statute. The article, relying on established principles of administrative law argued that the decision was erroneous. The article established that as far as disciplinary proceedings are concerned, the Osun State Polytechnic Law which requires a disciplinary action to be taken against an alleged erring student before referring him to a disciplinary panel is inherently flawed in that it put the cart before the horse. It was established in the English case of *Bernard v National Dock Labour Board*⁴⁶ and the Nigerian case of *Katagum v Roberts*⁴⁷ that a person vested with power to exercise disciplinary power over public employees cannot delegate this power to another person. The writer criticized the decision not only on unlawful sub-delegation of authority and the rule of fair hearing but also on the ground of improper evaluation of evidence. The article recommended

⁴⁴ Ogbuabor C.A (2014), Exercise of Delegated Power in Disciplinary Proceedings in Nigerian Administrative Law- Morenkeji V Osun State Polytechnic & Ors Revisited. The Nigerian judicial Review Vol 12 (3)

⁴⁵ (1998) 11NWLR (pt. 572) 145

⁴⁶ (1953) 2 Q.B 18

⁴⁷ (1967) 1 All NLR 127; (1968) N.M.L.R 167

amendment of the Osun State Polytechnic Iree Law 1992 so that section 37 of the Law permitting a decision to be taken before hearing on a matter can be done away with.

The first point to be noted is that the decision is based on the Osun State Polytechnic Iree Law 1992 . A deep analysis of the rule of fair hearing has not been undertaken, and the analysis of the rule of fair hearing based on the Polytechnic Law does not cover the subject matter of this research. This research fills this gap by making a deep analysis into the concept of fair hearing and how same has been incorporated or breached by the Kano State Civil Services Rules 2004.

Fair Trial: The History of an Idea⁴⁸

This article is mainly a historical research which seeks to do a deep study of the origin of the principle of fair hearing. The article traced the history of fair trial from ancient period, the Old Bailey 1674–1834 and the modern day concept of fair trial. The evidence presented in this study has shown that the present-day meaning and use of *fair trial* is no more than 150 years old. However, it is without doubt that the concept of fair trial traverses almost all European jurisdictions, although the ingredients of such concept may vary from one jurisdiction to another.

The paper did not analyze the principles of fair trial, talk less of fair hearing. In the same vein, the paper does not consider disciplinary procedure under administrative law and how same can be gauged. This research work analyzed the applicability of fair hearing in administrative law even if the function exercised is purely administrative and how same may be mandatorily exercised in compliance with the principles of natural justice.

⁴⁸ Ian L. (2009), Fair Trial: The History of an Idea, Journal of Human Rights, 8:1 37-52

The Principles of Natural Justice in Public Administration and Administrative Law⁴⁹

The article is a very short one. It is confined to: (a) those administrative actions linked directly to adjudication; and (b) administrative adjudication can be defined as judicial decision that is derived from the existence and application of enabling provisions, that is, that statutory provisions in terms of which the legislature delegates powers to a person or body⁵⁰.

The paper opined that the principles of fair hearing also apply to public administration so long as the administrative body has power to adjudicate on the issue. The two main maxims were highlighted, i.e. The principles of *nemo debet esse judex in causa propria sua* and *audi alteram partem* principle (rule). Some of the elements of the maxims were highlighted.

The paper did not however relate to disciplinary procedure in civil service either generally, or in relation to any particular code. In the absence of the above, and the fact that no case law was cited to buttress the points relied upon, there is, therefore, a huge gap that can only be addressed by a research of this nature. This research work filled this gap by not only considering decided cases on the area, but also by buttressing the point that fair hearing applies in to administrative law so long as an administrative decision has the tendency to adversely affect the civil rights and obligations of an individual.

Principles of Natural Justice⁵¹

'Natural Justice' is an expression of English Common Law. In one of the English decisions, *Local Government Board v. Arlidge*⁵², Viscount Haldane observed,

...those whose duty it is to decide must act judicially. They must deal with the question referred to them without bias and they must give to each of the parties

⁴⁹ Marume. S.B.M, et. al. (2016) The Principles of natural justice in public administration and administrative law. International Journal of Business and Management Invention, Volume 5 Issue 1. PP-22-24 Also available at www.ijbmi.org

⁵⁰ *ibid*

⁵¹ Justice Brijesh K. (1995) Principles of Natural Justice: J.T.R.I Issue 3.

⁵² (1915) AC 120 (138) HL

the opportunity of adequately presenting the case made. The decision must come to the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice.

The paper argued the principles of natural justice were made reference to since the 5th Century, and has a universal appeal to jurisdictions. Examples of cases in which judicial and quasi judicial proceedings that were vitiated by reason of non-compliance with the principles of natural justice were copiously referred to.

The paper finds that initially the principles of natural justice used to be applied to courts of law alone, but later on from judicial sphere it extended to the tribunals exercising quasi-judicial functions and then to the statutory authorities and the administrative authorities, who have upon them, the responsibility of determining civil rights or obligations of the people.

This paper is generic, in that it looks at principles of natural justice from criminal, civil, judicial, quasi-judicial and even administrative perspectives. However, attention has not been given to the application of the principles of natural justice to disciplinary proceedings in the Civil Service. This research is going to remedy this omission by looking at the disciplinary proceedings under the Kano State Civil Service Rules, 2004.

Principles of Natural Justice⁵³

The paper is divided into 4 segments, i.e. the Principle and its Essential Elements, How the Name Came, How it Developed Over the Years, and How and Where it has to be Applied.

The principles of natural justice have no universally accepted definition. During the earlier days, the expression “Natural Justice” was often used interchangeably with the expression natural Law, but in the recent times a restricted meaning has been given to describe certain rules of

⁵³ Justice T.S.Sivagnanam; being a Lecture delivered at Tamil Nadu State Judicial Academy on 01.06.2009 to the newly recruited Civil Judges (JR Division) during Induction Programme 2009

Judicial Procedure.⁵⁴ However, no man shall be Judge in his own cause and both sides shall be heard, or *audi alteram partem* have been held to be the essential elements of the doctrine. An attempt was made by the paper to trace how the principle got its name, and how it was applied by the courts. The aim was to get the target audience, the newly appointed judges to appreciate the fact that any case brought before them had to be decided based on the admissible evidence, and no preconceived verdict should influence the outcome.

The focus of the paper is on judicial determination of cases. Attention has not been given to application of the principles of natural justice to disciplinary proceedings in the civil service. This research, by appraising the Kano State Civil Service Rules 2004, vis a vis the right to fair hearing with a strong position that fair hearing must manifest on all stages of disciplinary proceedings is an attempt to fill this literature gap.

1.9 Organizational layout

The research is divided into five chapters as follows:

Chapter One contains Background of the Study, Statement of the Problem, Research Questions, Aim and Objectives, Justification, Research Methodology, Scope and Limitations, Literature Review and Organizational Layout.

Chapter Two contains the Conceptual Framework which deals with the several introductory issues related to the research ranging from the meaning, evolution and elements of the principles of fair hearing and its applicability to all types of proceedings. The chapter notes that there are general and specific requirements of fair hearing.

⁵⁴ Justice T.S.Sivagnanam; being a Lecture delivered at Tamil Nadu State Judicial Academy on 01.06.2009 to the newly recruited Civil Judges (JR Division) during Induction Programme 2009 p.2

Chapter Three dwells on the concept of discipline, the need for discipline in an organization, requirements of fair hearing in disciplinary proceedings, classification of acts subject to disciplinary actions under the Kano State Civil Service Rules and the applicable punishments.

Chapter Four conducted a constitutional study of the disciplinary procedure under the Kano State Civil Service Rules, 2004 with the main aim of seeing how the procedure complies with or breaches the principles of fair hearing as guaranteed by the Constitution. This chapter looks his chapter contains the searcher's main contributions because it has identified the major areas of compliance, partial breach and total non-compliance with the constitutionally and judicially recognized principles of right to fair hearing in general, and fair hearing in administrative disciplinary proceedings in particular. This will be of some help to students of Constitutional and Administrative Law.

Chapter Five contains the summary of the relevant issues, major findings, conclusions and recommendations, which may guide Kano State Civil Service Commission to amend its Rules and bring it in line with the 1999 Constitution of the Federal Republic of Nigeria (as amended).

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS OF RELEVANT TERMS

2.1 Introduction

This chapter is mainly introductory and seeks to expound the principles of fair hearing. An attempt is made to trace the historical development of the concept, having a look at enactments and case law. The concept applies to all kinds of proceedings, as it has now assumed a constitutional flavour. In a quest to properly evaluate the concept, the general and specific provisions on the right to fair hearing will be identified, with a view to giving the reader a fair idea of how wide the concept is, and how it applies to various types of proceedings. Towards the end of the chapter, the fundamental nature of the concept, as well as the effect of any proceedings conducted in breach of it will be analyzed.

2.2 Justice, Administrative Law, Quasi-Judicial Administrative Tribunals and Need for Fair Hearing

Fair treatment, justice and freedom are not just desired by mankind, but are fundamental to human existence the world over.¹ Issues on social interaction, equality, fairness and rights are therefore *sine qua none* to human survival.² To promote and maintain a successful scheme of justice requires the promotion of sense of obligation as well as appetite for rights, especially when this leads to liberties.³

Administrative law is a branch of law that deals with the powers of the Administrative authorities, the manner in which powers are exercised and the remedies which are available to

¹ Blessing E., Nsikan S., & Emmanuel A. Criminal Justice System in Nigeria: An Appraisal of Fair Hearing and Related Issues. International Journal of Social Sciences. Vol. 12, No. 1, January – March, 2018 p. 172

² *ibid*

³ *ibid*

the aggrieved persons, when those powers are abused by administrative authorities. According to Fox,⁴ in the broadest sense, administrative law involves the study of how those parts of our system of government that are neither legislatures nor courts make decisions. These entities, referred to as administrative agencies, are normally located in the executive branch of government and are usually charged with the day-to-day details of governing.⁵ Agencies are created and assigned specific tasks by the legislature. The agencies carry out these tasks by making decisions of various sorts and supervising the procedures by which the decisions are carried out.⁶ Agencies make a great deal of policy within the boundaries of their enabling acts. Within the boundaries of their administrative procedure act, they also establish procedures for efficient and fair decision-making.⁷

Administrative law governs agency decisions to grant licenses, administer benefits, conduct investigations, enforce laws, impose sanctions, award government contracts, collect information, hire employees, and make still further rules and regulations. Administrative powers are exercised by the ministers,⁸ officers and parastatals under them. Some federal administrative bodies in Nigeria are established by section 153 (1) of the Constitution,⁹ while the remaining administrative bodies are established by statutes passed by the Nigerian legislatures pursuant to their legislative powers.¹⁰ Although they are not, strictly speaking, courts of law, there are instances that persons exercising ministerial functions do make decisions that affect the civil rights and obligations of citizens. In the discharge of their statutory functions, public officials

⁴ William F., *Understanding Administrative Law* 4th edition (2000) LexisNexis, San Francisco, p. 1

⁵ *ibid*

⁶ *ibid*

⁷ *Ibid*

⁸ Section 147(1), 1999 Constitution of the Federal Republic of Nigeria (as amended); similar provision is made under section 192(1).

⁹ 1999 Constitution of the Federal Republic of Nigeria (as amended); Section 197 (1), 1999 Constitution of the Federal Republic Of Nigeria (as amended) in respect of state bodies

¹⁰ Section 4(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

make decisions that affect the lives of citizens. This means that these public officials have to act fairly in the exercise of their functions. Customs, Immigration, licensing and other officers are invested with considerable amount of the discretion in the exercise of their functions. It is submitted that judicial enquiry into procedural fairness of decisions of administrative bodies had in the 19th Century, become an important tool in controlling the discretionary power of government.¹¹

The concept of procedural fairness need not be restricted in application to near-adjudicative processes. This was clarified by Dickson J.'s statement in *M.N.R. v. Coopers & Lybrand* as follows:¹²

Administrative decision does not lend itself to rigid classification of function. Instead, one finds realistically a continuum. As paradigms, at one end of the spectrum are rent tribunals, labour boards and the like, the decisions of which are eligible for judicial review. At the other end are such matters as the appointment of the head of a Crown corporation, or the decision to purchase a battleship, determinations inappropriate to judicial intervention. The examples at either end of the spectrum are easy to resolve, but as one approaches the middle the task becomes less so.¹³

The question has always been that has the authority exercised its function *ultra vires*, in bad faith, unreasonably, or against the rules of natural justice in such a way that the civil rights or obligations of a citizen are adversely affected? If the answer is in the affirmative, the courts are

¹¹Marshaw, Jerry L., (2011) "Rethinking Judicial Review of Administrative Action: A Nineteenth Century Perspective" Faculty Scholarship Series 4662 See also Harold W., (1965) Development of Scope of Review in Judicial Review of Administrative Action: Mandamus and Review of Discretion, 33 Fordham L. Rev. 359 p. 359. <https://ir.lawnet.fordham.edu/flr/vol33/iss3/1>

¹² *M.N.R. v. Coopers & Lybrand* [1979] 1 S.C.R.495

¹³See also Macdonald R. (1980) Judicial Review and Procedural Fairness in Administrative Law: I; McGill Law Journal P. 548

willing to intervene to protect a complainant having some right or even legitimate expectation in which case it will not be fair to deprive him without a hearing.¹⁴ The English case of *R v Gaming Board, ex parte Beniam*¹⁵ offers a classical exposition. Crockfords was one of the famous clubs in London. It sought a certificate to enable it to apply for a gaming license. The Gaming Board refused their consent, and refused to disclose their reason for so doing, despite repeated demands. The Board submitted that it could grant or refuse gaming license as it pleased. According to it, being a body exercising purely administrative functions, just like Board of Trade which grant industrial development certificate or the Television Authority which award television program contracts, they were not bound to observe the rules of natural justice. Relying on several cases like *Kanda v Government of Malaya*¹⁶ and *Ridge v Baldwin*,¹⁷ Lord Denning M.R held that the Board, although charged with purely administrative function, was bound to observe the rules of natural justice. In the case of immigrants, it has been held that though they have no right to come in; they have the right to be heard.

This was eloquently put by Lord Parker, the Lord Chief Justice in *Re H.K (An Infant)*¹⁸, at p. 630

Even if an immigration officer is not in a quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the subsection, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. This is not as I see it, a question of acting or being required to act judicially, but being required to act fairly.

¹⁴ Chigozie N., (2006) The Role of Fair Hearing in the dispensation of Justice in Nigeria- A Legal Perspective. International Journal of Innovative Legal & Political Studies 4(4) p.4; Edeko S., (2011) The Protection of the Right to Fair Hearing in Nigeria. Sacha Journal of Human Rights, Volume 1 Number 1 p. 74; Schmidt V Secretary of State for Home Affairs (1969) 2 Ch. p.149

¹⁵ (1970) 2 Q.B p.417

¹⁶ (1962) A.C p.322

¹⁷ (1964) A.C p.40

¹⁸ (1967) 2 Q.B p.617

This duty on administrative bodies to act fairly is a convenient principle that mandates public officers to ensure that before reaching any decision or exercising any public function, they must act fairly, by giving the parties an opportunity to be heard, and basing their decision on the presentations made. In the Nigerian case of the *Chairman of the Board of Inland Revenue v Joseph*,¹⁹ the appellants' main grouse with the directive to pay £ 2,520 and penalty for two years' default was that the Board had not given them the statutory notice in writing requesting them to, within the prescribed time, deliver a return of income. The Supreme Court in invalidating the Board's action, held that in the spirit of fairness and Section 47(1) of the Income Tax Ordinance, the appellants' could only be expected to pay after the expiration of the statutory notice giving them time to make representation.

In *WAEC v Akinwunmi*,²⁰ the applicant enrolled as an external student to sit for the Senior School Certificate Examination in one of the secondary schools in Lagos State. He passed the examinations and got a provisional statement of result with which he was admitted to the University of Ilorin. The respondent thereafter conducted an investigation which revealed that there was massive examination fraud in the school and the results were therefore cancelled. The plaintiff therefore applied for leave of the High Court of Lagos under section 46(1) and (2) of the 1999 Constitution and Order 1, rules (2) and (3) of the Fundamental Rights (Enforcement Procedure) Rules, 1979 to apply for enforcement of his fundamental right to fair hearing. Leave was granted and the applicant by motion on notice prayed the court for a declaration that the cancellation of his result obtained in May/June 1992 Senior School Certificate Examination by the respondent was illegal, unconstitutional and violates his right to fair hearing, orders quashing

¹⁹ 1962 All N.L.R 1. See *R v. Kent Police Authority, Ex Parte Godden* (1971) 2 QB 662, *Alakija v Medical Disciplinary Committee* (1959) 4 FSC., *LPDT v Idowu* (1971) All NLR pt 7, p. 300 S.C,

²⁰ (2002) 7 NWLR pt. 327 C.A. see also *Onagoruwa v JAMB* (2001) 10 NWLR pt. 722, *WAEC v Mbalamu* (1992) 3 NWLR 583 pt. 230, p. 481 CA

the decision of the respondent to cancel the result and compelling the respondent to issue the applicant a certificate based on the said results and to furnish the Admissions Office of University of Ilorin with the purportedly cancelled results. The trial court granted the application. Aggrieved, the respondent appealed to the Court of Appeal and Supreme Court where its appeal was dismissed.

Some arguments were proffered in support of administrative adjudication to include speed, economy, expertise,²¹ fast hearing, and implementation of government policy and simplicity of procedure.²² Some criticisms against administrative adjudication as voiced by some authors and the courts include inadequate knowledge of the law,²³ loyalty to government,²⁴ inadequate observance of legal procedure,²⁵ secrecy of sitting²⁶ and application of draconian laws.²⁷

Loren A. Smith, in his criticism of judicialisation of administrative law opined that the fallacy is that we can make social and economic decisions by means of formal processes and legal procedures without the exercise of political will.²⁸ We have come to believe that public hearings, public disclosure of all documents relevant to a given issue, and trial-type methodologies for testing ideas will lead to "better" social and economic policies by government decision makers having power over large sections of the economic and social life of the nation.²⁹ This attitude leads to an excessive focus on the process rather than the substance of governmental decisions. It is a fallacy that diverts us from the recognition that a government's decisions must ultimately be

²¹ Per Lord Wilberforce in *Anisminic v Compensation Commission* (1969) 2 WLR 163 at 203

²² Malemi, E. (2012) *Nigerian Constitutional Law*, Princeton Publishing Company Lagos. P 333-4

²³ *ibid* p. 336

²⁴ Per Oputa JSC in *FCSC v Laoye* (1989) 2 NWLR pt. 106 p. 265 at 708

²⁵ *Ibid* p. 705

²⁶ *Ibid* p. 714

²⁷ *Iffie v A.G Bendel State* (1987) 4 NWLR pt. 67 p. 972 CA

²⁸ Loren A., (1985) *Judicialization: The Twilight of Administrative Law*. Duke Law Journal Vol. 4 p. 429

²⁹ Loren A., (1985). *Judicialization: The Twilight of Administrative Law*. Duke Law Journal Vol. 4 p. 429

judged by the values embodied in that government's constitutional mandate-that is, by moral values derived from the society's culture and traditions.³⁰

While involvement of the administrative agency at so many levels may raise the hackles of some sort, the courts generally hold that this combination of adjudicative, investigative, and prosecutorial functions in an agency is not a violation of due process.³¹ Bias must be demonstrated before a court will find a violation. As some American courts reiterated the law, the mere combination of adjudicative and investigative powers in one agency, without more, would not be viewed by a reasonably prudent and disinterested observer as denying any party a fair, impartial, and neutral hearing.³²

For ease of administration, administrative bodies do act either judicially or quasi judicially by determining questions of facts submitted to them for adjudication. According to Professor Ben Nwabueze, it is often necessary under modern practice of government to enable administrative authorities to decide matters of a judicial or quasi-judicial nature.³³

The Supreme Court settled the question of what constitutes a judicial tribunal, quasi judicial tribunal, a domestic tribunal in the *LPDC v Fawehimi* in the following words:

The debate over what constitutes a judicial tribunal, quasi judicial tribunal, a domestic tribunal, a tribunal *simpliciter*, *abitrament*, *forum conpetens*, etc. will certainly go on as an academic exercise ; but once a body of persons by whatever name called, are invested with 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 a statute, such a body will

³⁰ *ibid*

³¹ Jeff B. and Christal W., (2004).The Building and Maintenance of "Ethics Walls" in Administrative Adjudicatory Proceedings, Journal of the National Association of Administrative Law Judiciary. Vol 24, Issue 1. P. 3

³² *Ibid*

³³ Nwabueze B., Constitutional Laws of the Nigerian Republic (London, Butterworth, 1964) pp.390-391

be required to carry out its functions with that fairness and impartiality, which the rules of natural justice dictate. Therefore, the Legal Practitioners Disciplinary Committee which exercises, under the Legal Practitioners Act of 1975, the important function of considering and determining cases of misconduct alleged against legal practitioners, should in every step they take in this important sphere of human activity is guided by the important principles of eternal or natural justice. This seems to be fair enough.³⁴

Despite the fact that they are not regular courts, section 36(2)³⁵ confers on government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -

- (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; and
- (b) contains no provision making the determination of the administering authority final and conclusive.

It is obvious that the most important point is that the tribunal must be vested with power to listen to a case, evaluate evidence and make findings and arrive at a decision before it can be said to operate judicially or quasi-judicially.³⁶

Administrative bodies or tribunals exercising judicial/quasi judicial function subject to published rules of the agency may administer oaths and affirmations, issue subpoenas authorized by law, rule on offers of proof and receive relevant evidence, take depositions or have depositions taken

³⁴ (1985) 1 NWLR pt. 7 p. 300 at p. 364

³⁵ 1999 Constitution of the Federal Republic of Nigeria (as amended)

³⁶ Fred. A. (2007) Defining the Limits Employer's Disciplinary Powers in Industrial Relations: Labour Law Review. N.J.L.I.R Vol. 1 No 1 (3) p. 18

when the ends of justice would be served, regulate the course of the hearing, hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution, inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods, dispose of procedural requests or similar matters, make or recommend decisions and take other action authorized by agency rule.³⁷

2.3 The Concept of Fair Hearing

The concept of fair hearing is one of the most well-known principles in the administration of justice, and in fact one of the most important among the fundamental rights enshrined in the various constitutions. Fair hearing is the bedrock of any judicial system as there can be no talk of justice without fair hearing. Fairly certain, however, is that it is difficult to offer a holistic and universally accepted definition of the term. In this work, we shall try only to identify the ingredients of the concept, the observance of which will ensure procedural fairness to parties and some level of certainty in the administration of justice. As we shall see in this Chapter, fair hearing is easily distinguishable from the concept of natural justice. Although the two are erroneously confused, natural justice consist of the twin principles of rule against bias and right to be heard while fair hearing consists of numerous principles that are not exhaustive. Any principle that will ensure that parties to an action are treated fairly can be conveniently brought under the umbrella of fair hearing. Thus, it can be said that natural justice is just one particular aspect of fair hearing.

