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LIMITATION ON THE RIGHT TO FAIR HEARING IN JUDICIAL PROCEEDINGS IN NIGERIA

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Abstract
The rule of natural justice as old as it has been provided the template and basis for hearing from parties before adjudication. Since then, the awareness to afford parties ample opportunity of being heard, has gained universal acceptance both within the legal, traditional, and socio-economic spheres. Evidently, the concept of fair hearing stipulates that both parties to a dispute must be given equal opportunity to present their cases. Incidentally, the specie as well as primary characteristic of the doctrine is captured as the principle of fair hearing which is enshrined in Section 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended. The right to fair hearing is so fundamental that no one can contend against a person's right to be heard. It is a natural and fundamental right which must be adhered to when there is a complaint against another person. It is against this background that the paper argued that the right to fair hearing in judicial proceedings in Nigeria is limited. The authors therefore maintained that the right to fair hearing should not be limited to judicial proceedings and other tribunals established by law. Furthermore, the authors canvassed that the twin pillars of fair hearing; *audi alteram partem* and *nemo judex in causa sua*, required that both parties be heard before reaching a verdict and that the umpire cannot be a judge in his own cause, must be observed in the resolution of any dispute as this inviolable principle of natural justice, have enjoyed steady patronage among family members, communities and customary arbitrations. Consequently, they concluded that while the specie of fair hearing can be situate in judicial proceedings, same cannot be said of the *generis* natural justice.

Keywords: natural justice, fair hearing, limitation, constitution, Nigeria, legal/judicial proceedings

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1 Introduction

The doctrine of fair hearing traverses beyond the length and breadth of the legal profession. It dates back to the period of creation, when God established the spiritual precedent of fair hearing in the garden of Eden by affording, Adam and Eve, the opportunity to defend themselves against acts of disobedience.[1] That singular act of natural justice provided the template and basis for hearing from parties before

[1] Genesis 3: 9 -13

adjudication. Since then, the awareness to afford parties ample opportunity of being heard, has gained universal acceptance both within the legal, social, cultural and societal strata. Evidently, the concept of fair hearing stipulates that both parties to a dispute must be given equal opportunity to present their cases. Incidentally, a primary characteristic of the doctrine is captured as the principle of fair hearing which is enshrined in Section 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended.[2] The right to fair hearing is so fundamental that no one can contend against a person's right to be heard. It is a natural and fundamental right which must be adhered to when there is a complaint against another person. The doctrine of fair hearing can only be invoked by Court after it has assumed jurisdiction in a proceeding. In *Oyegun v Nzeribe* Adekeye JSC summed it up in this manner:

> The doctrine of fair hearing can only be invoked by court after it has assumed jurisdiction-that is, it is competent to hear the matter. Moreover, fair hearing is not a cut-and-dried principle which parties can, in the abstract, always apply at their comfort and convenience.[3]

The right to fair hearing revolves around an opportunity of a hearing which a party is at liberty to either utilize or disregard. But where an opportunity is given to a person to be heard and he fails to utilize same, he cannot thereafter complain of a denial of fair hearing. In the *Nigerian Navy v Labinjo,* the court stated in clear terms the fate of a party who disregards the opportunity of being heard in the following words:

> The right to fair hearing is a fundamental right guaranteed by the Constitution of the Federal Republic of Nigeria, 1999. A hearing cannot be said to be fair if any of the parties is refused a hearing or denied the opportunity to be heard, present his case or call witnesses. It does not however lie in the mouth of a party who disregarded the rules of court or refused to attend court having been served with a hearing notice, to talk of denial of justice and fair hearing.[4]

The importance of fair hearing in the 1999 Constitution of Nigeria cannot be undermined as it occupies a fundamental space in judicial proceedings. This accounts for the special attention accorded the doctrine of fair hearing by courts as the absence of fair hearing goes to the root of any adjudication. In *Moore v Flour Mills of Nigeria Plc.*, the Supreme Court while elucidating on the nature and importance of fair hearing provision in the Constitution and the need for proper utilization, stated that:

