FAIR HEARING AND ADMINISTRATIVE DISCIPLIINARY POWERS: THE MEDICAL AND DENTAL DISCIPLINARY TRIBUNAL IN REVIEW

BY

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DECLARATION

I hereby declare that this work is the product of my research efforts undertaken under the supervision of Prof. A. B. Ahmed and has not been presented anywhere for the award of a degree or certificate. All sources have been dully acknowledged.

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CERTIFICATION

This is to certify that the research work for this dissertation and the subsequent write-up by Ladi Mummy Omale, with Reg. No. SPS/13/MLL/00048were carried out under my supervision.

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This Dissertation is dedicated to my faithful God, my ever loving husband, Dr. Oseni Olaiya and to our sons, David Oseni and Daniel Oseni.

LIST OF CASES

LIST OF STATUTES

African Charter on Human and People's Rights, Cap. A9, LFN Volume 1, 2004.

Constitution of the Federal Republic of Nigeria, 1979

Constitution of the Federal Republic of Nigeria, 1999

Evidence Act, 2011

Medical and Dental Practitioners Act Cap. M8, 2004

Medical and Dental Practitioners (Disciplinary Tribunal) Rules, 2004

LIST OF ABBREVIATION

All F.W.L.R ---------- All Federation Weekly Law Reports

All E. R.---------- All England Report

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

CA ---------- Court of Appeal

Cap ---------- Chapter

CFRN ---------- Constitutional of the Federal Republic of Nigeria

E.N.L.R ---------- Eastern Nigeria Law Report

E.R.N.L.R---------- - Eastern Region of Nigeria Law Report

F.W.L.R ---------- Federation Weekly Law Report

Ibid ---------- Same citation with the one fully cited above

ISA ---------- Investment and Securities Act

IST---------- Investment and Securities Tribunal

L.F.N ----------Laws of the Federation of Nigeria

LPDC---------- Legal Practitioners Disciplinary Committee

MDPA ---------- Medical and Dental Practitioners' Act

MDPDT –---------- Medical and Dental Practitioners' Disciplinary Tribunal

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

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

N.W.L.R ---------- Nigerian Weekly Law Report

N.S.C.C ---------- Nigerian Supreme Court Cases

Op cit ---------- Cited elsewhere

Q.B ----------Queens Bench

S.C ---------- Supreme Court Report

Supra ---------- Cited elsewhere before this

Vol. ---------- Volume

No. ---------- Number

WACA ---------- West African Court of Appeal

W.L.R ---------- Weekly Law Report

W.N.L.R---------- ------- Western Nigeria Law Report

W.R.N ---------- ------Weekly Report of Nigeria

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ABSTRACT

The nature of Fair Hearing is that it is a Constitutional Right guaranteed to all persons coming before every Court of Law or Tribunal. Fair hearing is founded on the twin pillars of National Justice couched in the maxims audi alteram partem and memo judex in causa sua. These two tenets of fair hearing are entrenched in Section 36 of the 1999 Constitution of the Federal Republic of Nigeria. Once there is an infringement of the principles of fair hearing or natural justice, the trial cannot be fair. Hence, there should be no infringement on any Party's right to fair hearing, as the effect would be that the entire judgment will be set aside as null and void on Appeal as seen in several cases decided by the Medical and Dental Disciplinary Tribunal as discussed in this work. Judges and those sitting over disputes in their respective capacities should do away with bias and myopic sentiments which are the worst obstacles towards the achievement of any fair hearing, so that the dispensation of justice will be a Reality rather than a Myth. This study however observes that there is no constant education and/or enlightenment of the members of the panel as to their powers and obligations in the discharge of judicial or quasi-judicial functions on the need to adhere strictly to the rules of fair hearing, so as to prevent the decisions of the Panel and/or Tribunal from being invalidated by the courts. It is further observes that an attribute of administrative adjudication, informality and simplicity, often results in unpredictability of its decisions given the same facts, as subjective considerations and idiosyncrasies of each member of the administrative adjudicative body influences the outcome of their proceeding, in the absence of formal rules of evidence and procedure, to neutralize such influence, as it is with the normal court. The study however concludes that the panel or tribunal can suo motu, invites a person to appear as witness or as a respondent by filing his response to the complaints stating his level of involvement in the action complained of for the purpose of arriving at a just decision or to clarify any confusing issue. Additionally, the role of the of a member of the panel, interestingly the only lawyer who is called a Legal Assessor whose duty is to advice the members of panel on any legal issues in the course of the proceedings and the advice must be given in open or when it is given in private during the private deliberation of the members of the tribunal, it must be brought to the notice of all parties to the case. Relatively, this study concludes that, it is not a must the tribunal hides to his advice and no reason need be given for not so doing. We therefore recommend a reform of the Rules and Procedures for disciplinary proceedings. The need for a specific time frame within which things are to be done by all the parties cannot be over-emphasized. Even though, the informal or relaxed rules have led to speedy adjudication, it is not without abuse. In addition, there is need for constant education and/or enlightenment of the members of the panel as to their powers and obligations in the discharge of judicial or quasi-judicial functions on the need to adhere strictly to the rules of fair hearing, so as to prevent the decisions of the Panel and/or Tribunal from being invalidated by the courts. Even though the members of the panel and tribunal are professionals in the medical and dental field, they need to be trained as their job require them to act and think more like a lawyer than a doctor.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Conflict is inevitable and perpetual in all human interaction. "Human beings engage in conflict, aggression, warfare, violence seemingly equate with the human condition"[1] Conflict occurs because individuals have different perceptions, beliefs and goals. Barki and Hartwick explain conflict as;

> a dynamic process that occurs between interdependent parties as they experience negative emotional reaction to perceived disagreement and interference with the attainment of their goals[2]

Jehn and Bendersky[3] defined conflict as, perceived incompatibilities or discrepant views among the parties involved. Conflict can produce severe problems in an organization; it can certainly hurt an organization performance and lead to the forfeiture of employees.

Conflict occurs between people in all kinds of human relationships and in all social settings. Because of the wide range of potential differences among people, the absence of conflict usually signals the absence of meaningful interaction. Conflict by itself is neither good nor bad. However, the manner in which conflict is handled determines whether it is constructive or

[1] Tidwe, A.: (1999) Conflict Resolution? London Printer, Pg. 1
[2] Barki, H. and Hartwick, J. (2004). Conceptualizing the Construct of Interpersonal Conflict: International Journal of Conflict Management, Vol. 15, pg. 234.
[3] Jehn, K.A. and Bendersky, C. (2003), "Intragroup Conflict in Organizations: a contingency perspective on the conflict outcome relationship", Research in Organizational Behavior, Vol. 25, pg. 189.

destructive[4]. Conflict has the potential for either a great deal of destruction or much creativity and positive social culture.[5]

International conflicts and conflicts within divergent cultures necessitate flexibility in management approaches and understanding of context and procedure in order to choose an appropriate mode of dispute resolution. In essence, the function of law is to establish "rules and procedures that constrain the power of all parties, hold all parties accountable for their actions, and prohibit the accumulation of autocratic or oligarchic power. It provides a variety of means for the non-violent resolution of disputes between private individuals, between groups, or between these actors and the government"[6].

World War 1 was the most destructive conflict in human history, fought in brutal trench welfare conditions and claiming millions of casualties on all sides. Though the origins of the war were incredibly complex, and scholars still debate which factors were most influential in promoting the conflict, the structure of the European alliance system played a significant role[7]. In the immediate aftermath of the war, American and European leaders gathered in Paris to debate and implement fair reaching changes to the pattern of international relations[8]. The League of Nations was seen as the option of a new world order based on mutual cooperation and the peaceful resolution of International conflicts. However, the league ultimately failed to prevent the

[4] Deutsch, M. and Coleman, P. (eds). The handbook of conflict resolution: theory and practice. San Francisco: Jossey-Bass, 2000
[5] Kriesberg, L.(1998) Construction Conflict; from Escalation to Resolution. Lanham, MD: (Rowman & Littlefield).
[6] Crocker. C, & Hampson, F.O (Eds). Managing Global Chaos: Sources of the Response to International Conflict, (1996) Washington US Institute of Peace Press. pg.586.
[7] James J. and Gordon M.: The Origins of the First World War (2013) New York: rout ledge. Pg. 7
[8] Margaret M.: Paris 1919: Six Months that Changed the World (2003) New York: Random House. Pg.10

outbreak of the World War II, and has therefore been viewed by historians as a largely weak, ineffective, and essentially powerless organization[9].

The United Nations was created during and in the wake of World War II, which was a global cataclysm that brought death to millions of civilians. Most of those civilians were primary target, and often not even enemy targets. The genocide of the Jews, Gypsies, Slaves and others by Nazi Germany, and the brutal repression and discrimination that preceded it, lent weight to the argument that peace and justice were inseparable, the other side of the coin from war and oppression[10]. The accumulating evidence of the scope and depravity of the crimes against humanity perpetrated by Nazi Germany lent weight to the cause of those states who wishes greater attention to be paid to human rights issues. In the words of Paul Gordon Lauren;

> As more and more details about the shocking extent of the Holocaust began to seep their way out from under the earth of unmarked mass graves in occupied territories, and from under the barbed wire enclosures of the extermination camps into the world, it became nearly impossible to ignore the connection between racial and religious discrimination, especially as revealed by the recent extremes of Nazi of philosophy on the one hand, and genocidal war on the other[11].

As a result of these current, several references to human rights were inserted into the UN Charter's preamble and six articles (Articles, 1, 13,55, 62, 68, and 76) were added[12]. December 10, 1948, the General Assembly adopted the Universal Declaration of Human rights. Although the declaration had only the force of a recommendation, it quickly became the standard of the

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[9] George S.: The Rise and Fall of the League of Nation (1919) New York: MacMillan. Pg. 5

[10] As stated in September 1944 by the Commission to study the organization of Peace, an influential United States non-governmental organization: "It has become clear that a regime of violence and repression within any nation of the civilized world is a matter of concern for all the rest.

[11] Gordon L.P.: The Evolution of International Human Rights: Visions Seen (1998) Phhiladelphia: University of Pennsylvamia Press pg. 183.

[12] Of special note is Article 1, paragraph 3, which includes among the purposes of the United Nations: "To achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

International Human rights movement. The declaration became the first element of an International Bill of Human Rights that would eventually be completed by a series of binding treaties[13].

Following the formation of the United Nations Organisatio[14] and the promulgation and adoption of the Universal Declaration of Human Rights[15] which provided a firm foundation for the historical developments and globalisation of human rights, the global community has not wavered in its commitment to the global promotion and protection of human rights. This explains the subsequent numerous resolutions, declarations[16] and conventions which have been passed in the area of human rights. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the state of their nationality and all other contracting states[17].

To underscore the importance of human rights, remarkable attempts have also been continually made at the regional levels to promote and secure respect for human rights. The Council of Europe,[18] the Organisation of American States,[19] and the Organisation of African Unity,[20] have

[13] Including the International Covenant on economic, social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of which were adopted on December 16, 1966, and came into force in 1976.

[14] UNO Charter, 1945.

[15] Adopted and proclaimed by General Assembly resolution 217 A (111) of 10 December, 1948

[16] Some of the Declaration are, Declaration on the Elimination of All forms of Intolerance and Discrimination Based on Religion or Belief, adopted 25 Nov. 1981. G.A. Res (No. 5+) UNDOC. A/36/51 at 171 1981; Declaration on the Elimination of violence Against Women adopted 20th Dec, 1993 GA Res 48/104, UNDOC. A/48/29; Declaration on the Right of Child, adopted 20 Nov. 1959, GA Res 1386 (XIV), 14 UN GAOR, Supp. (No. 16) UN Doc. A/4334 at 19(1959) Declaration on the Right to Development, adopted 4 Dec, 1986, GA Res 41/28.

[17] Notable Conventions which have been passed by the United Nations include, The International Convention on the Prevention of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination., The International Convention Relating to the Status of Refugees, the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; The Convention on the Right of the Child; the Convention Concerning the Abolition of Forced Labour. The Convention on the Political Rights of Women; The Convention on The Nationality Rights of Women; Convention on the prevention and punishment of the Crime of Genocide, etc.

[18] Established on November, 4, 1950 drafted and adopted the European Convention on Human Rights which came into force on Sept. 3, 1953.

[19] This regional inter-governmental organisation adopted in 1969, the American Convention on Human Rights which came into force on July, 18, 1978. The Convention is also known as the pact of San Jose, Costa Rica. See OASIS 36, OAS off. Rec OEC/Ser.L/v/11.23 doc 21 rev. 6 (1979).

all formulated and adopted human rights instruments which guarantee rights which are comparable with, (and in some cases, more extensive than), those guaranteed in the Universal Declaration of Human Rights.

In apparent endorsement of the global movement towards the promotion and protection of human rights,[21] Nigeria has not only subscribed to major international human rights instruments but contributed quite remarkably to the process that led to the actualization of the dream of an African Charter on Human and Peoples Rights. In addition, due attention has always been paid to human rights in Nigeria Constitutions, beginning of the post-independence constitution. In the amended 1999 Constitution for instance, two Chapters,[22] spanning 26 (twenty six) sections devoted to the human rights subject.[23] In order to bolster human rights promotion and protection in Nigeria, Nigeria has also established the National Human Rights Commission.[24]

Further, Nigeria has established a number of other institutional infrastructures dedicated to the promotion, protection and enforcement of human rights. These are the Public Complaint

[20] The Organisation adopted African Charter on Human and Peoples Rights at Nairobi on 26 June, 1981 which entered into force on 21 October, 1986, in accordance with Article 63 of the Charter.

[21] Although the Charter came into force in 1987, as far back as 1961, Nigeria hosted a conference in Lagos on the Rule of Law. It was at this conference convened by a non-governmental organisation that African jurists for the first time called for the establishment of an African Commission on Human Rights. Indeed, a Nigerian, in the person of Dr. Nnamdi Azikwe has been credited with the first suggestion for an African Convention on Human Rights and Nigeria also actively participated in other conferences and seminars which furthered the realisation of an African Charters on Human Rights. On the history of the Charter, see, "Kerba Mbaye, "Keynote Address: An Introduction to the African Charter on Human and Peoples" Rights", Report of a Conference held in Nairobi from 2nd to 4th December, 1985, convened by the ICJ Geneva, (1986) at 20.

[22] That is chapters 2 and 4, 1999 Constitution. Although the provisions of chapter 2 dealing with fundamental objective and directive principles of state policy are not justiceable, they are nonetheless without any utilitarian value as they serve as aid to interpretation of the other sections.

[23] These provisions are virtually, a verbatim et literatim reproduction of the 1979 Constitution, The 1963 constitution however had no provisions comparable with chapter 2 of the 1979 and 1999 Constitutions; but made provisions for human rights in sections 18 to 33.

[24] National Human Rights Commission Act, N46 LFN, 2004. The Commission was established in 1995 and its governing Council inaugurated on 17th June, 1996.

Commission,[25] the Legal Aid Council,[26] and also, though tangentially, The Nigeria Police Force[27].

It has long been recognized that subscription to human rights instruments and the establishment of institutions for their enforcement are not sufficient indication of sincere recognition, promotion and protection of human rights. Indeed, mere declaration and actual practice are not synonymous. This is why Justice Haleem was constrained to lament that, "nation-states have not been able to match their impressive record of codification and prescription with equally vigorous attempts at the application and enforcement of human rights norms…."[28]

Commenting on the fact that a wide gap exists between mere human rights rhetoric and actual practice, a learned author succinctly posited that, "at one time or the other in our national history, we had observed the tenets of human rights more on paper than in practice, yet the fact remains incontrovertible that these tenets had always been in place within our legal system." [29]

In lamenting human rights abuses in the world today, O'Byrne provided a graphic picture which is considered not only apt but irresistible to re-echo somewhat extensively as follows:

> When the United Nations introduced the Universal Declaration of Human Rights in 1948, it was seen by many as a sign of optimism, of the possibilities of a better world. Yet over 50 years later, observers recognize that we live in an age when human rights abuses are as prevalent as they have ever been; in some instances more prevalent. The world is littered with examples of violation of basic rights: censorship, discrimination, political imprisonment, torture, slavery, the death penalty, disappearances, genocide, poverty, refugees.

[25] Established by Public Complaint Commission Act, cap P37 Laws of the Federation of Nigeria, 2004.
[26] Established pursuant to Legal Aid Act, No. 56 of 1976, L9 Laws of The Federation of Nigeria, 2004.
[27] Established pursuant to section 214 of the 1999 Constitution (as amended).
[28] Haleem M., "The Domestic Application of International Human Rights Norms", in Developing Human Rights Jurisprudence, The Domestic Application of International Human Rights Norms op. cit. at 92.
[29] Ajomo M.A., "Human Rights under the Nigerian Constitution", in Democracy and the Law, papers presented at the Second Conference of the Body of Attorneys-General in the Federation Held in Abuja 9th -12th September, 1991, ed Bola Ajibola. Lagos, Federal Ministry of Justice, 1991 at 105.

> The rights of women, children, and other groups in society continue to be ignored in atrocious ways. The environmental crisis takes the discourse on rights to a different level.[30]

That human rights violations exist in advanced technologies and democracies is an inescapable indication that the story in Nigeria could not have been positively different because as rightly noted by Umozurike, African Continent of which Nigeria is a dominant force, "erected an unenviable record on human rights violations going back to slavery, and slave trade, colonialism, apartheid, military and dictatorial regimes."[31] Accordingly, the picture of human rights promotion and protection in Nigeria despite the adoption of numerous international human rights instruments and the constitutional provisions remain a worrisome which should provoke more than a mere passing interest.

One of the human rights which have suffered so much infringement both at the international and local level is the right to fair trial. This right is as old as mankind. It dates back to the Biblical account of Adam and Eve in the Garden of Eden, where God gave them an opportunity of being heard before passing His judgment upon them.[32]

The right to fair trial has been defined in numerous regional and international human rights instruments as one of the most extensive human rights and all international human rights instruments enshrined in several articles show this. It is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. In the Universal Declaration of Human Rights (UDHR), It is predicated on the

[30] O'Byrne D.J, Human Rights, An Introduction, 2003, India: Dorling Kindersley Publishing Inco, at 5.
[31] Umozurike U.O., "The African Charter and National Laws: The Issue of Supremacy," in Current Themes in the Domestication of Human Rights Norms, op. cit.
[32] The Holy Bible, the book of Genesis, Chapter 3:1-24, see also R v Chancellor, University of Cambridge (Dr Bentley's Case) (1723] 1 Str. 557; Garba v university of Maiduguri (1986)1 NWLR (pt . 18) 550. Adigun v Attorney General, Oyo State (1987)1 NWLR (pt. 53) 678.

presumption of innocence until the accused is proven guilty particularly Article 10 which states that: "Everyone is entitled to a fair hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."[33]

> Trial rights include the right to fair hearing; the right to a competent, independent and impartial tribunal established by law; the right to presumption of innocence; the right to prompt notice of the nature and cause of criminal charges; the right to adequate time and facilities for the preparation of a defense; the right to a trial without undue delay; the right to defend oneself in person or through legal counsel; the right to examine witnesses; the right to an interpreter; the prohibition on self-incrimination; the prohibition on retroactive application of criminal laws; and, the prohibition on double jeopardy.[34]

Thus, fair hearing is synonymous with fair trial,[35] and implies that every reasonable and fair-minded observer who watches the proceedings shall be able to conclude that the court has been fair to all the parties' concerned.[36] Commenting on the relationship between fair hearing and fair trial, the Supreme Court in *Mohammed* v. *Kano Native Authority*,[37] noted that although it has been suggested that a fair hearing did not amount to a fair trial, yet that the court was of the firm view that "fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing."

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[33] Also, under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides that; "everyone shall be entitled to a fair hearing by a competent, independent and impartial tribunal or court established by law". In Africa, the right to a fair trial is enshrined in articles 3, 7 and 26 of the African Charter on Human and Peoples' Rights (ACHPR).

[34] Article 14(1) of UDHR on the basic right to a fair trial holds that all persons are equal before the courts and tribunals. Article 14(2) provides for the presumption of innocence, and article 14(3) sets out a list of minimum fair trial rights in criminal proceedings. Article 14(5) establishes the right of a convicted person to have a higher court review of the conviction or sentence, and Article 14(7) prohibits double jeopardy.

[35] A trial is a judicial examination and determination of issues between the parties in accordance with the law of the land. A fair trial therefore, implies a trial by an impartial and disinterested court or tribunal in a regular procedure, especially, a criminal trial which the accused person's constitutional and legal rights are respected. See Black's Law Dictionary, Eighth Edition, p. 634. See also Kajubo v. The Slate [1988] 3 SCNJ (Pt. 1) 79

36 Ayorinde v. Fayoyin [2001] FWLR (Pt. 75) 483 at p.500. In Grace Akinfe v. The State [1988] SCNJ (Pt. 2) 226 at pp. 233, 241, the trial Judge descended into the arena of the fight by asking so many probing and searching questions which were not even confined to the facts presented by the parties before die court. The Supreme Court held that the trial Judge had become both a Prosecutor and a Judge at the same time. The image of an even-handed justice was consequently destroyed and real likelihood of bias was established.

[37] (1968) 1 All NLR 424 &426.

The essential attributes and basic criteria of fair hearing include, inter alia:

i. that the court or tribunal shall hear both sides not only in the case, but also in all material issues in the case, before reaching a decision which may be prejudicial to any party in the case;

ii. that the court or tribunal shall give equal treatment, opportunity, and consideration to all concerned;

iii. that the proceedings shall be held in public and all concerned shall have access to and be informed of such a place of public hearing;[38] and

iv. that having regard to all the circumstances, in every material decision in the case, justice must not only be done but manifestly and undoubtedly be seen to have been done.[39]

In Nigeria, this right is enshrined in section 36(1) of the 1999 constitution which boldly provides that;

> …in the determination of his civil right and duties, including any question or decision by or against any government or authority, a person shall be eligible to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a way as to secure its independence and impartiality.

Although, the 1999 Constitution does not define the term, "fair hearing," yet the courts of law have proffered some judicial definitions to it. For instance, in *Ezechukwu* v. *Onwuka*,[40] the Court of Appeal pointed out that:

[38] Constitution of the Federal republic ofNigeria, 1999, Section 36(4)
[39] Kotoye v. Central Bank ofNigeria [2001] FWLR (Pt. 49) 1667 at p. 1600. See also Adigun v. Attorney-General of Oyo State [1987] 1 NWLR (Pt. 53) 678; Sussex Justices, Ex Parte McCarthy [1924] 1 K. B. 256 at p. 259
[40] [2005] All FWLR (Pt. 280) 1514 at pp. 1542, 1553. See also Ogundoyin v. Adeyemi [2001] FWLR (Pt. 71) 1741 at p. 1754

> Fair hearing is a hearing which is fair to all parties to the suit, whether the plaintiff, defendant, the prosecutor, or the defence. It is a doctrine of substance and the question is not whether injustice has been done because of lack of fair hearing, rather... whether a party entitled to be heard has been given an opportunity of being heard....Fair hearing entails doing during the course of a trial all that will make an impartial observer to believe that the trial has been balanced... to both sides....

The principle of fair hearing as enshrined in the 1999 Constitution is often illustrated by the "twin pillar of justice"[41] expressed in the Latin maxims: *nemo judex in causa* sua[42] and *audi alterem partem.*[43] In this regard, it submitted that these principles expressed in these Latin maxims are an integral and inseparable part of the fair hearing provision guaranteed by section 36(1) of the 1999 Constitution. A breach of the doctrine of fair hearing in a judicial enquiry renders the action unconstitutional, illegal and liable to be set aside.[44]

In view of the complexity of modern administration, it has become inevitable that a great deal of adjudicatory powers is exercised by various administrative bodies or tribunals which perform judicial and quasi-judicial functions.[45]

Various reasons have been put forward to justify the increasing recourse to administrative adjudication in modern governance. According to Hood Phillips and Jackson, "the reasons why Parliament increasingly confers powers of adjudication on special tribunals rather than on the ordinary courts may be stated positively as showing the greater suitability of such

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[41] Hon. Justice Nnaemeka-Agu (1988). "Impact of Natural Justice on our Law." 13 The Advocate, at p. 21. See also Ex Parte Olakunri: Olakunri v. Oba Ogunoye [1985] 1 NWLR [41] (Pt. 4) 652, per Nnamani, J.S.C.

[42] Meaning, a person shall not be a judge in his own cause. See Gani Fawehinmi v. Legal Practitioners Disciplinary Committee [1985] 2 NWLR (Pt.7) 300 at 308. See also Alakija v. Medical and Dental Practitioners Disciplinary Committee [1959] 4 FSC 38. The principle that the Judge who presides over a matter should not himself be interested in the subject matter of the litigation is intended to ensure that decisions are taken purely on judicial grounds uninfluenced by motives of self-interest

[43] That is, no man shall be condemned unheard or without having an opportunity of being heard. See PR. P. v. Independent National Electoral Commission [2004] All FWLR (Pt. 209). See also Akande v. The State [1988] 7 SCNJ (Pt. 2) 314; Ogundoyin v. Adeyemi [2006] All FWLR (Pt. 71) 1741 at p. 1755.