It is observed that the concept of fair hearing is a fundamental right which has been entrenched in almost all Nigerian Constitutions. In Nigeria, even before independence in 1960, we had

³⁷ Daniel F., (2011). Summary of Administrative Law Judge Responsibilities, Journal of the National Association of Administrative Law Judiciary, p. 477

various constitutions. Nigeria attaining independence in 1960 had the Nigeria (Constitution) Order-In-Council 1960. Section 21 of that particular Constitution dealt with the right to fair hearing. Under the 1963 Constitution of the Federal Republic of Nigeria, provisions for fair hearing in Section 22 were put under the heading of ‘Determination of Rights’. It was not until the 1979 Constitution that these rights were put under the significant side note of ‘Right to fair hearing’. The provision for fair hearing became more comprehensive than those in previous Constitutions. The fair hearing provisions in the 1999 Constitution of the Federal Republic of Nigeria (as amended) are more comprehensive than those in the 1979 constitution.³⁸

However, none of the Constitutions has defined it, and no case law has offered a comprehensive elucidation of the concept. Morgan, C.J.N observed in *Whyte V Police*:³⁹

There is no definition in the constitution as to what constitutes a fair hearing within the meaning of Section 22 (1963) and it is difficult, perhaps impossible to give a comprehensive definition that will cover all cases.

From available legal authorities, fair hearing and fair trial are synonymous. In *Muhammed V Kano Native Authority*⁴⁰, counsel for the defense contended that there is a difference between fair hearing and fair trial. In rejecting this submission, the Supreme Court held inter alia;

It has been suggested that a fair hearing does not mean a fair trial. We think a fair hearing must involve a fair trial and a fair trial of a case consists of the whole hearing. We therefore see no difference between the two.

The attributes of fair hearing presuppose that the court or tribunal shall hear both sides not only in the case but also in all material issues before arriving at a decision which may be prejudicial to

³⁸ Roland Otaru Esq., Access to Justice and Right to Fair Hearing; being a lecture delivered at the Nigerian Institute of Advanced Legal Studies on 2nd day of December, 2010). P. 5

³⁹ (1966) (S.C.N) N.M.L.R 215 at 216

⁴⁰ (1968) All N.L.R p. 424 at p. 426

any party in the case. The court shall give equal treatment, opportunity and consideration to all concerned. Accordingly, natural justice demands that a party must be heard before the case against him is determined.⁴¹

2.4 Scope of Fair Hearing

The requirements for fair hearing are provided for under section 36 (1-2) of the Constitution of the Federal Republic of Nigeria. Section 36(1)⁴² provides 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”. A person charged with a criminal offence shall be entitled to a public hearing within reasonable time⁴³. By Section 36 (5),⁴⁴ a person charged with a criminal offence shall be presumed innocent. Section 36 (6)-12⁴⁵ made specific provisions concerning the fundamental rights of an accused person during criminal trial as follows:

(6) 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

⁴¹ See generally, the recent Supreme Court authorities of *Alabi v Lawal* (2004) 2 NWLR (pt. 856) 134; *Adeyemi v State* [2015] All FWLR (pt. 790) 1201 S.C

⁴² Constitution of the Federal Republic of Nigeria (1999) as amended

⁴³ *Ibid* Section 36 (4)

⁴⁴ *ibid*

⁴⁵ *ibid*

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.

(7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any persons authorized by him in that behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed

in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

Flowing from the above, the Constitution has mandated courts of law and tribunals to strictly adhere to the principles of fair hearing in civil, criminal and administrative hearing.

Pursuant to its mandate under Article 45(c) of the African Charter on Human and Peoples' Rights (the Charter) "to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African states may base their legislation", the African Union, through its Africa Commission on Human and Peoples' Rights has issued Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. The Principles apply to administrative, civil, criminal, and military proceedings. Article 1 (h) states that one of the essential elements of a fair hearing is an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the judicial body.

The principles of fair hearing under the Nigerian law can be classified as general and specific requirements of fair hearing.

2.5 Provisions on Right to Fair Hearing that Apply to Quasi-Judicial Administrative Proceedings

Section 36 (1)⁴⁶ provide that any court of law, whether exercising civil or criminal jurisdiction so long as they relate to the determination of the civil rights and obligations of a person or against a government or authority, must give parties fair hearing within a reasonable time, in such a manner as to secure its independence. The section goes ahead to empower governments or other authorities power to determine questions arising in the determination of a law which may affect a

⁴⁶ The 1999 Constitution of the Federal Republic of Nigeria (as amended)

person's right and obligations. These requirements also apply to tribunals exercising quasi judicial functions that may affect the civil rights and obligations of persons affected. The only conditions for this exercise are that the tribunal must allow parties to make representations before it can take any decision adverse to any of them, and that its decisions must not be final. The following are the general requirements of fair hearing under the constitution:

1. audi alteram partem (hear the other side or the rule of fair hearing or the rule that no one should be condemned unheard.
2. Nemo judex in causa sua (the rule against bias)
3. The hearing must be within reasonable time

It is true that the rule of natural justice restricts the freedom of administrative action and that their observance costs certain amount of time and money.⁴⁷ But time and money are more likely to be well spent if they tend to reduce friction in the machinery of government, and it is more likely because they are essentially rules for upholding fairness and to reduce grievances that the rules of natural justice can be said to promote efficiency.⁴⁸ The courts do not let them run riot, and keep in touch with the standards of good administration. Any decision which is made without bias and with prior and proper consideration of the views of those affected by it will also be of better quality. Justice and efficiency go hand in hand.⁴⁹

The first two are also requirements of the principles of natural justice. For the purpose of clarity, we shall discuss each of the requirements in greater detail.

2.5.1 Audi alteram partem (Hear the other side or the rule of fair hearing or the rule that no one should be condemned unheard).

⁴⁷ Akshaya G. & Dhivya R. (2018): Principles of Fair Hearing with Respect to Rules of Natural Justice under Article 14 and 21 of the Constitution. International Journal of Pure and Applied Mathematics, Volume 120 No. 5 p. 2106

⁴⁸ ibid

⁴⁹ ibid

This principle imposes an obligation on any deciding authority to hear all the parties to a case.

This was succinctly put by Lord Hudson in *Ridge V Baldwin* ⁵⁰

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 or misconduct, and (3) the right to be heard in answer to those charges.

In the case of *Baba V Nigerian Civil Aviation Training Centre*,⁵¹ the Supreme Court identified the standards of hear-the-other-side before any judicial or quasi-judicial body. For the hearing to be fair, the person affected must;

- a. Be present all through the proceedings and hear all evidence against him;
- b. Cross-examine or otherwise confront or contradict all the witnesses that testified against him;
- c. Have disclosed to him the nature of all relevant material evidence, including real evidence prejudicial to the party, save in recognized exceptions;
- d. Have read before him all the documents tendered in evidence at the hearing;
- e. Know the case he has to meet at the hearing and have the adequate opportunity to prepare for his defense; and
- f. To give evidence by him, call witness if he likes, and make oral submissions either personally or through a counsel of his own choice.⁵²

In his famous article Friendly, discussed the major indicators of fair hearing in quasi-judicial administrative proceedings⁵³ to include unbiased tribunal, notice of the proposed action and the

⁵⁰ (1963) 2 All ER 63

⁵¹ (1991) 7 SCNJ 1

⁵² Michael A. Millemann, Prison Disciplinary Hearings and Procedural Due Process - the Requirement of a Full Administrative Hearing, 31 Md. L. Rev. 27 (1971) pp. 51-52

⁵³ Friendly H., (1975). Some Kind of Hearing. University of Pennsylvania Law Review, Vol. 123.pp.1280-1295

grounds asserted for it,⁵⁴ an opportunity to present reasons why the proposed action should not be taken,⁵⁵ the rights to call witnesses, to know the evidence against one, and to have decision based only on the evidence presented, right to be represented by legal practitioner,⁵⁶ the making of a record and a statement of reasons,⁵⁷

We shall now have a look at the features *Audi alteram partem* in any civil, criminal or administrative quasi-judicial proceedings.

2.5.1A to be present all through the proceedings and hear all the evidence against him

Hearing cannot be said to be fair if it is conducted secretly, and the parties concerned do not have notice of what transpired at the hearing. The rationale for this rule, obviously, is that a party will not have adequate knowledge of the nature of the case against him if he was not opportune to be at the hearing, or given access to the records. Denial of this will be unfair and a breach of right to fair hearing.

In *Denloye V Medical and Dental Practitioners Disciplinary Tribunal*,⁵⁸ the sole issue was whether the Medical and Dental Practitioner's Investigation Panel denied the appellant a fair hearing. The Panel met and received evidence from certain persons but neither the appellant nor his witnesses were called at the meeting. The appellant was subsequently summoned to appear before the panel. Evidence taken prior to this date was not made available to him or his counsel and when the counsel asked for it, the Chairman of the panel refused to produce it. He stated categorically that they were confidential and for the exclusive use of the Panel. In the circumstances of the case, the court set aside the decision of the Panel. The court held that the procedure adopted by the panel was unknown to law as the panel had deprived the appellant of

⁵⁴ Friendly H., (1975) Some Kind of Hearing. University of Pennsylvania Law Review: Vol. 123. p. 1280

⁵⁵ Ibid, p 1281

⁵⁶ Ibid p. 1287

⁵⁷ Ibid p. 1291

⁵⁸ (1986) 1 All E.R

his right to be present at the hearing and did not make available evidence taken against him in his absence or his counsel despite repeated demands.

2.5.1B to cross-examine or otherwise confront or contradict all the witnesses that testified against him

In *Denloye's* case,⁵⁹ it was held that the Panel breached the appellant's right to fair hearing because it did not permit the appellant to cross-examine the witnesses that testified in his absence, despite repeated demands.

In the case of *Garba V University of Maiduguri*⁶⁰, Oputa JSC eloquently explained the relevance of this point in the following words:

“To constitute a fair hearing whether it be before the regular courts or before tribunals and Boards of inquiry, the person accuse should know what is alleged against him; should be present when any evidence against him is tendered and should be given fair opportunity to correct or contradict such evidence. How else is this done if it be not by cross-examination?”

2.5.1C to have read before him all the documents tendered in evidence at the hearing

Part of the evidence to be considered in a case in some instances, are documents tendered in support of allegations from parties. If a party does not have access to those documents, it will difficult for him to have a true picture of the case, let alone to know how to prepare his own case. Galadima JCA in *Nwanegbo v. Major Oluwole & Anor*,⁶¹ observed that in any judicial inquiry, hearing or opportunity to be heard in order to be fair must include the right of the person to be

⁵⁹ Supra note 86

⁶⁰ (1986) 1 NWLR 550

⁶¹ (2001) 37 LRN 101. See also *R v Director of Audit (Western Region) & Anor*, Ex Parte Oputa & Ors, (1961) All NLR 659

affected to, among other things have read before him the nature of all relevant material evidence including documentary and real evidence prejudicial to the party.

2.5.1D 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.

It is a general requirement of fair hearing that the persons likely to be directly affected by a proposed administrative act, decision or proceedings be given adequate notice thereof. This will afford him the opportunity to prepare for the case he is going to meet, and have the chance to come up with adequate defense.

Similarly, in *Aiyetan V Nigerian Institute for Oil Palm Research*,⁶² the appellant, an employee of the respondent, a statutory corporation was invited before a Board of Enquiry as a witness to testify on the loss of some money with which a fellow employee absconded. The appellant testified as a witness and gave useful suggestions in regard to how such an occurrence could be avoided in future. The respondent later dismissed the appellant from his employment on the ground that the Board found him guilty of negligence. The Supreme Court held his dismissal to be a serious and fatal breach of the rules of natural justice since there was nothing on the face of the invitation which could have given the appellant the notion that that he was in the line of fire, or that his conduct was to be probed particularly as he must have felt that he had been discharged and acquitted by a court. The appellant was not informed of the case against him or given an opportunity to defend himself as he had been invited to testify to the loss of money, not to his role in the loss. The exchanges between him and the Board of Enquiry were no more than could be expected between mere witnesses, which the appellant was.

⁶² (1987) 6 S.C.N.J. 36 see also *Adedeji V Police Service Commission* (1965) N.M.L.R

2.5.1E Legal representation

Generally, in any judicial proceeding, a person who is entitled to appear is also entitled to be represented by a counsel. This applies not only to a court of law *strictu sensu*, but also to proceedings of statutory tribunals except there is an express or implied provision to the contrary.⁶³ In criminal trials, as we shall see later, the right to counsel is absolute. It should be noted that the right to counsel is different from the right to make presentations.⁶⁴ We shall dwell on this in the next segment of this Chapter.

2.5.1F Right to make representations

All parties to a case must be given equal opportunity to make representations to establish their respective cases. This could be orally or in writing. The right to make written representations is a requirement to be observed by administrative bodies under the disciplinary procedure.⁶⁵ *In R V Director of Audit (Western Region) & Anor, Ex Parte Oputa & Ors*⁶⁶, the Supreme Court held that there had been no breach of the principles of natural justice since the appellant had been given the opportunity to make written representations (which they availed themselves of) to the minister before he made his decision.

2.5.1G Reasoned decision and appeal

It is difficult to know the rationale behind a decision if the deciding body fails to disclose its reasons for the decision. In *Mogaji V Odofin*,⁶⁷ the Supreme Court held that in deciding whether

⁶³ Muhammed, H., (1986.) Concept of Fair Hearing Under the Nigerian Law, being an unpublished thesis submitted to the Faculty of Law, Ahmadu Bello University Zaria, in partial fulfillment for the award of LLM, P. 82 similarly, Friendly, in Friendly H., (1975) Some Kind of Hearing: University of Pennsylvania Law Review: Vol. 123: at p. 1287 perceived no difference between a capital case and the suspension of a welfare allowance, except that in the latter the government was not required to provide counsel. He argued that by appearing in administrative hearings, counsel will assist in bringing out unknown or ignored facts, help to arrive at a compromise, among others. The exception according him is in prison administrative hearings in which legal counsel has been excluded.

⁶⁴ Ibid, p. 83

⁶⁵ See for instance, Rule 030302 of the Federal Government Service Rules, 2014

⁶⁶ (1961) All NLR 659

⁶⁷ (1978) S.C 91

a certain set of facts have been established, the trial judge must consider both sides and their evidence, put them in an imaginary scale, one against the other, then decide which one, on the preponderance of evidence, is more preferable, and then apply the applicable law. Even in the case of administrative bodies, their decisions must be supported with reasons. If administrative bodies are allowed to reach conclusions based on the whims and caprices of their members, it will be difficult to know if the decision was arrived at in good faith courts of law have the power to review the decisions of a minister if it can be shown that he took into consideration extraneous matters, or he ignored relevant evidence. In *Padfield V Minister of Agriculture and Fisheries*,⁶⁸ Lord Denning rejected the submission that the minister was under no obligation to disclose his reasons for refusing to investigate certain complaints brought to him by some farmers. He said:

If the minister is to deny the complainant a hearing, he should at least have good reasons for his refusal. If he does not do so, the court may infer that he has no good reason and mandamus would issue against him.

This decision was upheld by the House of Lords.

The Nigerian legal system recognizes a system of courts from the Supreme Court downwards.⁶⁹

A litigant who is not satisfied with the decision of a court has the constitutional right to appeal the decision, to have the decision scrutinized. If it stands, the test of law and justice, it will be affirmed. Otherwise, it will be quashed, substituted, or a rehearing be ordered.

In Nigeria, section 36 (2) (b) of the Constitution⁷⁰ provides that the decisions of any administering body must not be held to be final and conclusive. An aggrieved party can therefore

⁶⁸ (1968) A.C 997

⁶⁹ See generally, Chapter VII of the 1999 Constitution of the Federal Republic of Nigeria, (as amended), the High Court, Magistrates, Shari'a, Area and Customary Court Laws of the various states and Abuja

⁷⁰ Ibid

seek for judicial review of the decision with a view to seeing the level of its compliance with the extant laws.

2.5.2 *Nemo Judex in Causa Sua (The Rule Against Bias)*

The second general requirement of fair hearing is that the judge or umpire must not have any direct financial or proprietary interest in the outcome of the proceedings, and must not be reasonably suspected to show a real likelihood of bias.⁷¹ It is essential that a court or tribunal must be completely detached from any of the parties to the case, to have a fair view of the evidence adduced, and pass judgment based on the established facts. In *Garba V University of Maiduguri*,⁷² the principle was clearly applied. The appellants were students of various disciplines in University of Maiduguri, the respondent, before their expulsion from the said institution with effect from 30th day of March, 1983. Their expulsion was sequel to riotous behavior following demonstration, rampage, wanton destruction of properties in the University and assault on persons. Their expulsion was not till after the Senate had considered the reports of the Disciplinary Board and panels set up by the Vice Chancellor. The Chairman of the Panel which tried the students was a victim of the rampage the students were alleged to have committed. The Supreme Court held that a likelihood of bias was discernible since the Deputy Vice Chancellor was not only a witness in the panel, but also a judge at the same time. The Supreme Court established that fair hearing in Nigeria is not only a common law requirement, but a statutory and Constitutional requirement and that when the Deputy Vice Chancellor assumed the disciplinary powers, he became not a court, but a tribunal established by law acting in a quasi-judicial capacity. Thus he had to comply with the constitutional requirements of fair

⁷¹ Marume, S., et. al; (2016) The Principles of Natural Justice in Public Administration and Administrative Law. International Journal of Business and Invention, Vol. 5 issue 1, January, p. 23

⁷² (1986)1 NWLR 550

hearing. The Supreme Court in *Kanon & Ors V Tekam & Ors* ⁷³ defined bias in the following words;

Bias in its ordinary meaning is opinion or feeling in favor of one side in a dispute or argument resulting in the likelihood that the judge so influenced will be unable to hold an even scale.

Some interests that may disqualify a judge from adjudicating over a matter are highlighted by Chigozie⁷⁴ as pecuniary interests,⁷⁵ relationship with a party,⁷⁶ previous participation in the matter,⁷⁷ foreknowledge or previous knowledge of the facts of the case, hobnobbing with a party, unwarranted verbal attack on a party, descending into the arena in support of one side, combining the functions of a judge with that of a prosecutor, witness or other party, inhibiting or denying a party the opportunity to effectively state his case⁷⁸ and personal attitude, hostility, preference or one side inclination of the judge and a host of other interests or circumstances from which the inference or suspicion of a real likelihood of bias may be drawn.

According Finin O'Brien,⁷⁹ possible sources of bias can be grouped under four main categories. The first and most important source of bias is when the umpire has financial interest in the matter, i.e where he has the tendency to benefit from the outcome of the proceedings or he was bribed by a party. Bias may also be inferred from the umpire's personal attitude, relationships or beliefs in the case. The third category is loyalty to an institution which can result in the decision maker being so committed to the objectives or interests of that institution, that they might be

⁷³ (2001) 7 N.S.C.Q.R 147 p 168

⁷⁴ Chigozie N., (2016) The Role of fair Hearing in the Dispensation of Justice in Nigeria- A Legal Perspective. International Journal of Innovative Legal and Political Studies (4)1-10- Oct-Dec 2016 P. 8

⁷⁵ Metropolitan Properties Co. V Lennon (1969) 1 Q.B 577

⁷⁶ Abiola V FRN (1995) 7 NWLR pt 405; Secretary, Iwo Central L.G V Adio (2000) 8 NWLR pt. 667 p 155

⁷⁷ A similar decision was arrived at in Sandy V Hotogua (1952) 14 WACA 18

⁷⁸ Olaye V MDPDT (1997) 5 NWLR pt. 505 at 550 CA

⁷⁹ Finin O'Brien: (2015) *Nemo Juxda in causa sua*: Aspects of the No-Bias Rule of Constitutional Justice in Courts and Administrative Bodies: Irish Journal of legal Studies Vol. 2(2) p. 27

incapable of holding a balance between these objectives and other interests. The last possibility is prior involvement in the case or pre-judgment of the issues.⁸⁰

A party can effectively succeed in overturning a decision on allegation of bias if he can prove that there is likelihood of bias on the part of the umpire. Blackburn J. aptly expounded the rationale for this in *R V Rand*⁸¹ that “it is not only of some importance, but is of fundamental importance that justice should not only be done, but should be seen to be done”.

It was the inference of likelihood of bias that prompted the Supreme Court to nullify the proceedings of the Panel in *Garba v University of Maiduguri*⁸² when it observed that the Chairman and Vice Chairman were themselves victims of the arson and malicious damage which followed in the wake of the rampage. The court said:

They have to be super human to be able to obliterate from their minds their personal plights and to be able to approach their assignment with the impartial objectivity and fairness required of those acting in a judicial or quasi-judicial capacity. Even if they achieved this extra ordinary feat, the appearance of justice having been done by their panel will be seriously compromised. It will ever remain a matter of grave concern in the minds of the appellants and ordinary citizens whether they, the chairman and vice chairman of the Disciplinary Investigation panel, were not biased, for as Lord Hewert, C.J emphasized, ‘justice must not only be done but manifestly and undoubtedly be seen to be done...’

In considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal. The court looks at the

⁸⁰ Finin O’Brien: (2015) *Nemo Judex in causa sua*: Aspects of the No-Bias Rule of Constitutional Justice in Courts and Administrative Bodies: Irish Journal of legal Studies Vol. 2(2) p. 27

⁸¹ (1966) L.R 1 Q.B 230

⁸² Supra note 28

impression, which would be given to other people. Even if he was impartial, if right minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit, and if he sits, his decision cannot stand.⁸³

The standard of impartiality required of full time judges is the same as those required of persons who adjudicate in administrative boards (like Disciplinary Investigation Board).⁸⁴ Establishing that a case is tainted by likelihood of bias requires proof from the party alleging it. He has a duty to produce substantial proof that will lead to the conclusion that the umpire had been influenced by some extraneous matters, and might have been biased.⁸⁵ In this regard, mere vague suspicion of whimsical, capricious and unreasonable people should not be made to constitute proof of such serious complaints.