> The fair hearing provision in the Constitution is the machinery or locomotive of justice; not a spare part to propel or invigorate the case of

[2] [Hereafter, The CFRN]
[3] (2010) Vol. 180 LRCN, p. 50
[4] (2012) Vol. 211 LRCN, P. 1

> the users. It is not a casual principle of law available to a party to be picked up at will in a case and force the court to apply it to his advantage. On the contrary, it is formidable and fundamental constitutional provision available to a party who is really denied fair hearing because he was not heard or that he was not properly heard in the case. Therefore, litigants who have nothing useful to advocate in favour of their cases, should leave the fair hearing constitutional provision alone because it is not available to them just for the asking.[5]

The right of both parties to have their matters properly considered and determined by court must be anchored on the twin pillar *of audi alteram partem* and *nemo judex in causa sua* which means that the other party must be heard and that one cannot be a judge in his own cause in order to enhance the principles of fair hearing as enshrined in the 1999 Constitution. In the *Military Governor of Lagos State v Adeyiga,* Adekeye JSC underscored the importance of fair hearing and the need for a party to take advantage of same as follows:[6]

> However, whenever a party has been given ample opportunity to ventilate his grievances in a court of law but chooses not to utilize same, he cannot be heard to complain of breach of his right to fair hearing as what the court is expected to do by virtue of Section 36 of the 1999 Constitution is to provide a conducive atmosphere for parties to exercise their right to fair hearing. Furthermore, a party complaining that he has been denied fair hearing during the trial of a case ought to remember that in a civil case, a balance has to be struck between the plaintiff's right to have his case heard expeditiously and the defendant's right to put across his defence to the plaintiff suit. Where the party has been afforded the opportunity to put across his defence and he fails to take advantage of such an opportunity, he cannot later turn around to complain that he was denied a right to fair hearing. Hence, a party who refuses or fails to take advantage of the fair hearing process created by the court cannot turn around to accuse the court of denying him fair hearing because equity aids the vigilant and not the indolent.

Having drawn attention from the above, there is need to consider whether or not the principle as contained in Section 36 (1) of the 1999 Constitution as well as numerous other judicial authorities, in order to ascertain whether the right to fair hearing is limited to judicial proceedings.

2. Meaning Nature and Scope of Fair Hearing

The provision of Section 36 (1) CFRN 1999 as amended, provides that:

> In the determination of his civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to fair hearing within a reasonable time by a court or tribunal established by law and constituted in such manner as to secure its independence and impartiality.[7]

[5] (2022) 11 NWLR [Pt. 1841] P. 365
[6] (2012) Vol. 205 LRCN, p. 1
[7] Section 36 (1) CFRN as amended

From the above provisions of the Constitution, both parties shall be availed of an opportunity of a fair hearing when a dispute has been submitted for determination. It is pertinent at this stage to examine the legal meaning of the word 'fair hearing' as provided for in the Constitution.[8]

The principle of fair hearing stems from two common law principles of natural justice, to wit: '*audi alteram partem'* (hear the other side) and '*nemo judex in causa sua'* (a man shall not be a judge in his own cause) no judge shall preside over a matter in which he has a personal interest or involvement.[9] In Eze v University of Jos,[10] the Supreme Court of Nigeria restated the application and utility of the twin pillars of the rules of natural justice in fair hearing to remain '*audi alteram partem'* and '*nemo judex in causa sua*.' In *Ararume v Ibezim,* the Supreme Court while highlighting the principle of natural justice stated that, 'natural justice demands that a party be heard before the case against him is determined.'[11] Once there is an infringement of the principle of natural justice against a party, then the trial is not fair. The principle of fair hearing is not a mere adjudication but a doctrine that enjoins that once a party entitled to be heard before deciding a matter is denied opportunity of being heard, the order or decision given thereof will be vacated or set aside. Where the principles of natural justice are breached, the hearing cannot be said to be fair. In Bamigboye v Saraki, the Court of Appeal stated as follows:

> A hearing can only be fair when all parties to the dispute are given a hearing or an opportunity of hearing. If one of the parties is refused a hearing or not given an opportunity to be heard, the hearing cannot qualify as fair hearing. Without fair hearing, the principles of natural justice are abandoned and without the guiding principles of natural justice, the concept of the rule of Law cannot be established and grow in the society.[12]

However, it must be appreciated that hearing is not at all cost so long as an opportunity has been provided for a hearing. In *Kano Textile Printers PLC v Gloede & Hoff Nigeria Limited:*

> The principle that the other party must be heard in my respectful opinion does not mean that he must be heard willy-nilly. The rule of *audi alteram partem* means no more than offering each party opportunity to be heard. If after affording a party opportunity to be heard and such party fails to avail itself of the opportunity, it is his own funeral. It does not mean that the party should be put in jeopardy. If the concept means that such a party must be heard under all circumstances, it will be at advantage and at expense of doing substantial justice, a litigant who has no defence to an action but who will want to dribble, frustrate and cheat the other party out of judgment which he is entitled to by

[8] Ibid at S. 36
[9] Obasan v Audu (2003) 8 NWLR, (Pt. 1887) p. 423
[10] (2021) 2 NWLR (Pt. 1760) 208
[11] (2021) 8 NWLR (Pt. 1779) 543
[12] (2010) 14 WRN 125 per Ayo Salami JCA

> delay tactics aimed at gaining time within which he may continue to postpone meeting his obligation and indebtedness at the peril of the plaintiff, after all the Court is not equivalent of football pitch. It is the seat of justice and the interest of justice dictates that the prayer of the claimant must be acceded to.[13]

Consequently, the rule of fair hearing is not a technical doctrine. It is one of substance. This point was well digested by the court in *All Progressive Congress v Anambra State Independent Electoral Commission* when the court held that: 'the question is not whether injustice has seen done because of lack of fair hearing, it is whether a party entitled to be heard before deciding has in fact, been given the opportunity of a hearing.'[14]

The right to fair hearing enjoins that Court should give equal treatment, opportunity and consideration to all parties in the consideration and determination of their grievances. One of the basic attributes of fair hearing is that the court or tribunal should hear both sides on all material issues in a case before reaching a decision which may be prejudicial to any party in the case.[15] In Agbiti v The Nigerian Navy the Supreme Court of Nigeria highlighted other attributes of fair hearing to include:[16]

(a) Fairness of proceedings among other things, requires that a person who is tainted by likelihood of or actual bias should not take part in the decision making process where the adjudicator is under a duty to act fairly, and:

(b) The person whose conduct is the subject of inquiry has an opportunity of knowing what evidence has been given against him and to challenge hostile witness.

In Wema Bank Plc. v Olotu the Supreme Court of Nigeria while harping on attributes of fair hearing and duty on court to hear parties on issues submitted to it, stated that:

> A proper interpretation or construction of the provision of Section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) shows that the right of fair hearing extends beyond merely affording the parties a hearing, but also includes a proper consideration and determination of the issues canvassed by the parties before the court. Where a Court of Law, without hearing the parties, proceeds to consider the issues in the matter and delivers a judgment, it is clear that the parties were denied fair hearing. Fair hearing is in most cases, synonymous with natural justice, an issue which clearly is at the threshold of our legal system. Once there is a denial of fair hearing as guaranteed under Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as altered) the whole proceedings automatically becomes vitiated with a basic and fundamental irregularity which renders them null and void.[15]

[13] (2002) 7 WRN 78
[14] (2022) 12 NWLR [Pt. 1845] 411
[15] Federal College of Education Technical Potiskum v Joseph (2020) 9 NWLR [Pt. 1729] 381
[16] (2011) Vol. 200 LRCN 181

Space constraint will not permit the paper to dwell much on fair hearing save and except, that failure to observe the rules of fair hearing, will lead to a miscarriage of justice and antithetical to the spirit and letters of the constitution.[16]