[44] Oyakhere v. The State [2006] All FWLR (Pt. 305) 703 at p. 716

[45] B.O. Iluyomade & B.U. Eka, Cases and Materials on Administrative Law in Nigerian (Ife, Obafemi Awolowo University Press 1980) p. 129

tribunals, or negatively as showing the inadequacy of the ordinary courts for the particular kind of work that has to be done." [46] Some of the specific reasons include the expert knowledge required in respect of some matters which are outside the training of the lawyers who man the regular courts. The reasons also include the cheapness, the speed, the flexibility and the informality which are often required in respect of the various subjects covered by the tribunals.[47] These tribunals are constituted by persons who may be experts in their own field but in most cases lack the requisite judicial or legal training for the adjudicatory function they perform.[48]

1.2 Statement of the Research Problem

With democracy subsisting, Nigerians are increasingly becoming more assertive of their rights, particularly the type that is based on the rule of natural justice, which is a common law doctrine, substantially equates with the provision of section 36 (1) of the 1999 constitution on fair hearing. This rule was first postulate by God in determining the fate of Adam and Eve, before sending them away from the Garden of Eden. But with the expansion of administration prerogatives, the rule increasingly suffers violence in the hands of administrative authority's exercising judicial or quasi-judicial powers.

When an administrative tribunal, like the medical and dental disciplinarily trial exercises judicial or quasi judicial function, it can only successfully do so in accordance with section 36(1) of the 1997 Constitution on fair hearing.

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[46] Hood. Philips O. and Jackson, Constitutional and Administrative Laws, 8th ed. London, Sweet and Maxwell, (2001), Para 30-005 p.686.
[47] Ibid, at p.690
[48] Iluyomade B.O. &. Eka, B.U, Cases and Materials on Administrative Law in Nigerian (Ife, Obafemi Awolowo University Press 1980) p.130

In exercising administrative adjudication, two of the fundamental principles that formed the nucleus of natural justice, even before its codification as fair hearing are audi alteram partem hear the other party and nemo judex in causa sua the rule against interest and bais.

In *Adigun v. AG Oyo State,*[49] Nneameka Agu JSC of the principle of fair hearing, said:

> The principle has been incorporated in our jurisprudence that a man cannot be condemned without being heard. This is often expressed by the latin maxim, audi alteram partem- hear the other side, and it is applicable in all cases in which decision is to be taken in any matter, whether judicial, quasi-judicial or even in a purely administrative proceedings involving a person's interest in a property right or personal right.

The point was reiterated by Eso *JSC, in FCSC v. Laoye,*[50] where he held;

> the reasoning of this court in fair hearing is not only in accord with the law over the ages but agrees with common sense …i think it is admitted in every reasonable culture, even apart from the decision of this court, that a judge should hear both sides before determining the guilt or otherwise of a person.

On "nemo judex in causa sua", Holt CJ in *City of London v. wood,*[51] said;

> it is against all laws that the same person should be party and judge in the same case cause, for the party is he that is to complain to the judge and the judge is to hear the party, the party endeavors to have his will, the judge determines against the will of the party, and has authority to force him to obey his sentence; and can any man act against his own will or enforce himself to obey?.

Thus, while administrative adjudication is a necessity in modern administration, it must be constituted in such a manner as to meet the requirements of natural justice.

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[49] (1987) 1 NWLR (pt 53) 678 at 682
[50] (1989) 4 S.C (Pt 11)1
[51] Philip A. Revolution and Judicial Review-Chief Justice Holt's Opinion City of London V Wood: Colunisia Law Review (1994) Vol. 94, p.7

1.3 Research Questions

This study therefore, examines the following questions with a view to provide analysis to the legal issues raised above.

1. Whether the practice and procedure adopted by the Medical and Dental Disciplinary Tribunal is in tandem with the principles of fair hearing as enshrined in the provisions of the Constitution of the Federal Republic of Nigeria, 1999(as amended)?

2. Whether the Medical and Dental Disciplinary Tribunal as currently constituted as a quasi-judicial body can be said to safeguard the right of the accused to fair hearing?

3. Whether there are further mechanisms that can be adopted by the Medical and Dental Disciplinary Tribunal to safeguard the right of an indicted medical doctor?

1.4 Aims and Objectives of the Study

This research work sets out the following as its objectives;

1. To examine the practice and procedure applicable in the Medical and Dental Disciplinary Tribunal so as to ascertain whether it is in tandem with the principles of fair hearing.

2. To examine the Constitution/Coram of of the Medical and Dental Disciplinary Tribunal as a quasi-judicial body for the purpose of assessing whether it institutionalsed the principles of fair hearing.

3. To suggest further legal mechanism that can be adopted by Medical and Dental Disciplinary Tribunal so as to safeguard the right of an accused to fair hearing.

1.5 Significance of Study

In view of the growing importance of administrative adjudication in modern governance on the one hand and the need to observe the rule of law as required in any democratic society on the other hand, this research upon conclusion will be a veritable and true resource material first for the Tribunal to understand the need to observe and adhere to the statutory provision on fair hearing. This research will also provide reference material for other researchers, legal practitioners, readers, doctors, members of the tribunals and scholars interested in the area of study.

1.6 Scope of the Study

This research focuses on administrative tribunal specifically the Medical and Dental Practitioners' Disciplinary Tribunal and the administration of justice within the framework of the 1999 constitution on the issue of fair hearing. This essay will also be examining some of the decisions of the Tribunal which were set aside on appeal and looking at the reasons giving by the appellate courts for setting them aside, which all borders on the issue of fair hearing

1.7 Research Methodology

In this research work, for easy access to current information and research material the doctrinal methodology is adopted. It involves the utilization of primary and secondary sources to collect data on the subject of the research, which includes written publication and unpublished materials such as textbooks, journals and e-journals, articles and e-articles, workshop and seminar presentations, conference reports and international instruments relevant to the issue involved.

References are made to case law and statutes as well as comments and views of legal writers on the said statutory provisions. Also judicial pronouncements are referred to and reviewed as they are very useful to this research.

1.8 Literature Review

This thesis undertakes a contemporary study of a long existing issue and for a proper establishment of this essay a plethora of authorities have been referred to as is relevant to this research topic.

In the book, Nigerian Legal Method,[52] the author maintains that laws are made to achieve particular objectives in the society, e.g Criminal Procedure Code was enacted to regulate crime in Nigeria, the company and Allied Matters Act to regulate the formation of companies and so on. This essay however majors on the law that provides the right to fair hearing of an accused before the Medical and Dental Disciplinary Tribunal.

Alan Simpson, in an online "The Role of Law in Conflict Management" [53] discussed the concept of law which is as ancient as mankind, the function of law is to establish rules and procedures that constrain the power of all parties, hold all parties accountable for their actions and prohibit the accumulation of autocratic or oligarchic power. However, this essay will go beyond just the function of law and look at the function of law as it relates to proceedings in Tribunals especially the Medical and Dental Disciplinary Tribunal. Also, this essay looks at the law that guarantees the accused right to fair hearing before a tribunal particularly the M.D.D.T.

[52] Olamide O. (2016), The Nigerian Legal system, www.djetlawyer.com/author
[53] Simpson A. (1996), the role of law in conflict management resources full internet solution, inc www.mediate.com

Blake Sara, in her book "Administrative Law in Canada''[54] defines an administrative tribunal and explains the latest development relating to powers and procedures of many agencies, public officials etc. that exercise statutory authority. Went further to state clearly that the fact that no procedural rules are prescribed; they are governed by common law procedural principles. The procedure to be followed by a tribunal may be found in the enabling statute or related regulation and in rules, guidelines or directives formulated by the tribunal. This work agrees with this author but this work defers in the sense that, it talks specifically on the M.D.D.T, the enabling status which is the Medical and Dental Practitioners Act and the procedure of adjudication

Prof. Oyewo, in the book "Material on Administrative Adjudication" [55] stated that tribunals are mainly adjudicative and acts as court substitutes by hearing, investigating, fact finding, adjudicating. He also made it clear that defining a tribunal is no easy matter. Hence, it has been proposed to focus on the "properties" that constitutes the basic characteristics of a tribunal. Prof Oyewo did a good job in his book by discussing the development and the rationale for the establishment of administrative adjudication. However, this work goes further to look specifically at the M.D.D.T., its characteristics, its procedures and the method at arriving at its decisions. Also, thesis will review some of the decisions of this tribunal.

Babalola Abegunde, in the paper "Legal Implication of Ethical Breaches in Medical Practice: Nigeria a Case Study''[56] examined the legal implication of ethical breaches in medical practice using Nigerian as a case study. In doing this, he made references to legal framework and some decided cases by Medical and Dental Disciplinary Tribunal in Nigeria and elsewhere where

[54] Sara Blake, (2017), Administrative Law in Canada, 6th Edition, LexisNexis Canada.
[55] Prof. Oyewo, (2014), Material on administrative Adjudication, htts://tosynmacaulay.wordpress.com/2014/01/15/prof-oyewos-pul222-material-on-administrative-adjudication/
[56] Abegunde B, (2009), Legal Implication of Ethical Breaches in Medical Practice; Nigeria a Case Study, Faculty of Law Ekiti State University, Ado Ekiti https://.ajhss.org

medical doctors faced disciplinary actions on the basis of reports on medical negligence. This work however looked at some of the cases of this tribunal set aside on appeal to review them on the basis of violation of the principle of fair hearing in the course of arriving at their decisions affecting the rights of the medical doctor in question.

Adekilekan M.T., in the book "Medical Ethics in the Face of Emerging Medico-Legal Issues in Nigeria" [57], defined medical ethics as the codes of conduct which should govern the art of healing also the duties of doctors in Nigeria which include duty not to violate professional ethics. He went further to discuss the duties of a medical doctor and the need to adhere strictly to the codes of conduct in caring out their duties. This work even though agrees with this author but went further to discuss the process of punishing a doctor accused of violating the code of conduct visa-vis his right to fair hearing.

Iwara E. I, in the Article "Rights of Fair Trial and the Human Persons in Nigeria's Political System: a legal Political Perspective" [58], emphasized the need for fair trial stating that it is inalienable under the universal declaration of human rights 1948, is also a necessary condition for a stable and just society. This research agrees with the position of the author and adopted same when discussing the need for tribunals exercising their administrative powers to adhere to the principles of fair hearing in arriving at their decisions.

Enobong M. A., in the article "Fair Hearing: Sine Qua Non Under Nigeria Criminal Justice Jurisprudence" [59], discussed right to fair hearing and stated that, this right is as old as mankind,

[57] Adekilekan M.T. (2010), Medical Ethics in the Face of Emerging Medico-Legal Issues in Nigeria; Department of Business Law, University of Ilorin.

[58] Iwara E.I, (2016) Rights of Fair Trial and the Human Persons in Nigeria's Political System; a legal-political perspective , international journal of Arts Humanities and Social Sciences (IJAHSS) Volume 1 issue (4) www.ijhass.com

[59] Enobong N.A , Fair Hearing: Sine Qua Non Under Nigeria Criminal Justice jurisprudence; Journal Of Law, policy and globalization volume 52, (2016) www.iiste.org

he stated how God himself gave Adam and Eve a fair trial by giving them an opportunity of being heard before passing his judgment upon them.[60] He also emphasized on the provision of section 36 (1) of the 1999 Constitution which provides that in the determination of his civil right and duties, including any question or decision by or against any government or authority, a person shall be eligible to a fair hearing within a reasonable time by a court or a tribunal. This work agrees with the author on the provision of the Constitution on fair hearing but differs in the sense that this work majors on the principles of fair hearing in administrative adjudication specifically the M.D.D.T.

Alberta Ombudsman, in an online text "Administrative Fairness Guide Book" [61] where he stated that as a public servant or member of a professional body, you may require to make administrative decisions. If this decision affects the right, privileges or interest of an individual, it triggers what's called a "duty of fairness". He went further to say that natural justice is the administrative fairness what due process is to criminal law. This work agrees totally with this author but went further to discuss in details fairness as regards the proceedings of the M.D.D.

Alimi L. O, in his book "Administration of Justice within the Framework of the 1999 Constitution" [62], stated that in view of the complexity of modern administration, it has become inevitable that a great deal of adjudicatory powers are exercised by various administrative bodies or tribunals which perform judicial or quas-judicial functions. He also classified tribunals into three main categories which are:

1. Statutory tribunals like the rent tribunals in states.

[60] The Holy Bible, The Book Of Genesis Chapter 3:1-24
[61] Albert Ombudsman; (2013) Administrative Fairness Guide Book, https://www.ombudasma.ab.ca.
[62] Alimi L. O, (2001) Administration of Justice within the framework of the 1999 constitution, Nigerian Law School, Victoria Island, Lagos. Pg 129.

2. Administrative entities Governors, ministers, commissioners, head of departments and local authorities.

3. Domestic tribunals which are mostly concerned with disciplinary processes, like the Accountants Disciplinary Tribunal, Legal Practitioners Disciplinary Committee and the Medical and Dental Practitioners Disciplinary Tribunal. Also he stated that these tribunals are constituted by persons who may be experts on their own field but in most cases lack the requisite judicial or legal training for the adjudicatory function they perform.

He also indicated the judicial control of administrative and statutory tribunals. 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. This is according to Awogu J.C.A the case of *National Electoral Commission (N.E.C) v. Nzeribe*.[63] Furthermore, he made it clear that a tribunal must act in accordance with the rule of national justice, failure of which may render their proceedings null and void. This work agrees with the position of the learned author on the need to act in accordance with the rule of natural justice but specifically the M.D.D.T. This work further discusses the proceedings of this tribunal and the position of superior courts on some of the cases decided by this tribunal void of fair hearing.

Gabriel Amalu, in a news paper publication, "Limits of Administrative Adjudication"[64] talked on Nigerians increasingly becoming more assertive of their rights, particularly the type based on the rule of natural justice or fair hearing when confronted by an administrative action. He also emphasized on the expansion of administrative prerogatives, the rule increasingly suffers violence in the hands of administrative authorities exercising quasi-judicial powers. He further

[63] (1991) 5 NWLR (pt. 190) 458 at pg. 472
[64] Gabriel Amalu, (2016), Limits of Administrative Adjudication, The Nation: Truth in Defence of Freedom, April 19, 2016.

lauds the decision of the Federal High Court curtailing the powers of the Federal Road Safety Corps (FRSC) to impose fine on motorist. This work agrees with this writer but centers more on the holdings of superior courts on the decisions of the M.D.D.T. where it contravenes the provisions of law on fair hearing and natural justice in arriving at decisions that affects the right and means of livelihood of a medical doctor.

Brandow C.,[65] wrote on review of tribunal decision, she defined judicial reviews as the guardian of legal fairness in the administrative process. According to her, it is similar to appeal is a way of challenging decision that negatively affects your client. She also gave reasons for judicial reviews which include:

1. There was no "jurisdiction" or authority to decide the issue
2. The process was unfair or
3. The decision did not logically flow from the information or was irrational.

This work agrees with this author especially the review of decisions of tribunals where the process at arriving at such decision was unfair or void of fair hearing. This work however discusses some of the decisions of the M.D.D.T. in a bid to review them.

[65] Brandow C. (2009), Judicial Review of Tribunal Decisions, The Litigation. www.primafact.com. Last visited on 24/7/2017

CHAPTER TWO

FUNDERMENTAL PRINCIPLES THAT SAVEGUARD FAIR HEARING IN THE CONDUCT OF PROCEEDINDS BEFORE TRIIBUNALS

2.0 Introduction

The concept of fair hearing which is one of the human rights engenders one of the most profound questions ever to task the intellect.[1] The expression 'human rights' as a term or art, is of recent origin'.[2] The Greek City states also provide a glimpse of human rights in the form of *isogoria*, *isotamia*.[3] The concept of just and unjust had always existed throughout the civilizations,[4] The traditional approach to human rights finds firm anchorage on natural law conceptions. Proponents of this synthesis, such as Thomas Hobbes an English philosopher suggested the existence of hypothetical social contract where a group of free individuals agree for the sake of the common good to form institution to govern themselves.[5] They give up some liberties in exchange for protection from the sovereign. This led to John Locke's theory that a failure of the government to secure rights is a failure which justifies the removal of the government.[6]

To prevent the violation of these rights, efforts were made to legislate against their violation with impunity. In 1188, which happened to be the earliest known effort to enhance human rights by King Alfonso IX, includes the rights of accused persons to a regular trial and the right of the inviolability of life, honour, home and property. But the snag with this earliest attempt was that it

[1] A. A. Na'im and F. Deng (1990) (Eds), Human Rights in Africa – Cross Cultural Perspectives (Washington: The Brooking Institution pg.10
[2] Khan, M.M. (1998), "Human Rights: Myth and Reality." Indian Journal of Politics, XXXII (1-2): pg.124-125.
[3] Isogoria implies freedom of speech, Isonomia means equality before law while Isofamia refers to equal respect for all. See Cranston, What are Human Rights?, Taplinger Publishing Company, New York, 1973, pg.2.
[4] Khan, M.M. (1998), "Human Rights: Myth and Reality." Indian Journal of Politics, XXXII (1-2): pg.124-125.
[5] Eze O. (1988), Human Rights in Africa (Lagos: Nigeria Law Publications Ltd;); M. Cranston, What are Human Rights? (New York; Taplinger, 1973) Chapter I; C. A. Oputa, Human Rights in the Legal and Political Culture of Nigeria (Lagos: Nigerian Law Publication Ltd, 1988) pg.15.
[6] Ibid at pg.17

was limited to the nobles' alone.[7] The evolution of human rights can be found in several documents.[8]

2.1 Definition of Human Right

The term human rights, does not lend itself to a precise definition. Indeed, there has not been an acceptable definition of 'human rights' amongst jurists, it is a concept that can best be described rather than defined.[9] Despite the controversy generated by attempts to define human rights, some scholars have attempted to conceptualize it without necessarily being definitional. For Human, it is "laws and practices that have evolved over the centuries to protect ordinary people, minorities, groups and races from oppressive rulers and governments".[10]

Thomas Jefferson put forward a definition of human rights when in 1887 he wrote from Paris to James Madison about the necessity to safeguard individual liberty and the need for a bill of right. He was of the notion that "…a bill of rights is what people are entitled to against every government on earth".[11] In an insightful piece, Irele,[12] stated that that, the most important class of ideal or moral rights is that of human rights. Human rights are rights that are held by all human beings unconditionally, unalterable and they are inalienable. Although, human rights are normally termed natural rights, it need be emphasized that not all natural rights are human rights.

[7] Ogundele, B. (1985), "The Denied Rights." Nigerian Tribune, Ibadan, (September 7th) pg.34.
[8] Taiwo, O.C. (1994), "Implementation of the United Nations Declaration of Human Rights: An Examination of Human Rights Protection in Nigeria." Nigeria Journal, of Democracy, 1 (1): 21. (Magna Carta, 1215; Petition of Rights, 1682; Bill of Rights, 1689; Virginia Declaration of Rights, 1776; American Declaration of independence, 1776; French Declaration of Rights of Man and of the Citizen, 1789; Universal Declaration of Human right, 1948; European Convention for the Protection of Human Rights and Freedom, 1950; American Convention for the Protection of Human Rights and Freedom, 1959; Written Constitutions for several independent modern states and states liberated from colonialism; and African Charter on Human and Peoples' Rights, 1986.)
[9] Ajomo, M.A. 1985. "Man in Quest of Himself: The Challenges of Human Rights." The 18th Ilorin Lecture delivered at the university of Ilorin, Ilorin, Nigeria on the occasion of its 9th Convocation Ceremony, (October 25), Unilorin Press, Ilorin, Nigeria pg.65.
[10] Humana, C. 1983. World Human Rights Guide. London: Hutchinson pg.89.
[11] Calude, R.R. 1976. "The Classical Model of Human Rights Development", in J. C. Strouse and R. P. Calude (eds.), Empirical Comparative Human Rights Research: Some Preliminary Tests for Development Hypothesis. Baltimore: The Johns Hopkins University Press, pg.21.
[12] Irele, D. 1998: Introduction to Political Philosophy. Ibadan: Ibadan University Press,pg.123-137 .

The concept of natural rights states not only that there are "certain human rights but also that these rights have certain further epistemic properties and certain metaphysical status".[13]

Human Rights are said to be inalienable with divine content and appertain to the individual they are also held to be absolute. What this means is that, they are inalienable and universal. But, at times, absoluteness could be referring to some additional features, which can be interpreted in three ways. Feinberg, claims that the first interpretation could mean that all rights are "unconditionally incumbent within the limits of their well defined scope."[14] In virtually all-political systems, there are a number of institutional mechanisms put in place either formally to safeguard the inalienable rights of man. First, in all regions and climes, the Constitution is a major safeguard of the rights of man. In Nigeria, the Constitution is the supreme law of the land on the basis of which the validity of other laws is determined. It is the grundnorm of the country's corpus juris.[15] Rights in the Constitution are enforceable in accordance with the provisions of the Constitution.[16]

There are presently three generations of Human Rights. First generation rights relate to civil and political rights, second generation rights are of economic, social and cultural nature, while the third generation rights deal with the issue of solidarity. Civil and Political Rights which form the basis of the first generation rights are libertarian in character. They relate to the sanctity of the individual and his right within socio-political milieu in which he is located.[17] First general rights

[13] Feinberg, J. 1973. Social Philosophy. Englewood Cliffs, N.J.: Prentice Hall, pg.85.
[14] Ibid. at pg.87-89
[15] S.1 (3) 1999 Constitution of Federal Republic of Nigeria.
[16] Kuti and others v. AG Federation [1985] 8 NWLR (pt 6) pg.211.
[17] Such rights include: right to life; freedom from torture and in human treatment; right to liberty; freedom from slavery and force labor; freedom of movement; right to fair trial, freedom of thought, conscience and religion, right of franchise and the rights which are central to the traditional synthesis.

find expression in the Constitution of many Countries as Fundamental Rights.[18] The following civil and political rights are guaranteed by the 1999 Nigerian Constitution; The right to life; the right to dignity of (the) human person; the right to personal liberty; the right to fair hearing; the right and family life; the right to freedom of thought, conscience and religion; the right to freedom of expression and of the press; the right to peaceful assembly and association; the right to freedom of movement; the right to freedom from discrimination; and the right to acquire and own immovable property anywhere in Nigeria.[19]

Second generation rights, primarily of economic, social and cultural nature, pertain to equality and are predicated on the necessity for the material well- being of the citizenry, with the state playing a pivotal role. They are essentially equalitarian or egalitarian in character and embrace, inter alia, the right to work; the right to just condition of work; the right to fair remuneration; the right to an adequate standard of living: the right to organize, form and join trade unions; the right to equal pay for equal work; the right to social security; the right to food, the right to education and the right to participate in cultural life.