However, an aggrieved party cannot be heard to complain that because he is not of the same tribe with the members of the bench, he cannot have fair hearing. If such argument is upheld, then a number of trials will be vitiated merely because a party is not satisfied with the ethnic composition of the bench.⁸⁶

2.5.3 The Proceedings must be Conducted and Concluded within Reasonable Time

For hearing to be fair, it must be conducted and concluded within a reasonable time. Reasonable time must mean the period of time which the search for justice, does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to reasonable persons to have been done.

⁸³ See generally the speech of Akpata JSC in *Yabugbe V Commissioner of Police* (1992) 4 NWLR (pt. 234) p. 152 at 174

⁸⁴ *ibid*

⁸⁵ *Ojengbede V Esan & Anor* (2001) 8 N.S.C.Q.R 461

⁸⁶ In *Urugbo V Una* (2002) 16 N.W.L.R (Pt. 792) p 175, the Supreme Court stated that the constitutional provision of fair hearing has no tribal insinuation of the composition of the bench vis-à-vis the tribes of the parties.

In relation to criminal trials, the Supreme Court has identified the following factors as determining whether a trial was conducted within reasonable time:⁸⁷

- a. The length of the delay in the trial;
- b. The reasons given by the prosecution for the delay;
- c. The responsibility of the accused in asserting his rights; and
- d. The prejudice to which the accused person may be exposed.

In the case of *Ozulukenyo & Ors v The State*,⁸⁸ the proceedings took four years. The accused persons, ten in number, testified at the trial. The trial judge was transferred to another judicial division, and was later transferred back, to find it where he left it. He concluded the trial. On appeal, it was held;

- a. That due to affluxion of time, the trial judge could not possibly recollect the evidence given at the trial;
- b. That the trial judge lost track of the facts of the case; and
- c. Consequently, the accused persons were not given a fair trial within a reasonable time.

Conversely, in *Okeke v the State*,⁸⁹ a trial which took six years was not vitiated as being in breach of the accused person's right to have his trial concluded within reasonable time. The main evidence was the accused person's voluntary confessional statements. The accused changed counsel during the trial, and that occasioned some delay, and most of the adjournments were at his instance, or not objected by him. In affirming the conviction, the Supreme Court held that

⁸⁷ *Effiom v State* (1995) 1 N.W.L.R (PT. 373) 575

⁸⁸ (1983) 4 N.C.L.R P. 204

⁸⁹ (2003) 15 NWLR (pt. 842) p. 25

even though the trial took long, the trial judge did not lose track of the facts due to the affluxion of time. The appeal was dismissed.

2.6 Effect of Breach of Fair Hearing

Right to fair hearing is fundamental to proceedings, and being of constitutional importance, it cannot be compromised or whittled down by the court for whatever reason. Any decisions reached consequent to any breach or denial of the rule of fair hearing is tantamount to a nullity, and is liable to be set aside.⁹⁰ The Supreme Court in *First Bank of Nigeria Plc v T.S.A Industries Limited*⁹¹ said

A hearing cannot be said to be fair if any of the parties is refused or denied the opportunity to be heard or present his case... Any judgment or ruling based on a breach of the Constitution will not be allowed to stand on appeal.

Breach of fair hearing in a trial vitiates such proceedings rendering same null and void.⁹² The trial remains invalid even if the person complaining of such breach cannot prove that by reason of such breach, he had suffered any loss. This is because; the proceedings are tracked in the intractable web of nullity, in breach of the Constitution.⁹³ Once it proved that a person's right to fair hearing as guaranteed by the Constitution had been breached, the decision no matter how well conducted would be declared a nullity and is bound to be set aside.⁹⁴

2.7 Conclusion.

This chapter discussed the concept of fair hearing, its meaning, scope and application to civil and criminal proceeding. It has been noted that the concept have general application and specific

⁹⁰ Uzowulo v Akpor [2015] All FWLR pt 763 p. 1954 at 1981

⁹¹ (2010) All FWLR (pt 537) 633

⁹² (2005) All FWLR (Pt. 244) 960; See also Ogundoyin v Adeyemi (2001) FWLR (pt. 58), UBA Ltd. V Achoru (1990) 6 N.W.L.R. (pt. 156) 25, Okafor v Attorney-General, Anambra State (1991) 6 N.W.L.R (pt. 1216)

⁹³ Adra v Govt., Nassarawa State (2015) All FWLR pt. 746 . 70

⁹⁴ Omoniyi v Alabi (2015) All FWLR pt. 744, p. 181 S.C

application. Tracing the history of the concept, it has been observed that the principle of fair trial is of great antiquity. It started as a principle found in the statute books, and then got developed and refined by judicial decisions. Nigeria has now adopted the principle as a constitutional concept, and had made elaborate provisions for its application. Authorities have been cited, which establish that the concept of fair hearing is fundamental and how proceedings conducted in breach of the principles of fair hearing will be void.

CHAPTER THREE

THE CONCEPT OF DISCIPLINE AND THE APPLICATION OF THE RULES OF FAIR HEARING IN DISCIPLINARY PROCEDURES UNDER THE KANO STATE CIVIL SERVICE RULES 2004

3.1 Introduction

This chapter will have a look at discipline and its necessity in the achievement of organizational goal. In this Chapter, we shall see the applicability of the concept of fair hearing to various types of employments. We shall see the various classes of acts or omissions that are sanctioned by the Kano State Civil Service Rules and the applicable sanctions. This, it is believed, will lay a good foundation for our discussion of the observance or otherwise of the concept of fair hearing under the Kano State Civil Service Rules 2004.

3.2 The Concept of Discipline

Discipline refers to conditions of orderliness in which members of an organization conduct themselves with respect of the needs and desires of the organization, subordinating to some extent their own needs and desires. We see discipline as concerned with the imposition of certain restrictions on the behavior of members (employees) of an organization¹. Discipline also refers to punitive actions or measures taken by an organization against erring worker.² It is punishment for wrong-doing by an employee. Discipline has some purposes which include correcting the erred employee, re-directing of staff to the set objectives and preventing future occurrence of such misdeed by either the affected staff, other persons or the victim. It serves as a preventive

¹ McFarland, D.E. (1979): *Management foundations and Practices*. 5th ed. New York: Macmillan pub. Co. Inc p. 15

² ibid

and deterrent measure against diversion of attention and goals. Disciplinary measures are guided by basic principle so as to accomplish its desired purposes.³

According to Osezua,⁴ there are two basic forms of discipline, namely, positive or constructive discipline on the one hand and negative discipline on the other. Positive discipline means the fostering of co-operation and a high level of morale so that the written and unwritten rules and conditions are obeyed willingly by employees. These rules may cover general terms of employment, working hours, communication channels, performance standards, organizational expectations and general employees conduct.⁵ It also embraces good behavior by managers or supervisors, such as good supervision, treating all employees fairly, eschewing bad manners, being helpful and considerate to staff and setting of good examples by not breaking any rule.⁶

Ethical behavior and the prevailing system of employment relations in any work organizations is very crucial for general development, the production of goods and services, both for domestic consumption and international trade or exchange, creation of national wealth, the attainment of political stability and the inclusive benefits of sustainable human developments. In other words, how well organizations adhere to ethical standards, obviously, determines the well-being of all the stakeholders, the organization's productivity and the subsequent profitability, as well as the macroeconomic growth and development of the nation.⁷ It has been observed that teamwork, personal integrity, attitude to work, employee commitment and self discipline are essential to the success of any organization.⁸

³ Idris Sule-Dan (2015) Discipline and Organization Effectiveness: A Study of Nigeria Customs Service. Review of Public Administration and Management. Vol 4 No 8 p. 95-96

⁴ Osezua M., et. al, (2009) Staff Indiscipline and Productivity in the Public Sector in Nigeria: African Research Review (An International Multi- Disciplinary Journal, Ethiopia) p. 462

⁵ ibid

⁶ ibid

⁷ Adeyeye, J.O Aina, S. & Ige A. (2012) Globalization and the Transitional Economy; Impacts and Effects on African Regional Growth. European Journal of Globalization and Development Research, Vol 9 (1) pp. 176-185

⁸ Ibid

Indiscipline, on the other hand, refers to conditions of disorderliness in which members of an organization conduct themselves without respect to the rules and regulations and subordinating their needs and desires to the overall needs of the organization. This manifests itself in a wide range of acts and omissions such as late coming, corruption, insubordination, negligence, disclosure of official secrets, etc. Public/Civil Servants, in contemporary public organizations in Nigeria, exhibit discipline at a minimal level coupled with some elements of indiscipline.⁹

3.3 Applicability of the Principles of Fair Hearing to Contracts of Employment with Statutory Flavour

An employment enjoys statutory flavour when the contract of service is governed by statute or where the conditions of service are contained in regulations derived from statutory provisions. In the circumstance they vest the employee with a legal status higher than the ordinary master/servant relationship.¹⁰ The law is settled that the only way to terminate a contract of service with statutory flavour is to adhere strictly to the procedure laid down in the statute.¹¹

Where an employment is governed by rules and regulations backed by statute, such as Civil Service Rules, as to how the employment is made and determined, a person who claims to be a public servant and seeks the protection of those rules and regulations must show that he was employed subject to those rules and regulations otherwise he cannot rely on them as protecting his employment.¹² An employment with statutory flavour, though basically creating a service relationship goes beyond the notion of ordinary master and servant whose contractual obligation

⁹ Osezua M (et. al) (2009) Staff Indiscipline and Productivity in the Public Sector in Nigeria. African Research Review (An International Comptroller Multi- Disciplinary Journal, Ethiopia) p. 461-471

¹⁰ Imoloame Vs W.A.E.C. (1992) NWLR (Pt.265) 303; Olaniyan vs University of Lagos (1985) 2 NWLR (Pt.9) 599; Shitta-Bey v. Public Service Commission (1981) 1 SC 40.

¹¹ Bamgboye Vs University of Ilorin (1999) 10 NWLR (Pt.622) 290; Olatunbosun Vs N.I.S.E.R. Council (1988) 3 NWLR (Pt.80) 25; Comptroller General of Customs & ors v. Gusau (2017) LPELR-42081(SC)

¹² Supra, note 12

can anyhow be effectively brought to an end albeit in breach of contract for which the only remedy is damages.¹³

The fact that an organization or authority is a creation of statute does not elevate all its employees to that status or that the status of master and servant is no longer existent or that their employment or determination of their appointment must necessarily have a statutory flavour.¹⁴

The Court must confine itself to the terms of contract of service between the parties which provides for their rights and obligations.¹⁵ The rules and regulations which are claimed by an employee to be part of the terms and conditions of his employment capable of giving it statutory flavour and be of protection to the employee must:

- a. have statutory reinforcement or at any rate, be regarded as mandatory,
- b. be directly applicable to the employee or persons of his cadre,
- c. be seen to be intended for the protection of that employment; and
- d. have been breached in the course of determining the employment; before they can be relied on to challenge the validity of that determination.¹⁶

An employment which is protected by statute must be terminated in the way and manner prescribed by the relevant statute and any other manner of termination inconsistent with the statute will be null and void and of no effect. The case of *J.S.C., Cross River State v. Young*¹⁷ which was decided by the Supreme Court of Nigeria presents a classical example. The respondent was the Chief Registrar of the Cross River State High Court. She was alleged to have mismanaged the Estate of one Chief Effiom who died intestate and in respect of which estate she was appointed as a receiver by virtue of her office in an action pending before the court. She

¹³ *ibid*

¹⁴ *Idoniboye- Obu v. N.N.P.C* (2003) 2 NWLR (Pt 805) 589 at 620

¹⁵ See *Fakuade V. O.A.U.T.H* (1993) 5 NWLR (Pt 291) 47

¹⁶ See *Idoniboye-Obu vs. N.N.P.C* (2003) 2 NWLR (Pt. 805) 589 at 624 paras. C-E

¹⁷ [2014] All FWLR pt. 714 p. 40

was subsequently redeployed to another office which she rejected on grounds that it amounted to a demotion. She petitioned the Chief Judge of Cross River State to the Chief Justice of Nigeria and subsequently withdrew the petition after which she was suspended and retired by the Cross River State Judicial Service Commission. She therefore took out an application in the High Court of Cross River State, seeking an order of *certiorari* to bring the proceedings of the Commission before the High Court for the purposes of being quashed.¹⁸ The appellants filed a counter affidavit to the application contending that the commission is an administrative body which performed an administrative function; therefore, *certiorari* cannot be applied to quash its proceedings. The trial court upheld the objection and struck out the application for incompetence. Not satisfied, the respondent filed an appeal to the Court of Appeal where the appeal was allowed and her re-instatement ordered. Also, dissatisfied, the appellant filed an appeal to the Supreme Court challenging the lower court's decision that fair hearing was not observed by the 1st appellant when discharging its duties and that it exceeded its jurisdiction. It was held by the Supreme Court that apart from the courts, the other adjudicating bodies like tribunals, though not expected to act fully like a court of law are enjoined in their hearing of matters to act in good faith and to fairly listen to both sides before deciding matters before them. Citing the case of *District Officer v Queen*,¹⁹ it proceeded to hold that when an administrative body or tribunal is to determine whether an officer is guilty of misconduct or breach of regulations, then a *lis inter* parties arises and so throws up the necessity for a hearing before

¹⁸ *Certiorari* is one of the prerogative writs whose main function is to ensure that inferior courts or body entrusted with the performance of judicial or quasi-judicial functions keep within the limits of the jurisdiction conferred upon them by the statute which create them. Therefore, an order of *certiorari* will lie to remove into the High Court (in this case the National Industrial Court) for the purpose of being quashed, any judgments, orders, convictions or other proceedings of such inferior courts or body, civil or criminal made without or in excess of jurisdiction. See *District Officer v Queen* (1961) SCNLR 83; *Hart v Military Governor of Rivers State* (1971) 11 S.C 211; *Legal Practitioners Disciplinary Tribunal v. Chief Gani Fawehimi* (1985) NWLR (pt. 7) 300 and *Baba v. Nigerian Civil Aviation Training Centre, Zaria* (1991) 5 NWLR (pt. 192) 388 at 414, (1991) 7 SCNJ (pt. 1)

¹⁹ (1971) 11 SC 211

deciding and in such a case, the administrative body is acting judicially and the principles of fair hearing binding on judicial bodies would by the same token bind such administrative bodies. Since the Commission failed to observe fair hearing in its proceedings against the respondent, the Court of Appeal rightly set same aside.²⁰

The nagging question is, since an administrative body carrying a judicial or quasi-judicial function is not expected to act like a court of law in giving fair hearing to the parties, what are the minimum attributes of fair hearing in those cases? The cases of *J.S.C., Cross River State v Young*,²¹ *Baba v N.C.A.T.C.*,²² *P.H.M.B v Edosa*²³ and a host of others²⁴ found it as settled law that in judicial or quasi-judicial proceedings, a hearing in order to be fair must include the right of the person to be affected:

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

²⁰ Ibid n. 10 p. 54, paras C- E.

²¹ ibid

²² (1991) 5 NWLR (pt. 192) 388

²³ (2001) FWLR(pt. 41) 1977, (2001) 5 NWLR (pt. 707) 612

²⁴ *District Officer v Queen* (1961) SCNLR 83; *Hart v Military Governor of Rivers State* (1971) 11 S.C 211; *Legal Practitioners Disciplinary Tribunal v. Chief Gani Fawehimi* (1985) NWLR (pt. 7) 300 and *Baba v. Nigerian Civil Aviation Training Centre, Zaria* (1991) 5 NWLR (pt. 192) 388 at 414, (1991) 7 SCNJ (pt. 1)

It therefore follows that a person subjected to a disciplinary hearing whose right to fair hearing is breached can approach the court (in this case the National Industrial Court) and seek for a remedy in a contested suit. Alternatively, the affected person may apply to the court for the issuance of a writ to quash the decision of the body by way of *certiorari*.²⁵ Where it is established before the High Court (in this case the National Industrial Court) that a statutory body or maybe an inferior court with limited powers has abused that power and that such abuse does continue to affect the rights of a citizen, *certiorari* will issue at the instance of that citizen. Such abuse may take the form of non-compliance with the rules of procedure prescribed for that body or it may be exemplified in the denial of the rights to be heard in one's defense.²⁶ The Supreme Court in *Young's* case gave a general guideline which can be used to identify situations that qualify for the issuance of *certiorari* as a remedy.²⁷

It may consist of irregularities which are tantamount to a denial or breach of the rules natural justice, it may take the form of an assumption of jurisdiction to perform an action authorized by law or a refusal of jurisdiction where it should be exercised. The list is not exhaustive but these are the cases in which *certiorari* has always been used to quash arrest warrants, witness summons or even official medical certificates which were irregularly issued. In the instant case, where the Judicial Service Commission failed to comply with the relevant rules in the proceedings against the respondent, the trial court erred by striking out the application for *certiorari* filed by the respondent.

In the case of ordinary master and servant relationship, the old Common Law courts have consistently refused to read into employer's dismissal power, any implied duty to afford employees a Common Law fair opportunity to be heard. So long as a termination accords with

²⁵ J.S.C., *Cross River State v. Young* [2014] All FWLR pt. 714 p. 40 pages 58-59

²⁶ *ibid*

²⁷ *Ibid.* pp 58-59 paras F-B

the terms of the contract of employment, an employee is not entitled to fair hearing prior to the termination of the relationship. Lord Reid in *Ridge v Baldwin* encapsulated this position when he said “So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defense; it depends on whether the facts emerging at the trial prove breach of contract”.²⁸

In the case of *Olanrewaju V Afribank Plc*,²⁹ the appellant’s contract of employment assured him that he would be entitled to query and afforded an opportunity to defend himself before summary dismissal. While investigations of wrongdoing were being carried out against him, he was not afforded a hearing. He contended that not having been given a hearing, his termination was wrongful. His contention did not meet with favor in the Supreme Court. Katsina-Alu JSC stated that: “An employee can lawfully be terminated without first telling him what is alleged against him and hearing his defense or explanation.”³⁰

The Court of appeal in *Udemah v Nigeria Coal Corporation*,³¹ and the Supreme Court in *University of Calabar v Essien*³² advised an employer to give his servant fair hearing before terminating his appointment. This advice is of little value, since the position in both cases are obiter in cases involving public employees whose employments are ones with statutory flavour.³³

In *Akumechiel v Benue Cement Co Ltd*³⁴ it appeared in evidence that the appellant was accused of certain misconduct for which he was not given a hearing. His appointment was terminated

²⁸ [1964] AC 40, 65. Nigerian writers seem to follow suit. See Uvieghara, E E , Labour Law in Nigeria, Lagos, Malthouse, 2001, 89.

²⁹ (2001) pt. 72 FWLR p. 2008.

³⁰ Ibid, at p. 2018

³¹ [1991] 3 NWLR 477, 490

³² 1996] 10 NWLR (Part 477) 225, 262

³³ Emeka C. (2007) Towards Fair Hearing for all Nigerian Employees CALS Review of Nigerian Law and Practice Vol. 1(1) p 34

³⁴ [1997] 1 NWLR (Part 484) 695, 703.

with no reason given. The appellant argued for pre-termination hearing, but the Court of Appeal believed the employer's testimony that he was not terminated as a result of any allegation of misconduct. The termination was upheld, yet in the course of his judgment, Munkata-Coomassie JSC stated that where an employer "removes" an employee for misconduct, his "removal" cannot be justified in the absence of an adequate opportunity being offered to him to explain, justify or else defend that alleged misconduct. According to Emeka Chianu³⁵ in his comment on the case, the use of the non-committal word "removal" robs the dictum of its force.

There are serious academic criticisms of the legal position that an employer in an ordinary servant/employer relationship is under no obligation to ensure that the employee is given fair hearing.³⁶ However, if there is a term in the contract of employment mandating the employer to give fair hearing before taking any disciplinary action, it is the opinion of the researcher that the employer is so bound. A party cannot ordinarily resile from a contract or agreement just because he later found that the terms of the contract or agreement are not favorable to him. This is the whole doctrine of the sanctity of contract or agreement. The Court is therefore bound to properly construe the terms of the contract or agreement in the event of an action arising there-from.³⁷ In conclusion, Tobi, JSC, summarized the principles of law governing contracts succinctly in *Nika Fishing Co. Ltd V Lavina Corporation* in these words:³⁸

Parties are bound by the conditions and terms in a contract they freely enter into... The meaning to be placed on a contract is that which is the plain, clear and obvious result of the terms used... when construing documents in dispute between two parties, the proper

³⁵ Emeka C. (2007) Towards Fair Hearing for all Nigerian Employees CALS Review of Nigerian Law and Practice Vol. 1(1) p 34

³⁶ *ibid*

³⁷ *Arjay Ltd V Airline management Support Ltd* (2003) LPELR-555(SC) 1 at 67; *Nneji v Zakhem Con. (Nig.) Ltd* (2006) LPELR-2059 (SC) 1 at 27

³⁸ (2008) LPELR-2035(SC) 1 at 30-31,

course is to discover the intention or contemplation of the parties and not to import into the contract ideas not potent on the face of the document. Where there is a contract regulating any arrangement between the parties, the main duty of the Court is to interpret that contract and to give effect to the wishes of the parties as expressed in the contract document...It is the law that parties to an agreement retain the commercial freedom to determine their own terms. No other person, not even the Court can determine the terms of contract between parties thereto. The duty of the Court is to strictly interpret the terms of the agreement on its clear wordings... Finally, it is not the function of a Court of law either to make agreements for the parties or to change their agreements as made.

3.4 Kano State Civil Service Commission

The Kano State Civil Service Commission is recognized as one of the three state executive bodies³⁹ established by the Constitution.⁴⁰ The composition and powers of the Commission are set out I part II of the Third Schedule to the Constitution.⁴¹ State Civil Commission comprises a Chairman and not less than two or not more than four other persons, who in the opinion of the Governor are persons of unquestionable integrity and sound political judgment.⁴² The Commission shall have power without prejudice to the powers vested in the Governor and the State Judicial Service Commission to -

- (a) Appoint persons to offices in the State Civil Service; and
- (b) Dismiss and exercise disciplinary control over persons holding such offices.

