

**An Appraisal of Fair Hearing Principles in Relation to Contract of  
Employment**

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### Certification Page

This project entitled “An appraisal of fair hearing principles in relation to contract of employment” was carried out by Michael Kolawole AMUSAN (LCU/PG/OO3062), in the Department of Private and Business Law, Lead City University, Ibadan, Nigeria under my supervision.

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## **Dedication**

This research work is dedicated to the Almighty God

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An exercise of this type though, an individual work normally requires the assistance of many people. Firstly, my sincere appreciation goes to God Almighty for giving me the grace, knowledge and strength and good health to complete this project.

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## **Abstract**

Fair hearing is a legal proceeding that ensures justice and impartiality by providing all parties with adequate notice, the opportunity to present evidence, and the ability to challenge evidence and testimony. The decision-maker must be unbiased, and the right to legal representation must be accorded to the parties. This research investigates the principles of fair hearing within employment agreements, emphasizing their critical role in establishing justice and equity in workplaces. It assesses the contemporary challenges and trends that influence the application of these principles, particularly focusing on the National Industrial Court's utilization of international labour standards, such as International Labour Organisation (ILO) conventions and other conventions on human rights to ensure fair hearings, especially in statutory employment context. Moreover, it analyzes how the court addresses the intricacies of master-servant employment dynamics, guaranteeing employees fair hearings despite legal precedents allowing employers to dismiss them without cause. This research will incorporate doctrinal research, encompassing observational, evaluative, and analytical techniques. The study will examine primary sources of law such as the Constitution of the Federal Republic of Nigeria, 1999 (as amended), statutes, regulations, case law and secondary sources of law such as books, journal articles and the internet to thoroughly appraise the subject. Ultimately, upholding fair hearing principles in employment contracts requires proactive efforts in policy development, training, and adaptation to evolving trends and challenges. The study concluded that the National Assembly should draw on the experiences of other common law jurisdictions to enact laws protecting employees from unfair dismissal in line with best global practices.

**Key words:** National Industrial Court, ILO Conventions, Statutory Employment, Master-Servant Employment, Proactive Efforts, Dispute Resolution, Best Global Practices..

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## Chapter One

### 1.1 Introduction

An impartial trial is a cornerstone of the rule of law and a crucial component of due process, which together act as safeguards in violations of human rights. Therefore the right to a impartial hearing ensures that all individuals stand equal or are treated equally before the law and are guaranteed unimpeded access to judicial fairness.<sup>1</sup> This right is one of the most persistently and passionately defended rights in legal proceedings, highlighting its fundamental importance in maintaining justice.<sup>2</sup>

The entitlement to an impartial hearing entails that no person should suffer a decision affecting their rights or legitimate expectations without receiving prior notice of the charges against them, a fair opportunity to respond, and a chance to present their case.<sup>3</sup> Additionally, this right demands that the individual or body responsible for making the decision be unbiased, with no predisposition or likelihood of bias, thereby ensuring impartiality throughout the process.<sup>4</sup>

The principle of fair or impartial hearing dictates that in any dispute between or involving two or more disputed individuals, judgments or verdict ought not to be meted out on a biased, one-sided or unilateral testimony.<sup>5</sup> Instead, individuals involved should be afforded an equal grounds to present their evidence and arguments. This principle ensures that the judge or adjudicator is not only balanced and impartial but also recognized as fair and just by all parties.<sup>6</sup> The essence of an impartial hearing lies in providing equal opportunity for all litigants to be heard by the court. This means that each individual should have the chance to present evidence to support their

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<sup>1</sup> Wedderburn K.W., *The Worker and the Law* (London: Sweet and Maxwell, 3rd ed, 1986) 54

<sup>2</sup> Ibid

<sup>3</sup> Cletus Ojumu, Aruwa Emeje and Patrick Nwakah 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 277.

<sup>4</sup> Ibid

<sup>5</sup> Cletus Ojumu, Aruwa Emeje and Patrick Nwakah 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 280.