Generally, these rights require affirmative Governmental action for their implementation. Consequently, they are positively represented as rights to' rather than 'freedoms from' as is characteristic of first generation rights.[20]

Third generation rights relate to the question of solidarity, they deal with the organic and corporate existence and working of the society and embrace, inter alia, the right to safe and

[18] Various Regional Human Rights regimes also embody these rights while at the international levels the universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966 are instructive.
[19] The Constitution of the FRN, 1999, S. 33-42.
[20] Welch C, Jr.(1984) 'Human Rights as a problem I contemporary African, in Welch and Meltzer (eds.) Human Rights and development in Africa (Albany: Suny Press), Pg. 24.

healthy environment, the rights to development and the right to share in the common heritage of mankind.[21]

Of great importance to this work is one of the first generation right guaranteed by the 1999 constitution which is the right to fair hearing.[22]

2.2 The Concept of Fairness

The American legal philosopher, John Rawls described fairness as a "fundamental idea in the concept of justice".[23] It is also defined as any measure, beyond simple termination of a discriminatory practice, that permits the consideration of race, national origin, sex, or disability, along with other criteria, and which is adopted to provide opportunities to a class of qualified individuals who have either historically or actually been denied those opportunities and/or to prevent the recurrence of discrimination in the future.[24] To be fair is to be just and equitable.[25] Fairness is usually related to the concept of justice. This involves what is right and equal.[26]

The concept of fairness is closely related to a number of other moral concepts, such as **Equality, Impartiality and Justice**. Like these other notions, it centers on how people are treated by others, especially the requirement that they be treated alike, in the absence of significant

[21] See SS 14 – 23 of Chapter 11 of the 1999 Constitution of Federal Republic of Nigeria, Articles 11, 17, 18, 19, 20, 21, and 22 of the African Chapter on Human and Peoples Rights.
[22] Section 35 of the 1999 Constitution of Federal Republic of Nigeria, (as amended).
[23] Rawls J, (1958) 'Justice as Fairness' 67 The Philosophical Review, pp. 164-194 at 164.
[24] U.S. Commission on Civil Rights, Office of the General Counsel, Briefing Paper for the U.S. Commission on Civil Rights: Legislative, Executive and Judicial Development of Affirmative Action, Washington, D.C., Mar. 1995
[25] Concise Oxford Dictionary 510 (10th ed.).
[26] Prosecutor v. Slobodan Milošević, Case No. IT-02-54-AR 73.4, Separate Opinion of Judge Mohammed Shahabuddeen Appended to the Appeals Chamber Decision on Admissibility of Evidence-in-Chief in the form of Written Statements, ¶ 16 (Sept. 30, 2003); see also Prosecutor v. Pauline Nyiramasuhuko and Others, Decision in the Matter of Proceedings under Rule 15bis (D), Joint Case No. ICTR-98-42-A15bis, Dissenting Opinion of Judge David Hunt, ¶ 16 (Sept. 24, 2003) (—There may be many difficulties placed in the way of an accused in the course of applying an _interests of justice‘ test in various situations, so that the trial is not a perfect one (such as the need to protect victims and witnesses) but the absence of perfection does not mean that the trial will not be a fair one. However, the interests of justice cannot be served where the accused is denied a fair trial.‖).

differences between them. The distinctive focus of fairness is decision-making processes or institutions that apply rules. For instance, in regard to the application of rules, a fair procedure is one that applies them similarly to all cases, unless there are strong reasons for making exceptions in particular cases. Accordingly, an examination is graded fairly when all papers are judged by the same standards. "Fairness" is generally appealed to in assessing both the means through which decisions are made or rules applied, and the outcomes that are brought about. The former is generally described as "procedural" fairness, the latter as "distributive" fairness.[27] Though these two concerns frequently coincide (i.e., fair procedures give rise to fair outcomes and vice versa), this is not always the case, and so procedural and distributive fairness should be distinguished. However, though the notion of fairness pertains to both concerns, it is more closely associated with procedures, while the notion of justice (DISTRIBUTIVE JUSTICE) bears more particularly on outcomes.[28]

Exactly what constitutes fairness will depend on the specific nature of the decision process or institution in question. Consider, for example, a fair trial, a fair contest, a fair grade, a fair price, a fair agreement, a fair election. This variety of contexts entails a corresponding range of criteria of fairness. All of these, however, generally center on equal treatment of people, with departures from equality requiring justification.[29]

Aristotle makes the important observation that standards of justice or fairness are different in different regimes. In oligarchical regimes, ruled over by the rich, it is thought fair to treat people differently according to their merits, with amount of property constituting degree of merit. In

[27] Klosko, G. (1992). The Principle of Fairness and Political Obligation, Savage, Md.: Rowman and Littlefield, pg. 33.
[28] Bayles, M. (1990). Procedural Justice: Allocating to Individuals. Dordrecht: Kluwer Academic Publishers, pg. 125.
[29] Hochschild, J. (1981). What's Fair: American Beliefs About Distributive Justice. Cambridge, Mass.: Harvard University Press, pg. 214.

democratic regimes, in contrast, it is considered fair to treat people alike—and so to distribute political offices through a lottery system--with free birth and citizenship. Aristotle's discussion is that there is no universally recognized standard of fair treatment, in terms of either procedures or distribution. Different ways of dealing with people can plausibly be represented as fair, as long as they treat people who are similar in important respects similarly.[30]

In any legal system based on the rule of law, the principle of *fairness in court-proceedings* – i.e. procedural fairness – is cardinal. The historical lines in this respect are often drawn to clause 39 of the Magna Charta (1215), and the succeeding development of principles on fair procedure in common-law, based on "natural justice" encompassing, *inter alia*, judicial impartiality (*nemo judex in causa sua*), and the right to be heard (*audi alteram partem*).[31] In democratic states with a written constitution, due process of law has – although construed in quite diverse manners – typically been a part of the protection of individual rights and freedoms at national, constitutional level.[32]

2.3 Brief History, Definition and Rights in Relation to Fair Hearing

The right to a fair hearing is an ancient,[33] and a first generation right. No wonder then that justice Oputa succinctly opined that if there is one single right which has been constant, so vigorously agitated in our courts, it is the right to a fair hearing.[34] It is a cardinal principle in the

[30] Aristotle. (1981). The Politics. Revised ed. T. A. Sinclair and T. Saunders, eds. Harmondsworth: Penguin, 318.
[31] Clayton and Tomlinson, (2000) The law of Human Rights, vol. 1 pp. 554–556.
[32] Janis, Kay and Bradley, 1995 European Human Rights Law (2nd ed.) pg. 403.
[33] Some salutary scriptural leverages have been identified to authenticate the immemorial existence of Fair hearing; see the book of Genesis chapter 2 verse 15-18, Deuteronomy chapter 18 v. 16 – 17, the book of Acts chapter 25 v. 16 reads that it is not the manner of the Romans to deliver any man to die, before he which is accused have the accuser face to face, and have license to answer for himself concerning the crime laid against him. Nicodemus in John 17 v.15 equally asked; doth our law judge any man before it hears him, and know what he doeth? Suffice to mention John chapter 7 v. 57 where the Holy Book documented the question; But surely our law does not allow us to pass judgment on anyone without first giving him a hearing and discovering what he is doing.
[34] See. Oputa C.A. Human Rights in the Political and Legal Culture of Nigeria, 2nd Idigbe Memorial

administration of justice that justice should not only be done but should manifestly and undoubtedly be seen to be done. This is very fundamental in adversarial or accusatorial system or procedure practiced in Nigeria. Hence, prior to and during the trial in a court of law or tribunal, of any person charged with the commission of a crime, the Constitution of the Federal Republic of Nigeria, 1999, the Administration of Criminal Justice Act[35] and other relevant statutes have made elaborate provisions to safeguard a fair hearing

Article 10 of the Universal Declarations of Human Rights provides that, everyone is entitled in full quality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligation and of any criminal charge against him.

The right to a fair hearing is implicit within the concepts of rule of law and fundamental human rights. Right to fair hearing is the taproot of every trial; without it a trial becomes useless in law.[36] The principle of fair hearing was first introduced into Nigeria in the Constitution by virtue

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Lectures. Nigerian Law Publications Lagos, 1989, p.99. For a hearing to be fair the person affected must be given the opportunity to be present at the proceeding, to cross- examine or otherwise contradict any witness who testifies against his interest to enable him access to all documents in evidence against him, to disclose to him the nature of all relevant material evidence prejudicial against him within the limits of recognized rule and procedure. The immortal words of Justice kayode Eso, JSC (as he then was) in Akande v. The State (1988) 3 NWLR (pt. 85) 681 at 690 become apposite as he opined that fair hearing connotes the fact that the other side must be heard, not that the other side had been heard once and need not again be heard, especially when the decision taken after the hearing was in favour of that party. In T. O Wilson v. Oshin & ors (2000) 2 SCNR 215, Karibe Whyte could not hide his zeal for the adherence of fair hearing when he postulated that in the first place not considering one of many contentions of a party in a case cannot itself constitute a denial of fair hearing. A denial of fair hearing connotes a refusal to consider the pertinent and relevant issues in the case essential to its determination. In such a situation, a fair hearing minded objective observer will come to the conclusion that the hearing of the case has not been fair to the person. See also Dapo Adeyemi v. Oladipo (2003) FWLR pt. 155 pp.775 at 787, Akulega v. Benue State Civil Service Commission (2002) 2 CHR, Ibrahim Alemona v. Abubakar Bide (2001) 8 NWLR pt 688,p.186 and Bassey Essien & ors v. Okon Edet (2004) NWLR pt 667, p 51 at 557.

[35] Hitherto, the Criminal Procedure Act operated in the Southern States of Nigeria comprising: Abia, Akwa-Ibom, Anambra, Bayelsa, Cross-River, Delta, Ebonyi, Edo, Ekiti, Enugu,Imo, Lagos, Ogun, Ondo, Osun, Oyo and Rivers States and also in trials before the Federal High Court; while The Criminal Procedure Code operated in the Northern States of Nigeria comprising: Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateaus, Sokoto, Taraba, Yobe and Zamfara States. With the recent enactment, Nigeria operates unified criminal procedure legislation across the country.

[36] Okpara O. Human Rights Law and Practice in Nigeria(Nigeria: Chenglo Ltd, 2005) pg.179. In P.D.P V. K. S.I.E.C (2005) 15 NWIR (pt 948) at 240, the court held that fair hearing is in most cases synonymous with natural justice an issue which clearly is at the threshold of our legal system. Once there has been a denial of fair hearing,the whole proceedings automatically become vitiated with a basic and fundamental irregularity, which renders them null & void. See also Ojengbede v Esan (2001) 18 NWLR (pt.746) 771,

of the 1960 Independent Constitution and is provided for in subsequent constitutions of Nigeria. Section 21 stated that:

> in the determination of his civil rights and obligations 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 to secure its independence and impartiality. [37]

Although, the Constitution[38] does not define the term, "fair hearing," yet the courts of law have proffered some judicial definitions to it. For instance, in *Ezechukwu v. Onwuka*,[39] the Court of Appeal pointed out that:

> Fair hearing is a hearing which is fair to all parties to the suit, whether the plaintiff, defendant, the prosecutor, or the defence. It is a doctrine of substance and the question is not whether injustice has been done because of lack of fair hearing, rather… whether a party entitled to be heard has been given an opportunity of being heard….Fair hearing entails doing during the course of a trial all that will make an impartial observer to believe that the trial has been balanced… to both sides….

The content and extent of the right of fair hearing are not easily determinable. In *Federal Republic of Nigeria v. Joe Brown Akubueze,*[40] the court per Fabiyi, J.S.C. said that fair hearing presupposes a trial done in accordance with rule of natural justice which in the broad sense, is

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Sokoto State Government v. kamdex Nig ltd (2004) 9NWLR (pt 878) 345. In Ansambe v B.O.N Ltd (2005) 8 N.W.L.R .(pt.928), the court opined that fair hearing does not necessarily mean a hearing involving oral representation . In other words, a hearing is fair if the parties are given the opportunity to state their case in writing. See Alsthom v Saraki (2005) M.J.S.C. VOL3 at 128, where the Supreme Court stated that the principle of fair hearing is fundamental to all courts procedure and proceedings and like jurisdiction the absence of it vitiates proceedings however well conducted.

[37] 1960 Consttuion. Section 22 of the1963 Republican Constitution of Nigeria contained the same provision in pari material with that of the 1960 constitution. To solidify this position the 1979 constitution contains a similar but expanded provision. Section 33(1) stated that in the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 protects the rights to a fair hearing as it has a similar provision with the hitherto 1979 constitution.

[38] Of the Federal Republic of Nigeria 1999

[39] [1968] 1 All NLR 424.

[40] F.R.N. v. Joe Brown Akubueze (2010) 17 NWLR (Pt. 1223) 525 S.C.

that which is done in circumstances which are fair, equitable and impartial. Thus natural justice should not only be done but should be manifestly and undoubtedly being seen to be done.

The Supreme Court in *Aiyetan v NIFOR,*[41] in adapting the reasoning in several English courts cases[42] before it held, inter alia, that a person liable to be directly affected by proposed administrative acts, decisions or proceedings or against whom disciplinary action is proposed must be clearly informed of the allegations against him and be given opportunity to answer those allegations or charges before action is taken against him.[43] This requirement of hearing has been reiterated by the Nigerian courts in a plethora of cases that have also developed the jurisprudence on the various aspects of the requirements of hearing.[44] Indeed, the requirement of notice of allegations or charges is viewed by the court to be a distinguishing factor between a "witness" and the "accused" in any administrative adjudication proceeding, as any person called as a "witness" without a notice of allegation or charged, cannot later be found guilty of any requirement of fair hearing.

Fair hearing must include giving to a party or legal practitioner of his choice the opportunity to present his case before an impartial court or other tribunal in an atmosphere free from fear and intimidation. The Supreme Court in *Oyewole v. Akande,*[45] defined fair hearing to mean, hearing which is all about fairness, which is the determining factor for the application of natural justice.

[41] [1987] 3 NWLR (Pt. 59) 48
[42] R v Chancellor of Cambridge University (17160 1 Str. 557, (1723) 93 ER 698; Board of Education v Rice (1911) AC 179; Kanda v Government of Malaya (1962) 322
[43]Supra at 65 and 68-69 per Nnamani and Obaseki JJSC.
[44] See Adeniyi v Governing Council of Yaba College of Technology [1993] 6 NWLR (Pt. 300) 426; Obayan v Unilorin [2005] 15 NWLR (Pt. 947) 123 at 148-9 holding that a hearing is required before the appointment of a university lecturer can be terminated.
[45] (2009)15NWLR(Pt.1163)119S.C.Suit 196/2004.

In *Oni v. Fayemi,*[46] the Court of Appeal defined the term to mean the right of a party to correct or contradict the evidence against him or in his favour. Fair hearing is ambidextrous and both limbs often operate with synchronic nimbleness.[47] Gladly, however, certain requirements have been identified as basic to it.[48] In *Ariori v. Elome*,[49] the court held that fair hearing means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties to the course. Fair hearing implies that the subject matter must be heard by the authority charged with the determination of his rights before any decision is reached for it implies that both sides must be given an opportunity to present their respective causes and each side is entitled to know what case is being made against it and be given an opportunity to reply thereto.[50]

In *Mohammed v. Kano Native Authority,*[51] Ademola JSC (as he then was) observed that 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 a whole hearing. We therefore see no difference between the two. The true test of a fair hearing it was suggested by counsel, is the impression of

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[46] (2008)8NWLR(Pt.1089) 400C.A Suit No..CA/IT/EPT/GOV/1/2007.

[47] See Asuzu,c. Fair Hearing in Nigeria(Lagos; Mathouse Press Ltd,2009) p.2. See also Malemi E.,The Nigerian Constitutional Law(Lagos:Princeton Publishing Co.2006) pp. 266-272.

[48] See Okpara op. cit p.180 see Ezechukwu v. Onwuka (Supra) where some guiding principles were enunciated and they are (a) hearing which is fair to all parties to the suit whether the plaintiff, the defendant, the prosecution or the defense (b) Fair hearing is a doctrine of substance and the question is not whether injustice has been done, but whether a party entitled to be heard has been given an opportunity of being heard (c) fair hearing entails doing during the course of trial all that will take an impartial observer to believe that the trial has been balanced and even to both sides. It is not a one sided affair in which one party will be expecting all the good things to fall on his knees/laps while complaining
without thought for the other party's rights. Justice is not one sided affair for the court has a duty to hold
even balance (a) A party has every opportunity to present his case before the court and if he fails to do so, cannot be heard to complain of breach of his right to fair hearing; (e) fair hearing is speedy trial. See also Olabisi etc (eds) Rights to Prompt and Speedy Trial in Criminal Proceedings; Myth or. Reality (2005)
ODLSJ , P.71 Oputa C.A The Philosophy of Justice with emphasis on Arbitration, In Nigeria Law and Practice Journal Vol. 3 No.1 March 1999, p.82 and Adeyemi A.A. Rights to Fair and Prompt Trail
Under the Law; Administration of Criminal Justice and Human Rights in Nigeria, Mohammed Tabu ed. P.37. See also Shoyele O. Principles and Practice of Administrative Law in Nigeria. (Nigeria, Mono Expression Ltd, 1997) P.20 See Barnttet, Constitutional and Administrative Law, 5th Edition (London: Cavendish Publishing Ltd, 2004) P.572

[49] (1983) !. S.C 13 at 24. See Extractions System and Commodity Service Limited v. Nigbel Merchant Bank Ltd. (2005) All FWLR pt. 353 at 773, Governor Ekiti State v, Osayomi (2005) 2 NWLR pt 909 at 67, Abena v. Ben Obi & 4 ors (2006) 6 NWLR pt 920 at 183 and Idris Rabiu v. State (2005) 2 NWLR pt 221 at 33.

[50] In Darma v. Oceanic Bank Nig. Ltd (2005) 4 NWLR pt 915 at 393, Fair hearing was defined as meaning that which authority is fairly expressed that is consistent with the fundamental principles of justice embraced within the conception of due process of law. Contemplated in a fair hearing is the right to present evidence, to cross-examine and to have findings supported by evidence.

[51] (1968)1 ALL WLR 424 at426.

a reasonable person who was present at the trial, whether from his observation, justice had been done in the case.

The case of *Ndukauba v. Kolomo*,[52] adumbrated the fact that fair hearing means nothing less than a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties. In the same case, the court subsumed the ingredients of fair hearing to include the following:

a) A hearing can only be fair when all parties to the dispute are given a hearing or opportunity of a hearing. If one of the parties is refused a hearing or not given an opportunity to be heard, the hearing cannot qualify as hearing.

b) The principle of fair hearing implies that both sides must be given an opportunity to present their respective cases. It also implies that each side is fully entitled to know what case is being made against it and be given the opportunity to respond thereto. Fair hearing also implies some obligations on the tribunal or court hearing the case and fundamentally the court or tribunal should not take or hear evidence in a case or receive a submission or representation from a party at the back of the other.

c) An important essence of the right of fair hearing is that a party should not be denied not only the opportunity to present his defense to the defense being put up against his case. The rights of fair hearing do not stop parties being presented in court. It also includes a right to be heard at any material stage of the proceedings.

[52] (2005)4 NWLR (Pt.915) at 415

d) Fair hearing involves fair trial or vice versa, and in all cases what is required is that from the observation of persons present at any trial or investigation justice must appear to be done in the case.

The Nigerian Judicial System attaches great importance to the rule of fair hearing. It follows, therefore, that the effect of a breach of the rule of fair hearing renders the hearing liable to be set aside or declared invalid by the court. The court will treat the situation as if such a hearing never in fact took place. The desire of a court to dispose of as many cases as possible, whilst understandable and expedient, should not be at the expense of the rights to a fair hearing.[53]

Some of the safeguards for fair hearing in tribunals as retreated in plethora of cases are:

2.3.1 Notice of Hearing

It is the duty of a tribunal or decision making body which is bound to act judicially to give adequate notice of hearing to a party who is likely to be affected by the decision taken. Failure to give adequate notice would vitiate the proceedings. In *Owolabi & Ors. v. Permanent Secretary Minister Of Education ,*[54] the applicants upon complaints were sent a letter from the Ministry on Saturday 30th November, 1968, inviting them to a meeting on the following Monday, 2nd December, 1968. The appellants were not able to attend the meeting and a letter was sent to the Ministry to this effect requesting a fresh date for the meeting. Without hearing from the appellants, the permanent secretary transferred the financial administration and staffing of the applicant's school to the Local Government Officer, Ikeja by virtue of the powers conferred on

[53] Tunbi v. Opawole (2000) 2 NWLR pt. 644 p. 273, Gukas V Jos International Breweries ltd (1991) 6 NWLR pt 199 and Salu v. Egeidon (1994) 6 NWLR pt 348 p. 23

[54](1966) 1 All NLR 178

him by S.58 of Education Law (Western Region). 1959. Adeoba J., held that the applicants were not given sufficient and adequate opportunity of being heard because the only one day between Saturday 30th November and Monday 2nd December, 1968 was a Sunday.

Also, in Dr. *Denloye v. Medical and Dental Practitioners Disciplinary Tribunal*,[55] the appellant complained against the decision of the respondent which found him guilty of infamous conduct and ordered the removal of his name from the Medical Register without any warning as to the nature of his offence and an opportunity to be heard. The Supreme Court held that this was a denial of justice.

If a party fails to apply for an extension of a short notice of hearing, it does not amount to a breach of the rules of fair hearing if the decision making body goes ahead to hear the matter. In *First African Trust Bank Ltd v. Ezegbu,*[56] the counsel in this case complained that the time given them to prepare their affidavit evidence was insufficient and submitted that failure on the part of the Court of Appeal to give them sufficient time to prepare their counter-affidavit amounted to a denial of fair hearing. The Supreme Court held that a party cannot be heard to complain about the inadequacy of a hearing notice after the event. It does not amount to a denial of fair hearing if the court goes ahead to hear the matter once that party had failed to apply for an extension of time to enable him to prepare his reply. It will only amount to a denial of fair hearing if such application was made but unreasonably refused.

[55] (1968) 1 All N.L.R. 306
[56] (1993) 6 NWLR (Pt 297) 1

The provision does not only enjoin the court and tribunal to allow each party to state his own case in court or before a tribunal but to give each party notice of the date of hearing and place of hearing.[57]

2.3.2 Right to be informed of the offence committed

This is another safeguard to fair hearing preserved under the 1999 Constitution.[58] Every person charged with an offence (civil or criminal) is entitled to be informed promptly in the language that he understands and in detail of the nature of the offence alleged against him.[59] This requirement may be met by stating the charge either orally or in writing, provided that the information indicates both the legal description of the offence and the alleged facts on which it is based.[60] However, a person who has been promptly informed of the nature and details of a grave offence may nonetheless, be convicted of a lesser offence although he was not charged with it.[61] This is because the particulars constituting the lesser offence are carried out of the particulars of the grave offence charged. The essence of promptly informing an accused person of the nature of the alleged offence is to enable him know what he has done and is likely going to face so as to prepare for it. Our adversarial criminal legal system frowns at springing surprises at the opposite side.

[57] See Olumesan v.Ogundipo(19996)2NWLR(Pt.433)628. See alsoLukman, A.L.An Anaysis of the Concept of Fairhearing and the Principles of Natural Justice in Egbewole, E, The Jurist University of Ilorin:Essays in Honour of Hon Justice Faruk A,(Ilorin: Law Students Society,2005) at pp.127-128.
[58] Constitution of the Federal Republic of Nigeria, 1999; section 36(6)(a).
[59] Francis Durwode v. The State (2000) 12 SCNJ 1 at 9. See also Administration of Criminal Justice Act 2015, sections 6(1).
[60] M.D.P.D.T v. Okonkwo (2001)7 NWLR (pt 711) 206
[61] See generally Administration of Criminal Justice Act 2015, sections 223-237. See also Maja v. The State [1980] 1 NCR 212 at 220-221; Ezeja v. State [2006] All FWLR (Pt. 309) 1535at 1565, 1568.

2.3.3 Right to Adequate Time and Facilities

This right is guaranteed under section 36(6)(b), adequate facility necessitates granting counsel[62] access to the defendant on remand, to enable counsel to interview the defendant and prepare the case for the defence.[63] Where a legal practitioner is denied access to his client in custody, he may apply to the court for an adjournment and the release of his client to enable him prepare for the defence. Alternatively, he may apply to the High Court in the State for the enforcement of the right. The requirement for adequate time and facilities to prepare for the defence is also required of tribunals beside the regular courts. Thus, in a case where the Students Disciplinary Committee gave a student less than twenty-four hours to prepare his defence, the court held that the Committee had breached the basic rule to fair hearing.[64]

Similarly, in G*opka v. Inspector General of Police,*[65] where the accused was brought to court under a bench warrant to stand trial for offences of stealing and fraudulent accounting, he applied for an adjournment to enable him retain the services of a counsel to defend him. A short adjournment was granted to him until later in the afternoon. At the resumed hearing, counsel was not in court. He was subsequently convicted. On appeal, there was evidence before the court that any available counsel would have had to travel to court from the nearest town, a distance of about 23 miles to the court; hence, the short adjournment was inadequate. In allowing the appeal,

[62] It is submitted that this constitutional right to retain the service of a counsel of his choice only apply to a person charged with a criminal offence and does not apply to a civil case. Hence, in an appropriate case, the court has power to interfere with a litigant's right to counsel in a civil matters-Ikpana v. Regd, Trustees, Presbyterian Church of Nigeria & 5 others [2006] ALL FWLR (Pt. 310)1703 at1720;Williams v. Nwosu (2001) 3 NWLR (Pt. 700) 376. Moreover, in Awolowo v. Minister of Internal Affairs 1962] LLR 177, the constitutional phrase, "legal practitioner of his own choice," was interpreted to mean a legal practitioner without any legal disability of any kind. See also Registered Trustees of ECWA v. Ijesha [1999] 13 NWLR (Pt. 635) 368 to the effect that the Senior Advocates of Nigeria (Privileges and Functions) Rules, which prohibits the right of appearance of a Senior Advocate of Nigeria [SAN] in an inferior Court is not in conflict with Section 36(6)(c) of the 1999 Constitution.

[63] Administration of Criminal Justice Act 2015, section 267 (2).

[64]University of Ilorin v. Akinrogunde [2006] All FWLR (Pt. 302) 176 at pp.199-200.

[65][1961] 1 All NLR 423.

the appellate court also pointed out that the accused ought to have been granted a longer adjournment to enable him engage the services of a legal practitioner.