³⁹ The remaining two being State Independent Electoral Commission and State Judicial Service Commission

⁴⁰ Section 197 (1), 1999 Constitution of the Federal Republic Of Nigeria (as amended)

⁴¹ Ibid, Section 197 (2)

⁴² Ibid, Part II(a) to the Third Schedule

It was pursuant to this that the Kano State Civil Service Rules 2004 came into being,⁴³ to apply to all officers except where they conflict with specific terms approved by the State Government and written into the contract of employment or letters of appointment. The rules shall apply also, to the Governor, Deputy Governor, Chief Judge and Judges of High Court, Grand Khadi and Khadis of the Shari'a Court of Appeal, Chairmen and members of Code of conduct Bureau, The State Civil Service Commission, State Independent Electoral Commission, Code of Conduct Tribunal, etc so long as they are not contrary to the provisions of the Constitution.⁴⁴ The Kano State Civil Service is centered on Ministries headed by Commissioners who are appointed by the Governor, subject to the confirmation of the House of Assembly.⁴⁵ These Ministries also supervise certain government parastatals with related mandate, although the said parastatals may be statutorily created. An example of that is that the Ministry of Education supervises Kano State Polytechnic Established by the Kano State Polytechnic Law,⁴⁶ which is recognized as a distinct entity with capacity to sue and be sued.⁴⁷ Some statutory bodies are directly under office of the Governor of Kano State, e.g The Public Complaint and Anti Corruption Commission. The power to dismiss and exercise disciplinary control over officers in the Kano State Civil Service is vested in the State Civil Service Commission.

The Civil Service Commission by the Constitution⁴⁸ is empowered to, with the approval of the Governor, to make rules or otherwise regulate its own procedure or confer powers or impose duties on any officer or authority for the purpose of discharging its functions. That is the foundation of the Kano State Civil Service Rules, 2004. The Civil Service Commission had

⁴³ Kano State Civil Service Rules, 2004

⁴⁴ Kano State Civil Service Rules, 2004, Rule 01001. See also rule 010101 of the Public Service Rules, 2014, applying to Federal Public Servants.

⁴⁵ Section 19(2) Constitution of the Federal Republic Of Nigeria 1999 (as amended)

⁴⁶ Kano State Polytechnic Law, 2005

⁴⁷ Ibid section 5

⁴⁸ Section 204(1) Constitution of the Federal Republic of Nigeria 1999 (as amended)

delegated disciplinary powers to Permanent Secretary of each Ministry or Head of Extra Ministerial Department in respect of officers on salary Grade Level (GL)1-Grade Level (GL) 6 with the exception of power of dismissal, demotion and determination of promotion or increment which is subject to ratification by the Civil Service Commission.⁴⁹ The power to dismiss and the exercise of disciplinary control over officers in the State Civil service are absolutely vested in the State Civil Service Commission.⁵⁰

3.5 Power of Permanent Secretary or Head of Extra Ministerial Department to Delegate Disciplinary Power

The nagging question is, can the Permanent Secretary or Head of Extra Ministerial Department lawfully delegate the disciplinary authority delegated to him by the Civil Service Commission? This question can be answered in the negative. *Delegatus non potest delegare*, (that is, a delegate cannot sub delegate) is a doctrine of English Law which is not exclusively referable to any particular branch of the law.⁵¹ It is a doctrine according to which exercise of discretionary power is delegated or vested in certain authority because the judgment of that authority is to be trusted. Accordingly, it is to be exercised by that authority in person and by no other except where the said authority has been expressly or impliedly authorized to sub-delegate the exercise thereof.⁵² It therefore follows that, the Permanent Secretary and Head of Extra Ministerial Department cannot sub-delegate his disciplinary powers, except if such sub-delegation is recognized by the enabling law. This is because the law had specifically taken them to be ones with requisite experience and knowledge to adequately enforce the provisions of the Rules. Same cannot be

⁴⁹ Kano State Civil Service Rules, 2004, Rule 04103

⁵⁰ Rule 04102

⁵¹ John W.,(1943) “Delegatus Non Protest Delegare” 21 Canadian Bar. Review p. 257.

⁵² Supra,note 53

said in respect of any subordinate sub delegated. In *Vine v. National Bank Labour Board*,⁵³ the respondent which was statutorily empowered to exercise control over its employees delegated such power to a committee. It was the committee that heard the case filed against the appellant, and subsequently dismissed him. The appellant challenged the dismissal on the ground that the sub-delegation of the disciplinary powers to the committee was *ultra vires* and void. It was held by the House of Lords that disciplinary powers of a committee cannot be sub-delegated because Vine was entitled to have his case heard and determined by the board established by statute for that purpose.

The Nigerian case of *Katagum v. Roberts*,⁵⁴ reiterated the law that if a person or body is statutorily vested with disciplinary powers, no other person or body can usurp these powers under any guise. Under section 9 of the Pension Act⁵⁵ the Minister (Federal Minister in Charge of Pensions) was empowered to require a public officer who had attained the age of 45 to retire, subject to the required written notice of six months. The respondent, who was a police officer under the Police Service Commission, was issued with a written notice requiring him to retire within six months, following allegations of misconduct against him. He challenged this exercise of power by the Commission, and in quashing the notice the High Court held that the only person capable of exercising the powers under Section 9 of the Pensions Act, 1961 was the Minister, and not the Police Service Commission. The appellants' appeal at the Supreme Court was dismissed. In the same vein, the Supreme Court has in *Nigerian Air Force v. James*⁵⁶ affirmed that disciplinary powers cannot be delegated or sub-delegated except as expressly authorized by the enabling statute.

⁵³ (1956) 3 All E.R. 939

⁵⁴ (1967) 1 All NLR 127

⁵⁵ As amended in 1961

⁵⁶ (2002) 18 NWLR (Pt. 798) 295

It is for the above reasons that the researcher agrees with C.A Agbuabor⁵⁷ that the decision of the Court of Appeal in *Morenkeji v. Osun State Polytechnic & 2 Ors*⁵⁸ was reached in error. It was held that the provisions of Section 37(1) of the Polytechnic Iree Osun State Law,⁵⁹ vests the duty of determining whether an act of misconduct has been committed by the student, on the Rector, and once he is convinced that a student is so guilty he can on his own cause the suspension of the student from the institution, which is exactly what the 2nd respondent has done in this case. The court further held that by virtue of section 9(c) of the Polytechnic Law, the Council of the Polytechnic shall have power to delegate any of its powers to Committees of Council or its Chairman or the Rector as it thinks fit. Section 18 of the same law established the office of the Registrar designated as the Chief Administrative Officer of the Polytechnic and responsible to the Rector for the day to day administration of the Polytechnic. A holistic interpretation of these provisions reveals that the Registrar could not have issued the letter of suspension without the instruction or directive of the Rector, the Council and the Board of Studies. Being a servant of the Polytechnic, the Registrar merely conveyed the decision of the management of Osun State Polytechnic to the appellant by Exhibit 'D', the letter of indefinite suspension. The decision is wrong in the following ways.

Firstly, it does not follow the decision of the Supreme Court in *Nigerian Air Force v. James*⁶⁰ and by the doctrine of stare decisis, it is bad in law. In *Osakue v. Federal College of Education (Technical) Asaba*⁶¹ the Nigerian Supreme Court per Ogbuagu J. S. C. defined *stare decisis* thus:

⁵⁷ Ogbuabor C.A (2014), Exercise of Delegated Power in Disciplinary Proceedings in Nigerian Administrative Law- *Morenkeji V Osun State Polytechnic & Ors* Revisited. The Nigerian judicial Review Vol 12 (3)

⁵⁸ (1998) 11 NWLR (Pt. 572) 145

⁵⁹ Polytechnic Iree Osun State Law 1992

⁶⁰ (2002) 18 NWLR (Pt. 798) 295

⁶¹ (2010) 10 NWLR (Pt.1201) 1 at 34

Stare decisis means to abide by the former precedents where the same points came again in litigation. It presupposes that the law has been solemnly declared and determined in the former case. It does preclude the judges of the subordinate courts from changing what has been determined. Thus under the doctrine of *stare decisis*, lower courts, are bound by the theory of precedent.

In *Bamgboye v. University of Ilorin*⁶² the Supreme Court held that a statutory disciplinary power cannot be delegated. Such power can be delegated where there is an express statutory authority to delegate. Sovereign law-makers who grant statutory disciplinary power to a body or authority can also authorize such a body or authority to delegate such power. In the instant case where the power of Council was delegated to it by the university, i.e. the 1st respondent, the Council cannot delegate this power to the Senior Staff Disciplinary and Appeals Committee which is itself a delegate of the Council.

Secondly, the court recognizes the power of the Rector to suspend a student, “if it appears to him that the student is guilty of misconduct” and without giving the student an opportunity to defend himself at this stage. The Disciplinary committee can then determine whether the student is guilty or not. Order 3 of the Student Guardian Regulation is contrary to Section 36 of the Constitution, which provides in the determination of his civil rights and obligations, a person shall be given a fair hearing. By suspending a student prior to the commencement of disciplinary proceedings, the basic rule of fair hearing has been breached.

⁶² (1999) 10 NWLR (Pt. 622) 290.

3.6 Classification of Acts or Omissions Subject to Disciplinary Actions under the Kano State Civil Service Rules 2004

There are four main acts or omissions subject to disciplinary action under the Kano State Civil Service Rules, 2004. They are General Inefficiency, Misconduct, Serious Misconduct and Conduct Prejudicial to the Security of the State, each with different possible consequences.

3.6.1 General Inefficiency

Under the Common Law, the employer is entitled to summarily dismiss the employee for incompetence.⁶³ In *Harmer v Cornelius*,⁶⁴ the plaintiff who was employed as a scene painter was summarily dismissed for incompetence. Held: The employer was entitled to terminate the contract after two days when the artist proved to be incompetent. Willes J said:

When a skilled labourer, artisan, or artist is employed, there is on his part an implied warranty that he is of skill reasonably competent to the task he undertakes, – *Spondes peritiam artis*. Thus, if an apothecary, a watch-maker or an attorney be employed for reward, they each impliedly undertake to possess and exercise reasonable skill in their several arts. The public profession of an art is a representation and undertaking to the entire world that the professor possesses the requisite ability and skill.

Under the Kano State Civil Service Rules, the provision of Chapter 4, Rules 04201-04207 makes provisions on action to be taken if an officer is found to be incompetent. The position is different from the Common Law position on inefficiency. It will be seen that there is no power to terminate employment of a civil servant instantly for incompetence. The employer is mandated to notify the employee in writing the grounds for his belief that the employee is incompetent, giving him time to make amends. General inefficiency consists of omissions or incompetence the

⁶³ Searle v. Ridley (1873) 28 L.T 411

⁶⁴ (1858) 141 ER 94

cumulative effect of which shows that the officer is not capable of discharging efficiently the duties of the office he holds.⁶⁵ Once inefficiency is observed from a subordinate officer, it is the duty of a superior officer to draw the attention of the affected staff and record the shortcoming with a view to improving the officer's usefulness and efficiency in the service.⁶⁶ It should be noted that the Permanent Secretary/Head of Extra-Ministerial Department has the power to remove an officer for general inefficiency so long as the affected officer had been warned in writing on at least two previous occasions,⁶⁷ had suffered loss or deferment of his last increment and had been given ample opportunity to improve, usually within one year. In any event, the officer shall be given one month notice of removal, or be given one month salary in lieu of notice.⁶⁸

The Permanent Secretary/Head of Extra-Ministerial Department at his discretion can instantly remove a temporary staff, provided that the affected staff had been given notice of grounds of the termination and also the opportunity to submit a representation as to why his employment should not be terminated.⁶⁹

3.6.2 Misconduct

Misconduct is generally defined as a specific act of wrongdoing or improper behavior which can be investigated and proved⁷⁰. Under the Rules,⁷¹ misconduct includes:

⁶⁵ Rule 04201. See also Rule 030201 of the Public Service Rules, 2014

⁶⁶ Rule 04203 see also Rules 030201 of the Public Service Rules, 2014

⁶⁷ See generally, rules 04203 and 04207

⁶⁸ Ibid

⁶⁹ Rule 04204 under the Public Service Rules, 2014, particularly Rule 030203, before the proceedings for removal of an officer for general inefficiency may be commenced, he/she must have been warned on three different occasions.

⁷⁰ Rule 14301 of the Kano State Civil Service Rules, 2004

⁷¹ Specifically Rule 14301. It appears that in the Public Service Rules, 2014, the scope of misconduct seems to be more specified. By Rule 030301, misconduct is defined as a specific act of wrongdoing or an improper behavior which inimical to the image of the service and which can be investigated and proved. It can also lead to termination and retirement. It includes scandalous conducts such as immoral and unruly behavior, drunkenness, foul language, assault, battery, refusal to proceed on transfer or to accept posting, habitual lateness to work, deliberate delay in treating official document, failure to keep records, unauthorized removal of public records, dishonesty, negligence,

- i. Willful act or omission or general misconduct on the scandal of the public or to the prejudice and proper administration of the government e.g. Dishonesty, Drunkenness, False Claims against Government, Foul Language, Insubordination, Physical Confrontation, Negligence, Falsification or Suppression of Records, Failure to keep records, lackadaisical attitude to work, unruly behavior, abdication of responsibility, dereliction of duty, failure to complete processes and procedures for disciplinary action within three weeks. It is within the Rule that an officer shall not lend money at interest, whether on mortgage or otherwise or guarantee or stand as surety for money lent on interest, to any other person. This does not restrict members from forming registered cooperative societies or approved benefit societies.⁷²
- ii. Engaging in trade or business without authority. By way of elaboration, it is hereby prohibited for an officer to engage in any occupation for reward unless he has previously obtained the permission of the Head of Service which shall only be given if such engagement is not likely to interfere with efficient performance of his duties.⁷³
- iii. Unethical and immoral behavior as prescribed by Islam.
- iv. Improper dressing to office or while performing official duties. This provision has been clarified elsewhere in the Rules⁷⁴ to mean that no officer shall appear in the office or anywhere in his official capacity dressed in a manner considered immoral, abusive or ridiculing to the norms, values and traditions of the State. It will appear from the above that the yardstick for determining the propriety of dressing by an

membership of cult, sleeping on duty, improper dressing while on duty, hawking merchandise within official premises, refusal to take/carry out lawful instruction from superior officers, malingering, insubordination and discourteous behavior to the public.

⁷² See generally, Rule 04312

⁷³ Rule 04307

⁷⁴ Rule 04314, Kano State Civil Service Rules, 2004

officer is the prevailing custom of the people of Kano State, on what is considered acceptable dressing.

- v. Hawking merchandise or engaging in any other form of trading on office premises. Similarly, officers are prohibited from hawking merchandise or engaging in any other form of trading on office premises during working hours.⁷⁵ The rationale for this provision is not far-fetched. It is generally demeaning for an officer of the state to be seen hawking goods in the workplace. Similarly, hawking is time consuming, and has the tendency to distract the worker from discharging his duties. In these circumstances, it will be easy for the affected staff to engage in corrupt practices capable of grounding the civil service.

3.6.3 Serious Misconduct

The Rules has not given a comprehensive definition of serious misconduct apart from giving specific acts of wrong doing that can be categorized as such. The researcher has not found any specific Nigerian statutory definition of the term “serious misconduct”. In the case of *P.C. Mike Eze vs. Spring Bank Plc.*⁷⁶ the Supreme Court defined gross misconduct as a conduct that is of a grave and weighty character as to undermine the confidence which should exist between an employee and the employer. similarly, working against the deep interest of the employer amounts to gross misconduct entitling an employer to summarily dismiss the employee.

The Kano State Civil Service Rules 2004 has not given a general definition of serious misconduct, but seems to specify the acts that can be treated as such. According to the Rules,⁷⁷

⁷⁵ Rule 04313, Kano State Civil Service Rules, 2004

⁷⁶ (2012) All FWLR (Pt. 609) pg. 1076

⁷⁷ Rule 04401 of the Kano State Civil Service Rules. The Provisions of Rule 030401 of the Public Service Rule, 2014 define serious misconduct as a specific act of very serious wrong-doing and improper behavior which is inimical to the image of the service and which can be investigated and if proven, may lead to dismissal. By Rule 030402 of the Public Service Rules, it includes falsification of records, suppression of records, withholding of files,

serious misconduct is a specific act of very serious wrong doing and improper behavior which can be investigated and proved. It includes:-

- i. willful act or omission amounting to public scandal, or prejudice of discipline and proper conduct of government business;
- ii. conviction on a criminal charge (other other than minor traffic or sanitary offence or the like);
- iii. absence from duty without permission;
- iv. disobedience e.g refusal to accept posting;
- v. negligence;
- vi. suppression of records;
- vii. false claims against Government;
- viii. serious financial embarrassment. For the purpose of the Rules, “serious financial embarrassment” means the state of any officer’s indebtedness which, having regard to the amount of debts incurred by him, has actually caused serious financial hardship to him, and, without prejudice to the general meaning of the said expression. An officer shall be deemed to be in serious financial embarrassment;
 - a. if the aggregate of his unsecured debt liabilities at any given time is greater than his monthly emoluments;
 - b. where he is judgment debtor, for as long as the judgment remains unsettled;or

conviction for a criminal charge other than a minor traffic or sanitary offence or the like, absence from duty without leave, false claims against government officials, engaging in partisan political activities, bankruptcy/serious financial embarrassment, unauthorized disclosure of official information, bribery, corruption, embezzlement, misappropriation, violation of oath of secrecy, action prejudicial to the security of the state, Advanced Fee Fraud, holding more than one full-paid job, nepotism, divided loyalty, sabotage, willful damage to public property, sexual harassment and any other act unbecoming of a public officer.

- c. where he is equally adjudged bankrupt or insolvent, as long as any judgment against him in favor of the official assignee remains unsatisfied.

Serious financial embarrassment from whatever cause shall be regarded as necessarily impairing the efficiency of an officer and rendering him liable to disciplinary action.⁷⁸

- ix. engaging in political activities. No officer shall, without express permission of the government, whether on duty or absence of leave,
 - a. hold any office, paid or unpaid, permanent or temporary, in any political organization;
 - b. offer himself or nominate anyone else as a candidate for any elective public office including membership of a Local Government Council, state or National Assembly;
 - c. indicate publicly his support for or opposition to any party, candidate or policy;
 - d. Engage in canvassing for support of political candidates.⁷⁹

The researcher submits that by section 40 of the Constitution,⁸⁰ every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. The discussion borders on the Supremacy of the constitution. Section S.1 (3). It provides thus:

⁷⁸ Rule 04413

⁷⁹ Rule 04421, Kano State Civil Service Rules, 200

⁸⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended)

If any law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

This provision is self explanatory. It means that any law which conflicts with the provisions of the constitution shall be inapplicable to the extent of its inconsistency. This is also known as the blue pencil rule. The court of Appeal, in the case of *Inspector General of Police vs ANPP and Ors*,⁸¹ applied this provision of the constitution. It declared the provisions of the Public Order Act⁸² which provided that a permit is needed from the governor before people can assemble in public contrary to the provision of the fundamental human rights of freedom of expression and association which is contained in Sections 39 & 40 of the 1999 constitution. Therefore, those provisions of the Public Order Act were declared unconstitutional, null and void to the extent of their inconsistencies. When this question is submitted for determination before a court of law, it is hoped that this provision of the Rules will be declared inconsistent with the provisions of the Constitution, and is therefore void.

- x. unauthorized disclosure of official information, e.t.c;
- xi. Corruption. In its bid to enhance accountability and transparency, no officer shall receive any bribe or engage in corrupt practices.⁸³ In addition, public servants are prohibited from receiving any form of gratification either in cash or in kind. This restriction applies to their families.⁸⁴ Similarly, it is prohibited for any officer to seek

⁸¹ (2007) 18 NWLR (Pt.1066) 457 C.A.2 3,

⁸² Cap. 382, Laws of the Federation of Nigeria, 1990

⁸³ Ibid, Rule 04433

⁸⁴ Ibid, Rule 04432

the influence of prominent persons in consideration of his claims, transfer, promotion or posting.⁸⁵

- xii. embezzlement;
- xiii. unruly behavior;
- xiv. membership of secret societies;
- xv. Violation of section 14 (3) of the Constitution. It is clear that here, reference is made to Section 14 (4), of the Constitution⁸⁶ which provides:

The composition of the Government of a State, a local government council, or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation.

- xvi. contravention of any provision of the Civil Service Rules, Financial Regulations and Stores regulation;
- xvii. dishonesty;
- xviii. drunkenness;
- xix. insubordination;
- xx. falsification of records;
- xxi. failure to keep records;
- xxii. foul language;
- xxiii. sexual promiscuity e.t.c

⁸⁵ Ibid, Rule 04426

⁸⁶ 1999 Constitution of the Federal Republic of Nigeria (as amended)

It is glaring that the Rule is quite brief, as it does not attempt to define what constitute some of the acts or omissions classified as serious misconduct. These are the class of matters that can lead to outright dismissal. Failure to effectively define the scope of each of the items creates a huge gap in their appreciation of the meaning of serious misconduct. Without some explanation as to what will constitute any of the acts, a lot of conflicting opinions will emanate as to what are sanctioned under the Rules.

What really compounds the classification in addition is that the word “includes” when used in a statute or subsidiary legislation does not restrict the scope of the provision to the matters mentioned in the legislation. The Word ‘includes’ when used in a statute, can enlarge the scope of the subject matter.⁸⁷ The effect of this is that, the Permanent Secretary of the Head of Extra-Ministerial Department has the power to incorporate many other acts not specifically mentioned. It is submitted that this provision has given a lot of discretion to the stated officers, to label acts as serious misconducts, which can lead to dismissal of an officer. If a yard-stick for the exercise of this judgment has been laid down in the Rule, this problem will be alleviated.

3.6.4 Conduct Alleged to be Prejudicial to the Security of the State

Where it is considered that the conduct of an officer is prejudicial to the security of the State, and where a committee comprising members from the State Ministry of Justice, Office of the Head of Service and Special Services Offices is satisfied that an officer has committed an act of misconduct involving the security of the State, the normal disciplinary procedure need not be followed by the Commission in taking any disciplinary action it may deem fit.⁸⁸

⁸⁷ *Uhunwagho v Okojie* (1989) 5 NWLR (pt. 122) 471; *Ports and Cargo Handling Services Co. Ltd v MIGFOR (nig) Ltd.* (2012) 13 NWLR (pt. 1333) 555

⁸⁸ Rule 04501: under Rule 030501 of the Public Service Rule 2014, an officer alleged to have committed an act prejudicial to the security of the state cannot be arbitrarily punished without going through the normal procedure of

This provision is quite plain, and gives the Commission power to take disciplinary action against an officer without going through the disciplinary procedure contained therein, if it is of the view that the officer's action constitutes a misconduct involving the security of the state. The Rules has not defined what constitutes acts that involve the security of the state. In Chapter Four below, the researcher will attempt a constitutional study of the rule, especially that the rule excludes any form of hearing before finally taking action that will determine the civil rights and obligations of the affected officer.