From avalanche of judicial authorities as well as the Constitution,[17] the right to fair hearing is exercisable mostly through a law court or in tribunal proceedings, as established by law. The tribunal envisaged under the Constitution includes such bodies as Statutory Tribunals inclusive of Rent Tribunals, Industrial Arbitration Panel, Election Tribunals, and etcetera. The principle of fair hearing must be observed in all judicial proceedings as well as Tribunals exercising quasi -judicial functions such as the Legal Practitioners Disciplinary Committee, Medical and Dental Practitioners Disciplinary Committee, Public Complaints Commission, Judicial Service Commission, National Judicial Council, Code of Conduct Bureau and Tribunal, Estate Surveyors and valuers' Disciplinary Tribunal, and etcetera.

For instance, in *Gbenoba v Legal Practitioners Disciplinary Committee*[23] the Supreme Court while allowing the appellant's appeal for lack of fair hearing stated that, 'fair hearing consists in the proper institution of litigation and correct and consistent composition of the *judex* at all stages to cases on administrative law of the proceedings.[18]

In the same vein, the court observed in *Alakija v Medical Disciplinary Committee*[19], that the principles of natural justice, were not observed during the trial of the appellant whose name was ordered to be removed from the Register of Medical Practitioners for a period of two years, on the ground that the Registrar of the body who was the Prosecutor, participated in the deliberations of the disciplinary committee.[20]

Similarly, in *Olaoye v Chairman Medical & Dental Practitioners*, the Court of Appeal nullified the direction of the tribunal striking out the names of the appellants off the Register of Medical and Dental Practitioners, on the ground that the rules of natural justice were breached during trial and as such, denied the appellants the right to fair hearing.[21]

The right to fair hearing in all circumstances was also re-echoed by the Supreme Court in *Izevbuwa v Nigerian Bar Association*, where it was stated that:

> Deciding without hearing is an aspect of denial of fair hearing. It hovers between not giving the party adversely affected by the decision, an opportunity to be heard (*audi*

[17] CFRN, 1999
[18] (2002) 97 LRCN 946
[19] (1968) 1 ALL NLR 306
[20] (1997) NWLR [Pt. 506] 550
[21] (2022) 5 NWLR [Pt. 1823] 237

> *alteram partem*) and the non-impartiality of the *judex*. The rule is: *he who did not hear the evidence must not decide or determine the civil rights or obligations of another based on the evidence.* Consequently, for a member of a judicial tribunal or an arbitrator to participate in the evaluation of evidence and eventually decide on oral evidence and even oral submissions that he did not hear, is tantamount to breach of the right to fair hearing or natural justice.[22]

Similarly in Muyideen v Nigerian Bar Association, the Supreme Court nullified the direction of Legal Practitioners' Disciplinary Committee which ordered the striking out of the appellant's name from the roll of Legal Practitioners, on the ground that the appellant was denied fair hearing by the committee.[23] Ejembi Eko JSC who delivered the lead judgment stated thus:

> The proceedings at the Legal Practitioners Disciplinary Committee are quasi-criminal and quasi-judicial. Accordingly, absence of fair hearing vitiates the proceedings of the LPDC no matter how well the decision may have been written. In this case, the 2nd respondent's proceedings and direction in issue being quasi-criminal in nature, the same members of the Committee that took the plea of the appellant ought to have adjudicated over the matter to its conclusion. Fair hearing, as a fundamental procedure, is the *sine qua non* in all proceedings before judicial or quasi-judicial bodies like the Legal Practitioners Disciplinary Committee.