However, it is worthy of note that the issue of an adjournment is a matter within the discretionary powers of the court, which the court must exercise judiciously and judicially.[66] It is incumbent on the applicant to satisfy the court that the adjournment is necessary.[67] Every application for an adjournment would be considered on its own merits and within the circumstances of a particular case. The court cannot therefore, be bound by a previous decision to exercise its direction in a particular way.[68]

2.3.4 Right to Examination of Witnesses

This right is preserved under section 36(6)(d),[69] the right of examination of witnesses can be done by the defendant in person or by his legal practitioner. The right affords a defendant an opportunity to cross-examine the witnesses of the prosecution as well as procure witnesses to testify on his behalf. In *Tolu v. Bauchi Native Authority*,[70] the trial court did not allow the accused person to cross-examine the prosecution witnesses. When the case subsequently reached

[66] Francis v. Osunkwo [2000] FWLR (Pt. 14) 2469 at 2488-2489, pp. 2482-2483; George v. George [2000] FWLR (Pt. 23) 1180 at 1187.
[67] Shemfe v. Commissioner of Police (1962) NNLR 87, where counsel for the accused sent a telegram to the court seeking an adjournment of his matter. No reason was advanced by learned counsel to necessitate the adjournment and his failure to appear in the court. The court refused the adjournment and the accused was subsequently convicted. On appeal against the conviction, the appellate court held that the accused person was not denied fair hearing and that failure of the appellant to be represented by counsel was not the fault of the court but that of his learned counsel.
[68] Sossa v. Fokpo [2000] FWLR (Pt. 22) 1111 at 1127.
[69] of the 1999 Constitution.
[70] [1965] NMLR 343. See also Ayorinde v. Fayoyin (2001) FWLR (Pt. 75) 483 at 499, where it was held that natural justice requires that a party to a cause must be given opportunity to put forward his case fully and freely and to apply to the court to hear any material witness and consider relevant documentary evidence with a view to reaching a fair and just decision in the matter, Olaye v. Chairman, M.D.P.D.T (1997)5 NWLR 550 @ 552

the Supreme Court on an appeal, it was held that the trial court's action amounted to an infraction of the accused person's right to cross-examine the witnesses.

Similarly, in the case of *Idirisu v.The State*,[71] an accused person applied for an adjournment to enable him call a medical doctor who had prepared a medical report already received in evidence, as a witness, the application was refused. When the case got to the Supreme Court on an appeal, it was held that the application for adjournment ought to have been granted. Also, in the case of *University of Ilorin v. Akinroungbe,*[72] the right to examine the witnesses called in proof of a person's guilt or liability guaranteed under the Nigerian Constitution was held to have extended to a Students' Disciplinary Committee of a University which is bound to observe this basic requirement of fair trial before reaching its decision expelling the respondent. The expulsion order of the University was consequently nullified as it was done in brazen disregard to the student's right to fair hearing.

The principle of fair hearing as enshrined in the 1999 Constitution is often illustrated by the "twin pillar of justice"[73] expressed in the Latin maxims: *nemo judex in causa sua,*[74]and *audi alterem partem*.[75] In this regard, it is submitted that these principles expressed in these Latin

[71] [1967] 1 All NLR 32.
[72] [2006] All FWLR (Pt. 302) 176 at 199-200, see Also Adekunle v. University of Port Harcourt [1991] 3 NWLR (Pt. 181) 534, Garba v. University of Maiduguri (1986) 1 NWLR (pt.18) 550.
[73] Hon. Justice Nnaemeka-Agu (1988). "Impact of Natural Justice on our Law." 13 The Advocate, at p. 21. See also Ex Parte Olakunri: Olakunri v. Oba Ogunoye [1985] 1 NWLR (Pt. 4) 652, per Nnamani, J.S.C.
[74] Meaning that a person shall not be a judge in his own cause. See Gani Fawehinmi v. Legal Practitioners Disciplinary Committee [1985] 2 NWLR (Pt.7) 300 at 308. See also Alakija v. Medical and Dental Practitioners Disciplinary Committee [1959] 4 FSC 38. The principle that the Judge who presides over a matter should not himself be interested in the subject matter of the litigation is intended to ensure that decisions are taken purely on judicial grounds uninfluenced by motives of self-interest.
[75] That is, no man shall be condemned unheard or without having an opportunity of being heard. See P.R. P. v. Independent National Electoral Commission [2004] All FWLR (Pt. 209). See also Akande v. The State [1988] 7 SCNJ (Pt. 2) 314; Ogundoyin v. Adeyemi [2006] All FWLR (Pt. 71) 1741 at p. 1755.

maxims are an integral and inseparable part of the fair hearing provision guaranteed by section 36(1) of the 1999 Constitution.[76]

2.4.1 Audi alterem partem or audiator et altera pars

This is a Latin phraseology which means it should be heard. *Audiatur* meaning also the other party, to hear *audi,* the other side too or hear the alternative party too. It means hear the other side or the various sides in a dispute before reaching a decision or judgement.[77] It is a principle of fair hearing that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them or that no one should be condemned unheard. It is considered a principle of fundamental justice or equity in most legal systems. The principle includes the rights of a party or his lawyers to confront the witnesses against him and to have a fair opportunity to challenge the evidence presented by the other party. Over time the question has been whether legislation or case law has brought greater clarity concerning the application of the *audi alterem partem* rule? In *Engr. Asukwo Effiong Odiong v. Obong Iyamba,*[78] it was held that the right to be heard or to be given an opportunity of being heard is a constitutional right under section36 (1) of the 1999 constitution of the Federal Republic of Nigeria which is itself predicated upon the rule of natural justice requiring that the other side be heard-*audi alteram partem.* Failure to comply with these sacrosanct and fundamental principles of fair hearing touches on the competence of the court and the proceedings and any decision arrived at while in breach of the right to fair hearing must be set

[76] In D.U. Tamti v. Nigerian Custom Service Board (2009)7 NWLR (Pt.1141)631 at 636. Suit No.CA/A/183/06, it was held that the principle or doctrine of fair hearing in its statutory and constitutional sense is derived from the principle of natural justice under the twin pillars namely; audi alteram partem and nemo judex in causa sua.
[77] Malemi E, The Nigerian Constitutional Law (Lagos:Princeton Publishing Co.2010) p.267
[78] (2011) LPELR-CA/C/112/2009.

aside. Also, in *Chief Bassey & Ors v. Felix Edet & Ors,*[79] the court opined that it is a settled law that one basic requirement of natural justice is that a party should be given an opportunity any case without hindrance. The court must hear both sides at every material stage of the proceedings before handing down a decision. It is the rule of fairness and a court cannot be fair unless it considers both sides as may be presented by the parties.

In law a hearing can only be fair when, *interalia,* all the partied to a dispute are given a hearing or an opportunity of being haerd. If any of the parties is refused or denied a hearing or is not given an opportunity of being heard, such hearing cannot qualify as a fair hearing under the rule of *audi alteram partem.* The word hearing or opportunity to be heard includes both where oral submissions are made, as well as where written representations are made. A hearing may be by both oral evidence and written representations, or either method alone.[80] A decision reached after a full inquiry without an oral hearing does not violate the principle of fair hearing.[81]

Therefore, a decision reached after a full inquiry based on documentary evidence and written does not necessarily amount to a denial of fair hearing provided that, all the parties are treated equally and none of them is given oral hearing. The Supreme Court in *Mobil Producing (Nig) Unltd v. Monokpu,*[82] held that it is the duty of every court to entertain and determine all applications brought before it. It is immaterial that the applications is downright stupid, unmeritorious or even an abuse of court process. A refusal to hear a motion by a court or tribunal is a breach of the right of fair hearing an essence of the *audi alterem rule.*

[79] (2003) LPELR-CA/C99/98
[80] Malemi op cit at p.272, Gyang & Anor v. COP Lagos State& Ors (2014) 3 NWLR PT 1395 p. 547 @ 552 (per Galadima, JSC), Duke v. Government of Cross River State (2013) 8 NWLR PT 1356 @ p. 347; Hart v. Military Governor of Rivers State (1976) 11 SC Report 109
[81] Queen v. Director of Audit Western Region & Ors(1961)ALL NLR659 at 660.
[82] (2003) 18 NWLR (Pt.852) 346.

2.4.2 Nemo judex incausa sua

The other arm of natural justice is *nemo judex incausa sua,* the rule against bias and it is strict. According to the rule against bias, a man should not be a judge in own cause. If a prosecutor or a complainant judges a case, there is likely to be an element of bias.[83] If a party is allowed to be a judge in his own cause he is likely to enter either a ruling of not liable or an acquittal in the matter. It cannot be said in such a situation that justice has been done, what would result is manifest injustice.

The objection to 'bias' in administrative adjudication is that if allowed, it would undermine fair judgment. Administrators pursuing government policy in a manner which would be unfair to the interested parties may be regarded as being biased. Bias from a fair and sincere conviction as to public policy may therefore operate as a more serious disqualification than even pecuniary interest. In such circumstance, the decision-makers would inevitably be influenced. A party thus affected by an administrative decision is not only entitled under the Nigerian constitution to have his case heard by a body having the power to determine his case, but also that his case must be heard by that body free from bias or otherwise interested in the result of the decision.[84]

2.4.3 What is the Meaning of Bias?

The term "bias" was defined by the Court of Appeal in *University of Calabar v. Esiaga*,[85] to mean inclination, bent, pre-disposition, or a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction of mind which sways judgment and renders a judge unable to exercise his functions impartially in a

[83] Garba v. University of Maiduguri (supra) at 576
[84] Aihe D. O. (1984) Selected Essays in Nigerian Constitutional Law, Idodo Umeh Publishers, p. 82
[85] (1997) 4 NWLR (Pt 502) 719

particular case. As used in law regarding disqualification of a judge, it refers to mental attitude or disposition of the judge toward a party to the litigation, and not to express any view that he may entertain regarding the subject matter involved. A biased judge is incapable of using his naturally given senses of hearing and seeing to the egalitarian advantage of the parties. In the adjudication process, the judge is deemed to close one of his ears and one of his eyes against the evidence of the person he hates and opens the other ear and eye in favour of the person he likes. The only evidence that interests him is that given by the person he likes. At the end of the day, he gives judgment in favour of the person he likes without due consideration of the evidence before him.

It is not necessary to show that bias exists. The mere appearance or possibilities of bias will suffice.[86] The suspicion of bias must, however, be a reasonable one. Both financial and personal interest in a case may disqualify a person from adjudicating. Whether there is a reasonable suspicion of bias should be looked from the objective standpoint of an aggrieved party. The actual test being the impression of a reasonable person who is present at the trial, whether from his observation justice has been done. But where a reasonable person will get away with the notion that Justice has not been done, thus a likelihood of bias exists. In the case of *P.D.P v. K.S.I.E.C,*[87] the court enunciated some grounds that would preclude a judge from hearing a case on grounds of personal interest to wit:

(a.) When he would be seen to be a Judge in his own matter, or

(b.) Having dealt with the same issue and it comes or resurfaces when he is in a Superior Court and is being called upon to decide an appeal against his own decision; or

[86] See R v. Sussex Justice Ex parte Mc Carty (1924) p. 259 where it was succinctly put that Justice should not only be done but should manifestly and undoubtedly be seen to be done.
[87] (2005) 15 NWLR pt 918 at 232 –233

(c.) Because of some obvious or latent connection of him with either of the parties or all of them it would not be conscionable of him to participate in hearing the case; or

(d.) Generally his being a member of the tribunal would not appear to be in the interest of justice as he will not be seen to do justice.

A vague suspicion which is not rested on reasonable grounds would not amount to a real likelihood of bias on the part of the person or judge whose decision a party may want to impugn.[88] Where the judge feels he has a bias against one of the parties to litigation he may disqualify himself from sitting on the case, as did Lord Denning MR in *Ex parte Church Scientology of California.*[89] The Supreme Court hard warned in *Olawole Abiola v. FRN,*[90] that:

> a judge should not hear a case if he is suspected of partiality because of consanguinity, affinity, friendship or enmity with a party or because of his subordinate status towards a party because, he was or had been a party's advocate. Also natural justice demands, not only that those whose interest may be directly affected by an actor decision should be given prior notice as adequate opportunity to be heard, but also that the tribunal should be disinterested and impartial. The test of bias is not a question of whether the tribunal has arrived at a fair result; the question is whether the fair-minded and informed observer, having considered the facts, would conclude that the tribunal was biased.

[88] See Ojengbede v. Esan (2001) 18 NWLR pt 746 p. 771

[89] (1978) There, Counsel for the Church registered that he disqualified himself as a result of eight previous cases involving the church on which he had sat. In R v. Bow Street Metropolitan and Stipendry Magistrate Exparte Pinochet Urgate (1999) Extradition Proceedings against the former Chilean Head of State were challenged on the basis that one of the law Lords, Lord Hottman, had links with Amnesty International, the charitable pressure group which works on political prisoners around the world, which had been allowed to present evidence in court. It was accepted that there was no intend bias on the part of Hottman, but there were concerns that the Public perception might be that a senior judge was biased. As a result, the proceedings were abandoned and re – heard by a new bench of seven judges. See Taylor v. Lawrence (2002) Locabail (U K) Ltd v. Bayfield Properties Ltd (2000)

[90] (1995) 7 NWLR Pt. 415 P1

The requirement of impartiality is intended to prohibit a person from deciding a matter in which he has either pecuniary or any type of interest. Such other interest may arise from his personal relationship with one of the parties to the case or may be inferred from his conduct or utterances during the hearing of the matter. Thus, is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to have been done.

CHAPTER THREE

POWERS, DUTIES AND TYPES OF ADMINISTRATIVE TRIBUNAL

3.1 Introduction

The administration in the discharge of its functions of executing and implementing laws will usually be involved in processes of exercising judicial or quasi-judicial powers for the findings of facts, application of law to facts, and the determination of the rights and obligation of persons. These processes may take the form of administrative disciplinary procedure; panel of inquiry; administrative tribunal; statutory tribunal; special tribunal; inferior court; domestic or autonomic bodies; and such other bodies. These processes are known as administrative adjudication, administrative justice, or administrative or judicial tribunals, or simply as tribunals.

From the constitutional standpoint, administrative tribunal may appear to be in conflict with the doctrine of separation of powers that postulates that judicial powers are to be vested in the courts of law, as provided for in section 6(1) & (2).[1] However, the conflict is more apparent than real, as administrative adjudication does not conflict with the constitutional concept of separation of powers, due to the vesting of judicial powers in the courts to exercise supervisory jurisdiction over the administrative tribunal whenever it exercises quasi-judicial or judicial power. It also imposes on the administration compliance with standardized "procedural fairness" through the application of the principle of fair hearing or the common law doctrine of natural justice that comprises of two maxims: nemo judex incausa sua (a man may not be a judge in his own course); and audi altarem patem (hear the other side), and these apply to all courts and

[1] 6. (1) of the 1999 Constitution (as amended); The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.
(2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.

administrative adjudication bodies. Thus it was held in *National Electoral Commission (N.E.C) V Nzeribe*[2] that,

> 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.

3.2 What is a Tribunal?

Tribunals generally are special adjudicatory or fact finding bodies set up outside the normal hierarchy of courts, as part of the machinery of Justice. This is recognized by section 36(1) 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 a manner as to secure its independence and impartiality. [3]

Tribunal is used in a general sense and in a specific sense. In its general sense, it covers all bodies, including courts that determine the legal position of the parties before them. In its specific sense, it is used to distinguish some of those bodies from those that are courts.

A tribunal in this sense is a body created by statute.[4] Its purpose is to determine a person's legal position in respect of a private law dispute or a public law entitlement, whether initially or on

[2] (1991) 5 NWLR (P 192) 458 of 472
[3] Constitution of the Federal Republic of Nigeria, 1999(as amended)
[4] Lords Guest and Devlin in United Engineering Workers' Union v Devanayagam [1968] AC 35 6 at 382–383.

appeal.[5] It is given only a narrow and limited jurisdiction. But that jurisdiction is conferred generally and is not limited to an individual case. The members are likely to be expert in the jurisdiction; they are not limited to lawyers and may include others with relevant knowledge and experience. The procedures are likely to be relatively simple and user-friendly.

It is independent of the parties to the proceedings. In other words, the tribunal is an expert, independent standing statutory body, available to deal with all those cases within its jurisdiction and easily accessible by users.[6] This does not mean that these features are unique to tribunals. Court judges may, for example, be just as expert in their jurisdiction as tribunal judges. Nor does it mean that all tribunals exhibit these features. What it means is that tribunals are bodies in which these features are likely to occur in combination.

A tribunal performing judicial or quasi-judicial functions may be regarded as a court having special jurisdiction. A body performing such functions may be called "a tribunal" rather than "a court" by the legislature merely because the legislature requires the body to consist of experts in a particular area of the Law or to deal with a particular area of the law, or to deal speedily with certain aspects of the law, or to adopt a procedure different from the usual court procedure, or for

[5]A tribunal may have an original jurisdiction, an appellate jurisdiction or both. The Upper Tribunal has appellate jurisdiction under, for example, TCEA 2007 s11 and original jurisdiction in the case of forfeiture under the Forfeiture Act 1982. TPP2-2 chapters.in

[6] Examples of these Tribunals in Nigeria include, Election Petition Tribunals…, Code of Conduct Tribunal established pursuant to paragraph 15 of the Fifth Schedule Part I of the 1999 Constitution "A tribunal is a court or other adjudicating body, the seat, bench or place where a Judge sits. Therefore the Code of Conduct Tribunal is a court. It is a court vested with specific duties by the Constitution. Paragraph 18 of the fifth Schedule to the 1999 Constitution vests on the Code of Conduct Tribunal the power to arrest, convict, sentence, and impose punishment." Per Aboki JCA in A-G., Federation v. Abubakar [2007] 8 NWLR 117, at 150, Tax Appeal Tribunal established in accordance with Section 59(1) of the Federal Inland Revenue Service (Establishment) Act 2007; Medical and Dental Disciplinary Practitioners Disciplinary Tribunal established by the Medical and Dental Practitioners Act Cap 221, Vol. XII Laws of the Federation (LFN) 1990; Legal Practitioners Disciplinary Tribunal established by the Legal Practitioners Act Vol. XI LFN 1990; etc.

any two or more of those reasons.[7] In *Onuoha v. Okafor,*[8] the nature of the tribunal was explained thus:

> The term court or tribunal…..is used to indicate a person or body of persons exercising judicial functions by common law, statute, patent, charter, custom, etc., whether it be invested with permanent jurisdiction to determine all causes or a class or as and when submitted or to be clothed by the State or the disputants, with merely temporary authority to adjudicate on a particular group of disputes.

Tribunals are mainly adjudicative and acts as court substitutes by hearing, investigating, fact-finding, adjudicating, and hearing appeals against decisions and generally apply legal rules derived from statutes, regulations and other subsidiary legislation.[9] Obviously, the definition of what constitutes a tribunal is no easy matter. Hence it has been proposed to focus on the "properties" that constitutes the basic characteristic of a tribunal. These properties have been identified to include: "the ability to make final, legally enforceable decision, subject to review and appeal; independence from any department of government; the holding of public hearing, judicial in nature; the possession of expertise; a requirement to give reason; and the provision of appeal to the High Court on point of law.[10]

The rationale for the establishment of tribunals has been stated by Peter Leyland and Terry Wood to be that:

> an effective and fair system of remedies for the citizen depended, to a significant extent, upon developing new alternative mechanism to the courts that were both able to deal effectively with diverse types of decision making in the

[7] Obilade, A.O. (2005); The Nigerian Legal system; spectrum books limited, Ibadan, Pg.222-223
[8] (1985) 6 NCLR 503, 509.
[9] Peter Leyland & Terry Woods; Administrative Law, 4 ed, (Oxford University Press 2002) Chap. 7, pg. 187.
[10] Paul Craig, (2012) Administrative Law, 7 Ed., (Sweet & Maxwell & Thomas Reuters) Chap. 9, pp. 232-233

> public sector and cope with the increasing volume of grievances that were arising in the field of central and local government.[11]

The machinery of the courts was seen as not being suited for settling every dispute which may arise out of the work and process of government, thus social legislations in post World War II "put great trust in tribunals: it was based on an attitude of positive hostility to the courts of law." Subsequently, in response to complaints against tribunals steps had to be taken to bring tribunals back into touch with regular courts, in order to improve the standard of justice meted out by them and to impose order and discipline generally.[12]

To make tribunals conform to the standard which Parliament thus had in mind, three fundamental objectives were proclaimed: "openness, fairness and impartiality".[13]

Tribunals may differ from the courts in the way in which they operate, such as their informality, not being rigidly bound by precedent, and being less preoccupied with procedural technicalities. This point was made in the *NEPA v. El-Fandi,*[14] where it was held, inter alia, that where an order of an inferior tribunal is correct in form, and the procedure leading thereof also appears correct, the High Court would refuse to inquire into the reasonableness or otherwise of the tribunal's order.

3.2 Definition of Administrative Adjudication or Tribunal

Administrative adjudication has been defined as the process by which an administrative agency issues an affirmative, negative, injunctive, or declaratory order. The formal proceedings before an administrative agency adopt the process of rule making or adjudication. In rule making

[11] Leyland P. and Wood T.,(2002) Administrative Law, 4 ed (Oxford University Press) pg. 187
[12] Wade H.W.R & Forsyht C.F, (2009) Administrative Law, 10 Ed (Oxford University Press) Chap. 23 at 771 "The policy was to administer social service in the greatest possible detachment from the ordinary legal system, and to dispense with the refined techniques which the courts had developed over centuries."
[13] Ibid at pg. 776
[14] [1986] 1NWLR (Pt.) 884 at 888 per Akpata JCA, citing R v. Bolton (1841)1 QB 66

process, the policies are formulated by setting rules for the future conduct of persons governed by that agency. While in adjudication process, the agency's policies are applied to the past actions of a particular party, and it results in an order for or against that party. Both these methods are regulated by the law of administrative procedure.[15] They exist outside the ordinary courts of law, but their decisions are subjected to judicial control by means of the doctrine of ultra vires and by judicial review in cases of error of law on the face of the record.[16]

Thus any administrative body or tribunal that exercises judicial powers must be seen as an adjudicatory body subject to the requirements of fair hearing. Judicial acts in this sense have not been confined to orders made while a tribunal is sitting as a court,[17] as Lord Goddard observed in *Catsham Statutory Visitors, ex. p Pritchard,*[18] thus:

> It is not easy to give an exact definition of what is meant by act judicially, but I should say that for this purpose it means a body bound to hear evidence from one side and the other. There need not be anything called strictly a lis, but the body would have to hear submissions and evidence by such side and come to a judicial decision approximately the same way that a court must do.

Administrative adjudication can thus be defined as a process or procedure that involves the administration in the exercise of judicial or quasi-judicial powers whether its determination is final or recommendation, which may take the form of a tribunal, investigative panel, or inquiry or such other body by whatever name called. Administrative adjudication is a prominent feature of administrative law in Nigeria.

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[15] (http://www.answers.com/topic /administrative-tribunal-1) 14/12/16
[16] Onuoha v Okafor (1985) 6 NCLR 503, 509.
[17] Ihere v. Duru [1986] 5 NWLR (Pt. 44) 665 at 682
[18] (1953) 1 WLR 1158; (1953) 2 All ER 766 at 768

3.3 Powers of Administrative Tribunal

Administrative tribunal is constitutionally recognized in section 36,[19] by the acknowledgement of the fact that judicial powers may be exercised by tribunals and other administrative adjudication bodies, which are all subjected to the requirement of fair hearing,[20] this point was articulated by the court in *Obi V Mbakwe,*[21] that S.33(2)[22], was conceived to facilitate a smooth running of the administrative machinery by allowing agents of the executive to determine the rights of people in accordance with certain laws that might be made from time to time.

In *LPDC v Fawehinm,*[23] the Supreme Court observed on the nature of administrative tribunals thus:

> It is not easy to place a tribunal in the compartment of purely administering, predominantly administering or one with judicial or quasi-judicial function. In my view, a purely administrative tribunal may turn judicial once it embarks on judicial or quasi-judicial adventure. The test to my mind should be the function the tribunal performs at a particular time. During the period of in-course into judicial or quasi judicial function, an administrative body must be bound in process thereof to observe the principles that bind the exercise of judicial function. 'Even God himself did not pass sentence upon Adam before he was called upon to make his defence.

The Court also noted that the exercise of judicial power by an administrative or statutory body is determined largely by the nature of its function. One of the tests for identifying judicial functions is whether the purpose of the function terminates in an order or decision that has conclusive effect. Hence where the administrative or statutory body makes decisions or determination that

[19] 1999 Constitution (as amended)
[20] Garba v University of Maiduguri [1986] 1 NWLR (Pt. 18) 550
[21] (1985) 6 NCLR 783 at 793
[22] of the 1979 Constitution (which is identical to S.36(2) 1999 Constitution)
[23] [1985] 1 NWLR (Pt. 7) 300 at 347-348 per Eso JSC.

affects the civil rights and obligation of persons, the courts are likely going to hold the exercise of the function/power as judicial.[24] Another test in identifying whether administrative or statutory functions are of a judicial character lies in certain formal procedural attributes – adopted by the body, that is, requirement of formal adjudicative procedures before the exercise of such power.[25] Statutory procedures are often stipulated for the exercise of functions/powers that are judicial in character, for example statutory or administrative tribunals, disciplinary tribunals, and autonomic bodies.[26]

3.4 Functions or Duties of Administrative Tribunals as it Relate to Fair Hearing

3.4.1 Duty to Observe the Principles of Fair Hearing When Acting Judicially

Tribunals acting judicially in the determination or imposition of a decision that is likely to affect the Civil Rights and Obligations of a person are bound and enjoined to observe the principles of fair hearing. The principle often expressed by the latin maxim ' *audi alteram partem'* which means *hear the other side* has been for long enshrined in the Nigerian Jurisprudence.[27]

An Administrative Tribunal in ascertaining facts may be under a duty to act judicially notwithstanding that its Proceedings have none of the formalities of and are not conducted in accordance with the Practice and Procedure of a Court of Law.[28] It is enough if it is exercising judicial functions in the sense that it has to decide on the materials before it between an

[24] *Akintemi v Onwumechili ; Aiyeton v NIFOR [1987] 3 NWLR (Pt. 59) 48. In Hart v Military Government of Rivers State & Ors (1976) 11 S.C. 211,* the Court was of the view that in earlier times the law was that an administrative body holding inquiry …may be under a duty , in ascertaining facts, to act judicially notwithstanding that its proceedings have none of the formalities of, and are not conducted in accordance with, the practice and procedure of a court of law. It was enough, the Court observed, if it was exercising judicial functions in the sense that it had to decide, on the material before it "between an allegation and a defence.