3.7. The Applicable Sanctions under the Kano State Civil Service Rules, 2004

The Kano State Civil Service Rules 2004 has made provisions for various sanctions to be meted out on erring employees. These can be meted out prior to the commencement of the proceedings in the interim, pending the hearing and determination of disciplinary proceedings, or perpetually, upon the completion of the proceedings. In this Chapter, we shall see the nature of these sanctions under the Rules, and labour law generally, and leave the discussion on the propriety or otherwise of these measures in specific stages of disciplinary proceedings to Chapter Four. If it is discovered that the interim measures have the tendency of affecting the legal rights and obligation of the employee, the Civil Service Commission will be under a duty to accord fair hearing before imposition, even if they are interim in nature.

3.7.1 Suspension

Generally at Common Law, there is no right to suspend an employee as a disciplinary measure with loss of pay.⁸⁹ The employer can suspend the employee, but with full pay.⁹⁰ Under the Common Law, if the suspension of the employee will occasion loss of earnings, the employee

disciplinary proceedings under the Rule, except that punishment for this type of misconduct shall be aggravated. This, it is submitted is more in line with the established principles of fair hearing.

⁸⁹ Uvieghara, E E , Labour Law in Nigeria, Lagos, Malthouse, 2001, p. 78

⁹⁰ *ibid*

can only be denied emoluments only if there is provision in the contract of employment empowering him to do so.⁹¹ Where the right to suspend an employee is left to the discretion of the employer, the courts have held that the discretion must be exercised judiciously.⁹²

Suspension is an action whereby a civil servant is temporarily kept out of discharging his duty pending final action being taken against him i.e., whenever a departmental enquiry is contemplated or pending against a civil servant or where a case against a civil servant in respect of any criminal offence is under investigation, enquiry or trial, the rules authorize the disciplinary authority to place the concerned civil servant under suspension. Generally this has been applied on the basis of “if in doubt suspend”.

The object of placing a civil servant under suspension is

- a. to keep him away from a position where he can interfere with the conduct of the enquiry or tamper with documentary or oral evidence in any manner;
- b. Suspension is a good option if, having regard to the nature of the charges against him, it is felt that it would be unsafe to continue to vest in him the powers of his post.
- c. When a case against him in respect of any criminal offence is under investigation, inquiry or trial, it is considered appropriate to suspend the employee pending the determination of the enquiry or the criminal case.

A public servant may be suspended as a measure of protection and he may also be forbidden from discharging his duties during the pendency of an enquiry against him.

By Rule 04405,⁹³ suspension should not be used as a synonym for interdiction. It shall apply where a *prima facie* case, the nature of which is serious, has been established against an officer and it is considered necessary in the public interest that he/she should forthwith be prohibited

⁹¹ *ibid*

⁹² *Osun v Nigerian Railway Corporation* (1978) 10-12/CCHCJ 326

⁹³ Kano State Civil Service Rules 2004

from carrying out his duties. Pending conclusive investigation into the misconduct, the State Civil Service Commission or the Permanent Secretary/Head of Extra-Ministerial Office (if within his delegated powers) shall forthwith suspend him/her from the exercise of the powers and functions of his/her office and from the enjoyment of his salary. It is specifically provided that if upon conclusion of investigation, the officer is found guilty, his salary shall be forfeited. If however he is exonerated, all salaries due to him for the duration of the suspension shall be paid to him.⁹⁴

There is also a provision which permits the suspension of an officer convicted of a criminal offence (with the exception of minor traffic and sanitary offences and the like) from the date of the conviction, pending the consideration of his case by the Commission.⁹⁵ Although suspension can be an interim sanction or an outright disciplinary measure, it is clear that when an employee is suspended, his contract remains subsisting and unbroken.⁹⁶

3.7.2 Interdiction

When a serious case that may lead to dismissal has been instituted against an officer, the Permanent Secretary/Head of Extra-Ministerial Office may interdict him/her on not more than half pay pending the determination of the case.⁹⁷ Recommendations to the Commission for interdiction shall be made only if it is against the public interest that the officer should continue to perform any of the duties of his/her rank. When the charge against him/her is such that the continued performance of his present duties is against the public interest or prejudicial to the

⁹⁴ *ibid*

⁹⁵ Rule 04411. A similar provision is contained in Rule 030412 of the Public Service Rules, 2014

⁹⁶ See *Adekunle v Western Region Finance Corporation* (1963) WNLR 5 where Fatayi Williams held that when the defendant suspended the plaintiff, his employment remained valid and subsisting during the relevant period, and it was not open to it to end it respectively. The court held that the employer could not escape liability to pay the employee his wages during the period of suspension by dismissing him retrospectively. See also *ECN v Nicol* (1968) All NLR 201

⁹⁷ Rule 04403, Kano State Civil Service Rules, 2004

investigation of the charge against him/her, consideration shall be given to putting him/her on alternative duties. Interdiction shall only be resorted to when this is not possible.⁹⁸ When an officer is interdicted, he/she shall cease to report for duty. In the letter informing the officer of his/her interdiction it shall be indicated that the proportion of emoluments he/she is to receive while on interdiction shall be 50% of his emoluments.⁹⁹ If proceedings under Rule 04306 of the Kano State Civil Service Rules reveal that he/she is not guilty of the charge made against him, the officer shall immediately be reinstated and shall receive the full amount of his/her emoluments denied him/her while he/she was interdicted. If the officer is found guilty but is not dismissed, he/she may be refunded such portion of the emoluments denied him as the Commission may determine.¹⁰⁰

3.7.3 Dismissal

The ultimate penalty for serious misconduct is dismissal. An officer who is dismissed forfeits all claims to retiring benefits, leave or transport grant,¹⁰¹ etc. Summary dismissal is normally due to serious or gross misconduct or breach of an important term of the contract of the service. Although no notice or warning of dismissal will be given to the employee, the dismissal must still be with just cause or excuse. General rules of procedural fairness such as the rules of natural justice are required to be obeyed. Thus, a domestic inquiry will always be conducted before a summary dismissal is justified.¹⁰² In some jurisdictions like Malaysia, the employee is still entitled to wages, holiday pay and any other benefits under the contract of service even if he is

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Rule 04403, Kano State Civil Service Rules, 2004

¹⁰¹ Rule 04406

¹⁰² Guru D., (2013), Common Employment Dismissal Types and Procedures in Malaysia. International Journal of Business, Economics and Law, Vol. 3, Issue 3 (December) P. 16

dismissed on the spot.¹⁰³ But under most civil service rules in Nigeria, a dismissed employee automatically forfeits all his rights to outstanding salaries, leave grants and other entitlements.¹⁰⁴

It should be noted that there is distinction between termination and dismissal, although both refer to permanent removal of an employee from his employment. Termination of a contract of employment gives the parties the right to determine the contract at any time by giving the prescribed period of notice, while dismissal of an employee is a disciplinary measure which carries no benefit.¹⁰⁵ The Supreme Court drew the line of distinction in *Jombo v Petroleum Equalization Fund (Management Board)*¹⁰⁶ thus:

Termination or dismissal of an employee by the employer translates into bringing the employment to an end. Under termination of appointment, the employee is enabled to receive the terminal benefits under the contract of employment. The right to terminate or bring an employment to an end is mutual in that either party may exercise it. Dismissal on the other hand is punitive and, depending on the contract of employment, very often entails loss of terminal benefits. It also carries an unflattering opprobrium to the employee.

Dismissal carries infamy and deprives the dismissed employee of benefits while termination does not and also while an employer is not bound to give any reason for lawfully terminating a contract of service, he must give reason for summarily dismissing a servant.¹⁰⁷ It is submitted that termination of employment is essentially not a sanction, and may not emanate from

¹⁰³ *ibid*

¹⁰⁴ Rule 04406. However, under Rule 030407 of the Public Service Rules 2014, applying to employees under the Nigerian Federal public service, this provision is subject to the Pension Reform Act 2004.

¹⁰⁵ *Adeko v Ijebu Ode District Council* (1992) 1 SCNLR 349, *Union Bank of Nigeria Plc v Soares* (2012) 11 NWLR (pt. 1312) 550

¹⁰⁶ (2005) 14 NWLR (Pt 945) 443 at p. 467 paras A-B

¹⁰⁷ *Irem v Obubura District Council* (1960) SCNLR 70; *Ogunsanmi v Furniture (W.A) Co. Ltd.* (1961) 1 All NLR 224; *Abomeli v Nigerian Railway Corporation* (1995) 1 NWLR (pt. 372)

disciplinary proceedings. The general rule on termination of employment by notice is that the law does not require either party to state reason for doing so. The most important consideration is whether the notice had been given.¹⁰⁸

3.7.4 Retirement in Public Interest

Retirement signifies the detachment from primary activity in business, industry or active service as full time employee.¹⁰⁹ By the provision of Rule 04601,¹¹⁰ the Civil Service Commission is empowered to exclude the application of disciplinary proceedings on an officer if it thinks the matters are not suitably covered therein, and call for report from the Permanent Secretary/ Head of Extra Ministerial Department in which the officer has served. If upon consideration of the report, and having regards to the conditions of service, usefulness of the officer and the circumstances of the case, the Commission is of the view that that it is desirable in the public interest to do so, it shall retire the Officer and the Officer's service shall accordingly terminate on such date as the Commission may specify.

No mention is made of the acts that will necessitate such a retirement. So long as this is considered to be in public interest, the Commission will go ahead and retire the officer.

3.7.5 Demotion

Demotion is one of the punishments contemplated by the Kano State Civil Service Rule.¹¹¹ Demotion, generally speaking, is a reduction in rank. In labour law, a demotion is the withdrawal by an employer of an employee organization's official designation as exclusive representative. It

¹⁰⁸ See *Calabar Cement Co. Ltd v Daniel* (1991) 4 NWLR p 750; *Ajayi v Texaco Nigeria Ltd.* (1087) 3 NWLR 577

¹⁰⁹ Okechukwu E. & Chijioke S., (2011), *The Laws and Administration of Retirement in Nigeria: A Historical approach.* Kuwait Chapter of Arabian Journal of Business and Management Review Vol. 1, No.2; October p.1

¹¹⁰ Kano State Civil Service Rule, 2004

¹¹¹ *Ibid*, Rule 04305

is usually a result of employee disaffection and it follows a decertification election.¹¹² As a disciplinary measure, demotion is allowed only in circumstances where dismissal is justified but, due to mitigation factors, the employer decides not to dismiss the employee.¹¹³ In *Van Niekerk v Medicross Health Care Group (Pty) Ltd*,¹¹⁴ the CCMA found that, since demotion is a disciplinary action, ‘consultation and counseling’ should take place before the demotion is implemented. In the absence of a fair reason and fair procedure the demotion was held to amount to an unfair unilateral alteration of terms and conditions of employment. Under the South African law, before a worker liable to dismissal is removed, there is a general provision requiring that he be consulted, and his consent to get demoted obtained, instead of being dismissed.

In *Glass v University of Zululand*,¹¹⁵ however, Commissioner Rycroft found that demotion following a disciplinary inquiry is justified where demotion is expressly provided for as a sanction in the employer’s disciplinary code. Under those circumstances, the employer “was under no obligation to consult and obtain agreement to demotion as a sanction as opposed to dismissal. In *Van der Riet v Leisureniet t/a Health and Racquet Clubs*,¹¹⁶ the Labour Appeal Court held that failure by the employer to consult with an employee prior to his demotion constituted an unfair labour practice.

There is no such provision under the Civil Service Rules or the Labour Act in Nigeria.¹¹⁷ The Commission can therefore demote the officer to whatever rank it deems fit without consulting him, and without having recourse to what is reasonably fair or acceptable to the employee.

¹¹² Found at <https://definitions.uslegal.com/d/demotion> visited on 12/5/2018

¹¹³ See the South African case of *Transnet Johannesburg v TWU* [1998] 8 BALR

¹¹⁴ [1198] 8 BALR 1038 (CCMA)

¹¹⁵ [2006] 4 BALR 388 (CCMA)

¹¹⁶ [1997] 6 BLLR 721 (LAC)

¹¹⁷ Cap L1 LFN 2004

3.7.6 Deferment of Promotion or Increment

This is another sanction in which the Civil Servant's promotion is postponed to a future period to be determined by the Commission. There is no express limit as to the number of years that deferment will take. But it is expected that it will not exceed more than three years, or such number of years that it takes a civil servant to be due for promotion.

3.8 Conclusion

This chapter looked at the concept of discipline, its significance the need for disciplinary procedure. The concept of fair hearing in disciplinary proceedings of various classes of employment is given special attention. The chapter proceeded to trace the constitutional foundation of the Kano State Civil Service Commission and the Kano State Civil Service Rules. This laid a very good foundation for a review of classes of acts and omissions that are punishable under the rules and the various punishments prescribed by the rules. In the next chapter, we shall see the extent to which the concept of fair hearing is observed under the Kano State Civil service Rules.

CHAPTER FOUR

APPRAISAL OF THE DISCIPLINARY PROCEDURES UNDER THE KANO STATE CIVIL SERVICE RULES 2004 VIS-A-VIS THE CONSTITUTIONALLY GUARANTEED RIGHT TO FAIR HEARING

4.1 Introduction

Having had a look at the concept of fair hearing generally, and how it specifically applies to disciplinary proceedings in contracts of employment with legal or statutory flavour, it is now imperative to analyze the provisions of the Kano State Civil Service Rules 2004, with a view to seeing the extent to which it complies with the concept of fair hearing. The purpose of this endeavor is to find areas of compliance with the concept of fair hearing, and provisions that are in breach of officers' right to fair hearing. It is hoped that in this chapter, the identified gap in the statement of the problem will be unraveled, and subsequently addressed.

4.2 The Legal Status of Civil Service Rules

As a preliminary point, it is imperative to identify the legal significance of Civil Service Rules. The recent decision of the Supreme Court in *Comptroller General of Customs & ors v. Gusau*¹ identified the legal status of Civil Service Rules, even though it was based on the Public Service Rules of the Federation which has similar application and provisions with the Kano State Civil Service Rules, 2004. In that case, the respondent and one other person were custom officers until the 1st December, 2009 when they were compulsorily retired by the Nigerian Customs Service Board² without reaching the compulsory retirement age. The respondent's contention at the trial

¹ (2017) LPELR-42081(SC)

² The Nigerian Customs Service Board Act is a Federal Enactment. Section 1(1) of the Act provides that there is hereby established under the control of the Federal Ministry of Finance a board to be known as the Nigerian Customs Service Board which shall be responsible for the administration of the Customs and Excise Management

court, up to the Supreme Court was that the retirement was contrary to Section 8 of the Public Service Rules of the Federation which provides that compulsory retirement of all age grades in the Civil Service shall be 60 years or 35 years of pensionable service, whichever is earlier. The appellant's contention was that the respondent's compulsory retirement was made pursuant to a policy guideline introduced to reform the Nigerian Customs Service for better revenue generation into the Federation Account.

It has to be noted that the policy guideline was not made pursuant to Section 9 of the Nigerian Customs Service Board Act that empowers the Board to regulate conditions of service subject to the approval of the minister.³ The decision of the Supreme Court in invalidating the compulsory retirement of the respondents, affirming concurrent findings of two lower courts can be summarized as follows.

- a. The Nigerian Customs Service Board, the 4th Appellant, does not share with the Federal Civil Service Commission the basic powers or functions conferred expressly, by Paragraph II of the Third Schedule to the 1999 Constitution, as amended, on the Federal Civil Service Commission to make regulations relating to retirement of officers in the Public Civil Service of the Federation, and or rules relating to dismissal and exercise disciplinary control over persons holding such offices. The Public Service of the Federation is Item 53 of the Exclusive Legislative List contained in Part 1 of the Second Schedule to the 1999 Constitution. The Exclusive Legislative List is drawn pursuant to Section 4(2) of the said Constitution.

Act. Section 3 of the Act vests the Board with the responsibility for formulating the general policy guidelines for the Nigerian Customs Service. The Board by Section 4, has the power to appoint, promote, transfer and exercise disciplinary control over officers of the Nigerian Customs Service. However, The Act did not specify the manner that an officer could leave service.

³ See also *Union Bank of Nigeria Plc & Anor v Afeoluwa ig. Enterprises LTD* (2007) 7 NWLR (pt. 1032) 71

- b. Section 153(1) (d) of the Constitution establishes the Federal Civil Service Commission.

By Section 159(1) of the Constitution, the Federal Civil Service Commission, being one of the bodies expressly established by Section 153(1)⁴ of the Constitution, is an independent body which shall not be subject to the direction or control of any other authority or person. The Federal Civil Service Commission, by virtue of Section 160(1) of the Constitution, may, with the approval of the President, make rules to "regulate its own procedure or confer power and impose duties on any power or authority for the purpose of discharging its functions", which are expressly stated in Paragraph II of the Third Schedule to the Constitution.

- c. Section 3(a) of the Nigerian Customs Service Board Act cannot be used as the pretext for making Exhibit 24 empowering the 1st, 2nd and 4th Appellants to compulsorily retire from service, officers who had spent 10 years on duty post of Comptrollers but who are yet to qualify for compulsory retirement prescribed in the Public Service Rules. That would be contrary to, and in conflict with, not only the Respondent's existing terms of contract of service, but also the general principles of the Public Service Rules. The Supreme Court affirmed the finding of the Court of Appeal thus; "a statement of policy, general or otherwise by the 4th Appellant, cannot overrule or wipe away the specific provisions of the Public Service Rules made by the Federal Civil Service Commission which are written into the terms of pensionable contract of an officer in the Public Service."

⁴ Section 197 thereof empowers the State Civil Service Commission, as contained in Part I of the Third Schedule, to appoint persons into the State Civil Service and to dismiss and exercise disciplinary control over persons holding such offices. Section 202 of the Constitution states that in exercising its power to make appointment or to exercise disciplinary control over persons the State Civil Service Commission shall not be subject to the direction and control of any authority or person. Similarly, Section 204 of the Constitution empowers the State Civil Service Commission, among others, to rules or otherwise regulate its own procedure or confer powers or impose duties on any officer or authority for the purpose of discharging its functions.

- d. It is crystal clear from the express provisions of Section 153(1)(a), 159(1), and 160, read together with Paragraph II of the Third Schedule of the 1999 Constitution, as amended, that the Public Service Rules are made pursuant to the powers conferred on the Federal Civil Service Commission by the Constitution.⁵ They are accordingly a bye-law of the Constitution. They have been made with the main object and intention of protecting officers, particularly those holding pensionable employment, in the Public Service of the Federation. In interpreting these Public Service Rules, the Supreme Court chose the approach advocated by Nnamani, JSC in *F.C.S.C. v. Laoye*⁶ wherein His Lordship, adopting the opinion of Viscount Simon, L.C.⁷ stated:

We should avoid a construction which would reduce the Legislation to futility and rather accept the bolder construction based on the view that the Parliament would legislate only for the purpose of bringing about an effective result.

The main object and intention of the Constitution, in vesting in the Federal Civil Service Commission⁸ the power not only to appoint persons to offices in the Federal Civil Service but also to make rules regarding the manner they retire, or the manner they are compulsorily retired, there-from are clear. They are to engender in the civil servants security of tenure, which they psychologically need for patriotic and honest discharge of their duties. Where the main object and intention of a statute are clear, the Court, in its interpretative power, must give effect to those main object and intention. The words and language used in the statute to convey its main object and intention shall be given their

⁵ See *Federal Civil Service Commission v. Laoye* (1989) 4 SC (pt.11) p. 1

⁶ *Federal Civil Service Commission v. Laoye* (1989) 4 SC (pt.11) p. 1

⁷ in *Nokes v. Doncaster Amalgamated Collieries Ltd.* (1940) AC 1014,

⁸ And in our case the State Civil Service Commission

ordinary meaning⁹. The Constitution, in the powers or function it has vested in the Federal Civil Service Commission, should be so construed to achieve the purpose and object it is intended to achieve.

- e. The Supreme Court¹⁰ made it clear that the Civil Service Rules (or Public Service Rules) made by the Federal Civil Service Commission, pursuant to the powers vested by the Constitution, govern conditions of service of Federal Public Servants. The Public Service Rules are not only a by-law of the Constitution; they also have added constitutional flavour to the employment governed thereby. They take the relationship between the civil servant and the government beyond the ordinary or mere master and servant relationship. It behoves the Appellants, particularly the 1st and 4th Appellants, in their relationship with the Respondent herein to respect the Rules. They cannot, under the pretext of formulating policy guidelines on the Nigeria Customs Service Reform, tinker with the accrued rights of the Respondent to retire from the Civil Service of the Federation either upon attaining the age of 60 years, or having served for 35 years, whichever is earlier.
- f. The court held that the particular provision of Exhibit 24 on which the Appellants relied to compulsorily retire the 2nd Plaintiff/Respondent, on the ground that he had served on the duty post of Comptroller for 10 years, is a mere statement of policy intent. It has no force of law and it is in conflict with the provisions of Section 8 Rule 020810(i) or Section 8 Rule 020810(ii), read together with Chapter 16 Rule 160103, of the Public Service Rules, 2008 which provide that "the compulsory retirement age for all grades of officers in the service shall be 60 years or 35 years of pensionable service, whichever is earlier." For avoidance of any doubt, an officer who has remained on a duty post for 10

⁹ Unipetrol v. E.S.B.I.R. (2006) ALL FWLR 413 at 423; Obusez v. Obusez (2007) 30 NSCQR 329

¹⁰ Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C (Reprint) p. 26

years could be made to vacate that duty post by the management of Nigeria Customs Service. Such officer cannot however, be compulsorily retired from the Service by the Appellants unless the officer had attained 60 years of age or had spent 35 years in service, whichever is earlier.

4.3 Preliminaries to Disciplinary Proceedings Generally under the Kano State Civil Service Rules, 2004

It is the duty of a superior officer to report a case of misconduct to the Permanent Secretary/head of Extra Ministerial Department and if he is of the opinion that the affected officer should be interdicted, such recommendation shall be included in the report. The Permanent Secretary/head of Extra Ministerial Department may, if he thinks fit, interdict the officer at this stage before the proceedings commence.¹¹

At the stage of reporting and verifying a case worthy of institution of disciplinary proceedings, where the Permanent Secretary/head of Extra Ministerial Department is of the view that a prima facie case has been made against an officer, he may suspend him without pay. If however, the officer is exonerated at the end of the proceedings; all salary due to him during the period of suspension shall be paid to him.¹²

Fair hearing in any proceedings, whether judicial or quasi judicial, becomes manifest before the commencement of the proceedings and during the proceedings, having a look at the surrounding circumstances of each particular case and the interest of justice. Where therefore, some of these preliminary steps have not been complied with, the proceedings no matter how fair, will be quashed.