It is pertinent to state that fair hearing usually resonates more in judicial proceedings than ordinary disputes outside the courts. It is therefore a cardinal principle of adjudication that all judicial officers before whom parties have ventilated their grievances must ensure that the rules of fair hearing are duly observed. In *Ahmed v The Registered Trustees of Archdiocese of Kaduna of the Roman Catholic Church,* Bage JSC while restating the application of fair hearing to judicial proceedings stated that:

> The principle of natural justice and fairness are crucial and sacrosanct in our legal system and adjudicatory functions at all levels of the judiciary hierarchy. It must as a matter of Constitutional obligation be observed by all judicial officers. This is fairness and natural justice requires that a party to a cause, or a party who ought reasonably to be a party in the suit, must be given the opportunity to put forward his case or defence freely and fully.[24]

In Abuja Trans-Natural Market v Abdu, Omoleye JCA stated as follows, 'fair hearing given to all parties in all matters, is the hallmark and the bedrock of administration of justice. Indeed, the principle of fair hearing is the most of all cardinal principles of our judicial system.'[25]

Flowing from the above, it is imperative to state that apart from other tribunals, the principles of fair hearing are largely applicable to judicial proceedings. In Peterside v Odili, Augie JSC while highlighting the fundamental nature of the right of litigants to fair hearing, observed that 'the right to fair hearing is

[22] (2022) 5 NWLR [Pt. 1823] 244
[23] (2021) 6 NWLR [Pt. 1773] 499
[24] (2020) vol. 300 LRCN 1
[25] (2008) 1 NWLR [Pt. 1098] 98

not one available to be bandied around convenience. It is available to a party with genuine complaints whose right has been breached.'[26]

Similarly in Uzoho v National Council of Privatization, Nweze JSC while emphasizing the scope of fair hearing stated that, for a question of fair hearing to apply, there must be a valid and subsisting suit, not an academic or hypothetical suit.'[27]

Even older cases are emphatic on the observation of fair hearing, even in the process of exercise of disciplinary powers of statutory bodies in Nigeria.[28] For instance, it has been argued that the rational employed by either statutory body and / or court is predicated on the assumption of the fact that the principle of natural justice commands both pervading and universal application. Consequent on this realization, it has been maintained that statutory bodies ought to exercise prudence in way and manner they handle disciplinary matters in order to conserve fiscal allocations thus avoiding the concomitant effect of lengthy litigation in courts.[29]

3. The Consequence of Breach of Right to Fair Hearing

The right to fair hearing is sacrosanct such that its breach or denial in the conduct of judicial proceedings by a court of law, in which the rights and obligation of the parties are determined, will automatically render the entire proceedings from the beginning to the end, and the outcome thereof, illegal, null, void and of no effect whatsoever. However, the party alleging breach of his right to fair hearing, must establish how his right to fair hearing, was breached. In Popoola v Nigerian Army, Mohammed Lawal Garba JSC stated that:

> The legal duty is on the party alleging a denial of fair hearing in the conduct of a proceeding of a Court, to show and demonstrate, from the record of such proceedings, in what manner and how he was denied or not afforded or given the requisite opportunity before a decision affecting him was arrived at in the case.[30]

Similarly in *Mohammed v Nigerian Army council*, Mohammed Mustapha JCA stated thus:

> It is always advisable to raise the issue of denial of fair hearing fairly. Care should be taken to avoid clutching at straws where there is no basis of the claim. It is not enough to merely allege denial of fair hearing. It has to be established in Court. In the instant case, the contention that the trial Court violated the appellant's right to fair hearing because the issue of discharge was resolved without determining the appellant's right to freedom from discrimination was absurd. The allegation of denial of fair hearing was never

[26] (2022) 17 NWLR, part 1860, 549
[27] (2022) 15 NWLR [Pt. 1852] 1
[28] A K Anya, Disciplinary Powers of Statutory Bodies in Nigeria, (2005) 3 Benin Journal of Public Law, Pp. 140, 152
[29] Ibid, at P. 151
[30] (2022) 6 NWLR, [Pt. 2825] 1

> established at trial and the trial Court did not infringe on the appellant's right to fair hearing in the least.[31]

Where allegation of breach of fair hearing has been established, it will vitiate the entire proceedings. In *Orugbo v Una* Niki Tobi JSC while expressing the fundamental nature of fair hearing and nullity of proceedings arising from breach of the right to fair hearing stated as follows:

> The fair hearing principle entrenched in the Constitution is so fundamental in the judicial process or administration of justice that breach of it will vitiate or nullify the whole proceedings and a party cannot be heard to say that the proceeding were properly conducted and should be saved because of such proper conduction. Once an appellate Court comes to the conclusion that there is a breach of the principle of fair hearing the proceedings cannot be salvaged as they are null and *void ab initio*. After all, fair hearing lies in the procedure followed in the determination of the case, not in the correctness of the decision. Accordingly, where a Court arrives at a correct decision in breach of the principle of fair hearing, an appellate Court will throw out the correct decision in favour of the breach of fair hearing.[32]

In Ogbo v Federal Republic of Nigeria, Ogwuegbu JSC stated thus: 'a fair hearing connotes a fair trial and a breach thereof has its implication on the whole proceedings.[33]

The right to fair hearing is and has remained a constitutional issue. It is both fundamental and sacrosanct. The application of the rules of fair hearing is deeply rooted in all judicial proceedings as well as tribunals saddled with both judicial and quasi-judicial functions. For instance, some of the tribunals exercising judicial functions include the National and State Houses of Assembly Election Tribunals,[34] Code of Conduct Tribunal,[35]Presidential Election Petition Tribunal,[36] Governorship Election Tribunal.[37] There are other categories exercising quasi-judicial functions which include the National Judicial Council,[38] such Panels constituted by the Chief Judge of a State during impeachment proceedings against a Governor or his Deputy,[39] Legal Practitioners Disciplinary Committee,[40] and other Administrative Panels including the University of Jos Act[41] which provides for fair hearing before termination of appointment.[42]

[31] (2021) 13 NWLR [Pt. 1793] 259
[32] (2002) 46 WRN 1
[33] (2002) 97 LRCN 946
[34] Section 85 (1) of the 1999 Constitution
[35] Section 15 (1) of the 5th schedule to the 1999 Constitution
[36] Section 239 of the 1999 Constitution
[37] Section 2 (1) of the 6th schedule to the 1999 Constitution
[38] Section 21 Third schedule to the 1999 Constitution
[39] Section 188 of the 1999 Constitution
[40] Section 12 Legal Practitioners Act
[41] Section 16 (1) of the University of Jos Act
[42] See generally A K Anya, Disciplinary Powers of Statutory Bodies in Nigeria, (2005) 3 Benin Journal of Public Law, Pp. 140, 152

It is in the light of the clear provisions of Section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) as well as numerous judicial authorities insisting on fair hearing that the argument is made that the right of fair hearing is limited to judicial proceedings and other tribunals enumerated above exercising both judicial and quasi-judicial functions. However, it must be stated that the right to fair hearing as laudable as it may be, does not legally apply to settlement of communal and/or family issues as its application to such disputes, though borne out of the desire to observe the rules of natural justice, is not envisaged under Section 36 (1) of the 1999 Constitution.

In *Amaechi v Governor of Rivers State* the Supreme Court while analysing the scope of Section 36 (1) of the 1999 Constitution, stated as follows:

> The provision of Section 36 (1) of the 1999 Constitution applies to only judicial proceedings of bodies vested with judicial powers and functions by law. It cannot apply to non-judicial proceedings such as proceedings of commissions of inquiry and other administrative bodies. In the instant case, the commission of inquiry was not a Court, the proceedings not being judicial proceedings, section 36 (1) of the 1999 Constitution did not apply to it.[43]

Significantly, the instant paper maintains that commissions of inquiry and other administrative bodies, are creations of law and as such, the position of the paper with the greatest respect, does not agree with the above judgment considering the fact that even commissions of inquiry are usually regulated by law and must apply the principles of fair hearing, being the hallmark of every adjudication and inquiries. This reasoning is premised on the clear provisions of the Constitution[44] which refers to a court or other tribunal established by law. Furthermore, the right to fair hearing applicable to judicial proceedings and other tribunals including commission of inquiry has been restated by the Supreme Court in Arobieke v National Electricity Liability Management Company that:

> An administrative panel, such as the respondent's Ad-hoc Disciplinary Committee in this case, in its enquiries, may not necessarily adhere to such rules of natural justice as exist in a law court. However, the rules of fair hearing and natural justice can neither be compromised nor waived. The reason is that any infraction would automatically bring to naught whatever had been done in the process of the enquiries embarked upon by any panel, whether judicial or administrative.[45]

It is therefore recommended that for a holistic appreciation of the intendment of the principles of fair hearing which owe their existence to the origin of man, the 1999 Constitution, which operates to limit the principles of fair hearing to only judicial proceedings as well as other tribunals established by law, there is need to ensure that the principles of natural justice which inhere in man *qua* man should be made applicable to all disputes even when they are not contemplated by the Constitution.[46] This

[43] (2022) 17 NWLR Part 1858, 1
[44] Section 36 (1) of the 1999 Constitution as amended
[45] (2018) 5 NWLR [Pt. 1613] 383
[46] 1999 Constitution of the Federal Republic of Nigeria

inclination is adopted irrespective of the admonition of Agim JSC in *Amaechi v Governor of Rivers State*' where he admonished thus:

> Although, a commission of inquiry and other administrative tribunals or panels are not courts and therefore Section 36 (1) of the 1999 Constitution is not applicable to them, they are still bound to observe and comply with the principles of natural justice which embody the principle of fairness akin to that in Section 36 of the 1999 Constitution, in their proceedings.[47]

The fundamental nature of the rules of natural justice in dispute resolution was further amplified by the Supreme Court in *Arobieke v National Electricity Liability Management Company* where Peter-Odili JSC stated as follows:

> My Lords, having set out the differing conclusions of the trial Court as against that of the Court below, I need at this stage to restate the position of this Court which has been referred to again and again and that is, that what constitutes fair hearing depends on the circumstances of each case. However in doing that, it is the accepted law that the basic procedural and other requirements of the rule of natural justice must be served by every Tribunal or authority whose decision will affect the right of another. In this, I will seek in aid the case of *Legal Practitioners' Disciplinary Committee v Gani Fawehinmi* per Eso JSC that, "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 pure administrative Tribunal may turn judicial once it embarks on judicial or quasi-judicial adventure. The test to 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 govern exercise of judicial function. 'Even God himself did not pass sentence upon Adam before he was called upon to make his defence. Merely to describe a statutory function as administrative, judicial or quasi-judicial is not by itself sufficient to settle the requirement of natural justice. This certainly leaves it open for the Court to go into the substance of the very act of the Tribunal rather than form of description." In his own contribution Oputa JSC put across the following at page 392 paras. D-G thus: "The debate over what constitutes a judicial Tribunal, a quasi-judicial Tribunal, a domestic Tribunal, a Tribunal simpliciter, arbitrament, arbitral proceedings, forum competent etc. will certainly go on as an academic exercise; but once a body of persons by whatever name called are vested with authority to hear and determine particular issues or dispute either by consent of the disputants or by an order of Court, or by provisions of a statute, such a body will be required to carry out its functions with that fairness and impartiality which the rules of natural justice dictate.[48]

4. Conclusion

It is pertinent to state that although the right to fair hearing is strictly limited to judicial proceedings and other tribunals established by law, the twin pillars of fair hearing; *audi alteram partem* and *nemo judex in causa sua*, which requires that both parties be heard before reaching a verdict and that the umpire cannot be a judge in his own cause, must be observed in the resolution of any dispute as this inviolable

[47] Supra, at P. 1218
[48] Supra

principles of natural justice, have enjoyed steady patronage among family members, communities and customary arbitrations. Consequently, while the place of specie of fair hearing can be situate in judicial proceedings, same cannot be said of *generis* natural justice which is employed by members of the society in resolving disputes between contending parties. It is therefore strongly contended that the application of the principles of fair hearing to all manner of disputes whether or not, envisaged by the constitution, will provide the leverage for the attainment of justice through the principles of natural justice which is the bedrock of the principles of fair hearing.