[25] *LPDC V Fawehinmi, supra, per Aniagolu JSC at 330-332*

[26] The courts have always held that, once the law has prescribed a particular mode of exercising a statutory power, any other mode of exercise of it is excluded. This is a "strict scrutiny" approach that frowns at "arbitrariness" – *Ude v Nwara (1993) 2 NWLR (Pt 278) 638; Obioha v Dafe (1994) 2 NWLR (Pt. 325) 157; Ondo State University v Folayan (1994) 7 NWLR (Pt. 354) 1.* The courts also impose the requirement of fair hearing in the observance of these procedures – Animashahaun v UCH (1996) 10 *NWLR (Pt. 476) 65; Jubril v Mil. Admin., Kwara State (2007) 3 NWLR (Pt. 1021) 357; NBA v Odiri (2007) 8 NWLR (Pt. 1035) 203; Ndukwe v LPDC (2007)5 NWLR (Pt. 1026) 1.*

[27] The State v. Ajie (2000) 11 NWLR Pt 678 p. 434, Akande v. Nigerian Army (2001) 8 NWLR PT 714 p. 1

[28] Denloye v. M.D.P.D.T supre at 310, Garba v University of Maiduguri supra @ 560

allegation and a defence. However, the duty placed on such a Body is to act fairly in all such cases. It is not a question of acting or being required to act judicially, but of being required to act fairly.[29]

The rules of fair hearing will only be adhered to if the administration is acting judicially or it has a duty to act judicially. If the act of the administration is legislative or executive and discretionary it negates the application of the principles of natural justice. These issues came up for judicial determination in *Merchant Bank Ltd v. Federal Minister of Finance,*[30] where the issue was whether an order made by the Federal Minister of Finance under section 3(5) of the Banking Ordinance revoking the banking licence of the appellant was civil right determinable by a court of law or a tribunal. It was held that a right or licence to do banking business under the Banking ordinance does not come within the meaning of "Civil right" protected under the Nigerian constitution because Section 14 of the Banking Ordinance empowers the minister to revoke a licence at will. It was held that the powers under Section 14 of the ordinance were administrative and not judicial, therefore, in accordance with the rules of natural justice.

An Administrative Tribunal has the option to decide whether to deal with a Matter before it by oral hearing or by written evidence and argument(s) provided. Dealing with an appeal on written or printed evidence or communications only, is not itself a breach of the principles of Fair Hearing. In *Gyang & Anor v. COP Lagos State & Ors,*[31] it was not disputed that the Review Panel of the Commissioner of Police merely evaluated the oral evidence which had been

[29] Gyang & Anor v. COP Lagos State & Ors (2014) 3 NWLR PT 1395 p. 547 @ 551; Hart v. Military Governor, Rivers State (1976) 11 SC Rep 109; Falomo v. Lagos State Public Service Commission (1977) All NLR 102
[30] (1961) All NLR 598
[31] (2014) 3 NWLR PT 1395 @ pp 551 - 552

accepted before the Orderly Room Trial. The Proceedings at which the Appellants complained that they were denied fair hearing was a Judicial Review[32]. In the instant case, the purport of the Review of the Commissioner of Police was intended to re-examine administratively the decision of the Orderly Room Trial. The Review panel did not try the appellants. It simply examined the proceedings and judgment of the Orderly Room Trial. Therefore, a Party who has been given ample opportunity to be heard, or has in fact been heard, cannot complain of denial of fair hearing[33]. In *Garba v University of Maiduguri,*[34] the Supreme Court stated what fair hearing implies in administrative adjudication before a disciplinary tribunal thus:

(a) A person knows what the allegations against him/her are;

(b) What evidence has been given in support of such allegations;

(c|) What statements have been made concerning such allegations;

(d) Such person has a fair opportunity to correct and contradict such allegations;

(e) The body investigating the charge against the person must not receive evidence behind his/her back.[35]

3.4.2 Duty to observe the rules of Natural Justice

Natural justice does not require the application of fixed or technical rules; it requires fairness in all the circumstances. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth.[36]

[32] Review in this context refers to a judicial re-examination of the case in certain specified and prescribed circumstances.
[33] See Agbaso v. Iwunze (2015) 11 NWLR PT 1471 p. 527 @ 537-538 where it was held that the appellant was given opportunity to be heard and was in fact heard. In this case, the Appellant cannot complain of denial of Fair Hearing.
[34] [1986] 1 NWLR (Pt. 18) 550
[35] **Supra at 618 per Oput JSC**
[36] Ibid at 112

The principles of natural justice have been used by the courts to set aside the ruling of a tribunal, or a disciplinary Committee or an inferior court where there appeared to be violations of the individuals' rights to fair hearing.[37] In *Adene v. Dantubu,*[38] the court held that the twin pillars of natural justice now firmly established are:

(a) That a court or body exercising judicial or quasi-judicial powers must hear both parties to the dispute or no one should be condemned unheard. Its corollary is that a person must be given reasonable notice of the nature of the case to be met;

(b) That there should be no evidence of bias in the person called upon to adjudicate, that is, one should not be judge in his own cause.

The courts will therefore view any exercise of judicial or quasi-judicial power by the administration tribunal or autonomic body that results in the determination of the civil rights and obligation of a person appearing before it without the observance of the constitutional fair hearing or rules of natural justice as a violation of the rights of such person and therefore null and void.[39]

[37] Denloye v. M.D.P.D.T, supra at 311, M.D.P.D.T v. Okonkwo (2001) 7 NWLR (pt. 711) 206, Olaye v. Chairman, M.D.P.D.T (1997) 5 NWLR (pt. 550) 563
[38] Adene v. Dantubu (1988) 4 NWLR (Pt 88) 309
[39] Olatunbosun v NISER (1988) 3 NWLR (Pt 80) 52; Baba v NCAT (1991) 5 NWLR (Pt 192) 415;Obot v CBN (1993) 8NWLR (Pt. 310) 410 at 164
per Kutigi JSC; Jubrin v Nepa (2004) 2 NWLR (Pt 856) 210 at 229.

3.5 Types of Administrative tribunal (Disciplinary Tribunal)

3.5.1 Investigating Panel

Investigating panel is usually established to collect information or evidence to enable it to make recommendations that will form the basis of allegations or "charges" to be brought against person(s) who are to face Disciplinary Tribunals.[40]

The persons appearing before an Investigating Panel are there as witnesses to help the Panel in the discharge of its investigation duties, therefore such witnesses cannot be found guilty of any "charge" arising from the investigation of the Panel. In *Odigie v. Nig. Paper Mills Ltd,*[41] the Court of Appeal elucidate on this point by observing that;

> in a situation where a party was merely invited as a witness in an interview or investigative proceedings, such interview or investigative proceedings cannot be upgraded to the level of a disciplinary proceeding where the party summoned was properly tried and afforded the opportunity to make a full defence to the allegations against him in accordance with the principle of audi altarem partem. In such situation, it cannot properly be said that the party interviewed has been heard or been afforded the opportunity of knowing the case he is to meet or of being heard in reply to the series of allegations made against him. This is because it is one thing for a party to be heard as a witness before a panel of enquiry or investigation, and a different matter entirely for the party to be heard in defence of allegation made against him.[42]

Most of the enabling statutes setting up the domestic tribunals in this country provide for two bodies: an Investigating Panel and a Disciplinary Tribunal. Section 15 and the Second Schedule

[40] LPDC V Fawehinmi, supra, per Aniagolu JSC at 330, Garba v. University of Maiduguri, supra at 559, Denloye v. M.D.P.D.T supra, at 310

[41] [1993] 8 NWLR (Pt. 311) 338 at 351 -352 per Okunola JCA, Garba v. University of Maidugury, supra at 618 per Oputa JSC

[42] Citing the following cases in support of its position: Garba v University of Maiduguri (1986) 1 NWLR (Pt. 18) 550 at 618; Aiyeton v. NIFOR (1987) 3 NWLR (Pt. 59) 48 at 62; Orisakwe v Governor of Imo State (1983) 3 NCLR 738 at 743. See also Amolegbe v Lagos State University,Vol. 2 Nig. Public Interest Litigation Reports (H. C. Ikeja)(Published by Jiti Ogunye, Nigerian Courts And Students' Rights) 832 at 856 – 857 per Longe J.

of the Medical and Dental Practitioners Act,[43] specifies the procedure of the disciplinary tribunal and investigating panel.[44]

Section 15 (3) of the Medical and Dental Practitioners Act [45] provides that:

(3) There shall be established a body to be known as the Medical and Dental Practitioners Investigation Panel (hereafter in this Act referred to as ―the Panel), which shall be charged with the duty of –

(a)conducting a preliminary investigation into any case where it is alleged that a registered person has misbehaved in his capacity as a medical practitioner or dental surgeon, or should for any other reason be the subject of proceedings before the Disciplinary Tribunal;

However, the courts in examining the functions and powers of investigating panel states that, the investigation panel is a fact finding body whose procedure usually involve examination of documents, witnesses, and testimonies before making recommendation(s) to another body for necessary proceeding before a disciplinary tribunal. The duty of the panel is simply to investigate an allegation, assemble the evidence and reach a conclusion on whether such evidence shows prima facie case so as to justify the recommendation of the case to the disciplinary tribunal, which has the duty of actually conducting the "trial" of the case. The Supreme Court, in *M.D.P.D.T. v. Okonkwo,*[46] stated the functions of the investigation panel and under the Medical and Dental Practitioners Act, thus:

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[43] Cap 221, Vol. XII, Laws of the Federation of Nigeria (LFN) 1990

[44] See Oyelowo Oyewo, Constitutional Provisions and Administrative Disciplinary Powers: The Medical And Dental Disciplinary Tribunal in Review, Nig. Journal of Health and Biomedical Sciences, Jan. – June 2002, Vol. 1, No. 1, 29 – 34.

[45]Cap 221, Vol. XII , LFN 1990; Legal Practitioners Act Vol. XI, LFN 1990; Section 16 of the Surveyors Registration Council of Nigeria Act LFN 1990; as well as section 13 of the Estate Agents and Valuers (Registration) Act. LFN 1990

[46] [2001] 7 NWLR (Pt. 711) 206

> The functions of the Medical and Dental Practitioners Investigating Panel, so far as is relevant to this case, is to conduct preliminary investigation into any case where it is alleged that a registered person has misbehaved in his capacity as a medical practitioner, or should for any other reason be the subject of proceedings before the tribunal.[47]

In an earlier case, *Denloye v Medical and Dental Practitioners Disciplinary Tribunal*,[48] the Supreme Court considered the nature of the proceedings before the Panel and Tribunal. In that case Dr. Denloye challenged the decision of the Medical and Dental Practitioners Disciplinary Tribunal which had found him guilty on five counts of infamous conduct in a professional respect and had ordered the removal of his name from the Medical Register. The Court considered the proceedings of the Investigation Panel where evidence of a witness, Dr. Tai Solarin, and other witnesses were taken in the absence of Dr. Denloye, the Appellant, on August 7, 1967, in the residence of Dr. Tai Solarin, neither were these evidence made available to him throughout the course of the Investigation Panel's proceedings, as the evidence were treated by the Panel as confidential. The Tribunal in reaching its decision relied on the confidential evidence taken by the Investigation Panel. The Supreme Court, held that the circumstances surrounding the taking of the evidence on August 7, 1967, and the subsequent conduct of the Investigation Panel in treating the evidence as confidential and withholding of the same by the Tribunal until such time as it was released constitute a denial of natural justice to the Appellant, consequently the decision of the Tribunal was nullified.

Criticizing this decision, Karibi Whyte (of blessed memory), observed:

[47] Ibid, at 235 paras. B-C
[48] [1968] 1 All N.L.R. 306

> These conclusions are so replete with strange views, reasoning and illogicalities that they must be unreservedly rejected by the profession. They are a misleading and erroneous exposition of the law. This is because, firstly, their Lordships like the appellant's counsel, failed to recognize, or if they did, did not appreciate the legal distinction between judicial status and legal duties of the Investigating Panel and the Disciplinary Tribunal. It must however be pointed out that it appears to have been clearly recognized throughout the proceedings that the appellant was not being tried by the Investigating Panel. All that the panel was trying to do, and which duties we submit it discharged excellently, was to collect sufficient evidence for the purposes, if necessary, of prosecuting the appellant before the Tribunal. To this end, the Panel owed only the duty of fairness towards the appellant in the investigation of the allegations against him. To suggest, as did their Lordships, that the appellant should have been made a partner in the investigation of the allegation against him, is hardly fair to the continued effectiveness of our accusatorial procedure. It must be emphasized that the appellant was not denying that at the trial before the Tribunal (which was the relevant time) he was not confronted with such evidence. It is, therefore wrong in law to acquit the appellant on the grounds of the conduct of the Panel, which was quite consistent with our accusatorial procedure.[49]

This harsh criticism of the Supreme Court decision in *Denloye's* Case has not resulted in it being overruled by the apex court, on the contrary, the apex court in subsequent case affirmed the principle in the *Denloye's* Case that investigating panel/enquiry be conducted in accordance with the principles of natural justice and fairness.[50] Indeed, even Karibi-Whyte JSC in *LPDC v Fawehinmi,*[51] stated the principle thus:

> The principle of natural justice applies in all cases where the preliminary investigation or inquiry is an integral or necessary part of a process which may terminate in action adverse to the interests of the applicant claiming the right to be heard.

[49] "Natural Justice Never so Unnatural" (1970) 1 Nig. J. of Cont. Law 133 at 142-143. He later reiterated this position while serving as Justice of the Supreme Court in Adeniyi Yabatech[1993] 6 NWLR (Pt.) 426 at 454 thus:
In the observance of natural justice and the essential requirement of fair hearing, there is a distinction between the recommendation of an Investigation Panel which has no statutory power, and the acting of the recommendation by a statutory body with requisite statutory powers. Whereas the recommendations of the Investigation Panel will not affect the civil rights and obligations of the appellant, the acting upon such recommendation does. Hence, the implementation of the recommendation must comply with the rules of Natural Justice.

[50] LPDC v Fawehinmi [1985] 2 NWLR (Pt.) 300 at 336 per Aniagolu

[51] Supra at 381. See also Oputa JSC in Garba v University of Maiduguri [1986] 1 NWLR (Pt. 18) 550 at 618

Thus the Supreme Court decision in *Denloye's* Case can be understood from the point of view that the investigating panel's proceedings were an integral part of the Medical and Dental Practitioners Disciplinary Tribunal's proceedings, as they placed much reliance on the recommendations and decisions of the investigating panel, and were therefore bound to observe the rules of natural justice and fair hearing.[52]

However, there are certain instances where the investigating panel will not be so strictly construed to be bound by the rules of natural justice, where an appellant is amply availed the opportunity of being heard by the disciplinary tribunal. In *Baba v Nigeria Civil Aviation Training Centre,*[53] where the Appellant alleged that an investigation panel did not give him a copy of the allegation against him nor was he allowed to cross-examine his accusers. The Supreme Court held that where a body is merely investigatory and exploratory and does not determine the rights and obligations of the person affected, such a body cannot be regarded as if it were a court wherein the parties should be given the right to cross-examine all those who give evidence before it. However, any evidence relied upon by the Panel will at the proceeding of the Tribunal be subjected to confrontation and cross-examination before its decision or determination can be said to be valid.[54] This approach was reiterated by Edozie, J.C.A., in *Tionsha v J.S.C., Benue State,*[55] thus:

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[52] Where an administrative panel set up to investigate does not act judicially/quasi-judicially it is not necessary for such an administrative investigating panel to observe the rules of natural justice. See Ortese v Mil. Gov. of Benue State [1991] 4 NWLR (Pt. 184) 102 at 117. In Tamti v NCSB [2009] 7NWLR (Pt.) 631 at 652, the Court of Appeal elucidated on the principle thus:
An Administrative tribunal or investigation panel is bound to observe the principles of audi altarem partem and nemo judex incausa sua enshrined in the rules of natural justice. Justice must not only be done , it must be seen to be done.

[53] [1991] 5 NWLR (Pt.) 389

[54] See also Garba v University of Maiduguri [1986] 1 NWLR (Pt. 18) 550; Akintemi v Onwumechili [1985] NWLR (Pt.1) 68

[55] [1997] 6 NWLR (Pt. 507) 307 at 323

> There is a distinction between the recommendation of a board (panel) of inquiry and acting on such recommendation. The recommendation does not affect the civil rights of a person but acting upon such recommendation does. In the implementation of the recommendation of a panel, it is imperative to observe the rules of natural justice. In the instant case, the appellant was right when he complained that his right to fair hearing was transgressed where the 1st respondent proceeded to retire him on the basis of the report of the panel of inquiry without the report being made available to him and without his being called upon for explanation.[56]

A fundamental requirement of validity of proceedings of an investigating panel is its establishment by the appropriate authority statutorily vested with powers to set up the panel or committee of enquiry or investigation. Where such power or authority is lacking, the whole proceedings of the investigating panel or committee will be held to be null and void.[57] Where the power to establish an investigating panel is derivable from statute or subsidiary legislation made pursuant thereto, such enabling laws must be strictly adhered to for the exercise of power to be held to be valid.[58] In case there is no statutory of regulatory procedure prescribed for the exercise of the powers of the investigating panel, such panel is bound to observe the rules of natural justice and fairness in its proceedings.[59]

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[56] His Lordhip relied on the earlier decisions: Aiyetan v NIFOR (19870 3 NWLR (Pt. 59) 48 at 78; Baba v NCAT [1991] 5 NWLR (Pt. 192) 388 at 418

[57] Iderima v Rivers State Civil Service Commission (2005) 7 S.C. (Pt. III) 135 at 141 per Onu JSC; Bamgboye v University of Ilorin (1991) 8 NWLR (Pt. 207) 1 at 31-32; Magege v. University of Benin (2002) Vol. 2, Nig Public Interest Litigation Reports, 221 at 245 per Ovie-Whiskey, J., (H.C. Benin).In resolving the question whether a committee of inquiry not set up by the Vice Chancellor in exercise of his power to discipline a student under section 17 of the University of Benin Edict could investigate allegation of misconduct against students and make recommendations as regards disciplinary measures to be taken against such student. The High Court of Benin held that:
"It is clear on the evidence before me in this case, that the Orakwusi Committee of Inquiry was not set up by the Vice Chancellor and therefore its terms of reference touching on misconduct and discipline of students and the recommendation by the said Committee as regards the disciplinary measures to be taken against the plaintiff and other Students of the University, were irregular and illegal. The acceptance of the Council of the University of this irregular and illegal recommendation, which the University acted upon is unlawful and ultra vires the powers of the University and the Provisional Council of the University who are the Defendants in this case".

[58] Ibid at 251.

[59] Garba v University of Maiduguri [1986] 1 NWLR (Pt. 18) 550

3.5.2 Disciplinary Tribunals

The Constitution recognizes the exercises of judicial/quasi-judicial powers by domestic tribunals.[60] They have an attribute of exercising judicial/quasi-judicial powers that normally result in the determination of the civil rights and obligation of persons appearing before them.[61]

Also, section 15 (1) establishes the Medical and Dental Practitioners Disciplinary Tribunal, it states thus:

> There shall be established a tribunal to be known as the Medical and Dental Practitioners Disciplinary Tribunal (in this Act referred to as "the Disciplinary Tribunal"), which shall be charged with the duty of considering and determining any case referred to it by the Panel established under subsection (3) of this section and any other case of which the Disciplinary Tribunal has cognizance under the following provisions of this Act.[62]

Usually, the procedure for the exercise or the disciplinary powers may be specified in the enabling law or the power to make the rules of procedure is delegated. Section 15 and the Second Schedule to the Act,[63] specify the procedure' of the disciplinary Tribunal and the Panel. Pursuant to the provisions of paragraphs 2 and 4 of the Second Schedule, the Medical and Dental Practitioners (Disciplinary Tribunal and Assessors) Rules were made to apply to the proceedings of the Tribunal. Moreover, the Council which discharges its responsibility to prepare "a statement as to the Code of Conduct which the Council considers desirable for the practice of the professions in Nigeria" produced the Rules of Professional Conduct applicable to the professions pursuant to section 1 (2) of the Act.[64]

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[60] section 1, 6(6), 36(1) and 46(1) 1999 Constitution (as amended), Iluyomade and Eka, (1997) Cases and Materials on Administrative Law, p. 188
[61] Garba v University of Maiduguri, supra at pg. 54, M.D.P.D.T. v. Oknokwo, supra at pg. 50
[62] ibid
[63] Medical and Dental Practitioners Act Cap M8 2004 Laws of Federation of Nigeria
[64] These Rules of Professional Conduct were considered in M.D.P.D.T. v. Okonkwon, supra at 238-240

Procedure for Medical and Dental Practitioners Disciplinary Tribunal is provided for in Section 15 and the Second Schedule to the Act Pursuant to the provisions of paragraphs 2 and 4

> *2(1)"The Attorney-General of the Federation shall make rules as to the selection of members of the Disciplinary Tribunal for the purposes of any proceedings and as to the procedure to be followed and the rules of evidence to be observed in proceedings before the Disciplinary Tribunal"...*
>
> *4(1) "For the purpose of advising the Disciplinary Tribunal on question of law arising in proceedings before it, there shall in all such proceedings be an assessor to the Disciplinary Tribunal who shall be appointed by the Council on the nomination of the Chief Justice of Nigeria and shall be a legal practitioner of not less than seven years standing"...*

However, the courts in classifying and characterizing the functions and powers of administrative tribunal, distinguish the investigation panel from a disciplinary tribunal. The investigation panel is a fact-finding body whose procedure usually involves examination of document, witnesses, oral testimonies and where necessary make recommendation to another body for necessary disciplinary action to be taken. The disciplinary tribunal, on the other hand, adopts a procedure that will result into a decision or determination of the civil' rights and obligation of a citizen. This approach is adopted by the Act the Rules earlier mentioned.

The Supreme Court in *M.D.P.D.T V. Okonkwo,*[65] stated the position of the Tribunal and the Panel under the Act thus:

[65] Supra at 230

> The function of the T'ibunal established under section 15 of the Act, is to determine any case referred to it by the panel established under subsection 3 of section 15 and any other case of which the tribunal cognizance under the Act…

Also, In *Adeniyi v. Governing Council of Yaba Technology*,[66] it was held that there is a distinction between the recommendation of an Investigation Panel which has no statutory powers, and the action on the recommendation of a Disciplinary Tribunal or a statutory body. Whereas the recommendation of an Investigating Panel will not affect the civil rights and obligations of the person appearing before it, the decision of a Disciplinary Tribunal or statutory body does.

Unlike the investigating panel that usually exercise powers that are merely exploratory or recommendatory in nature, the disciplinary tribunal exercises power that is judicial in nature as its decision/determination affects rights and obligations of persons appearing before it, such as, dismissal, expulsion, rustication, de-listing from professional register, disbarment, loss of professional practicing license, and loss of means of livelihood, among others. That is why the observance of the principles of natural justice and fair hearing are mandatorily imposed on the disciplinary tribunal. The Supreme Court in *Oloruntoba-Oju v Abdul- Raheem,*[67] relying on earlier decision,[68] reiterated the principle thus:

> In the observance of the principles of natural justice and the essential requirement of fair hearing there is a distinction between the recommendation of an investigating panel which has no statutory powers and the action on the recommendation by statutory body with requisite statutory powers. Whereas the recommendation of the panel will not affect the civil rights and obligation of the person whose act

[66] (1993) 6 NWLR 431
[67] [2009] 13 NWLR (Pt 1157) 83 at 145 per Adekeye JSC
[68] U.N.T.H.M.B. v Nnoli 919940 8 NWLR (Pt. 363) 376 at 404

> or omission is being investigated, like the appellant in this case, the acting upon such recommendation does. Hence the implementation of the recommendation by the statutory body must comply strictly with rules of natural justice.