¹¹ Rule 04304(b) and (c) of the Kano State Civil Service Rules, 2004

¹² Rules 04304 (d) and 04405 of the Kano State Civil Service Rules, 2004

As soon as such¹³ a superior officer becomes dissatisfied with the behavior of any officer subordinate to him, it shall be his duty so to inform the officer in writing giving details of unsatisfactory behavior and to call upon him to submit within a specific time such written representation as he may wish to make to exculpate himself from such disciplinary action. After considering such written representation as the officer may make within the specific time the superior officer shall decide whether:-

- a. The officer has exculpated himself in which case, he shall be informed in writing and no further action shall be necessary, or
- b. The officer has not exculpated himself but it is considered that he should not be punished, in which case an appropriate formal letter of advice shall be issued to him and shall be required to acknowledge it receipt in writing, or,
- c. The officer has not exculpated himself and deserves some punishment, which case Rule 04304 shall apply.¹⁴

From the provisions of the Rules, a valid query must

- a. bear the name of the officer,
- b. draw his attention to the action complained against indicating whether it is a misconduct or serious misconduct,
- c. call upon him to submit a written response to the allegations against him within a specified time giving his reasons, if any, why disciplinary action should not be taken against him,

¹³ Rule 04302 Kano State Civil Service Rules, 2004

¹⁴ Rule 04302. Similar provisions are found in Rule 030302 of the Federal Public Service Rules, 2014

- d. Contain notice to the effect that failure to of the officer to submit written representation within the stipulated time mean that the officer does not wish to defend himself.

Query is the foundation upon which every disciplinary action can be based. It enables the officer to know with certainty the nature of the allegations against him, and if found guilty, the likely disciplinary action that can be taken against him. The officer's response to the query is what will determine the next line of action to be taken by the Commission. If the officer exculpates himself, the commission will write to him dropping charges and exonerating him. If the officer has not exculpated him, he can be issued with a letter of advice or be subjected to disciplinary proceedings.

4.4 Procedure under Rule 04306 in Cases of Allegations of Serious Misconduct

We have seen in Chapter 3 above, that dismissal is the main sanction to be meted out on officers found guilty of serious misconduct. As we shall see in succeeding parts of this research, it is only in cases of allegations of serious misconduct that officers are accorded elaborate proceedings in observance of their right to fair hearing by the Kano State Civil Service Rules, 2004. By Rule 04306, no officer shall be dismissed unless the following procedure has been followed.

- a. **Issuance of Query.** The officer shall be notified in writing of the grounds on which it is proposed to discipline him. The query should be precise and to the point. It must relate the circumstances of the offence, the rule and regulation which the officer has broken and the likely penalty. The query shall call upon the officer to state in writing, within the period specified in the query any ground upon which he relies to exculpate himself.¹⁵

¹⁵ Rule 04306 (i). This is similar to Rule 030307 (i) of the FRN Public Service Rules

- b. **Response to the Query.** If the officer submits his representation and the State Civil Service Commission is not satisfied that he has exculpated himself, and considered that the officer should be dismissed, it shall take such action accordingly. In the absence of such representation, the commission may take such action as it may consider necessary.¹⁶ If upon considering the representations of the officer the Commission is of the opinion that the officer does not deserve to be dismissed from service but deserved some other punishment, it shall impose on the officer such punishment as it considers appropriate.¹⁷
- c. **Setting up of Board of Inquiry.** The Commission if it considers necessary may set up a Board of Inquiry which shall consist of not less than three persons one of whom shall be appointed by the Chairman of Commission.¹⁸ The members of the Board shall be selected with due regard to the status of the officer involved in the disciplinary case as well as the nature of the offence which is the subject of inquiry.¹⁹ In any case, the Head of the officer's department shall not be a member of the Board.²⁰ This is possibly to avoid conflict of interests and the likelihood of the head of department being a judge in his own cause.
- d. **Appearance before the Board.** At the date of hearing, the officer will be allowed to defend himself, and to call witnesses in his defense.²¹ This Rule complies with decision in *R V Director of Audit (Western Region) & Anor, Ex Parte Oputa & Ors*²² where the Supreme Court held, among other thing, that opportunity to appear before disciplinary committee is an essential requirement of right to fair hearing. However, his failure to

¹⁶ Rule 04306 (iii) This is similar to Rule 030307 (iv) of the FRN Public Service Rules

¹⁷ Ibid

¹⁸ Rule 04306 (v) This is similar to Rule 030307 (v) of the FRN Public Service Rules

¹⁹ ibid

²⁰ ibid

²¹ Rule 04036(vi) This is similar to Rule 030307 (vi) of the FRN Public Service Rules

²² 1961 All NLR p. 659

appear to defend himself before the Board will not invalidate the proceedings so long there is evidence to establish that he is aware of the sitting.²³ The fair hearing principle entrenched in Section 36 of the Constitution is not for the indolent but for the party who is ready to take advantage of the principle at the appropriate time.²⁴ Where a party is given opportunity to present his case and he misused that opportunity, he cannot complain of breach of his right to fair hearing.²⁵

- e. **Right to Cross-examine Witnesses who Testified against him.**²⁶ The officer has the right to put questions to the witness with a view to exposing any possible contradiction, or bias in his testimony. Right to cross-examination can be equated to right to fair hearing and its denial can invalidate proceedings.²⁷ Cross-examination is a weapon employed by a party not only to build its case but also to demolish the case of the adversary or to cast aspersions on the credibility of a witness. In the Supreme Court case of *Oforlete v The State*,²⁸ Ayoola J.S.C had this to say

The noble art of cross-examination constitutes a legal weapon in the hands of the adversary to enable him effect the demolition of the case of the opposing party. It is therefore good practice for counsel not only to put across his client's case through cross-examination, he should , as a matter of utmost necessity, use the same opportunity to negative the credit of that witness whose evidence is under fire. Plainly, it is unsatisfactory if not suicidal bad practice for counsel to neglect to cross-examine a witness after his evidence in chief in order to contradict him

²³ ibid

²⁴ Newswatch Communications v Attah (2006) 12 NWLR pt. 992 p 144

²⁵ Chidoka v First City (2012) 7 SCNJ 452

²⁶ Rule 04306(vii)

²⁷ Onwuka v Owolew (001) 7 NWLR (pt. 713) 659 CA

²⁸ (2000) 7 SCNJ 162 at 179

or impeach his credit while being cross-examined but attempt at doing so by calling other witnesses thereafter. That is demonstrably wrong and will not even feebly dent that unchallenged evidence by counsel leading evidence through other witnesses to controvert the unchallenged evidence.

In *Denloye V Medical and Dental Practitioners Disciplinary Tribunal*,²⁹ the denial of right to cross-examine witnesses called at the tribunal lead to a decision quashing the proceedings. During cross-examination, the cross-examining party has the right to put as many questions as are material to his case.³⁰ Facts elicited during cross-examination must be given utmost consideration by the Board of Inquiry and must be taken into consideration in the determination of the matter. Going by what was decided by the court in the above cases, the provision of Rule 04306, it is submitted, complies with the principles of fair hearing.

- f. **Right to Have Advance Copies of Documents to be Tendered before the Board against Him.** No documentary evidence shall be used against the officer unless he has been previously supplied with a copy thereof or given access thereto.³¹ In *Adedeji V Police Service Commission*³², the appellant who was an Assistant Superintendent of Police was served with a letter by the respondent in which he was accused of corruption and contravention of certain general orders. He was required to make representations why he should not be dismissed for the offences. He wrote a reply but was eventually dismissed. He challenged his dismissal, but was confronted at the High Court with allegations which were not in the letter of query issued to him by the Commission. The

²⁹ (1986) 1 All E.R

³⁰ Ibrahim v Shagari (1983) 2 SCNLR 170 at 196

³¹ Rule 04306(vii) This is similar to Rule 030307 (vii) of the FRN Public Service Rules

³² (1968) N.M.L.R p. 102

court dismissed his case. He appealed to the Supreme Court. The court held that the letter did not sufficiently appraise the appellant of the case against him, giving him the opportunity to state his case in rebuttal in view of the fresh allegations in the counter affidavit filed at the High Court, and that adequate opportunity was not given to him to meet the case or the facts of the case known to the Commission.

- g. **Discovery of Additional Grounds for Dismissal.** If during the course of inquiry further grounds for dismissal are disclosed, and the State Civil Service Commission deems fit to proceed against the officer upon such grounds, the officer shall by the direction of the commission, be furnished with a written statement thereof and the same steps shall be taken as prescribed above in respect of the original grounds.³³ It undoubtedly accords with the principles of fair hearing for an officer against whom additional ground which may lead to dismissal have been discovered to be issued with a fresh query containing the fresh grounds, giving him the opportunity to defend himself. As stated above, all the perquisites of fair hearing will be given to the officer in respect of the fresh grounds.
- h. **Submission of Report to the Commission.** The Board having inquired into the matter shall make a report to the Commission. If the Commission considers that the report should be amplified in any respect or that further enquiry is desirable, it may refer any matter back to the Board for further inquiry or report.³⁴ The Commission shall not itself hear witnesses. The above clearly shows that the report of the Board must be reasoned; not capricious. For the Board to obviate the possibility of abuse of power, it must address all the issues raised in the allegation and give reason for its finding on each of them. If the Commission is of the view that more clarification needs to be made, then the Board

³³ Rule 04306(viii) This is similar to Rule 030307 (viii) of the FRN Public Service Rules

³⁴ Rule 04306 (ix) This is similar to Rule 030307 (ix) of the FRN Public Service Rules

has to supply these clarifications. As we have seen in Chapter Two, even administrative bodies have to give reasons for their decisions. This provision of Rule 04306 of the Kano State Civil Service Rules, 2004 complies with officer's right to fair hearing.

- i. **Consideration and or Implementation of the Report.** If upon considering the report of the Board together with the evidence and all material documents relating to the case, the Commission is of the opinion that the officer shall be dismissed, such action shall be immediately taken.³⁵ If the Commission does not approve the officer's dismissal and does not consider that any penalty should be imposed, the officer should be reinstated forthwith and be entitled to the full amount of salary denied him if he was interdicted or suspended.³⁶ If upon considering the report of the Board, the Commission is of the opinion that the officer does not deserve to be dismissed but that the proceedings disclosed grounds to requiring him to retire, the commission shall, without further proceedings, direct accordingly.

4.5 What is missing in Rule 04306 as far as Fair Hearing is concerned

Having gone through the provisions of Rule 04306 of the Kano State Civil Service Rules, 2004 it has been observed that the procedure applies to cases in which an officer is alleged to have committed an act of serious misconduct which may lead to dismissal. It does not apply to cases of misconduct. This is possibly why an attempt is made to provide as much of fair trial to an officer as the framers of the Rules can envisage. The importance of this inquiry is centered on the fact that under the Nigerian Labour Law, a plaintiff in case for wrongful dismissal or termination of employment has a duty to place before the court the relevant condition of service under which the employment was brought to an end, and point specifically how the employer breached the

³⁵ Rule 04306(x) This is similar to Rule 030307 (x) of the FRN Public Service Rules

³⁶ Rule 04306(xi)

condition of service in bringing the employment to an end. In this situation therefore, if there is an essential principle of fair hearing that is omitted in Rule 04306 of the Kano State Civil Service Rule, there is need to point it out and justify the need for its inclusion. However, Rule 04306 is deficient in the sense that it does not cover the following areas which are also important segments of fair hearing in quasi-judicial administrative proceedings.

a. *Right to be Present Throughout the Proceedings*

Right to be present at all stages of proceedings in a case concerning an individual is inherent in all proceedings. Rule 04306 of the Kano State Civil Service does not recognize the right of an officer against whom a disciplinary case is ongoing to be present all through the proceedings. What the Rule contemplates is the presence of an officer subject to disciplinary proceedings before the Board of Inquiry only in two instances. The first instance is when he is called upon to make his defense and call his witnesses in support of his own case. The second is when he chooses to cross-examine the witnesses that testified against him. It should be noted that nowhere was it stated in the Rules that witnesses testifying against an officer must do so in his presence. The only right he has is to cross-examine such witnesses who could have testified in his absence, the record of which he might have been supplied.

The rationale for the principle permitting the officer to be present at all stages of the proceedings obviously is that a party will not have adequate knowledge of the nature of the case against him if he was not opportune to be at the hearing, or given access to the records. Denial of this will be unfair and a breach of right to fair hearing. In *Denloye V Medical and Dental Practitioners Disciplinary Tribunal*,³⁷ the court set aside disciplinary proceedings on

³⁷ (1986) 1 All NLR p. 306

the ground that the appellant was not called or allowed to be present at the sittings of the Medical and Dental Practitioner's Investigative Panel were witnesses testified and document against him. When the appellant was summoned, the Panel declined his request to have access to evidence taken in his absence. The court in quashing the proceedings held that the procedure adopted by the panel was a gross violation of the appellant's right to fair hearing. Therefore, an officer can successfully challenge proceedings conducted under Rule 04306 of the Kano State Civil Service Rules which does not recognize his right to be present except at two stages of the proceedings, namely, when he appears before the Board of Inquiry to defend himself³⁸ and when he appears before the Board to cross-examine witnesses who testified against him.³⁹ Apart from the above two situations, the Board may exclude the presence of an officer undergoing disciplinary cases. The researcher submits that this is contrary to the principles of fair hearing.

In a recent case decided under the Kano State Civil Service Rules, 2004⁴⁰ one of the grounds of setting aside the disciplinary proceedings against the Respondent was the failure of the Board invite him back to attend its sittings, or to know the testimonies of witnesses who testified against him in the case. The Court of Appeal in resolving this issue in favor of the Respondent stated as follows:

One of the essential elements of fair hearing is that the body investigating an alleged misconduct against a person must not receive evidence or representation behind the back of the person being investigated. Where this is done, the Court

³⁸ Rule 04036 (vi) of the Kano State Civil Service Rules, 2004

³⁹ Rule 04036 (vii) of the Kano State Civil Service Rules, 2004

⁴⁰ Kano State Polytechnic V Aminu Gambo (Unreported suit No CA/360/2012)

will not enquire whether such evidence or representation did work to the prejudice of the person being investigated. It is sufficient that it might. The risk of it is enough.⁴¹

The researcher submits that literal study of Rule 04306 of the Kano State Civil Service Rules, 2004 leads the Board, as in *Aminu's* case supra, to dispense with the presence of the officer facing disciplinary proceedings, and require his presence only when he is to defend himself. The only way to address this lacuna is for Rule 04306 to expressly recognize the right of the officer to be present throughout the proceedings.

b. Right to Legal Representation

The failure of Rule 04306 of the Kano State Civil Service Rules, 2004 to recognize the right of an officer to be represented by a legal practitioner during the sittings of the Board of Inquiry will deprive the officer of obtaining legal assistance in situations where he needs them to sufficiently defend himself. The Rules mandates the officer to appear personally to defend himself in respect of the allegations leveled against him. As it was argued by Muhammad,⁴² in any proceedings be it civil, criminal or administrative in which a person is required to appear, he is entitled to be represented by a legal practitioner. It is submitted that this is a serious omission that can negatively affect the right of an officer to defend himself before the Board of Inquiry.

⁴¹ Kano State Polytechnic V Aminu Gambo (Unreported suit No CA/360/2012) p. 18

⁴² Muhammed, H., (1986.) Concept of Fair Hearing Under the Nigerian Law, being an unpublished thesis submitted to the Faculty of Law, Ahmadu Bello University Zaria, in partial fulfillment for the award of LLM, P. 82 see also the observation by Galadima JCA in *Nwanegbo v. Major Oluwole & Anor* (2001) 37 LRN 101 that there are certain components which must be present in any judicial determination either by the regular court or by an administrative tribunal some of which are that he may give evidence by himself, call witnesses, if he likes and make oral submission either personally or through a counsel of his choice if he so desires. See also Friendly H., (1975) Some Kind of Hearing: University of Pennsylvania Law Review: Vol. 123: at p. 1287

c. *Right to Trial within a Reasonable Time.*

The right to a trial within a reasonable time applies to civil, criminal and quasi-judicial cases.

Section 36(1)⁴³ provides

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 fair hearing **within a reasonable time by a court or other tribunal established by law**, constituted in such manner as to secure its independence and impartiality. [Emphasis supplied]

The purpose of this provision is to protect civil litigants and criminal defendants against excessive delays in legal proceedings, and to underline the importance of rendering justice without delays which might jeopardise its effectiveness and credibility. The question of what period of time is “reasonable” is judged in each case according to its particular circumstances. In making the assessment of reasonableness, the Court has regard to three issues, namely the complexity of the case, the conduct of the applicant, and the conduct of the state authorities. The Court examines the three issues separately, and then considers whether at certain stages, or overall, there have been excessive delays.

It is clear that the Board of Inquiry has the ultimate control of fixing time, place and duration of the proceedings.⁴⁴ However, the Rules do not have a time limit within which all disciplinary cases must be concluded. This failure places the officer subject to disciplinary proceedings in great danger of being involved in an array of proceedings for years that might at the end culminate in his exoneration. However, he may in the interim have to bear the

⁴³ Constitution of the Federal Republic of Nigeria (1999) as amended

⁴⁴ Obviously having recognized this danger, Rule 030307 (xiii) of Federal Republic of Nigeria Public Service Rules states that all disciplinary proceeding must commence and be completed within 60 days except where it involves criminal cases.

psychological stress of undergoing a disciplinary action. Proceedings can be used by an unscrupulous superior officer merely to overreach and cause untold annoyance to an officer with whom he is not in good terms.

Similarly, officers subjected to the interim measures of suspension and interdictions may have to forfeit their salaries or half of it until such a period, no matter how long, that the disciplinary proceedings might have come to an end and a report exonerating them considered. This is the more reason why the disciplinary proceedings under the Kano State Civil Service Rules should have time limit.

4.6 Instances of Breach of the Principles of Fair Hearing under the Kano State Civil Service Rules

There are also provisions in the Kano State Civil Service Rules that are completely in breach of the principles of fair hearing. These situations are:

- a. Dispensing with Disciplinary Procedure and Replacing it with the Report of Judicial Commission of Enquiry,
- b. Dispensing with comprehensive disciplinary proceedings under Rule 04306 in cases of misconduct,
- c. Denial of Fair Hearing Cases of Alleged Conduct Prejudicial to the Security of the State,
- d. Denial of fair hearing in taking interim measures suspending or interdicting an officer.

The researcher will analyze these provisions with a view to seeing how they breach the principles of fair hearing.

4.6.1 Dispensing with Disciplinary Procedure and replacing it with the Report of Judicial Commission of Enquiry.

There are instances where the need for a query and disciplinary proceedings under the Rules may be dispensed with. Where a Judicial Commission of Inquiry set up by the Government makes recommendations of a disciplinary nature of an officer, and such recommendations are accepted by the Government, the State Civil Service Commission shall proceed and implement the Commission's recommendations without having recourse to the disciplinary procedure encapsulated in the Rules.⁴⁵

A Judicial Commission of Inquiry is normally constituted by virtue of and under a Judicial Commission of Inquiry Law or Act as the case may be, to inquire into certain affairs and/or conduct of some individuals and after the enquiry, which is investigative in nature, the said commission submits its report to the government which set it up. The government will now study the recommendations and take further necessary actions.⁴⁶

The current legislation in Kano State is the Commissions of Enquiry Law of 1940 (as emended in 1983). Section 1 of the Law states:

Subject to the provision of Section 120 of the Constitution,⁴⁷ the Governor may, whenever he shall deem desirable, issue a commission appointing one or more commissioners, and authorizing such commissioners, or any quorum of them mentioned, to hold a commission of enquiry into the conduct of any officer in the public service of the State, or of any Chief, or the management of any department of the public service, or

⁴⁵ Rule 04303

⁴⁶ Dunbraye v. Preyor [2015] All FWLR pt. 774 p 127 at 171

⁴⁷ This is referring to Section 120 of the 1979 Constitution of the Federal Republic of Nigeria. The relevant section is section 128 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

of any local institution, or into any matter in respect of which , in his opinion, an enquiry would be for the public welfare.

The Commission in the exercise of its functions is empowered to summon witnesses, receive oral and documentary evidence, issue warrant to compel the attendance of witnesses, etc⁴⁸

By the Rules,⁴⁹ an officer can be disciplined based on the report of a Judicial Commission of Inquiry concerning him. If the government has accepted the report, the Commission can go ahead and implement the report without having resort to the disciplinary proceedings under the Rules. The nagging question is what is the justification for recognizing the report of a commission of inquiry as a substitute for disciplinary proceedings under the Kano State Civil Service Rules? Is the procedure adopted by Judicial Commissions of Inquiry similar to disciplinary procedure under the Rules? The answers to the above questions are not far-fetched.

To start with, the role of Judicial Commission of Inquiry is investigative while the role of Board of Inquiry set up under the Civil Service Rules is quasi-judicial. The role of the investigating panel is different from that of the disciplinary tribunal. Unlike quasi-judicial administrative bodies, the duty of the investigative panel is simply to investigate an allegation, assemble the evidence and submit its report to the government. The government can either implement the report or keep it in view.⁵⁰

Similarly, while there is detailed procedure before a disciplinary action can be taken under Kano State Civil Service Rules, there is no definite procedure as to how Commission of Inquiry under

⁴⁸ Section 7 of the Kano State Commissions of Enquiry Law, 1940 (as amended)

⁴⁹ Rule 04303 of the Kano State Civil Service Rules

⁵⁰ Dunbraye v. Preyor [2015] All FWLR pt. 774 p 127 at 171

the Kano State Commissions of Inquiry Law can arrive at a decision or conduct its proceedings. Section 6 of the Law⁵¹ states

The commissioners may make such rules for the conduct of the proceedings, the time and place of meeting and of adjournments as they may think fit, subject to the terms of the commission.

This shows that the commission has no definite rules that will ensure the fair hearing required before disciplinary action can be taken on an officer. Rule 04303 is contrary to the principle of right to fair hearing.

4.6.2 Dispensing with Comprehensive Disciplinary Proceedings under Rule 04306 in Cases of Misconduct

If it is represented to the Civil Service Commission that an officer has been guilty of misconduct and the Commission does not consider the alleged misconduct serious enough to warrant proceedings under Rule 04306 with a view to dismissal, it may cause an investigation to be made into the matter in such manner as it considers proper and the officer shall be entitled to know the whole case made against him, and shall have adequate opportunity of making his defense.⁵² If as a result the Commission decides that the allegation is proved, it may inflict any other punishment upon the officer such as demotion, withholding or deferment of promotion, increment or otherwise.