<sup>6</sup> Ibid

case and be informed of the evidence presented against them. In essence, impartial hearing demands that the court listens to dual sides in a dispute, considers all material issues, and reaches a decision that may affect any party only after thorough and unbiased deliberation.<sup>7</sup> The court must accord equal opportunities, and consideration to all parties involved. Moreover, proceedings should be held publicly, with all individuals concerned, having access to and being informed of the location of the public hearing. It is vital that in every significant decision, justice must not only be done but must be seen to be done, leaving no doubt that the process has been fair and transparent.<sup>8</sup>

When all parties are granted or accorded the chance to be heard, they cannot legitimately make a claim that their autonomy to a fair and impartial hearing has been or is being violated. However, if one party is denied a chance to be heard or not accorded or afforded a fair opportunity to present their case, the hearing cannot be considered fair. In such circumstances, it cannot be said that the party had the opportunity to be heard, thereby undermining the fairness of the entire process.<sup>9</sup>

The concept of impartial hearing is indispensable in upholding the principles or the doctrine of natural justice and the rule of law. Without it, these foundational principles cannot take root or flourish within any society, including Nigeria.<sup>10</sup> The rule of fair hearing is closely aligned with natural justice principles, which emphasize the significance of how sacrosanct fairness and its procedures is in all adjudicative processes.<sup>11</sup> Adherence to the rule of fair hearing is often seen as synonymous with adherence with the broader rules or principles of natural justice. The significance of impartial hearing in our legal system cannot be overstated; it permeates the fabric of justice and humanity in its entirety. The inability to adhere or inadequate adherence to the rule of

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<sup>7</sup> Hepple B., 'Restructuring Employment Rights' [1986] 83 *ILJ* 23.

<sup>8</sup> *Ibid*

<sup>9</sup> Anderman S., 'The Interpretation of Protective Employment Statutes and Contracts of Employment' [2000] 29 *ILJ* 78.

<sup>10</sup> *Ibid*

<sup>11</sup> Fabian Ajogwu, *Fair Hearing* (Second Edition, CLDS Publishing 2020) 66.

impartial hearing renders legal proceedings as well as their outcomes meaningless and devoid of legitimacy.<sup>12</sup>

In the context of employment contracts, the right to a impartial hearing plays a critical role in ensuring that decisions affecting an individual's livelihood are made justly and without bias.<sup>13</sup> Employment disputes often involve complex issues that require careful consideration of both the employer's and the employee's perspectives. A fair hearing ensures that both parties have the chance to present their case, contest the evidence that is not in their favor, and have their arguments heard by an impartial adjudicator.<sup>14</sup>

This research work, therefore, examine the essential elements and principles of fair hearing, with a particular focus on its application in employment contracts. By examining the various components that constitute a fair hearing, this study aims to highlight the importance of this principle in safeguarding the rights of individuals within the employment context. It underscores the need for judicial processes that are transparent, impartial, and equitable, ensuring that all parties receive a fair opportunity to be heard and that justice is not only done but is also seen to be done in every case.

## **1.2 Background to the Study**

Since ancient times, the conception of impartial hearing has been integral to the principles or doctrine of natural justice. Legal and quasi-judicial processes or proceedings afford individuals three main categories of rights: pre-trial, trial, and post-trial rights.<sup>15</sup> These rights are collectively safeguarded by the 1999 Constitution

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<sup>12</sup> Fabian Ajogwu, *Fair Hearing* (Second Edition, CLDS Publishing 2020) 66.

<sup>13</sup> Leighton P., *Employment Law: An Introduction* (Palgrave Macmillan, 2007) 44.

<sup>14</sup> Ibid

<sup>15</sup> Anderman S., 'The Interpretation of Protective Employment Statutes and Contracts of Employment' [2000] 29 *ILJ* 78.

of the Federal Republic of Nigeria, as amended. Conventions, covenants, treaties, statutes as well as constitutional provisions explicitly include the principles of fair hearing and impartiality, encapsulated in Section 36.<sup>16</sup> Other components of fair hearing are also comprehensively addressed throughout the constitution, making fair hearing synonymous with modern interpretations of natural justice.<sup>17</sup>

Fair or impartial presentation of case is an essential pillar of upholding the rule of law and ensuring the right process is followed, serving as a critical safeguard against violations of human rights.<sup>18</sup> The autonomy to impartial hearing asserts that all individuals before the law are equal and inherently entitled to judicial fairness. This right has been consistently, frequently, and vigorously advocated in our courts, underscoring its paramount importance in legal proceedings.<sup>19</sup> The essence of fair hearing necessitates that individuals should not face penalties affecting their rights or legitimate expectations without prior notification of the allegations, a reasonable, sound, just and fair chance or opportunity to respond must be accorded as well as the chance to present their case. Additionally, it mandates that the adjudicator must be impartial, devoid of any potential bias.<sup>20</sup>

In essence, the rule of fair hearing dictates that judgments should not rely exclusively or solely on one-sided testimony in any dispute between two or more parties. All parties must stand on an equal footing, afforded the opportunity to testify or present testimony before a balanced, fair, impartial and unbiased judge accepted by all as balanced, fair, impartial and just. Impartial hearing entails granting equal chance or opportunity for all litigants to present evidence and to be aware of evidence against

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<sup>16</sup> Anderman S., 'The Interpretation of Protective Employment Statutes and Contracts of Employment'

<sup>17</sup> Cletus Ojumu, Aruwa Emeje and Patrick Nwakah 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 277.