The principles of natural justice and fair hearing are applicable in all cases in which a decision is to be taken in any matter whether in a judicial, quasi judicial or even purely administrative proceedings involving a person's interest, rights and privileges, personal or proprietary.[69]

There is an expectation that the basic procedural and other requirements of natural justice are to be observed by every tribunal or authority which is under a duty to act judicially or fairly. Conclusively, Disciplinary or Autonomic tribunals exercise judicial powers which consist of findings of facts and the application of law thereto and are bound to observe the principles of natural justice and fair hearing.[70] Thus in all cases where a person invited as a witness before an administrative body is then treated as a person accused, the conversion of such a witness as a person accused is viewed by the court as a breach of the right to a fair hearing and the principles of natural justice.[71]

These pillars of justice require that the composition of the body charged with responsibility to adjudicate or inquire into the matter must be such that will ensure its independence and impartiality to avoid any person on the tribunal or panel being a judge in his own cause, expressed in the Latin maxim nemo judex in causa sua.[72]

The purity of the administration of justice is to be very jealously guarded in order that if there is any circumstances so affecting a person called upon to determine the rights of a fellow human

[69] Orugbo v Una [1997] 8NWLR (Pt. 516) 255 at 274 per Akpabio JCA.
[70] Garba v University of Maiduguri (1986) 1 NWLR (Pt 18) 550;
[71] Egwu v Uniport (1995) 8 NWLR (Pt. 414) 419 at 448-449
[72] M.D.P.D.T. v. Okonkwo, (2001) supra at 557, Garba v University of Maiduguri (1986), supra at 236

being as to be calculated to create in the mind of a reasonable man a suspicion as to that person's independence and impartiality, these circumstances in themselves per se will suffice to disqualify the person so adjudicating on the tribunal or panel. The other requirement of natural justice is expressed in the Latin maxim audi alteram partem which translates into an injunction to "hear the other side".[73] The rule of fair hearing requires that, a person who is liable to be directly affected by a proposed act or decision of a disciplinary tribunal should be given adequate notice to afford him the opportunity to make representations and effectively prepare his own case. Consequently, it is essential that the person against whom any allegation or "charge" is to be brought should be given prior notice of the allegation or "charge" or case against him so that he can prepare to meet the allegation, charge or case.[74]

The courts have always drawn a distinction between hearing a person as a witness in an administrative inquiry or before an investigating panel and hearing a person in defence of his/her actions, conduct, or integrity before a tribunal. In *Garba v University of Maiduguri,*[75] the Supreme Court stated what fair hearing implies in administrative adjudication before a disciplinary tribunal thus:

(a) A person knows what the allegations against him/her are;

(b) What evidence has been given in support of such allegation;

(c|) What statements have been made concerning such allegations;

(d). Such person has a fair opportunity to correct and contradict such allegation;

[73] Olaye v. Chairman, M.D.P.D.T (1997) 5 NWLR (pt 550) 568
[74] **Odigie v Nig. Paper Mills Ltd [1993] 8 NWLR (Pt. 311) 338 at 351**
[75][1986] 1 NWLR (Pt. 18) 550

(e) The body investigating the charge against the person must not receive evidence behind his/her back.[76]

The courts will therefore view any exercise of judicial or quasi-judicial power by the administration or disciplinary tribunal that results in the determination of the civil rights and obligation of a person appearing before it without the observance of the constitutional fair hearing or rules of natural justice as a violation of the rights of such person and therefore null and void.[77]

[76] Ibid **at 618 per Oput JSC**
[77] Olatunbosun v NISER (1988) 3 NWLR (Pt 80) 52; Baba v NCAT (1991) 5 NWLR (Pt 192) 415;Obot v CBN (1993) 8NWLR (Pt. 310) 410 at 164 per Kutigi JSC; Jubrin v Nepa (2004) 2 NWLR (Pt 856) 210 at 229.

CHAPTER FOUR

PRACTISE AND PROCEDURE OF THE MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL

Introduction

The regulation of Physicians and Dental Surgeons in Nigeria historically preceded indigenous statutory provisions for such functions.[1] The West African Medical Services originated from the Royal West African Frontier Force (WAFF) and in 1902, the Medical Department of the various British Colonies, i.e. Nigeria Gold Coast, Sierra Leone and Gambia were established.

The regulation of conduct of medical and dental practitioners started in that era in Nigeria with the establishment of the Medical Practitioners Disciplinary Board in the Colonial Department of Health for the medical personnel whose names were on the register of the General Medical Council in England. The Director of Medical Service (DMS) was its Chairman. This was theh position of statutory regulation of the professions of medicine and dentistry until independence in 1960. Indigenous statutory provisions came into being through the efforts of the first Nigerian Inspector of Medical Services, Sir Samuel and Dental Practitioner Act which became operational from 18 December 1963. This law established the Nigeria Medical Council, the first regulatory body for Medicine and Dentistry in Nigeria

The Nigerian Medical Council was succeeded by the Medical and Ddental council of Nigeria, a statutory creation of the Military Decree No 23 of 1988. This decree, with the return of

[1] The first allopathic doctors to come to Nigeria were Portuguese, they came in 1472. The Roman Catholic Mission opened a hospital at St. Thomas Island off the Bight of Benin in 1504. The trans-Atlantic slave traders also came with ship doctors and surgeons who attended to the healthcare needs for slavers and slaves. The Roman Catholic Mission established The Sacred Heart Hospital Abeokuta in 1865 whilst St. Margarets Hospital Calabar came into being in 1898. Before the establishment of the hospitals, a Medical Examining Board in 1789 recorded doctors' names, mainly Dutch names which were followed by Danish and British names on its register. Doctors of the Dutch West Indies Company went to Benin and treated the local people. Many of the explorers who came to NIsgeria were medical men and we easily recall names as Mungo park, David Livingstones, Schnister and John Kirk.

constitutional government of Nigeria is now known as The Medical Dental Practitioners Act.[2] The statutory functions of the Medical and Dental Council of Nigeria are:

1. Determining the standards of knowledge and skill to be attained by persons seeking to become members of the medical or dental professions and reviewing those standards from time to time as circumstance may permit.
2. Securing in accordance with the provisions of this Act the establishment and maintenance of registers of persons entitled to practice as members of the medical or dental profession and the publication from time to time of lists of those persons.
3. Reviewing and preparing from time to time, a statement as to the Code of Conduct which the Councnil considers desirable for the practice of the professions in Nigeria.
4. Performing the other functions conferred on the Council by the Act.

4.1 Practice and Procedure of the Tribunal

The Act provides for practice and procedure of the Investigating Panel and the tribunal. The proceedings begins with a complainant who files a complaint via an affidavit at the High Court registry stating his grievance against a doctor(s) who he feels and has evidence to show that he has mismanaged his relation or wife or was negligent in the management of the relation. An example of such affidavit is as follows;

[2] Cap. 21, Laws of the Federation of Nigeria 1990

IN THE HIGH COURT OF JUSTICE OF KANO STATE
IN THE KANO STATE JUDICIALDIVISION
HOLDEN AT KANO

AFFIDAVID AS TO PETITION AGAINST DOCTOR LAGBAJA YARO AND TEAM FOR NEGLIGENCE LEADING TO THE DEATH OF MY WIFE, MRS DUTSE KOWA AND MY CHILD ON SUNDAY 3rd MAY, 2010

I, Babana kowa, Christian, Male, Adult citizen of Nigeria of No. 33 tomatoes road Kano, do hereby depose to an oath and state as follows:

1. That I am the deponent in this affidavit and by virtue of same I am conversant with the fact deposed to herein.
2. That I wish to petition the unwholesome negligence of medical staff (Dr. Lagbaja Yaro and team) with Aminu Kano Teaching Hospital on Friday 1st to Sunday 3rd May 2010.

He will then continue to make other averments in paragraphs stating to the best of his knowledge what happened, what the doctor(s) did or neglected to do that lead to the death of the wife.

To this affidavit, he will attach all the documents he intends to rely on at the hearing of the case.

This affidavit will be forwarded to the Medical and Dental Practitioners Investigating Pane for investigation[3] being a court in matters of alleged infamous conduct in professional respect that are properly brought before the Medical and Dental Council of Nigeria. The panel will serve this affidavit of complaint on the doctor(s) complained against requesting him or her to respond to the complaint.

The doctor who intends to defend himself or herself will file an affidavit as a response to the petition against him or her. An example of such affidavit in response to a complaint is as follows:

[3] As provide for in section 15 (3)(a) of the Medical and Dental Practitioners (MDP) Act Cap. M8 LFN. 2004.

IN THE HIGH COURT OF JUSTICE OF KANO STATE
IN THE KANO STATE JUDICIALDIVISION
HOLDEN AT KANO

AFFIDAVID AS A RESPONSE TO PETITION AGAINST ME DOCTOR LAGBAJA YARO BY BABANA KOWA ON THE DEATH OF HIS WIFE, MRS DUTSE KOWA AND CHILD ON SUNDAY 3rd MAY, 2010

I, Dr, Lagbaja Yaro, male, Muslim, Adult, Nigerian Citizen, a Consultant Obstetrician and Gynaecologist with Aminu Kano Teaching Hospital, Kano, do hereby depose to an oath and state as follows:

1. That I am the deponent in this affidavit and by virtue of same I am conversant with the fact deposed to herein:
2. That as a matter of fact I wish to respond to the false accusation against my person and the team on call by Mr. Babana Kowa.

Other paragraph in the affidavit will state the events that led to the death of the patient, the actions he took (in details) and all the documents he intends to rely on at the hearing. In addition, he will apply to the hospital for the release of the entire documents e.g case file, nurses note and investigation results of the deceased to the Medical and Dental Council of Nigeria.

After this is done by all the doctors mentioned in the affidavit of complaint, then the investigating Panel will list the case for investigation. Notice of hearing by the Panel will be sent to the parties concerned. The notice will state the date, time and venue of the hearing.

At the sitting of the panel, the complainant will first open his case; gives evidence and his witness(s) testify then he will close his case. The respondent(s) also do the same thing and closes his defence. It is important to state that, both the complainant and respondent(s) can be represented by counsels at the hearing at investigating panel.

At the end of the hearing, the panel will deliberate extensively on the matter. In the course of their deliberation, if in the evidence tendered the name of a doctor(s) who made a note in the management of the patient and is not one of the respondents or called as witness, directive will be issued to the secretary of the panel to serve a notice on the doctor(s) to depose to an affidavit stating his level of involvement in the management of the patient now deceased or injured. In the same vein, any doctor who appears as a witness at the hearing of the panel but during the deliberation of the panel they find out that he should be a respondent in the matter, him or her will also be written to requesting him or her to depose to an affidavit stating what he knows about the patient and his involvement in the management of the deceased or injured. In addition, a nurse who makes attended to the patient and signed the nurse's note can be invited to appear as a witness.[4]

After all these persons have filed their response and all administrative process involved in exchanging the affidavit is completed, the case will be listed again for hearing. Hearing notice will be served on all the parties. At the hearing the respondents will give their evidence and tender documents if any and those called as witness as witness will give evidence as witness.

At the conclusion and after consideration of all the oral as well as written evidence, the panel will come to the finding whether a prima facie case is established any or all the doctors. A report will be made by the Secretary of the panel to the Tribunal stating the steps taken, how the investigation was conducted and the persons they invited as witness or respondent. The report will also include the parties that were represented by themselves or by a counsel, all the documents tendered and accepted in evidence for instance;

[4] Section 15(3)(b-d) of the MDPA.

1. An affidavit of complaint marked MDCN/IP/ABJ/LAG/200/201
2. Respondents affidavit by:

a. Dr. Kunu Aya marked MDCN/IP/ABJ/LAG/200/202

b. Dr. Ginger Powder marked MDCN/IP/ABJ/LAG/200/203

c. Dr. Tuwo Masara marked MDCN/IP/ABJ/LAG/200/204

3. A Certified True Copy of the medical report of Aminu Kano Teaching Hospital Kanoof Mrs Yarinya Sabo.

The report will list the names of the doctor(s) prima facie case is made against and the ones exonerated, this will be signed by the Chairman of the investigating panel and sent to the Tribunal.

Once the tribunal receives the report of the investigating panel, the Chairman of the tribunal gives the Secretary directives to serve all parties hearing notice, stating the date, time and venue of the hearing and serve them (other than the complainant) copies of report and all the charges prepared by the panel and all other documents considered by the panel. [5] At the hearing, the Secretary welcomes the Chairman, the learned Legal Assessor to the tribunal, all members of the tribunal and counsels present.[6] He then invites the Chairman to make his opening remarks before the cases are called. The Chairman makes his opening remarks and the secretary calls case and ask all the respondents to step forward, he then informs the chairman the respondents before the tribunal and those absent (if any).

[5] Section 15(2) of the MDPA. (At the hearing Chairman, members of the panel and the secretary are usually in attendance, also in attendance may include Assit. Registrar II, Asst. Director (Admin), Principal Confidential Secretary (Admin), Admin Officer II, Executive Officer (Admin) and Clerical Officer).

[6] Rules 5(1-2) of the Medical and Dental Practitioners (Disciplinary Tribunal) Rules, 1993. (MDPDTR)

The Chairman gives a go ahead for counsels to make appearances. The prosecution announces his appearance and that of his support counsels then the defence counse(s) makes his appearance and that of his support counsel.[7]

The Secretary reads the charges to the defendant(s) for him to take his plea of guilty or not guilty.[8] Once the plea is taken, the case will be adjourned to another date for hearing. It is important to note that, in the course of proceedings the charges forwarded to the tribunal can be amended or added as the tribunal thinks fit.[9]

On the next adjourned date which is for hearing, after the remarks of the chairman the secretary calls the case and the counsels announce their appearance. The prosecution then opens his case, call out his first witness who is put on oath. The prosecution leads his witness to give evidence in chief, identifies document(s) and the prosecution applies to tender it as evidence. If there is no objection, the document(s) is admitted in evidence and marked as exhibit(s).

At the end of the examination of the witness in chief, the Chairman will ask the defence counsel if he wishes to cross examine. If the answer is in the affirmative, then the witness is cross examined. During the examination in chief or cross examination if an objection is raised as to the relevance of a question, the counsel objecting to the question and the counsel asking the question address the tribunal on the reason why the witness should answer or not to answer the question, the chairman or the Legal Assessor may over rule such objection and direct the witness to answer the question or up hold the objection and ask the counsel to rephrase the question. Also, if a

[7] Rules 4(1 iii) and 2 of the MDPDTR

[8] If the defendants are more than one and the complaint or transaction is the same, prosecution can bring one charge sheet for all of the and put charge one for one person, charge two for the second defendant and the third charge for the third defendant. This is more convenient than having two or more separate charges, calling the same witness, recalling the evidence in one for the purpose of tendering it in another that will be cumbersome and untidy.

[9] Rule 8 of the MDPDTR

witness is trying to avoid answering a question, the Legal Assessor can direct a witness to answer the question. In addition, the when of the counsels ask a witness a question which in the opinion of the Chairman or Legal Assessor is unnecessary or irrelevant, they can suo motu without the objection of the other counsel, ask the witness not to answer the question or ask the counsel to rephrase the question. The tribunal may in the course of proceedings hear wtiness and receive documentary evidence as in its opinion may assist it in arriving at a conclusion as to the truth or otherwise of the allegation of misconduct referred to it by the panel.[10]

After the prosecution has taken all his witness, he closes his case and the defence opens his case. The same procedure as stated above also applies.

If there is a legal issue raised by either the prosecutor or the defence in the course of the proceedings, the Legal Assessor advices the Chairman in the presence of every party or person representing a party to the proceedings and if the advice was given while the tribunal was deliberating in private, every party shall be informed what advice the assessor has tendered. But, it is not a must that the chairman takes the advice of the assessor. This is as provided for in the second schedule to the Act which is as follows;

a. ….where an assessor advises the Disciplinary Tribunal on any question of law as to evidence, procedure or any other matters specified by the rules, he shall do so in the presence of every party or person representing a party to the proceedings who appears thereat or, if the advice is tendered while the Disciplinary Tribunal is deliberating in private, that every such party or person as aforesaid shall be informed what advice the assessor has tendered;

[10] Rule 7 of the MDPDT Rules

b. every such party or person as aforesaid shall be informed if in any case the Disciplinary Tribunal does not accept the advice of the assessor on such as question aforesaid.[11]

At the close of the defence, the case is adjourned for final address. There is no specific time within which counsels can file and serve their final addresses, they only apply to the tribunal suggesting the number of days they need to file and serve addresses which is granted if convenient to the tribunal. This in my view can be abused and can also lead to delay in justice

On the date adjourned for address, the counsels agrees on the time frame within which to educate or adumbrate on their addresses, if the chairman considers the time fair enough he grants such time to each counsel, for instance five or seven minutes for each counsel. Both parties address the tribunal in line with the evidence tendered by their witness and the witness of the other party that favours their case, admissions of witnesses on cross examination, contradictions e.t.c.

At the end of this, the tribunal deliberates among its members and gives a date for judgment.

The tribunal delivers her judgment in public[12] which usually contains the following;

The charges, the plea of the respondents, exhibits tendered through each of the witness, examination and cross examination of each witness, addresses of counsels and finally the holdings of the tribunal after the review of all of the above and the sentencing and direction of the doctor(s), for example;

Having looked at the circumstances of this case, and based on the tribunal's observations,

you - Dr. Kunu Aya, Dr. Ginger Powder and Dr. Tuwo Masara are found guilty of professional negligence contrarty to Rules 29, 29.4(a-i), of the code of Medical Ethics in Nigeria 2008

[11] Second schedule to the MDP Act s. (15)(5)(4.2a-b)
[12] Rule 7 of the MDPDT Rules

edition, that is failure to see a patient as often as her medical condition warrants and make appropriate notes,and Rule 43 of the cod of Medical Ethics in Nigeria 2008 edition, that is failure to take ultimate responsibility for the care of a patient under your care and punishable under section 16(1)a and (2) of the Medical and Dental Practitioners Act Cap M8, Laws of the Federation of Nigeria 2004.

You are hereby suspended from practice as follows:

1. Dr. Kunu Aya ---------- Five(5) months
2. Dr. Ginger Powder ---------- Seven(7) months
3. Dr. Tuwo Masara ---------- Six(6)months

Any party wishes to challenge the decision of the tribunal against his or her conviction, files a notice of appeal stating the grounds and particulars of the appeal. As provided by the Act as follows;

> "The person to whom such a direction relates may, at any time within 28 days from the date of service on him of the direction, appeal against the direction to the Court Appeal…"[13]

Also, Sections 6(1), (6)(b) of the 1999 Constitution confer judicial powers on the courts, which include the power of judicial review of executive and administrative powers. Section 6(1) provides that, the "judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation," and has been read together with section 6(6)(b) to vest supervisory jurisdiction over all inferior administrative adjudication

[13] Section 16(6) of the MDP Act.

bodies, under the rubric of "inferior tribunals." This principle was clearly articulated by the Supreme Court in *Okeahialam v Nwamara,*[14] thus:

> The High Court has an inherent jurisdiction to control all inferior tribunals, not in an appellate capacity, but in a supervisory capacity. That control extends not only to seeing that the inferior tribunal keeps within its jurisdiction, but also seeing that it observes the law. The control is exercised by means of a power to quash any determination by the tribunal which, on the face of it, offends against the law. The court does not substitute its own views for those of the tribunal as the Court of Appeal would do. It leaves it to the tribunal to hear the case again, and in a proper case may command it to do so.[15]

Moreover, the principle of judicial review,[16] which postulates that, the judicial powers of the court are exercisable over all executive/administrative and legislative powers, including any form of administrative adjudication,[17] except where the constitution provides otherwise. An example of the notice of the appeal can be found in appendix I.

All these have shown the workings of the MDPDT and we have come to discover that, there is no rule or law that provides for time frame within which a party to a case before the tribunal should put in an appearance or file any processes unlike the normal court. With this luxury of time, it could lead to abuse of time and can delay justice.

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[14] [2003} 12 NWLR (Pt.835) 597

[15] Ibid. Per Ayoola JSC, at 611, quoting from Denning L. J in R v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw (1952) 1 All E.R. 122 at 127. Followed by the Court of Appeal perAugie JCA in Shyllon v University of Ibadan [2007] 1 NWLR (Pt. 1014) 1 at 20; and per Adekeye JCA in Nwaogwugwu v. President, FRN [2007] 6 NWLR (Pt.) 237 at 271

[16] Administrative adjudication was once criticized as being contrary to the reservation of judicial power to courts as set down in Article III of the Constitution of the United States. However, the United States Supreme Court held in Crowell v. Benson (1932) that agencies could adjudicate cases as long as provision was made for ultimate judicial review. Constitutional judicial review gives to the court of competent jurisdiction the power to validate or invalidate the exercise of executive/administrative and legislative powers, including administrative adjudication. See ……The 1999 Constitution (as amended) provides in section 6(6) thus: "The judicial powers vested in accordance with the foregoing provisions of this section – a court of law
(a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions
(b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedRings relating thereto, for the determination of any question as to the civil rights and obligations of that person;"

[17] By virtue of sections 6(6) (a)&(b) and 1(3)

4.2 Analysis of Cases by the Medical And Dental Practitioners Disciplinary Tribunal

Non adherence to the principles of fair hearing or the pillars of natural justice has being one of the reasons why most of the decisions of disciplinary tribunals, Medical and Dental Practitioners' Disciplinary Tribunal in particular are quashed or set aside on appeal.[18] Thus, in this chapter, for us to do justice to it we will be analyzing the cases decided by the MDPDT using the requirements or ingredients of fair hearing as decided by the Supreme Court in several cases[19], to see where the Tribunal failed or breached in their decisions. This ingredients include:

(a) Given adequate notice of what the charge or allegations against him or her; that is, know the case against him/her are;

(b) What evidence has been given in support of such allegation and hat statements have been made concerning such allegations

(c|) Be given a fair opportunity to correct or contradict such evidence by cross-examination;

(d) It follows that the panel must not hear evidence or receive representations from one side behind the back of the other;[20]

(e) Effectively prepare his defense (by himself or by a counsel of his choice) and answer the case against him.

[18] Aside this, this Disciplinary tribunal have also assume jurisdiction where some of the allegations boarder on crime which has being provided for either by the Penal Code or Criminal Code.

[19] Garba v. University of Maidugury (1986) 1 NWLR (pt 18) 550 per Oputa J.S.C; Oyeyemi v. Commissioner of Local Government (1992) 2 NWLR 661 at 684 per Nnaemeka-Agu J.S.C; applied in Col Hassan (Rtd) v. Governor of Kogi State (1997) 7 NWLR (pt 517) 66 (C.A)

[20] Kanda v. Government of Malaya (1962) AC 332 at 337 Lord Denning

The cases decided by this tribunal which were set aside or quashed on appeal will be looked at under the headings of some of the ingredients of fair hearing as stated above.

4.3 Requirement of Notice

Notice of the allegations or charges of misconduct brought against the person to be disciplined must be given to him. What is necessary is that from the circumstances of the case the person charged must know the full extent of allegations or charges he is to answer[21].

The notice of allegations of serious misconduct or charges need not be in a streo-typed language like a charge sheet in a court of law. All that is required is for the disciplinary tribunal to convey to the person charged before it the notice of the alleged misconduct without regard to technicality[22].

In the case of ***Medical and Dental Practitioners' Disciplinary Tribunal v. Dr, Okonkwo***[23] in ths case Mrs. Okorie, a 29 - year old woman, having had a delivery at a maternity on 29th July, 1991 was admitted as a patient at Kenayo Specialist Hospital for a period of 9 days from 8th August, to 17th August, 1991. The patient and her husband refused to give their consent to blood transfusion. They belonged to a religious sect known as Jehovah's Witnesses who believe that blood transfusion is contrary to God's injunction. The respondent proceeded to treat the patient without transfusing blood. However, the patient died on 22nd August, 1991.

[21] Adedeji v. Police Service Commission (1986) NMLR 102, Onwemechili v. Akintemi (1985) 3 NWLR (pt 15) 504
[22] M.D.P.D.T v. Dr. Okonkwo (2001) 1 NWLR (pt 711) 206 at 204 per Ayoola J.S.C; Obot v. CBN (1993)8 NWLR (pt 310) 140; Animashaun v. UCH (1996)10 NWLR (pt)65 at 71 per Belgore JSC
[23] (2001) 7 NWLR (pt.711) 370

The respondent was charged before the Medical and Dental Practitioners Disciplinary Tribunal for conducting himself infamously in a professional respect contrary to "Medical Ethics' and punishable under section of the Act. The respondent pleaded not guilty to the charge.

The tribunal found the respondent guilty on two counts of attending to the patient in a negligent manner and acting contrary to his ethic as medical practitioner and suspended him for a period of six months on each of the charges, to run concurrently. The respondent appealed to the Court of Appeal.

The Court of Appeal having resolved all the issues substantially in favour of the defendant allowed the respondent's appeal and set aside the decision of the tribunal. The tribunal appealed to this court.

The Supreme Court held that it is not part of our criminal justice that the contents of a charge should be subject of speculation and inference. Thus, the essential elements of the offence should be disclosed in the charge. In addition, section 36(6) of the 1999 Constitution provides that every person charged with a criminal offence is entitled, among other things, to be informed in detail of the nature of the offence.