The implication of the above Rule is to empower the Commission to circumvent the provisions of Rule 04306 and refuse to comply with the principles of natural justice, except that the officer shall be given the opportunity to defend himself, where it is of the view that the officer faced with a case of misconduct which may not lead to dismissal.

⁵¹ Kano State Commissions of Inquiry Law, 1940

⁵² Rule 04305 this similar to Rule 030305 of the Federal Republic of Nigeria Public Service Rules, 2014

The main problem with the above provision is that it will deprive the officer charged with a case of misconduct the opportunity to have advance copy of documents to be used against him and the opportunity to cross-examine the witnesses who testified against him as well as such other measures put in place to ensure that the officer obtains fair hearing before any form of punishment is imposed on him.

As we have seen above, opportunity to cross-examine witnesses, to receive copies of documents to be used against him before the proceedings, among others are essential in any administrative disciplinary proceedings like the one Under the Kano State Civil Service Rules. At the end of investigation in a case of misconduct, the officer might be faced with sanctions such as demotion, withholding or deferment of promotion, increment or otherwise which are clearly decisions that can affect his civil rights and obligations.

Consequently, it is submitted that the provisions of Rule 04305 of the Kano State Civil Service Rules are contrary to the constitutionally guaranteed right to fair hearing. An officer who is punished in accordance with this rule can successfully challenge it in court.

4.6.3 Denial of Fair Hearing Cases of Alleged Conduct Prejudicial to the Security of the State

Where it is considered that the conduct of an officer is prejudicial to the security of the State, and where a committee comprising members from the State Ministry of Justice, Office of the Head of Service and Special Services Offices is satisfied that an officer has committed an act of

misconduct involving the security of the State, the normal disciplinary procedure needs not be followed by the Commission in taking any disciplinary action it may deem fit.⁵³

This provision is quite plain, and gives the Commission power to take disciplinary action against an officer without going through the disciplinary procedure contained therein, if it is of the view that the officer's action constitutes a misconduct involving the security of the state.

Rule 04501 has not defined what constitutes acts that involve the security of the state that will empower the Kano State Civil Service Commission to punish officers without observing the principles of fair hearing. This Rule is also a clear violation of officers right to fair hearing, especially that the rule excludes the application hearing before finally taking action that will determine the civil rights and obligations of the affected officer. It is clear that disciplinary action to be taken pursuant to this Rule can include dismissal, the most serious punishment under the Civil Service Rules. Disciplinary action can be taken under this Rule solely by the Civil Service Commission on even mere suspicion of engaging in activities that are prejudicial to the security of the State.

It can be argued that this Rule can be used to victimize officer in the Civil Service, since the Civil Service Commission is given a free hand and endless discretion in this disciplinary measure by giving it the power to determine the actions that are prejudicial to the security of the state and how to punish it without observing the principles of fair hearing.

4.6.4 Suspending an Officer

By Rule 04405, any person who appears to have committed any serious misconduct, when a *prima facie* case has been made against him may be suspended and his emoluments stopped. It is

⁵³ Rule 04501: under the Public service rule, an officer alleged to have committed an act prejudicial to the security of the state cannot be arbitrarily punished without going through the normal procedure of disciplinary proceedings under the rule. This, it is submitted is more in line with the established principles of fair hearing.

clear that Rule 04405 of the Kano State Civil Service Rules vests the Permanent Secretary/Head of Extra Ministerial Department with the power to suspend an officer pending the conclusion of investigation if he considers the suspension necessary, and in public interest.

The rationale of suspending an officer from his post in cases where he is charged with serious misconduct which may lead to dismissal, is that it removes the employee from the workplace so that he/she does not have the opportunity to interfere with records relevant to the investigation or to work with other staff who may provide evidence in respect of the allegations. However, can it be said that by suspending an officer without pay when a prima facie case was made against him without more not a clear violation of his fundamental right? The researcher submits that it is, for the following reasons. The power to suspend can be challenged from the following angles.

- a. Suspending an officer charged or about to be charged with an act of serious misconduct which can lead to dismissal is an act which can affect his civil rights and obligations. This is because the suspension has in a way tempered with his rights and duties under the contract of service between him and his employer by prohibiting him from carrying out his duties during the period of suspension. Secondly, it has deprived him of receiving salaries from which he takes care of his basic needs. During the period of suspension the affected officer will be deprived of means to settle his bills, children's school fees and other things. Thirdly, suspension will have psychological effect on him and adversely affect his credibility among his peers. To confirm this point, Rule 04405 state that if at the end of the disciplinary proceedings the officer is exonerated, he shall be paid all his salaries unpaid during the period of suspension. There is no provision in the Rules entitling the officer to subsistence

allowance, which is a token given to civil servants on suspension, disbursed to enable him to take care of his basic necessities.⁵⁴

- b. By Rule 04405, any person who *appears* to have committed any serious misconduct, may be suspended and his emoluments stopped. The authorised officer can suspend an affected staff at the point of investigation when he considers that a *prima facie* case has been made against the officer. However, this can happen even before the officer has been issued with a query and his response to the allegation received. The authorised officer, in this case the Permanent Secretary/Head of Extra-Ministerial Department, by arriving at a decision at the point of investigation as to whether a *prima facie* case has been made against an officer, is exercising a quasi-judicial function. If he is exercising a quasi-judicial function, he has a duty to observe the principles of natural justice, which entails among other things giving the concerned officer an opportunity to make a representation as to whether it is appropriate to suspend him or not. The question is what if the officer is suspended but at the end of the day, the Commission finds it expedient not to take disciplinary proceedings against him? Is it not likely that the officer's rights could have been affected without basis?
- c. The only way suspension can have a semblance of fair hearing is when it is meted out by the Permanent Secretary prior to hearing or the Board during the disciplinary hearing, when the officer is given the opportunity to make a representation specifically on the propriety of an order of suspension. In these circumstances, the Permanent Secretary or the Board will have the opportunity to appraise the facts of

⁵⁴ See the Indian cases of *Ghanashyamdas v. State of MP*, AIR 1973 SC 1183 and *Laxmi Datt v. Union of India*, SLR 1971 Del 232.

the case with a view to determining whether it is appropriate make such order. The facts to be considered will include the possibility of the officer interfering with the proceedings and the likely effects of the order of suspension of his life. If suspension at this level is not to be taken as punishment, the determination on whether to make it or not will be taken as something similar to interlocutory application in normal civil proceedings in the courts. This practice is what is obtainable as best practice in the international community. Section 75 (3) of New York Civil Service Law provides that “Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days.” Section VIII of New York State Department of Civil Service Manual of Procedure in Disciplinary Actions 2003 made reference to the above Section in regulating the procedure to be followed as follows:

The individual placed on suspension pending disciplinary charges should, at least, be given the opportunity to object to or give a reason why he or she should not be suspended before the suspension begins. In practice, this can be done at the time the Notice of Discipline is served and does not require a separate meeting or hearing. No questions should be asked, but the employee should be given a chance to read the charges, be aware that a suspension is to be imposed, and say something, if he or she wants to. The decision to suspend, however, remains with the employer. A witness is always a good idea at any stage of the disciplinary process to show that “due process” and fairness were followed regarding the suspension.

This clearly shows that even in cases of suspension as an interim measure, the agency is mandated to observe the principles of natural justice.

- d. The period of suspension has not been specified. In the same way that Civil Service Rules does not make provisions stating the time limit within which disciplinary proceeding must be concluded. It is an essential requirement of fair hearing that proceedings must be concluded within reasonable time.

By way of comparison, Section 75 (3) of New York Civil Service Law limits the length of period of suspension to 30 days. In India, there is no time limit for the period during which a civil servant can be kept under suspension. Even where the Rules provide that where an authority other than the government has kept a civil servant under suspension it should report the matter to the government, if the departmental enquiry is not completed within a period of six months it does not mean that an order of suspension beyond six months is not valid. The only duty enjoined by such a rule is that the officer who made the order of suspension must make a report to the government in all cases in which disciplinary proceedings are not concluded within a period of six months, so that the government may, by the application of its mind to the facts and circumstances of the case, make a proper order. It is open to the government to make an order vacating the order of suspension or to make an order directing the expeditious disposal of the disciplinary proceedings.⁵⁵ Where an employee was suspended and charge sheet was served after a long time, causing

⁵⁵ Subba Rao v. Assistant Commissioner, ILR 1962 Mys 972; State of Punjab v. Mewa Singh, SLR 1982(2) P&I I 611.

inordinate delay in the conduct of enquiry, the Indian apex court ordered reinstatement on that ground.⁵⁶

The absence of a similar provision in the Kano State Civil Service Rule, or in the case law will place the officer at the mercy of the authorities to the extent that he will remain suspended without pay for as long the proceedings last, even if it will take years. What confirms this suspicion is the provision of Rule 04405 of the Kano State Civil Service Rules which states that the officer will resume discharging his duties only upon his exoneration by the Board. If period of disciplinary hearing has been provided, and suspension exceeds this period, the officer could have reason to complain and demand his full pay. In the Kenyan case of *Peter Opiyo v Laikipia University*⁵⁷ the Court held that:

In my view, where there is an express provision for interdiction or suspension and the interdiction or suspension stretches beyond such period, the employee would be entitle to all benefits prior to such interdiction or suspension.

4.6.5 Interdiction

Literally, interdiction is an act of stopping something or of not allowing something.⁵⁸ It can also be defined as an act of stopping and taking illegal goods that are being transported somewhere, or an occasion when this happens.⁵⁹ Technically, interdiction refers to temporary removal of an officer from performing his normal duties.⁶⁰

Rule 04403 provides

⁵⁶ *ibid*

⁵⁷ [2015] eKLR

⁵⁸ <https://dictionary.cambridge> accessed on 2nd April, 2019

⁵⁹ *ibid*

⁶⁰ www.bahamas.gov.bs accessed on 2nd April, 2019

- (vi) When a serious case that may lead to dismissal has been instituted against an officer, the Permanent Secretary/Head of Extra Ministerial Department may interdict him on not more than half pay pending the determination of the case.
- (vii)When the charge against him is such that continued performance of his present duties is against public interest or prejudicial to the investigation of the charge against him, consideration shall be given to putting him on alternative duties.
- (viii) When an officer is interdicted he shall cease to report for duty and shall receive such proportion of his emoluments, not being less than one half, as the commission may determine.
- (ix) If proceedings under reveal that he is not guilty of the charge made against him, the officer shall immediately be reinstated and shall receive the full amount of his emoluments denied him during the interdiction.
- (x) If he is found guilty but is not dismissed, he may be refunded such portion of the emoluments denied him as the commission may determine.

By Rule 04404 a suspended and or interdicted officers have similar responsibilities namely they have a duty to inform and obtain the consent of their Permanent Secretary/Head of Extra-Ministerial Department before the State. They must keep the Ministry/Department informed of the addresses at which instructions to them can be delivered. If they fail to comply with the instructions delivered to them at such address within 7 days, they will be regarded as being absent from duty without permission.

Although there are arguments that suspension and interdiction are one and the same thing in the sense that they require an employee not to attend the workplace either for investigative purposes or as a disciplinary sanction,⁶¹ Subsection (2) of Section 36⁶²

without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law-

- a. Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes decision affecting that person

Without a doubt, interdiction is a very ambivalent measure. It can be taken both as a preventive measure or a punitive measure. In both cases, they affect the civil rights and obligations of the officer concerned. In the Kenyan case of *Fredrick Saundu Amolo v Principal Namanga Mixed Day Secondary School & 2 others*⁶³ the court made the following observations

It is important to note that there can be preventive interdictions and punitive interdictions... Punitive interdictions can only issue in circumstances where the employment contract, the employer code of conduct, the Collective Bargaining Agreement or the law allows for it as a sanction... Whether it is preventive or punitive, the interdiction to be valid must meet the requirements of substantive and procedural

⁶¹ See <https://kenyaemploymentlaw.com> accessed on 3rd April, 2019. In the Kenyan case of *Teresia N. Peter vs Kitui Teachers Savings Credit Co-operative Society Ltd* [2014] eKLR, the court held the view that suspension is neutral action taken to facilitate investigations whereas interdiction is a disciplinary penalty that can be coupled with the employee's salary being withheld.

⁶² Constitution of the Federal Republic of Nigeria (1999) (as amended)

⁶³ [2014] eKLR

fairness. This is the position articulated in *Chirwa v Transnet and Others* [2008] 2 BLLR 29, at the Constitutional Court of South Africa and reiterated by this court in Industrial Petition No 15 of 2012 in the matter of *Joseph Mburu Kahiga et al versus KENATCO Co Ltd et al*. This is so because suspensions and interdictions are acts that have detrimental effect of it impacts on the employee's reputation, advancement, job security and fulfillment.

The above shows that interdiction can be imposed as a punitive measure on the employee after conducting a disciplinary hearing and finding him guilty where condition of service or the law permits it. It can be argued that punitive interdiction is unknown to Kano State Civil Service Rules. What is common in Nigerian Civil Service Rules is preventive interdiction. In this circumstance, the officer is interdicted pending the conclusion of investigation or disciplinary hearing, placing him on a half salary in some cases. In the above stated case, the court went ahead to lay down requirement of fair hearing in cases of interdiction, even if they are preventive in the following way;⁶⁴

There must be a clear reason why the employee's interdiction is necessary, independent of any contention relating to the seriousness of the misconduct... thus a suspension or interdiction should only follow pending a disciplinary enquiry only in exceptional circumstances, where there is reasonable apprehension that the employee will interfere with any investigation that has been initiated or repeat the misconduct in question. The purpose of such removal from the workplace even temporarily, must be rational and reasonable and conveyed to the employee in sufficient detail to enable the employee to defend himself in a meaningful way...

⁶⁴ See also *Fredrick Saundu Amolo v Principia Namanga Mixed Day Secondary School & 2 others* [2014] eKLR

The Kano State Civil Service Rules however, states that suspension should not be used as synonymous to interdiction as the latter is lighter than the former. Suspension shall apply where a *prima facie* case, the nature of which is serious has been established against an officer and it is considered necessary in the public interest that he shall forthwith be prohibited from carrying out his duties.⁶⁵ From the above, the researcher is of the view that the Rules differentiates between interdiction and suspension in the following ways:

In the first place, suspension is more serious in nature as an interim measure than interdiction. In addition, an officer can be suspended by the Permanent Secretary/Head of Extra Ministerial Department if he is of the view that at the point of investigation, a *prima facie* case had been made against him. In the case of interdiction, a *prima facie* case need not be made out against an officer. Finally, a suspended officer will not enjoy his salary during the period of suspension⁶⁶ but an interdicted officer can only be denied not more than half of his salary during the period of interdiction.⁶⁷ The researcher submits that criticisms given against the legality of suspension of an officer as an interim measure will apply here, *mutatis mutandis*. The Rules as it stands on interdiction is contrary to the right to fair hearing since order of interdiction is arbitrarily imposed on the officer without procedural fairness.

4.7 Nature of Suits Challenging Breach of Right to Fair Hearing

An action challenging the termination of plaintiff's appointment and seeking reinstatement does not come within the class of actions for breach of fundamental rights as it is not a claim envisaged by the Fundamental Rights Enforcement Procedure (PREP) rules.⁶⁸ Thus, an action for wrongful dismissal from employment cannot be brought under the rules since it belongs to a

⁶⁵ Rule 04405

⁶⁶ Rule 04405

⁶⁷ Rule 04403

⁶⁸ Fundamental Rights Enforcement Procedure Rules, 2009

different class of action from actions on contravention or threatened contravention of a fundamental right.⁶⁹

In *Sea Trucks Ltd V Anigboro*⁷⁰ Karibi-Whyte, JSC held that the correct approach in a claim for the enforcement of fundamental rights is to examine the relief sought; the grounds for such reliefs and the facts relied upon. Where the facts relied upon disclose a breach of the fundamental right of the applicant as the basis of the claim, there is here a redress through the Fundamental Rights (Enforcement Procedure) Rules, 1979. However, where the alleged breach of right is ancillary or incidental to the main grievance or complaint, it is incompetent to proceed under the Rules. This is because the right, if any, violated, is not synonymous with the substantive claim which is the subject matter of the action. Enforcement of the right, *per se*, cannot resolve the substantive claim which is in any case different.

In *Gafar V Governor of Kwara State*⁷¹ the Supreme Court held as follows:

Where ancillary or incidental or accessory claims are so inextricably tied to or bound up with the main claims in a suit before the court, a court cannot adjudicate over them where It has no jurisdiction to entertain the main claims if such incidental or ancillary claims cannot be determined without determination at the same time, of the main claims, or where the determination of such incidental or ancillary claims must necessarily involve consideration or determination of main claims. In the instant case, it was not possible to determine the appellant's claim that his fundamental rights have been breached by the respondent without necessarily wading into the indictment of the appellant in the report of the Commission of Inquiry and the white paper issued on the report by respondent,

⁶⁹ Abba v J.A.M.B [2015] All FWLR pt.777 p. 744

⁷⁰ (2001) 3 NWLR (pt. 969) 159 at p. 1024,

⁷¹ (2007) 4 NWLR (pt. 1024) 375 at 463,

which was the main complain of the appellant in his action against the respondent the result of his being asked to refund N2 million or forfeit his personal assets. In the circumstance, the Court of Appeal was right to hold that the Federal High Court lacked the jurisdiction to determine the appellant's action as brought before that court.

In *Tukur v. Government of Gongola State*⁷² the applicant sought for an order of the court setting aside his deposition as the emir of Muri on the ground that he was not given fair hearing. He also sought for a declaration that his confinement by the state government was a breach of his fundamental right to movement. He also sought for an injunction restraining the respondent from further breaching his rights, among other reliefs. The respondent's notice of preliminary objection on the ground that the suit's main claim was on chieftaincy matter was dismissed. This decision was set aside at the Court of Appeal on the ground that the main claim did not border on the enforcement of fundamental rights. On further appeal to the Supreme Court, the court allowed the appeal on the ground that the trial court had no jurisdiction to entertain the matter. The Supreme Court held that since the Federal High Court had no jurisdiction to entertain the main relief, it cannot grant the ancillary relief. The case was therefore struck out

4.8 Taking Disciplinary Actions against Officers Charged with an Act which Amounts to a Crime

Where there is an allegation of criminal wrongdoing against a person, the jurisdiction to determine the allegation is vested in the courts, and the exercise of that jurisdiction cannot be usurped by an administrative tribunal.⁷³ The law is that if anyone is caught committing a crime, it is only a criminal tribunal that can convict him. Conduct amounting to a crime must first be a

⁷² (1989) 4 NWLR (Pt. 117) 517

⁷³ *Abba v J.a.m.b* [2015] All FWLR pt.777 p. 744, *Egbuniwe v Federal Government of Nigeria* (2010) All FWLR (pt 530) 1317; *Garba v University of Maiduguri* (1986) 1 NWLR (pt 18) 550 *Sofekun v Akinyemi* (1981) 2 NCLR 135; *Dongtoe v Civil Service Commission, Plateau State* (2001) FWLR (pt 50) 1639

matter for the criminal court or tribunal before disciplinary issues can be raised and resolved. This is because, where a person is accused of committing a criminal offence, his civil right to freedom from arrest, prosecution and punishment is called into question. There are however exceptions to this. For instance, where the person accused of committing the offence accepts his involvement in the commission of the offence. ⁷⁴In *Uondu v Union bank of Nigeria PLC*,⁷⁵ the Court of Appeal per Ogunwumiu JCA stated as follows:

The law in this regard is that where there is an allegation of crime against an employee, the employer cannot dismiss the employee based on that allegation until the conclusion of a criminal trial convicting the employee. Where however as in this case, the employee is not dismissed on the basis of the criminal allegation but for “gross misconduct”.... And having given the appellant a fair hearing as evidenced by Exhibit 3, the respondent is quite entitled to dismiss the appellant in this case.

4.9 Judicial Control of Administrative Adjudications under the Nigerian Law

An administrative tribunal, no matter how highly placed is inferior to the High Court and is always subject to the supervisory jurisdiction of the High Court. According to Awogu J.C.A. in *National Electoral Commission (N.E.C) V Nzeribe*⁷⁶

“A tribunal, no matter how highly clothed with power is still a tribunal and so an inferior Court and subject to the supervisory jurisdiction of a superior Court of record, such as the High Court of Lagos.”

⁷⁴ *Dongtoe v Civil Service Commission*, Plateau State (2001) FWLR (pt 50) 1639. *Garba v University of Maiduguri* (1986) 1 NWLR (pt 18) 550

⁷⁵ (2009) 5 NWLR (pt 1133) 1 at 14,

⁷⁶ (1991) 5 NWLR (P 192) 458 at 472

Accordingly, proceedings before an administrative or statutory tribunal may be challenged at the High Court on certain grounds. Prominent among these is want or excess of jurisdiction, denial of natural justice or fair hearing and error of law in the conduct of the proceedings by the tribunal.⁷⁷

It is settled law that a tribunal or other body with a limited jurisdiction acts *ultra vires* if it purports to decide a case falling outside its jurisdiction. Such proceedings will be a nullity and will be set aside by the courts.⁷⁸ Therefore a tribunal must act within the four corners of the statute creating it.⁷⁹ Rule of natural justice with its twin pillars of *audi altarem partem* and *nemo judex in causa sua* which are inherent in S.36 of the 1999 Constitution must be observed by these tribunals as failure may render their proceedings null and void.⁸⁰ Also, failure to follow the rules and procedure laid down by the enabling statute or an error of law in the proceeding before a tribunal may be fatal depending on whether the defect is fundamental or not.⁸¹

4.10 Conclusion

Having laid the foundation on the concept of fair hearing and its applicability to administrative law generally and disciplinary proceedings under administrative law in the preceding chapters, this chapter has delved into an analysis of the disciplinary proceedings under the Kano State Civil Service Rules, with a view to finding the extent to which the Rules comply with the principles of natural justice and the rules of fair hearing. It was discovered that while most of the provisions of Rule 04306 have complied with the rules of fair hearing, the rule itself applies mandatorily in cases of serious misconduct only and is deficient in some respects. The chapter

⁷⁷ See *Anisminic Ltd. V Foreign Compensation Commission* [1969] 2 A.C. 147.

