

Principle of fair hearing
Applicability of to quasi-judicial proceedings

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON 17TH MAY, 2013

BEFORE THEIR LORDSHIPS

HONOURABLE JUSTICE MAHMUD MOHAMMED
HONOURABLE JUSTICE JOHN AFOLABI FABIYI
HONOURABLE JUSTICE BODE RHODES - VIVOUR
HONOURABLE JUSTICE MARY UKAEGO PETER-ODILI – LEAD JUDGMENT
HONOURABLE JUSTICE KUMAI BAYANG AKA' AHS

APPEAL NO. SC.102/2008

BETWEEN

1. JUDICIAL SERVICE COMMISSION OF CROSS RIVER STATE
2. THE ATTORNEY-GENERAL OF CROSS RIVER STATEAPPELLANTS

AND

DR. (MRS.) ASARI YOUNGRESPONDENT

“Section 36(1) of the 1999 Constitution provides that in the determination of his civil rights and obligations; including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality

The interpretation that has been given to Section 36(1) of the 1999 Constitution or its successors or even just the matter of fair hearing is that apart from the courts, the other adjudicating bodies like tribunal though not expected to act

fully like a court of law is enjoined in their hearing of matters to act in good faith and fairly listen to both sides before deciding" (Per Peter-Odili, JSC)

(Underlining ours)

The Respondent was the Chief Registrar of the High Court of Cross River State. On 14th May 2001, she was redeployed from her office to the office of the Head of Department of Planning, Research and Statistics. The Respondent refused to resume her new office and petitioned the Chief Justice of Nigeria, alleging unwarranted demotion, a petition she eventually withdrew. The Respondent was thereafter retired from office by the Cross River State Judicial Service Commission (the 1st Appellant) without a trial.

The Respondent thereafter instituted an action, by originating summons, seeking *inter alia*, an order of *certiorari* quashing her letter of retirement from service and an injunction restraining the Appellants from further harassment, suspension or however threatening the security of service of the Respondent without fair hearing. After hearing the summons, the trial Judge refused to grant the Respondent's prayers. The court held that the action of the 1st Appellant in retiring the Respondent was not a judicial action but an administrative duty.

Aggrieved, the Respondent appealed to the Court of Appeal, which allowed the appeal and granted all the reliefs sought by the Respondent. Dissatisfied, the Appellants appealed to the Supreme Court, where two issues were submitted for determination; (1) whether the Court of Appeal was right in holding that the respondent was not given fair hearing before her retirement as Chief Registrar of the High Court of Cross River State; and (2) whether the Court of Appeal was right in holding that the 1st Appellant exceeded its jurisdiction in retiring the Respondent as Chief Registrar of the High Court of Cross River State.

On Issue 1, the Appellants' counsel submitted that the requirement of fair hearing under the constitution is designed for both parties. He stated that the Respondent was a public servant bound by the public service rules as applicable to all staff of the commission and that the letter of retirement sought to be quashed derived from the

Commission's power under Section 197(2) of the Constitution and Rule No. 04108 (vii) of the Public Services Rules. He argued that the fact that Respondent was queried and she responded to the said query, on which response the 1st Appellant allegedly effected the retirement, meant that the Respondent's right to fair hearing had not been violated. In arguing issue 2, he submitted that *certiorari* is a discretionary order issued by a court to quash the decision of an inferior court or body where it is established that the inferior court acted in excess of its jurisdiction or there is a breach of natural justice. He contended that there is nothing in the procedure leading to the Respondent's retirement showing that the 1st respondent exceeded its powers.

In response, the Respondent's counsel contended that the general rule on the right of fair hearing is that where a body, whether judicial, quasi-judicial, administrative or executive acts judicially in the determination of the civil rights and obligations of a person, or to find him guilty or liable of a fault, he must be given a hearing before the issue can be properly decided. Respondent's counsel also submitted that Public Civil Servants are expected to enjoy tenure of office to their retiring age and can only be validly removed from service if the procedures prescribed by law are followed.

In the determination of the first issue, the apex court relied on the provisions of **Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999** which stipulates that:

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

The Learned Justices held that the interpretation given to the above section is that apart from the courts, **other adjudicating bodies like tribunals are enjoined to act in good faith in hearing matters, stating further that such bodies, even if administrative must always give the parties before them the opportunity to controvert, correct or contradict any relevant statement prejudicial in their view.**

Relying on the cases of *C.I.C. of Armed Forces of Nigeria v. Public Service Commission Mid-West & Anor (1974) NSCC Vol. 9, Page 509* and *Baba v. N.C.A.T.C. (1991) 5 NWLR (Pt. 192) 388*, the learned Justices held to the effect that **in a judicial or quasi - judicial body, a hearing in order to be fair must include the right of the person to be affected to be present all through the proceedings and hear all evidences against him and to have read before him all documents tendered in evidence at the hearing, amongst other requirements.** The Appellants failed to comply with the aforementioned requirements and the Court of Appeal was right to have so held.

In his concurring judgment, Bode Rhodes-Vivour, JSC held that the **Cross River State Judicial Service Commission is a public authority with the power to act administratively or/and quasi judicially.** He stated that the fact that the Respondent was retired on unproven allegations of serious crimes without affording her the right to defend herself rendered the proceedings conducted as one done in clear violation of her right to fair hearing.

On issue 2, flowing from the finding on the 1st issue, the Supreme Court held that the 1st Appellant denying the Respondent her right to fair hearing by failing to comply with the principles of natural justice and by the violation of the laid down statutory procedures for discipline as provided for in the Civil Service Rules of Cross River State in the attempted discipline of the respondent, acted in excess of their powers by retiring the Respondent.

Having resolved both issues against the Appellants, the Supreme Court upheld the decision of the Court of Appeal.

Appeal dismissed

Counsel:

Ikoi E. Ikona (DCL MOJ CRS) with E.E. Ekpo (SC MOJ CRS) for the Appellants
E.A. Abang with Nochano Emmanuel and Comfort Akubo for the Respondent.