The court went further to hold that, what is important is that the person charged should have sufficient notice of the acts alleged to have been committed by him which add up to "infamous conduct"[24]. Although the medical profession is the primary judge of what is infamous conduct, it cannot do so without paying attention to what the law permit, either of the patient or the practitioner. From the fact as found by the court of appeal it is difficult to see anything that is infamous in the conduct of the respondent.

[24] Per Ayoola JSC at 240; NEPA v. El-Fandi (1996) NWLR 884

Also in the case of ***Denloye v. M. & D. P. D. T.***[25] the Supreme Court per **Ademola, C.J.N.** held that, counsel for Dr. Denloye arguing before us referred to the irregularities before the panel and submitted that the evidence of the witnesses on counts 3, 4 and 5 before the panel were not supplied to Dr. Denloye this vitiates these counts and that it was against the principles of natural justice that a man charged before a tribunal should not know the nature of full particular of the charges against him before the trial. The truth of the matter was that up till Dr. Denloye appeared before the Tribunal, all he knew was that it had been alleged that he issued certificate of fitness on various dates, to three different persons named, after collecting monies from each of them and without examining any of them. Apart from a letter addressed to him (exhibit 8) stating this as briefly as we have stated above, the Chairman of the Panel on 11th October, 1967 told him this in the same words.

The court further held that, the appellant was entitled to an adequate opportunity to know the case he has to meet and failure to supply him with a full statement of the facts of evidence upon which the panel and the tribunal relied was a denial of justice and a breach of the rules of natural justice. For the above reason the Court of Appeal was unable to support the decision of the tribunal and it was set aside. The order or direction striking the name of the appellant of the medial register is was then quashed and set aside.

From our discussions (from chapter one to three) the Court of Appeal and the Supreme Court have stated this fact that, everyone charged with any offence in courts or tribunal 'must' be informed of the allegation(s). This notice should contain the act that the person committed which

[25] (1968) 1 All NLR 306, Even though not decided by the Medical Tribunal, the importance of notice was stated by the Supreme Court.

add up to be infamous, negligent or a crime. In my view, the case of Denloye even though old settled the issue with regards to notice and that of Okonkwo settled the issue on the content of the notice.

4.4 Right to know the Evidence and Statement made Concerning the Allegation

The requirement to give the accused the evidence that has been given in support of the allegations and the statements made concerning such allegations is related to the requirement of notice[26].

The Supreme Court, in the case of ***Denloye v. MDPDT***[27] held that under Section 12 of the Medical and Dental Practitioners' Act, 1963[28], complaints against a medical practitioner as to his conduct should normally be first investigated by a body known as the Medical and Dental Practitioner Investigating Panel and it is the duty of this body to decide after due investigations have been carried out, whether or not there is a prima facie case to go before the tribunal.

It would appear that in this matter the investigating panel first met at Ikenne on 7th August 1967 and received evidence from one Tai Solarin and others. Although all members of the Panel and their counsel Mr. Whyte was present and conducted the investigations by calling witnesses, neither the practitioner whose conduct was called to question nor anyone on his behalf was invited to be present. It was not until the 11th October, 1967 that he was summoned to appear before the Investigating Panel. The evidence taken prior to this date was not made available to the practitioner or his counsel and when they were asked for by counsel, the Chairman of the Investigating Panel refused to produce it. He stated categorically that they were confidential and

[26] Adedeji v. Police Service Commission (1967) 1 All N.L.R. 67
[27] (1968) 1 All NLR 306
[28] Now section 15 (3)(a) of the Medical and Dental Practitioners Act Cap. M8 LFN. 2004.

for the exclusive use of the Panel. These statement or evidence we observe from the material before us were clearly not made available to the practitioner or his counsel until the practitioner was before the tribunal and at some later stage during the trial.

It is correct that the investigating panel has wide powers as to how it obtains its information since the act does not restrict it any way, but we fail to see how a responsible body comprising of experience medical practitioners, impelled by sense of justice, could set out from Lagos to Ikenne to investigate and receive evidence in a matter against a fellow practitioner without any warning to him that his presence might be required to hear the complaint against him. As if the whole complaint was shrouded in mystery this body not only went to Ikenne but also settled themselves down in the house of the complainant or the informer Mr. Tai Solarin, took his evidence and that of the witnesses he produced, after which they returned to Lagos.

We must point out for the benefit of the tribunal concerned that like any other tribunal of this nature, it is entitled to decide its own procedure and lay down its own rules for the conduct of enquiries regarding discipline[29]. It is of the utmost importance that the enquiry be conducted in accordance with the principles of natural justice[30].

The court went on to hold that, the circumstance surrounding the taking of evidence on 7th August, 1967 and the subsequent conduct of the Panel in regard to the evidence and unfortunately the withholding of the evidence by the tribunal until such time as it was released constitute a penal of justice to the appellant. For the above reasons we are unable to support the

[29] R.V Central Tribunal: Ex parte Parton 32 T.LR. 476

[30] Russel v. Duke of Nortfoil and ors (1949) 1 All E.R. 109 at p. 118; Kanda V. Government of the Federation of Malaya (1962) A.C. 32 at p. 337

decision of the tribunal and it must be set aside. The order directing the striking of the name of the appellant of the medial register is hereby quashed and set aside[31].

As discussed earlier, it all begins with a person aggrieved with the way he or his relative was managed by a doctor or team of doctors, he files an affidavit of complaint, this affidavit of complaint is to be served on the doctor(s) complained about for his response. Under no circumstance should this affidavit be kept away from the doctor whose conduct is being complained about. As a matter of fact, it is the affidavit of complaint the doctor(s) replies to by filing his response stating his level of involvement in the matter complained about. We must state that the Supreme Court nailed the issue by stating in conclusion that, the requirement is said to be implicated if the allegations or charges brought against the person accused are significantly at variance with the basis or conclusion of the disciplinary tribunal. Disciplinary Tribunal must not be seen as guerilla warfare where it may be used to 'discipline' the person accused by any means necessary, rather it is a procedure that can be compared to conventional warfare that must be executed in accordance with rules of engagement as dictated by the rules of natural justice and constitutional fair hearing, and any violation of which will render the whole process a nullity.

4.5 Right to Correct or Contradict by Cross Examination

Generally, the question whether there must be a right of cross-examination will depend on the nature of the proceeding and/or the existence of statutory or regulatory procedures set down for the adjudicative body or Panel to follow.

Though, the rule is not as strictly applicable to the proceedings of an Investigating Panel as seen earlier, since its proceedings are exploratory. However, in the tribunal proceedings subsequent to

[31] Denloye v. MDPDT(1968) 1 All NLR 306

that of a panel, the person accused must be given the opportunity of confronting and cross-examining the evidence, and witnesses against him[32].

The right to confront and question or cross-examine the accusers is often associated with an oral hearing. However, this does not mean that the hearing should be conducted in accordance with the strict rules and procedure which will apply in a court of law.[33] Even where a written type of hearing is adopted and reliance is to be placed on the evidence of witnesses, such written testimony must be made available to the person accused of the misconduct to afford him the opportunity of challenging the veracity of such written testimony evidence, in his written defense. The same rule will apply in an oral hearing, as it will be a breach of the requirement of natural justice and fair hearing to take evidence of a witness in the absence of the person being accused of misconduct in such testimony of a witness, and thereby deny him the right to confront and cross-examine the witness, while at the same time placing much reliance on such testimony to reach a verdict or decision against him.

In the case of ***Dr. Olaye v. Chairman, Medical and Dental Practitioners Investigating Panel & 1Ors***[34] the appellant and three other medical practitioners were in 1990 charged before the Medical and Dental Practitioners (Disciplinary) Tribunal with negligence in their non-attendance to a patient. At the hearing on the 12th December, 1990 certain documents were admitted. Three witnesses testified for the panel. The appellant and the other defendants also testified. But before the appellant testified, the tribunal recalled Dr. Okpara as a witness for the panel and two of the defendant and the chairman and members of the tribunal put questions to them. After the

[32] Denloye v. M.D.P.D.T supra
[33] **Hiliare Barnett, Constitutional & Administrative Law, 5 ed. (2004) 772**
[34] (1997) 5 NWLR (pt. 506) 550-569

appellant's evidence the tribunal recalled yet another witness for the panel one Dr. Ikpe. The hearing dragged on until 11.55p.m when it had to be adjourned to the next day 13th December, 1990 due to the protest of appellant's counsel.

However, on the adjourned date rather than take addresses the chairman announced that before the addresses one or two witnesses would be recalled in order "to clear evidence which they gave". He asked counsel for the tribunal if he had any objection but failed to ask counsel for the practitioners their opinion on the matter before he recalled the defendant. All the witnesses were then subjected to prolonged questioning by the chairman with a few questions by other members of the tribunal. In all questioning, counsel for the practitioners was not asked to take part.
In the event, the tribunal returned a verdict unfavourable to the appellant.

on appeal, the Court of Appeal held that it is clear that the Tribunal is a statutory domestic tribunal[35] empowered to impose gave penalties which could not only deprive a practitioner of the right to practice his profession but also damage his reputation for life. Anybody vested with such powers is under a duty to act fairly. Its proceeding must in truth be a "due enquiry" into allegation made against the practitioners in the sense that observance of rules of natural justice is imperative. A disciplinary Tribunal must not only afford the practitioner an opportunity of being heard but must demonstrate that it decision is honestly arrived at after the practitioner had been given an opportunity of being heard. Where the reputation and means of livelihood of the

[35] The Tribunal was established under section 15(1) of the Act. It consist of the chairman of the council and ten other members of the council appointed by the council who shall include not less than two persons who are fully registered dental surgeons. The tribunal is charged with the duty of considering and determining any case referred to it by the Investigating Panel established under Section 15 (3) and other cases of which the Tribunal has cognizance under the provision of the Act. By Section 16 (1) of the Act penalties for professional misconduct of the type charged in this case include an order that the Registrar do strike the person's name off the relevant register or registers. The consequence of an order directing the striking off of the name of a person from the register of medical practitioners is that such a person should not bold an appointment or practice as a medical practitioner in Nigeria (section 18) (1)

appellant is at stake the minimum requirement must include not only adequate opportunities given to the practitioner to adduce evidence but also opportunities to challenge hostile evidence by adducing contrary evidence or by cross-examination. An opportunity to question witnesses is an essential requirement of procedural fairness in disciplinary proceeding particularly where such witness has given evidence against the defendant.

On the whole, having regard to the totality of what transpired at hearing the conclusion is inescapable that the Tribunal went beyond what could be justified by Rule 9 or by any provision of the evidence Act. The unilateral questioning of witnesses and the appellant without offering the appellant counsel opportunities to cross-examine the witnesses or put questions to the appellant is inexcusable and adds to the unfairness of the proceeding. In the result, the entire proceedings are vitiated.[36]

Looking at these case above, the proceeding went contrary to the proceedings of the MDPDT as discussed earlier and as provided by the Act and rules guiding the practice and proceedings of the investigating panel and tribunal , the chairman of the panel or the assessor only ask wittiness questions to clarify issues that are not clear but cannot become the complaint or his counsel by questioning the witnesses or the doctor whose action is complained about with the intent to find him guilty at all cost. The panel must resist this temptation and allow the complainant or his counsel and the respondent(s) or his counsel conduct their case the way they deem fit, the work of the panel is to consider the whole evidence before them and give their judgment or directives.

[36] Per Ayoola JCA 550-569

Furthermore, in the case of ***Dr, Okezie v. Chairman, Medical and Dental Practitioners' Disciplinary Tribunal***[37]**,** the appellant was arraigned before the Medical and Dental Practitioner Disciplinary Tribunal for failure to secure professional services of anaesthetist and qualified registered nurses to provide necessary professional care as required for a patient, provide requisite professional facilities, cross matched blood and oxygen which would have been used to resuscitate the patient, provide professional nurse or medical practitioner to monitor patient's vital signs or to be available himself to do so. The appellant pleaded not guilty to the charges.

In a reserved and considered judgment, the seven member tribunal chaired by Dr.S.S. Gyoh found the appellant guilty of infamous conduct with respect to the element of the charges and was suspended from practice for six months.

It is against this decision that the appellant has appealed to the Court of Appeal. The Court of Appeal held that both sides are aware that even though the documents and evidence of the parties are admitted by the tribunal in evidence, parties who testified before the investigating panel and tendered documents, must appear before the tribunal, identify their written statement and documents tendered by them and be cross-examined. Any of the witness who fails to give evidence before the tribunal, his written statement and the document tendered by such witness are of no evidential value as same are deemed abandoned.

The tribunal in its comment on placenta previa and transverse lie commented extensively on the report signed by "G.Afam" and the other report signed by "Dr. S.A. Mgbor" and concluded that the latter report is much more credible. Here G. Afam and Dr. S A. Mgbor were not called to give evidence before the tribunal and be cross-examined on their qualification and competence and the source of their respective report. The failure by the prosecution to call these witnesses has rendered the two reports impotent and they carry no evidential value.

[37] (2011) All FWLR (pt. 585) 370

On the comment by the tribunal on myomectomy by the appellant at the operation, the tribunal said:

> The operative record shows that the doctor not only removed the baby, and a placenta that he said was on the lower segment of the uterus, he also removed a fibroid that was on the same lower segment. This was a highly dangerous and irresponsibly thing to do. It might have contributed to the heavy bleeding seen by the patient's mother that led to the patient's death…

The conclusion reached by the tribunal here is speculative, because no expert evidence was called to reveal the cause of death of the deceased. The post mortem report which was tendered and admitted as exhibit 7 was prepared by Dr. D.B. Olusina, and it is dated 19 April 2009. In its judgment, the tribunal held the post mortem report to be fake without inviting the maker of the report to throw light on how he arrived at the content of the report and his qualification and competence.

The court further held that, from assessment of the finding of the tribunal, I agree with the learned counsel for the appellant that the tribunal relied heavily on the professional opinion of its members to arrive at its decision that the appellant was guilty of infamous conduct, upon which it predicated its sentence of six months suspension of the appellant from medical practice. It is the duty of the prosecution to call vital witnesses who evidence will help the tribunal reach a just decision[38]. The tribunal's reliance on those facts that were no part of evidence upon which cross-examination were conducted, amount to descending into the arena and setting out cases for

[38] Galinje JCA 370; Although the prosecution needs not call a host of witnesses on the same point, where there is a vital point in issue and there is a witness whose evidence will settle it one way or the other that witness ought to be called. In the instance case, some of the vital points raised by the tribunal could only be put in evidence by relevant professional medical practitioner. These experts were not called as witnesses by the prosecution.

parties. The conduct of the tribunal clearly raised some dust which ultimately blurred its vision, the result of which has lead to miscarriage of justice[39].

On the whole, the Court of Appeal allowed the appeal, set aside and quashed the decision of the tribunal and entered a verdict of acquittal.

Also, in the case of ***Denloye v. Medical and Dental Practitioners Disciplinary Tribunal,*** where the Medical Practitioner was not present when evidence' of Dr. Tai Solarin and others were received by the Investigating Panel and were not made available to him, it was not until before the Tribunal that he became aware of the nature of evidence against him on certain counts.

The Supreme Court pronounced thus on these facts:

> It is correct that the Investigating Panel has wide powers as to how it obtains its information since the Act does not restrict it ; in any way, but we fail to see how a responsible body comprising of experienced medical practitioners impelled by a sense of : justice, could set out from Lagos to Ikenne , to investigate and receive evidence in a matter against a fellow practitioner without any warning to him that his presence might be required to hear the complaint against him ... This is a procedure unknown to lawyers and it is most surprising that a member of the profession who should have guided the medical practitioner aright was himself a party to this procedure, a departure from accepted practice...[40],

The Act and the supplementary provisions relating to the Tribunal and Panel in the Second Schedule to the Act[41], and the Rules of Procedure clearly confer the right, of confrontation and cross-examination on the practitioner appearing before the Tribunal. Failure to comply with this requirement will render the proceedings in breach of fair hearing as was in *Denloye's Case.*

[39] Erelu v. Queen (1959) WNLR 77: Omogodo v. State (1981) 5 SC 5.
[40] Supra per Ademola CJN at 310
[41] Medical and Dental Practitioners (Disciplinary Tribunal and Assessors) Rules 2004

In analyzing these cases above, it is important we state that, in as much as the members of the tribunal are medical doctors and the person complained against is a medical doctor, the panel can only reach a decision and give judgment or directives base on the evidence before them. The panel must not allow their knowledge of the field of medicine the doctor whose conduct is complained about specializes to preclude their judgment. The Act and Rules as seen earlier provides that, the panel or tribunal can for the purpose of clarifying issues direct anyone who from the evidence before the tribunal should be called as a witness or respondent but was not called, to come and testify or give evidence on their level of involvement in the act complained against. Also, all the persons who tendered evidence during the investigation must also appear before the panel, identify their evidence and if they refuse to appear, their evidence is considered abandoned.

We can confidently say that the decision of the Court of Appeal in this case settled the issue on the right of parties to a case before the tribunal to examine or cross examines witnesses testifying for or against their case and the decision of the tribunal must be based on evidence before them and counsels should be given the opportunity to examine and cross examine those witness through which the evidence are tendered.

4.6 Requirement not Hear Evidence or Receive Representations from One Side behind the Back of the other

In the case of ***Denloye v. Chairman, Medical and Dental Practitioners' Disciplinary Tribunal.***[42] the Supreme Court per Ademola, C.J.N. held that;

the Medical Practitioner was not present when evidence' of Dr. Tai Solarin and others were received by the Investigating Panel and were not made available to him, it was not until before the Tribunal that he became aware of the nature of evidence against him on certain counts.

The court held that, We fail to see how a responsible body comprising of experience medical practitioners, impelled by sense of justice, could set out from Lagos to Ikenne to investigate and receive evidence in a matter against a fellow practitioner without any warning to him that his presence might be requide to hear the complaint against him. As if the whole complaint was shrouded in mystery this body not only went to Ikenne but also settled themselves down in the house of the complainant or the informer Mr. Tai Solarin, took his evidence and that of the witnesses he produced, after which they returned to Lagos. This is a procedure unknown to lawyers and it is most surprising that a member of the learned profession who should have guided the medical practitioner aright was himself a party to this procedure, a new departure from the accepted practice. Surely, Mr. Tai Solarin if he were invited to Lagos by the Investigating Panel would not have refused to attend and if it were of such importance to carry out the investigations at Ikenne, there are other places the panel could meet other than Mr. Tai Solarin House[43].

[42] (1968) 1 All NLR 306
[43] Ibid at pg. 310

Even though Denloye's case is an old case, it is a locus classical in relation to this ingredient of fair heating that is; "not to hear evidence or receive representations from one side behind the back of the other". What transpired in this case was a clear denial of fair hearing, it is clear from the decision of the Court of Appeal that, no decision can and should be taking convicting a doctor of infamous conduct or negligence without being aware of the complained made against him and the evidence the prosecution intends to rely on. These are the things that will help such doctor prepare for his defence. The inquiry by the Panel must comply with the essential principles of fairness which must as a matter of necessary implication be treated as applicable in the discharge of the Panel's admittedly quasi-judicial functions, in other words with the principles of natural justice.

4.7 Right to Legal Representative

Most administrative adjudication by domestic or autonomic bodies, do not easily embrace the idea of allowing legal representation for persons charged with misconduct before them or exhibit aversion towards the involvement of legal counsel/representation in their proceedings.[44] Although the right to legal representation is specifically guaranteed in section 36(6)(c) 1999 Constitution to persons charged with criminal offence, however, fair hearing in civil proceedings before administrative adjudication bodies have been held to extend to right to legal representation, as the right to present one's case at a hearing involves the right to brief a counsel to do so.[45]

[44] Odukale v University of Ife 7 U.I.L.R; reported in Iluyomade and Eka, (supra) at 230-6, where the court held that the Council of the University of Ife (now Obafemi Awolowo University) acted unfairly and not judicially, when it insisted on proceeding with the matter concerning the plaintiff when he protested that he would be handicapped without his lawyer, the Council Solicitor being present and assisting the Council before the verdict or council decision.
[45]Section 15(5)(2d) MDP Act, Olaye v Chairman, Medical and Dental Practitioners Investigating Panel [1997] 5 NWLR (Pt. 506) 550 at 569 per Pats-Acholonu JCA; quoted from Ntukidem v Oko (19860 5 NWLR (Pt. 45) 990 per Karibi-Whyte JSC

It is however, still not uncommon to encounter a tribunal or panel that disdain the right to legal representation of the person charge before it thereby periling the whole proceeding. The extreme example of such intolerant attitude towards the exercise of legal representation can be seen in ***Olaye v Chairman, Medical and Dental Practitioners Investigating Panel & Ano***[46] where the legal counsel to the 'accused' medical practitioner objected to the procedure of the tribunal. The chairman waved aside the objection and also interrupted the presentation to recall a witness and throughout the recall of the witnesses counsel for the parties were completely ignored. The most intolerable intervention occurred during the presentation of the appellant's defence, the chairman of the tribunal virtually took over the cross-examination of the appellant even before she finished her evidence in chief, and when the appellant's counsel wanted to put matters on the right course the following dialogue ensued between him and the chairman:

Counsel: Sorry sir

Chairman: No, we are trying to find out… we are talking doctor to doctor now, so sit down. We are talking in our profession.

Counsel: I thought sir may be…

Chairman: No just sit down. We are talking doctor to doctor you don't understand what we are saying.

Counsel: I do, I am learned Sir.

Chairman: O.K. sit down and learn more.[47]

Invalidating the whole proceedings of the tribunal, the Court of Appeal held that the right to Legal Representation of the Appellant, medical practitioner, was denied her, since the Act which

[46] [1997] 5 NWLR (Pt. 506) 550
[47] Ibid at 565-6

set up the Tribunal envisages a hearing in which there are patties and in which those parties have a right to representation, and a right to present their respective cases in an orderly fashion.

We can say at this junction that, the tribunal did not only fail to appreciate the nature of the proceedings or its role, but also failed to appreciate that the Act which set up the tribunal envisaged a hearing in which there were parties and in which those parties have a right of legal representation, and a right to present their respective cases in an orderly manner.

As discussed in this work, depending on the circumstances of each case, it can be stated that where an administrative adjudication is to take the form of a formal trial proceedings involving procedure of framing of "charges", taking of evidence on oath, having counsel assisting the panel or tribunal, the right to legal representation of the person accused must be respected in order to meet the requirement of fair hearing and natural justice.

However, it may seem that an investigating Panel which is not bound to accord the right of confrontation to the person accused may not be so bound as to afford the same right to his counsel, but opportunity must be fully available during the tribunal proceedings in respect of charges or complaint arising from the Investigating Panel's proceedings.

4.8 Natural Justice

The doctrine of Natural Justice [48]was expressed in the twin maxims of: (a) *audi altar patem* (hear the other side); and (b) *nemo jut incausa sua* (no person should be a judge in his own cause)[49]. The doctrine has been held applicable to disciplinary tribunals.

[48] Alakija v. Medical Disciplinary Committee (1959)4 F.S.C 38, L.P.D.C V. Fawehinmi (1985)2 NWLR 300

The principle of fair hearing, which found expression in the fundament right provisions of most constitutions, including Nigeria, is synonymous to but not coterminous with natural justice. In *Ori-Oge v. A-G Ondo* Stete[50] it was maintained that the two principles of natural justice are inherent in the provisions of fair hearing but the constitutional provision goes beyond the rule of natural justice. This proposition was well elaborated by Karibi-Whyte J.S.C in *Legal Practitioners' Disciplinary Committee V. Fawehinmi*[51] thus:

> The word "fair hearing" in Section 33 of the Constitution 1979 has been employed to express all the requirements of common law for the observation of the rules of natural justice in the determination of the civil rights and obligations of the citizen. Although it is common law concept that is in consideration, the scope and extent of the concept should be determined within the context of the section of the Constitution in which it has been incorporated in the light of the constitution as a whole.

2.8.1 Audi alterem partem or audiator et altera pars

It is very glaring from earlier chapter that, it is a Latin phraseology which means 'he should be heard'. It means hear the other side or the various sides in a dispute before reaching a decision or judgment[52]. It is a principle of fair hearing that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them or that no one should be condemned unheard.

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[49] In D.U. Tamti v. Nigerian Custom Service Board (2009)7 NWLR (Pt.1141)631 at 636. Suit No.CA/A/183/06, it was held that the principle or doctrine of fair hearing in its statutory and constitutional sense is derived from the principle of natural justice under the twin pillars namely; audi alteram partem and nemo judex in causa sua.
[50] (1982) 2 NLCR 743
[51] (1985) 2 NWLR 300 at 309
[52] Malemi E, The Nigerian Constitutional Law (Lagos:Princeton Publishing Co.2010) p.267

The Right to be heard is such an important radical and protective right that the Courts strain every nerve to protect it and even imply it where a statutory form of protection will be less effective if it did not carry with it the right to be heard[53].

The rule stipulates that, each party must be given an opportunity of stating his case and answering if he can, any arguments put forward against it[54]. The rule requires that a person liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so as to give him an opportunity to make representations, and effectively prepare his own case and to answer the case he has to meet. It is therefore essential that the person involved be given prior notice of the case against him so that he can prepare to meet that case[55].