⁷⁸ *ibid*

⁷⁹ *Okoroafor V Miscellaneous Offences Tribunal* [1995] 4 NWLR pt.387 pg. 59; *Soleye v. Sonibare* (2002) FWLR (pt.95) 221

⁸⁰ *Orugbo V Una* (2002) 9-10 S.C. 60 at 69

⁸¹ *R. v. Minister of Health, ex. parte Yaffe* [1930] 2 K.B. 98

has identified some instances where the disciplinary procedure under the Kano State Civil Service Rules has clearly breached the right of officers to fair hearing. These instances include situations of complete denial of the right to fair hearing and substituting it with findings of Judicial Commission of Inquiry to partial denial of fair hearing where an officer is charged with a case of misconduct which will not lead to dismissal. The irresistible conclusion to be drawn from a study of the rules is that an officer is entitled to fair hearing to a large extent only when he is charged with a case of serious misconduct which may lead to dismissal. We have also seen how in many respects imposition of preliminary sanctions on officers charged with disciplinary cases have the tendency of affecting the civil rights and obligations of these officers without giving them audience before the imposition of these sanctions. The chapter then went ahead to recognize the power of courts to review disciplinary proceedings, except that a person who complains of the decision of a disciplinary tribunal on the grounds of fair hearing cannot institute a suit for the enforcement of his fundamental human right, if the principal remedy is not the enforcement of the fundamental rights. The next chapter will contain the summary, findings and recommendations.

CHAPTER FIVE

SUMMARY, FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

5.1 Summary

This Chapter summarizes and presents the contents of the preceding chapters, identifies the major findings and makes recommendations to the relevant authorities. The research work is divided into five chapters, including this one, each put in place symbiotically to achieve the objectives of the research.

Chapter One is the backbone of the research. It started by identifying the role of effectiveness in the achievement of organizational goal in every institutional setting. Where the organization seeks to impose a punishment on an erring staff, this is where question of disciplinary proceedings comes in. Tribunals exercising disciplinary control over employees are obliged to act fairly. They are, by the provisions of Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) mandated to give fair hearing to before arriving at a decision affecting the civil rights and obligations of an officer. Kano State Civil Service Rules was made in this fashion. It was however identified that although the disciplinary procedure in the Rules accords fair hearing to officers, such right is comprehensively given in cases of serious misconduct which may lead to dismissal, and only partially given in cases of misconduct which may lead to demotion, deferment of promotion or increment. Similarly, the Permanent Secretary/Head of Extra-Ministerial Department at some point of investigation is empowered to suspend the officer without pay or interdict him with not less than half pay. In both circumstances, once exonerated, the officer will have his pay denied him during the period interdiction or the suspension. Similarly, there are instances where the application of the principles of fair hearing is expressly excluded before the imposition of penalties, which may

include dismissal. All these issues call for an in-depth study of the Rules. The identified research questions and objectives centered on applicability of the principles of fair hearing to administrative disciplinary proceedings and how the provisions of Kano State Civil Service Rule, 2004 comply with the principles of fair hearing. The chapter employed doctrinal methodology as principal means of data collection in the research. Primarily, Kano State Civil Service Rules and relevant codes Constitution of the Federal Republic of Nigeria and other enactments judicial authorities are of great use in this work. Secondary sources such as books, journal articles seminar papers, conference papers, articles in newspapers and magazines, reports of government based committees, public lectures, academic theses, projects; dissertations as well as relevant publications have been consulted. The chapter ended with review of related literature. There are pieces of work written on the general concept of fair hearing and the principles of natural justice. There were other works which are specifically on the applicability of the concept of fair hearing in administrative law, and in disciplinary cases. It was however discovered that none of the identified literature had specifically addressed the Kano State Civil service Rules, nor some of the identified lacuna even in other Civil Service Rules in Nigeria.

Chapter Two was dedicated to conceptual clarification of relevant terms. The concepts of Justice, Administrative Law, Quasi-Judicial Administrative Tribunals and Fair Hearing were briefly discussed. The Chapter identified the scope of Fair Hearing and its applicability to Quasi-Judicial administrative proceedings. For ease of reference, the chapter identified general provisions on fair hearing under the Section 36 which apply quasi judicial proceedings in which the civil rights and obligations of citizens may be affected. The chapter then proceeded to identify specific provisions of fair hearing, which applies specifically to criminal proceedings.

Chapter Three is dedicated to a study of universality of the concept of fair hearing and discipline under the Kano State Civil Service Rules, 2004. The chapter then proceeded to see under what type of labour relationship an employee must be given fair hearing before a disciplinary action can be taken against him. The first category is contracts with statutory flavour which must be terminated in the way and manner prescribed by the relevant statute, including fair hearing and any other manner of termination inconsistent with the statute will be null and void and of no effect. The second category is ordinary master and servant relationship, in which case the employer is not bound to accord fair hearing before exercising disciplinary control over the employee. The third category is where the employee holds office at the pleasure of the master, in which case employee is not entitled to fair hearing. The chapter went ahead to consider the classification of acts or omissions subject to disciplinary actions under the Kano State Civil Service Rules and the applicable sanctions.

Chapter Four undertook an appraisal of disciplinary procedure under the Kano State Civil Service Rules 2004 vis-a-vis the constitutionally guaranteed right to fair hearing. In that chapter, it was discovered that Rule 04306 of the Rules which applies to cases of serious misconduct has recognized if an officer is alleged to have committed an act of serious misconduct which may lead to dismissal, must be given fair hearing by issuing him with the query in a prescribed form and giving him an opportunity to submit a written response. If disciplinary proceedings are instituted, he shall have copies of documents that will be used against him and be given an opportunity to defend himself and cross-examine witnesses who testified against him. However, the Rule does not recognize the right of an officer to be present at all stages of the proceedings and to be represented by a legal practitioner of his own choice. The Rules has not also made

provision for speedy determination of disciplinary cases, thereby breaching officers' right to have their cases determined within a reasonable time.

There are cases where the Rules empower the Commission to partially observe the right to fair hearing only to the extent of giving the affected officer opportunity to defend himself and denying him the remaining. This is Rule 04305. Where it is alleged that he is guilty of misconduct which may not lead to dismissal, the officer shall be sanctioned without complying with disciplinary procedure in Rule 04306 so long as he was given the opportunity to defend himself. It has been submitted that any officer sanctioned under this rule can successfully challenge the sanction in court for failure to give him fair hearing. The chapter analyzed the provisions of Rules Rule 04303 where an officer can be punished based on the report of Judicial Commission of inquiry accepted by the government and Rule 04501 where an officer can be sanction if it is believed that his conduct is prejudicial to state security. These two Rules totally denied officers their right to fair hearing enshrined in the constitution.

We have also seen how the imposition of preliminary sanctions of suspension and interdiction by the Permanent Secretary/Head of Extra Ministerial Department without according the officer an opportunity to make presentations on the propriety of that order is in total breach of the officer's fundamental rights.

From the above, the researcher's contribution to knowledge can be found in his exposition of principles of fair hearing as found in the Nigerian Constitution, case law and scholarly write ups. The researcher then proceeded to test the disciplinary procedure under the Kano State Civil Service Rules, 2004. From the analysis, it is clear that Rule 04306 which essentially applies to cases of serious misconduct which may lead to dismissal attempts to comply with the tenets of

fair hearing making the issuance of query, opportunity to respond to query, setting up of board of inquiry, appearance by an officer who must be given an opportunity to cross-examine witnesses who testified against him and access to documents tendered. However the said Rule 04306 does not recognize some other rights of an officer which are necessary for him to be accorded fair hearing. They include right to be present throughout the proceedings, right to legal representation and right to trial within reasonable time.

The research work identified part of the Kano State Civil Service Rules which have totally denied officers rights to fair hearing. These include; Rule 04303 which dispenses with fair hearing where a Judicial Commission of Inquiry makes recommendation of a disciplinary nature on an officer and such recommendation is accepted, Rule 04306 which dispenses with comprehensive disciplinary procedure in cases of misconduct which will not to dismissal, Rule 04501 which denies officers right to fair hearing where their action are allegedly prejudicial to the security of the state. These three Rules are indeed contrary to section 36 of the Constitution of the Federal Republic of Nigeria which provides that 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 a manner as to secure its independence and impartiality. The researcher is of the view that the above section has not made a distinction as to the nature of the cases that must be given fair hearing. So long as the civil right and obligation of an individual are at stake, he must be given fair hearing. The qualifications given by Rules 04303, 04306 and 04501 are totally contrary to the provisions of the Constitution.

The research work also criticized Rules 04405 (power of suspension) and 04403 (power of interdiction) by stating that even though they are interim in nature, by being measures that have

the tendency to affect the civil rights and obligations of officers, they should not have been left to the Permanent Secretary/Head of Extra Ministerial Department to impose as he deems fit. These discussions, coupled with the recommendations contained below constitute contributions to knowledge by this research work.

5.2 Findings

Having undertaken the research as indicated above a perusal of the chapters revealed the following findings.

1. That fair hearing as a concept applies to civil, criminal as well as quasi-judicial disciplinary proceedings. Although the requirements of each could be different, it is essential that for parties to be given fair hearing, they must have been given adequate opportunity to know the nature of the case against them, have access to all the documents that will be used against them as well as be given the opportunity to defend themselves.
2. That the Kano State Civil Service Rules, 2004 was made pursuant to section 197 of 1999 Constitution of the Federal Republic of Nigeria (as amended) and same is considered a bye-law of the Constitution. This has made it to have constitutional flavour and so is bound to follow the spirit of the Constitution especially on issues that have to do with rights of citizens. Being a by-law of the Constitution, it is expected that provisions of the Civil Service Rules will always be in line with constitutional provision, and not contrary to it.

The Kano State Civil Service Rules made various provisions concerning civil servants stemming from recruitment, postings, salaries and increments, medical and dental procedures, overtime, allowances, leaves, promotions, transfers e.t.c. Three of those

areas which are germane to this research work are classification of offences, the applicable sanctions as well as disciplinary proceedings respectively.

3. Although the Kano State Civil Service Rules, 2004 and the Public Service Rules of the Federation are similar especially with respect to discipline, it was discovered that the Public Service Rules applying to Federal public servants contains more provisions that guarantee officers' right to fair hearing. Firstly, by Rule 04501 of the Kano State Civil Service Rules 2004, an officer alleged to have committed an act prejudicial to the security of the state can be arbitrarily punished based on the report of a committee not established for disciplinary purpose. However, Under Rule 030501 of the Public Service Rule 2014, an officer alleged to have committed an act prejudicial to the security of the state cannot be arbitrarily punished without going through the normal procedure of disciplinary proceedings under the Rule, except that punishment for this type of misconduct shall be aggravated. This, it is submitted, is more in line with the established principles of fair hearing. Secondly, under Rule 04406 of the Kano State Civil Service Rules 2004, officers dismissed are not entitled to all terminal benefits. However, under Rule 030407 of the Public Service Rules 2014, applying to employees under the Nigerian Federal Public Service, this provision is subject to the Pension Reform Act 2004.¹ Once an officer is entitled to terminal benefits under the Act, he will receive them even if his employment was brought to an end by dismissal. The researcher is of the view that this provision is more humane than the provision of Rule 04406 of the Kano State Civil Service Rules 2004. Finally, the Kano State Civil Service Rules 2004 has not made provisions stating the time limit within which disciplinary proceedings must be

¹ The applicable law is Pension Reform Act 2014

concluded. This might authorise the Civil Service Commission to proceed against an officer longer than necessary, to that extent that disciplinary proceedings could be initiated in the spirit of witch-hunt. Rule 030307 (xiii) of the Public Service Rules however limits the period of disciplinary proceedings to 60 days. This in effect guarantees the right of officers to have a fair trial within a reasonable period.

4. Rule 04306 of the Kano State Civil Service Rules 2004, which has laid down a relatively elaborate procedure on fair hearing has a quite limited application as it applies only to cases of alleged serious misconduct which may lead to dismissal by giving them opportunity to respond to query, make representations in their defense, have copies of documents tendered against them before the Board of Inquiry and right to cross-examine witnesses who testified against them. The Rule however, omitted right to legal representation, right to be present throughout the trial and right to have the inquiry concluded within a reasonable time, which are necessary features of right to fair hearing enshrined in Section 36(2) of the 1999 Constitution. This is to say, the only instance that the Kano State Civil Service Rules attempted to comply with disciplinary cases is in cases of serious misconduct which may lead to dismissal, but even then, the Rule has failed to adequately provide for this right because some salient provisions are missing.

Rule 04305 has empowered the Kano State Civil Service Commission to sanction officers found guilty of misconduct and to impose the appropriate penalty like demotion, deferment of promotion, increment or otherwise, without giving them fair hearing as exemplified by Rule 04306 except an opportunity to make representations in his defense. This provision will enable Commission to deny an officer right to cross-examine witnesses, receive copies of documents tendered during the proceedings of the Board of

Inquiry if he is tried for a misconduct which may not lead to dismissal. The researcher has shown how measures such as demotion, deferment of promotion, increment or otherwise affect the civil rights and obligations of citizens, and not dismissal alone. By these provisions, it is clear that the approach of the Rules to the concept of fair hearing is quite narrow, and can subject officers to disciplinary sanctions without according them the opportunity of a fair trial.

5. A study of Rule 04306 of the Kano State Civil Service Rules 2004 will reveal that the Rule itself is insufficient to provide fair hearing to officers because although the Rule provides for some aspects of fair hearing, it has failed to recognize the right of an officer undergoing disciplinary proceedings to be present before the Board of Inquiry in all stages of the proceedings and to be represented by a legal practitioner. This in effect means that the Board of Inquiry can proceed against the officer in his absence and may need him to be present only when it is his turn to defend himself. Of course, the Board may console him by giving him documents that were tendered against him and record of testimonies of witness who testified against him. The researcher submits that this measure is still inadequate, in the sense that presence of the officer or his legal practitioner during the whole disciplinary proceedings is the only way that he will be fully abreast with the facts of the case and the circumstances of the proceedings to the extent that he will be in the best position to defend himself. He cannot be expected to study all the bundles of documents and witness statements and appreciate them in the same way that he would have, if the witnesses testified and the documents were tendered in his presence or his legal practitioner. This denial has rendered the Rule contrary to Section 36 (2) of the 1999 Constitution of the Federal Republic of Nigeria was judicially

interpreted by the Supreme Court in the cases of *The cases of J.S.C., Cross River State v Young*,² *Baba v N.C.A.T.C.*,³ *P.H.M.B v Edosa*⁴ and a host of others.

6. Rule 04303 empowers the Civil Service Commission to dispense with disciplinary procedure and replace it with the report of a Judicial Commission of Inquiry and can impose any penalty to the affected officer, including dismissal. It has been found that a Judicial Commission of Enquiry is investigative in nature, and does not exercise quasi-judicial functions. It is more or less in a fact finding mission and submits report to the government. In addition to that, Judicial Commission of Inquiry does not have any recognized, mandatory procedure. It is after the inauguration of the Commission that the Commissioners can improvise their own rules that will guide their proceedings⁵. This cannot replace the provisions of the Civil Service Rules which are made pursuant to the Constitution. The researcher submits that report of a 6Judicial Commission of Inquiry cannot substitute disciplinary proceedings under the Civil Service Rules.
7. Rule 04501 clearly denies fair hearing to officers in cases of alleged conduct prejudicial to the security of the state, before the imposition of penalties which may include dismissal. When an officer is suspected to having engaged in a conduct prejudicial to the security of the State, under the Rule, the officer will not be given any form of fair hearing before he is punished. Surprising, the Rule has not defined the actions that are prejudicial to the security of the state, leaving same to be determined by a committee comprising members from the State Ministry of Justice, Office of the Head of Service and Special Services Office. Once the committee Is satisfied that an officer has committed an act

² [2014] All FWLR p. 714 p 40

³ (1991) 5 NWLR (pt. 192) 388

⁴ (2001) FWLR(pt. 41) 1977, (2001) 5 NWLR (pt. 707) 612

⁵ Section 6 of the Kano State Commission of Inquiry Law, 1940

involving the security of the State, the normal disciplinary procedure need not be followed by the Commission in taking any disciplinary action it may deem fit. The researcher submits that this is a clear violation of right to fair hearing.

8. The provisions of Rules 04405 (entitling the Permanent Secretary/ Head of Extra Ministerial Department to suspend an officer without salary if it appears to him at the point of investigation that prima facie case has been made against the officer) and Rule 04403 (entitling the Permanent Secretary/Head of Extra Ministerial Department to interdict or place him on not less than half salary when a serious case which may lead to dismissal have been instituted against the officer) are clear violations of Section 36(2) of the Constitution since they authorized the above superior officers to make decisions affecting the civil rights and obligations without giving them an opportunity to make representations on the propriety or otherwise of such orders. There is no doubt that at this stage, that suspension by the Permanent Secretary/Head of Extra Ministerial Department are purely administrative actions taken before the trial. It has been established by the cases⁶ that public authorities when exercising their functions in situations where the civil rights and obligations can be adversely affected are bound to comply with the rules of natural justice. In Schmidt's case, the court held that the courts are willing to intervene to protect a complainant having some right or even legitimate expectation which it will not be fair to deprive him without a hearing. In the Nigerian cases of *Chairman of Board of Inland Revenue v Joseph*⁷ and *WAEC v Mbalamu*,⁸ it was held that before taking any administrative action affecting the civil rights and obligations

⁶ Schmidt v Secretary of the State for Home Affairs (1969) 2 Ch p 149, R v Gaming Board ExParte Beniam (1970) Q.B p. 417, Kanda V Government of Malaya (1962) A.C p. 322

⁷ (1962) All N.L.R p. 1

⁸ (1992) 3 NWLR pt. 230 p 481

of a citizen, the principle of natural justice must be observed. In essence the affected person must be given an opportunity to make representations before the decision can be taken.

We have seen how suspending or interdicting an officer reduces him to a position of complete partial or total denial of his salary during the period of the interdiction of suspension, thereby depriving him of earning a livelihood both for himself and his family. If this measure can be imposed without listening to him, his right to fair hearing has been infringed upon. It is for this reason that in the Kenyan cases of *Fredrick Saundu Amolo v Principal Namanga Mixed day Secondary School & 2 ors*⁹ and *Chirwa v Transnet and Others*,¹⁰ the courts have held that whether preventive or punitive, interdiction or suspension must meet the requirements of substantive and procedural fairness. This is because according to the courts, suspension and interdiction are acts that have detrimental effect on the employees reputation, advancement, job security and fulfillment.

5.3 Recommendations

To address the problems identified by this study, the study recommends the following areas of amendment of the Kano State Civil Service Rules 2004 are recommended for the Kano State Civil Service Commission.

1. Rule 04306 should be amended and widened to recognize rights of officers to be present throughout disciplinary proceedings as well as their right to be represented by a legal practitioner during the proceedings. This will make it to agree with the decisions of the

⁹ [2014] eKLR

¹⁰ [2008] 2 BLLR, 29

Supreme Court setting down the minimum requirements for fair hearing in these types of proceedings.

2. The scope of the application of Rule 04306 should be expanded to cover cases of misconduct which may be demotion, deferment of promotion or increment among others. This is because it has been established that the requirement of fair hearing in disciplinary cases is geared towards ensuring procedural fairness before the imposition of penalties. This fairness is mandatory whether the likely penalty is dismissal, demotion, deferment of promotion or any other form of penalty. Consequently, Rule 04305 should be removed, having been replaced.
3. The maximum period of 60 days within which disciplinary cases must be initiated and concluded as contained in the Public Service Rules¹¹ should be adopted. This will enable the officers to know their fate within a reasonable time, and to obviate the tendency to victimize staff members.
4. Rules 04303 (Dispensing with disciplinary procedure and replacing it with the report of a Judicial Commission of Enquiry) and 04501 (Denial of fair hearing cases of alleged conduct prejudicial to the security of the state) should be removed/deleted having been found inconsistent with the provisions of Section 36 (2) of the 1999 Constitution of the Federal Republic of Nigeria and therefore void.
5. Rules 04405 (entitling the Permanent Secretary/ Head of Extra Ministerial Department to suspend an officer without salary if it appears to him at the point of investigation that prima facie case has been made against the officer) and Rule 04403 (entitling the Permanent Secretary/ Head of Extra Ministerial Department to interdict an place him on

¹¹ Rule 030307 (xiii) of the Public Service Rules of the Federal Republic of Nigeria 2014

not less than half salary when a serious case which may lead to dismissal have been instituted against the officer) should be amended in the following ways:

- a. The power to suspend and interdict, being quasi-judicial decisions should be vested in the Board of Inquiry and not the Permanent Secretary/ Head of Extra Ministerial Department.
- b. Before the exercise of the interim power to suspend or interdict, the Board should be made to present proposal to take these measures and an opportunity be given to the officer to make representations on why the order should not be made, since it is a measure that will affect him. Equipped with the available evidence, the Board can then decide whether or not to suspend or interdict the officer.
- c. In order to safeguard the interest of an officer suspended or interdicted, there should be a time limit for such measure. If such period elapses, the officer will be deemed reinstated.
- d. There should be sustenance allowance for officers under suspension, to reduce the hardship caused by total denial of salary.

5.4 Conclusion

The idea of embarking on this research work was inspired by the desire to ensure level playing ground for all citizens involved in all spheres of human endeavour. One of the legal provisions ensuring this level playing ground is the provision for the fundamental right to fair hearing. The Kano State Civil Service Rules, 2004 has several provisions prescribing penalties for certain forms of conducts. It has also made provisions on how Board of Inquiry set up by the Civil Service Commission can arrive at a decision on the guilt or otherwise of an officer charged with a disciplinary case. It was found that the disciplinary procedure under the Rules fall grossly short

of the basic requirements on fair hearing. Even Rule 04306 which has made some provisions on fair hearing is itself deficient in the sense that it has failed to encapsulate all the provisions of fair hearing as duly interpreted by the courts. The said rule is too narrow in approach as it relates only to serious misconduct which may lead to dismissal. Rule 04305 which relate to disciplinary procedure for misconduct has clearly denied officers' right to fair hearing with the exception of right to make representations in their defense. To make matters worse, rules 04303 and 04501 have unequivocally excluded the application of the principles of fair hearing in two particular instances. It is been submitted that this is inconsistent with the provisions of Section 36(2)1999 of the Constitution of the Federal Republic of Nigeria (as amended). The power of some a superior officer to suspend or interdict officer before the conclusion of cases against them have been found to be *ultra vires* and clear breach of right to fair hearing.

It was consequent upon these findings that the research work recommended the amendment of the provisions of the Kano State Civil Service Rule on disciplinary proceedings to bring them in line with the provisions of Section 36(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

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