In the case of ***Denloye v. M.D.P.D.T***.[56] the Supreme Court held that the appellant was entitled to an adequate opportunity to know the case he has to meet and failure to supply him with a full statement of the facts of evidence upon which the panel and the tribunal relied was a denial of justice and a breach of the rules of natural justice.

We must point out for the benefit of the tribunal concerned that like any other tribunal of this nature, it is entitled to decide its own procedure and lay down its own rules for the conduct of enquiries regarding discipline[57]. It is of the utmost importance that the enquiry be conducted in accordance with the principles of natural justice[58].

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[53] UBA v. Oranuba (2014) 2 NWLR PT 1390 p. 1 @10 (Per Iyizoba, JCA); Olatunbosun v. NISER Council (1988) 3 NWLR PT 80 p. 25

[54] See Cooper v. Wandsworth Board of Works 14 C.B. (N.S.) 180.

[55] See Durayappah v. Fernando (1967) 2A.C. 337 (P.C.); Schmidtv. Secretary of State for Home Affairs (1969) 2 C.H. 1149; Chettlar v. Chettlar (1962) 1 W.L.R. 279; R. v. Birkenhead 11 Exp. Fisher (1962) 1 W.L.R. 1410; Ridge v. Baldin 1964 A.C. 40 at 71-79 per Lord Reid; Kandav Government of the Federation of Malaya (1962) A.C. 322 at p. 337 particularly at p. 311; Hart v. Governor of Rivers State (1976) 11 S.C. 211.

[56] Supra at p.263

[57] See R.V Central Tribunal: Ex parte Parton 32 T.LR. 476.

[58] Garba v. University of Maidugury supra per Oputa at 601

The proceedings and how the tribunal finally arrived at their decision in the above case, violated most guide lines or ingredients of fair hearing and also the twin pillars of natural justice as seen by the final decision of the Supreme Court. In other not to over flog this issue, we can confidently say that we agree with the findings and decision of the Supreme Court and also state the obvious that, this decision has settle the issue as regards tribunals and specifically the MDPDT as to their duty to observe this principle of natural justice that is; 'he should be heard' both at the investigation level and the hearing by the tribunal.

2.8.2 Nemo judex incausa sua

The other arm of natural justice is *nemo judex incausa sua,* the rule against bias and it is strict[59]. According to the rule against bias, a man should not be a judge in own cause. If a prosecutor or a complainant judges a case, there is likely to be an element of bias. If a party is allowed to be a judge in his own cause he is likely to enter either a ruling of not liable or acquittal in the matter. It cannot be said in such a situation that justice has been done. What would result is manifest injustice.

From our earlier discussion, it is clear from the provision of section 36(1) of the 1999 Constitution that the independence and impartiality of a court are part of the attributes of fair hearing. The requirement of impartiality is intended to prohibit a person from deciding a matter in which he has either pecuniary or any type of interest. This rule focuses upon the independence and impartiality of the Investigating Panel and/or the Disciplinary Tribunal. Real bias or likelihood of bias or interest may arise from his personal relationship with one of the parties to

[59] UBA v. Oranuba (2014) 2 NWLR PT 1390 p. 1 @10 (Per Iyizoba, JCA); Olatunbosun v. NISER Council (1988) 3 NWLR (PT 80) p. 25

the case or may be inferred from his conduct or utterances during the hearing of the matter[60].It may also be disclosed from the way and manner the whole proceedings was conducted. If it is favourably partial to the complainant or hostile to the person accused from the point of view of a reasonable independent person who witnessed the proceedings. For example, the kind of bias disclosed during the proceedings as to how the members of the Tribunal's actions may amount to denial of a fair hearing was determined by the court in ***Olaye v Chairman, Medical and Dental Practitioners Investigating Panel & Anor.***[61] where the tribunal recalled witnesses at different stage of the proceeding and even on the date for final addresses.

The Court of Appeal held that, the general test is whether the recall of witnesses by the tribunal suou motu and gathering of additional evidence at that stage in all the circumstances does not portray the Tribunal as exhibiting a likelihood of bias. Such likelihood of bias is exhibited when the Tribunal assumes the role of a prosecutor and shows itself to be "collecting evidence" in support of preconception: or, when the Tribunal after extensive questioning of witnesses recalled fails to turn over such witnesses to the person whose conduct is being inquired into for cross-examination as happened in this case.

While the rules of procedure and evidence may be relaxed in proceeding before tribunals, such relaxation of rules does not need to lead to such procedural chaos and display of bias which results where the line between proof of allegation and presentation of defence is blurred by inordinate and random interference by the tribunal and when the umpire enters into the arena as a gladiator displaying combative skills. A party who has the umpire assuming wittingly or unwittingly the role of an adversary stands no chance of getting a fair hearing.

[60] Abiola v. Federal Republic of Nigeria (1995) 7 NWLR (Pt 405) 1
[61] **[1997] 5 NWLR (Pt. 506) 550**

The Tribunal at several points in the course of the proceeding the chairman and member of the Tribunal descended into the arena; and that in the process, the Tribunal exhibited bias by (i) making findings of fact before the close of the case and (ii) making statement which properly should be made by a witness in the case.

Several passages in the record show that the Tribunal (particularly the Chairman) left its role and entered into the arena, objecting to question, offering statement of fact and taking over the examination of witnesses[62]. Not less than ninety interventions were made in the course of examination in chief only. The chairman of the Tribunal virtually took over the cross examination of the appellant even before she finished her evidence in chief.

After all exercise in which the Tribunal purported to be clearing doubts, at the end of the day it purported to decide the case against the appellant mainly on documentary evidence. The fact remained that the documentary evidence alone without oral evidence of the surrounding circumstance would not have sufficed. It is in relation to the oral evidence that the Tribunal had intermeddled to the point of unfairness.

[62] At page 52(records of proceeding) when a witness was asked by the appellant's counsel "have you finished what you are told to say or you have anything to add" the chairman "objected" to the question and would not let the witness answer it even though it was legitimate for counsel to put such suggestion to the witness, acting on this client's instructions, to test the weight that can be ascribed to the evidence of that witness. Similarly at pp 94-95 when counsel for the appellant tried to elicit evidence of practice in the particular hospital concerned as to the procedure of handing over a patient from one 'firm' of doctors to another, the tribunal stopped that line of questioning even though for whatever it was worth, it was relevant to the appellant's defense.
While the defendants were presenting their respective cases the Tribunal interrupted the presentation to recall a witness for the panel, upon a member of the Tribunal expressing a confusion in his mind on the inconsistencies in the evidence on an aspect of the case which was important to the appellant's defence, namely the period of "call duties" and unavailability of materials in the hospital. Throughout the recall of Dr. Okpara and Dr. Audu counsel for the parties were completely ignored and what took place was questioning by the Tribunal even though aspects of the evidence of the recalled witnesses concerned the matters which formed part of the appellant's defence.

The law that sets up the Disciplinary Body envisages or dictates that the tribunal in conducting disciplinary proceeding should eschew bitterness and leave its mind wide open to bring to bear on the trial civilized and ethical code of conduct expected of an impartial referee. The chairman so inextricably immersed himself in the case that one cannot help wondering whether he was the person affected by the conduct of the appellant whose actions were being investigated. The whole proceeding in the tribunal was a parody[63].

After considering the facts stated above, the Court of Appeal held that where the chairman's refusal to allow the accused medical practitioner's legal counsel to conduct the case on his behalf was held to amount to likelihood of bias.

Furthermore, in the case of ***Dr. Okezie v. Chairman, Medical and Dental Practitioners' Disciplinary Tribunal***[64]***,*** In this appeal, one of the issues formulated for determination was whether the honourable tribunal below was right, and not biased when it based its decision, in part on the appellants looks, carriage, comportment and physiognomy during trial as well as prayer session for patient during emergency, and whether this did not create bias in the mind of the tribunal and thus a miscarriage of justice.

In her judgment, the Court of Appeal held that the chairman and members of the tribunal in the instant matter are sitting as Judges whose preoccupation is to determine the dispute between the complaints and the accused. They should therefore do nothing of their own arbitrary will, or on the dictate of their own personal inclination, but should decide according to law and justice only,

[63] Otapo v. Sunmonu (1987) NWLR (Pt. 58) at 605 and 606,
[64] Supra at 370

and in the process, they must be fair to both sides and avoid taking decision based on evidence not properly placed before them.

The court agreed with the learned counsel for the appellant that from their assessment of the finding of the tribunal, the tribunal relied heavily on the professional opinion of its members to arrive at its decision that the appellant was guilty of infamous conduct, upon which it predicated its sentence of six months suspension of the appellant from medical practice. It is the duty of the prosecution to call vital witnesses whose evidence will help the tribunal reach a just decision.
In the instance case, some of the vital points raised by the tribunal could only be put in evidence by relevant professional medical practitioner. These experts were not called as witnesses by the prosecution. The tribunal's reliance on those facts that were no part of evidence upon which cross-examination were conducted, amount to descending into the arena and setting out cases for parties. The conduct of the tribunal clearly raised some dust which ultimately blurred its vision, the result of which has lead to miscarriage of justice[65].

On the whole, I find the decision of the tribunal not supported by evidence. Accordingly this appeal is allowed. The decision of the tribunal is hereby set aside and quashed. In its place, I enter a verdict of acquittal[66].

In yet another case of ***Dr. Akintade v. Chairman, Medical and Dental Practitioners' Disciplinary Tribunal,***[67] the appellant was arraigned before the Medical and Dental Practitioners Disciplinary Tribunal on two charge of offences bordering on negligence and professional malpractice.

[65] Erelu v. Queen (1959) WNLR 77: Omogodo v. State (1981) 5 SC 5.
[66] Per GALINJE J.C.A (Presided and Read Lead Judgment
[67] (2005) All NWLR (pt. 930) 236

At the conclusion of his trial the tribunal found the appellant guilty and he was sentenced to suspension from practice for six (6) months.

Dissatisfied with above decision of the tribunal, the appellant filed a notice of appeal. The major ground of appeal was that the findings of the tribunal were based on its opinion without any evidence to contradict the appellant that he relied on what the patient told him.

In her holding, the Court of Appeal stated that it appears that the evidence of appellant and the entries made by him, in exhibit 8 were the evidence adduced before the tribunal on the matter[68]. From the evidence available to the tribunal, they unable to find support for the findings that:

> This condition was an acute emergency which any reasonable doctor ought to have diagnosed properly. As it was, no effort was made to investigate this infection or to treat it and this gravely imperiled this patient and contributed to her death, in our opinion, the failure to recognize this great danger and to plant appropriate treatment was grossly negligent…[69]

All the charges against the appellant, but in particular, the ones he was convicted for by the tribunal, were required by law to be proved by credible and admissible evidence[70]. The professional opinion of the members could only be used to assess the evidence adduced before the tribunal in order to ascribe probative value to it. Accordingly, any opinion not based on the evidence available before the tribunal cannot form the basis of any decision on the charges or issues before it. This is in keeping with the principle that one cannot be the prosecutor as well as the judge in the same case.

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[68] The appellant had said at p.44 (last three lines) of the records of proceedind that he became aware that the patient's condition was deteriorating about 5.p.m. on 5th day, post operative. This piece of evidence was not challenged or discredited under cross examination. The entries in exhibit 8 made by him clearly disclose the same position and like the oral evidence of the appellant they were not challenged.

[69] at p.74 of the record

[70] See section 135 (1) & 136, of the Evidence Act, as well as the case of Okoroji v. State (2002) 5 NWLR (Pt. 759) 21, Marakyo V. Fed Rep. of (Nig) (2003) 1 FWLR (186) 106.

Accordingly, I can find no justification for the tribunal's decision. The issues are resolved in appellant's favour[71].

Though the appeal failed in respect of the first charge, we agree with the Court of Appeal allowing the appeal in respect of the decision of the tribunal on second charge on the basis that there is no evidence before the tribunal to support their findings or to put it differently, the opinion of the tribunal is not borne out of the evidence before it. In this regard, we will like to stress the fact that, though the tribunal is composed of fully registered medical practitioners and the professional competence of the appellant was in question, the opinion of the members out of their professional knowledge, experience, skill or expertise cannot take the place of, substitute or replace evidence which was required in proof of the charges against the appellant.

In addition, in ***Alakija v Medical Disciplinary Committee***[72] the proceedings of the Committee, it Swas alleged that the inquiry was conducted in a manner contrary to principles of natural justice in that the Registrar, who was in fact the prosecutor, took part in the Committee's deliberations. The court held the proceedings of the Committee unsatisfactory and in breach of the principles of natural justice.[73]

From earlier discussions, a complainant cannot in any case be part of the Investigating Panel nor the Tribunal which is to decide the fate of an accused person. If this provision of Natural Justice is breached it will amount to one being a judge in his own case and there can never be fair hearing for the accused.

[71] Garba J.C.A. (Read the Leading Judgment)
[72] **(1959) 4 FSC 38**
[73] This approach was followed by the Supreme Court in **LPDC v Fawehinmi [1985] 2 NWLR (Pt. 7) 300,** where the complaint was that the Committee composition did not secure its independence and impartiality, Attorney General of the Federation who was the Chairman of the Committee was found the accuser, the prosecutor and judge at the same time, and such proceeding was obviously null and void as being an infringement of the principle of nemo judex incausa sua.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

We have seen that the right to a fair trial is something to which every person is entitled. The history of this right and the practice of courts show that the right to a fair trial has acquired universal recognition and acceptance. Not only has it been integrated into the legal systems of most countries, but it has been codified in treaties and conventions.

Indisputably, the 1999 Constitution of the Federal Republic of Nigeria and other relevant national statutes have similarly recognised and institutionalised the basic right of fair hearing. It is a cardinal principle in the administration of justice that justice should not only be done but should manifestly and undoubtedly be seen to be done. This is very fundamental in adversarial or accusatorial system or procedure practiced in Nigeria.

The Right to a Fair, just and impartial hearing according to Natural Justice or the Fair Hearing Provisions of the Nigerian 1999 Constitution cannot be ousted by any Law. It is the only fundamental or Constitutional Right that cannot be denied by law. It is an inherent right of every person who is called in any adjudication of dispute to have a fair hearing.

The principles enshrined in section 36 of the 1999 Constitution represent an indispensable cornerstone of the well settled Rules of Natural Justice which must be observed in every determination of the Rights and obligations of a person.

Natural justice is an all – pervading principle of adjudication which requires that parties to a trial by either the administration or any tribunal or the regular court should be allowed to make their representations of what transpired before a decision is taken; and which also declares that the presiding officer must not have a personal interest in the matter or have any element of bias. The rules of natural justice are presently based on unwritten (common law) and written (Constitution and Statutes) principles of justice. It is written in the sense that it is entrenched in the Nigerian Constitution and unwritten in the sense that it has been evolved by judicial decisions. An administrative body must act in accordance with the procedure laid down by the enabling statute. Failure to follow the procedure laid down renders the act of an administrative tribunal void. Also, an individual is entitled to the benefits of the common law doctrine of natural justice (*audi alteram partem and nemo judex in causa sua*).

In addition, judicial powers are constitutionally vested in the courts, however, a system of administrative adjudication has evolved, whereby executive/administration, statutory bodies, domestic and autonomic bodies, are enabled by the let the legislature to exercise judicial or quasi-judicial powers in the discharge of their functions[1].

The Medical and Dental Practitioners Act, vest the Council with the responsibility for determining the standards for medical and dental practice and to produce the Code of Conduct for practitioners among others[2]. The Act established the disciplinary procedures through which the Tribunal and the Panel enforce professional discipline[3]. The 1999 Constitution recognizes the

[1] Iluyomade and Eka, (1997), Cases and Materials on Administrative Law, p. 188
[2] Section 1(2), Medical and Dental Practitioners' Act; Section 15 of the same Act
[3] These subsidiary legislation or rules have the same force of law as the provision of the Act from which they derive. See the Interpretation Act Cap LFN 1990.

exercises of judicial/quasi-judicial powers by domestic tribunals or such other autonomic bodies, but it subjects their proceedings to judicial review of the courts by virtue of sections 1, 6(6), 36(1) and 46(1).

Furthermore, courts in classifying and characterizing the functions and powers of administrative adjudicative bodies, distinguish the investigation panel from a disciplinary tribunal. The investigation panel is a fact-finding body whose procedure usually involves examination of document, witnesses, and oral testimonies and where necessary make recommendation to another body for necessary disciplinary action to be taken. The disciplinary tribunal, on the other hand, adopts a procedure that will result into a decision or determination of the civil' rights and obligation of a citizen. This approach is adopted by the Act and the Rules earlier mentioned[4]. The recommendation of an Investigating Panel will not affect the civil rights and obligations of the person appearing before it, the decision of a Disciplinary Tribunal or statutory body does[5]. More so, the decision of the Disciplinary Tribunal based on its Rules and Regulations, will only be invalidate d by the courts where there has been breach of natural justice or when bias is shown or when it shown that the Tribunal acted on no evidence at a or its decision is unreasonable [6].

In addition, where the allegation or accusations in a charge discloses the commission of a crime, the disciplinary tribunal lacks the competence to entertain such criminal offence(s). Such crime

[4]Medical and Dental Practitioners' Act, Medical and Dental Practitioners Disciplinary Tribunal Rules, 2008, Adeniyi v. Governing Council of Yaba Technology (1993) 6 NWLR 431
[5] M.D.P.D.T V. Okonkwo (supra)
[6] WAEC v. Mbamalu (1992) 3 NWLR 881

or offence can only first be reported to the Police, for prosecution before a court of competent jurisdiction. After that, a disciplinary action can be taken.[7]

The exercise of disciplinary powers by the Panel and Tribunal involve the determination of the civil rights and obligations of medical and dental practitioners and their professional responsibilities to the patients, profession and the society.

As we have demonstrated from the above analysis non-observance of the rules and procedure for the exercise of the powers or failure to meet the constitutional requirement of fair hearing or such other constitutional rights with implications for the decision of the Panel and/or Tribunal will amount to denial of justice. Moreover, this work discussed in details the practice and proceeding of the Investigating Panel as well as the Disciplinary Tribunal.

Finally, some of the decisions of the tribunal were looked and the found out why they were set aside on appeal which were mostly based on violation of the principles of fair hearing and natural justice. We have also found in many cases were the members of panel were preclude in their judgment base on their knowledge of medicine but were admonished by superior courts that, in as much as the they are medical doctors and the person complained against is a medical doctor, the panel can only reach a decision and give judgment or directives base on the evidence before them. The panel must not allow their knowledge of the field of medicine or specialty in the field of medicine the doctor whose conduct is complained about specializes to preclude their judgment.

[7] F.C.S-C. V. Laoye (1989)2 NWLR (PT 106) 652 at 658; University of Agric. V. Grace Jack (2001) 3 WRN (pt 83) 102

5.2 Conclusions

The conclusions that can be drawn from the study include:

The practice and proceedings in this tribunal is similar to a normal court but it is much more informal and the rules are relaxed. For instance, there are is specific time limit within which parties are to file or exchange pleadings most times parties agrees on dates within which to file a process and the chairman grants their application when he thanks is fair.

Also, the panel or tribunal can suo motu, invites a person to appear as witness or as a respondent by filing his response to the complaints stating his level of involvement in the action complained of for the purpose of arriving at a just decision or to clarify any confusing issue.

Additionally, the role of the of a member of the panel, interestingly the only lawyer who is called a Legal Assessor whose duty is to advice the members of panel on any legal issues in the course of the proceedings and the advice must be given in open or when it is given in private during the private deliberation of the members of the tribunal, it must be brought to the notice of all parties to the case. Relatively, this study concludes that, it is not a must the tribunal hides to his advice and no reason need be given for not so doing.

Moreover, the Act and Rules as seen earlier provides that, the panel or tribunal can for the purpose of clarifying issues direct anyone who from the evidence before the tribunal should be called as a witness or respondent but was not called, to come and testify or give evidence on their level of involvement in the act complained against. Also, all the persons who tendered evidence during the investigation must also appear before the panel, identify their evidence and if they refuse to appear, their evidence is considered abandoned.

5.3 Observations

From the conclusions drawn above, the following observations are made:

1. An attribute of administrative adjudication, informality and simplicity, often results in unpredictability of its decisions given the same facts, as subjective considerations and idiosyncrasies of each member of the administrative adjudicative body influences the outcome of their proceeding, in the absence of formal rules of evidence and procedure, to neutralize such influence, as it is with the normal courts. For instance, the provisions of the Act that the panel or the tribunal can suo motu invites a medical personal or a doctor who in their opinion or from the evidence tendered to be a witness or a respondent in a case before them. Unlike the normal courts, where each party attach to their process the name(s) of persons who they intend to call as witness in their claim or defence and the court can only summon a witness or join a person as a party, either as a plaintiff or defendant base on the application of either of the party or by a third party and such application can be objected to which will require the judge to rule in favour of the party making the application or the party objecting to it
2. It is also observed that the Medical and Dental Practitioners Disciplinary Act especially section 5 and 18 did not state specifically what a doctor should do when faced with a patient who refuses a particular treatment on the basis of religion or other things as seen in the case of Chairman M.D.P.D.T. v. Okonkwo (supra).
3. We also observe that there is no constant education and/or enlightenment of the members of the panel as to their powers and obligations in the discharge of judicial or quasi-judicial functions on the need to adhere strictly to the rules of fair hearing, so as

to prevent the decisions of the Panel and/or Tribunal from being invalidated by the courts.

4. We finally observe that the only lawyer who is a member of the tribunal known as the legal assessor but whose advice on issues of law must not be adhere to by members of the panel who are not lawyers and not trained but are appointed to decide on the rights of people, whose decisions most often than not affect the livelihood of the persons appearing before them as respondent(s).

5.4 Recommendations

Based on the above observation, the following recommendations are made:

1. We therefore recommend a reform of the Rules and Procedures for disciplinary proceedings. The need for a specific time frame within which things are to be done by all the parties cannot be over-emphasized. Even though, the informal or relaxed rules have led to speedy adjudication, it is not without abuse.
2. We also recommend for the amendment of the Medical and Dental Practitioners Disciplinary Act especially section 5 and 18 to state specifically what a doctor should do when faced with a patient who refuses a particular treatment on the basis of religion or other things as seen in the case of Chairman M.D.P.DT. v. Okonkwo (supra). The Supreme Court stated that a helpless medical doctor a scapegoat of the consequences of whatever deficiency there may be in the remedy provided by our law. Even as our law proves that no one should be convicted for an offence not stated and the punishment prescribed. This will not only save the doctor from litigation it will also save the lives of Nigerian citizens who have right to practice any religion of their choice.

3. In addition, there is need for constant education and/or enlightenment of the members of the panel as to their powers and obligations in the discharge of judicial or quasi-judicial functions on the need to adhere strictly to the rules of fair hearing, so as to prevent the decisions of the Panel and/or Tribunal from being invalidated by the courts. Even though the members of the panel and tribunal are professionals in the medical and dental field, they need to be trained as their job require them to act and think more like a lawyer than a doctor.

4. Moreover, section 15 (2) that provides the composition of the tribunal did not mention a lawyer as one of the members, lawyers need to be appointed as members of the panel and tribunal because, the members of the panel and tribunal are often lacking in legal and judicial skills that are the hallmark of judicial officers that man the courts, therefore making the members of the disciplinary tribunal ill-equipped to perform their adjudicatory function. They are also often lacking in the judicial tradition of independence and impartiality, a basic and fundamental requirement of natural justice and fair hearing. To worsen this, the Act only provides for a lawyer known as the legal assessor but whose advice on issues of law can be thrown away or neglected by people who are not lawyers and not trained but are appointed to decide on the rights of people, whose decisions most often than not affect the livelihood of the persons appearing before them as respondent(s).

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APPENDIX I
IN THE COURT OF APEAL
IN ABUJA DIVISION
HOLDEN AT ABUJA

APPEAL NO……………………….

CHARGE NO: MDPBT/22/2017

BETWEEN:

DR. KOFO YARO::APPELLANT

AND
MEDICAL AND RENTAL PRACTITONERS
DISCIPLINARY TRIBUNAL:::RESPONDNET

NOTICE OF APPEAL FROM THE DECISION OF THE MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL SITTING AS A COURT OF FIRST INSTANCE AT ABUJA ON 4TH APRIL, 2011 SERVED ON THE 31ST MARCH, 2011.

To the Secretary,
Medical and Dental Practitioners Disciplinary Tribunal,
Abuja

I, **DR**. **KOFO YARO,** having been convicted of professional negligence contrary to Rules 29, 29.4(a-i) and Rule 43 of the code of Medical Ethics in Nigeria, 2008 and being desirous of appealing against my conviction and direction (particulars of which hereinafter appear) to the court on the following grounds:

GROUNDS OF APPEAL

1. …………………………………………………………..
2. …………………………………………………………..
3. …………………………………………………………..

PARTICULARS

The particulars include all what the court should look at in regards to the ground as stated. Once the tribunal receives this, it acts as stay to further actions as regards to the matter.