<sup>18</sup> Cletus Ojumu, Aruwa Emeje and Patrick Nwakah 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 279.

<sup>19</sup> Ewing K., *Working Life: A New Perspective on Labour Law* (London: IER, 1996) 46-47

<sup>20</sup> *Ibid.*

them.<sup>21</sup> Crucially, it presupposes that the court should hear both sides on all material issues before reaching any decision prejudicial to any party. Furthermore, it requires equal treatment, chance, opportunity, and consideration for all involved, with proceedings held in public to ensure transparency and accessibility.<sup>22</sup> Every significant decision must not only uphold justice but must also unequivocally manifest it.

Providing parties with the opportunity to be heard is integral to ensuring the right to fair hearing. Denying a party a hearing or a chance or an opportunity to be heard undermines the essence of fair hearing, rendering the proceedings unfair and devoid of legitimacy.<sup>23</sup> Fair hearing is indispensable for establishing and nurturing the principles or doctrine of natural justice as well as the rule of law within Nigerian society. This rule closely aligns with the foundational principles or doctrine of natural justice, emphasizing procedural fairness in all adjudicatory processes.<sup>24</sup> Compliance or adherence with the rule of impartial hearing inherently ensures adherence to the broader principles of natural justice. Its significance within our judicial system cannot be overstated; it permeates every aspect of human existence. Failing to adhere to fair or impartial hearing rules or principles renders both the process and its outcomes absurd, undermining the very essence of justice.<sup>25</sup>

The rule against bias or the principles of impartial hearing is deeply rooted in the doctrine of natural justice, are fundamental in the realm of employment law, serving as the bedrock for ensuring justice and equity in workplace relations.<sup>26</sup> Natural justice encompasses two key principles: the right to be heard (*audi alteram partem*) and the

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<sup>21</sup> Leighton P., *Employment Law: An Introduction* (Palgrave Macmillan, 2007) 45.

<sup>22</sup> *Ibid*

<sup>23</sup> Okpara Okpara, 'Right To Fair Hearing (Section 36 of the 199 Constitution)' in Okpara Okpara (Ed) *Human Rights Law and Practice in Nigeria* (Chenglo Limited Enugu, 2005) 181

<sup>24</sup> *Ibid*.

<sup>25</sup> *Adedeji v Public Service Commission* [1968] NMLR 102/106

<sup>26</sup> *Ibid*.

rule against bias (*nemo iudex in causa sua*).<sup>27</sup> These principles are pivotal in maintaining a balanced and respectful employer-employee relationship, where decisions are made impartially and transparently.

The right to be heard ensures that employees have an opportunity to present their perspectives regarding what transpired before any adverse action is meted out against them. This principle is essential in disciplinary proceedings, grievance handling, and termination processes.<sup>28</sup> It requires that employees be informed of any allegations or complaints against them, given access to the evidence, and allowed to respond adequately. This process not only upholds fairness but also reinforces trust in the employment relationship, ensuring that employees feel valued and respected.<sup>29</sup>

The rule against bias ensures that the decision-maker in any employment-related process is impartial and free from any conflict of interest. This principle is crucial in disciplinary hearings, grievance investigations, and performance evaluations, where impartiality is necessary to ensure fair outcomes.<sup>30</sup> By adhering to this rule, employers can prevent decisions influenced by personal prejudices, favoritism, or conflicts of interest, thereby upholding the integrity of the decision-making process.

Employment contracts are legal documents that outline the terms as well as the conditions governing the relationship between employers and employees. These contracts typically include provisions related to job responsibilities, remuneration, working hours, and procedures for handling disputes and disciplinary issues.<sup>31</sup> The incorporation of fair hearing principles within these contracts is essential to protect employees from unjust treatment and to ensure that any actions taken by the employer

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<sup>27</sup> *Adedeji v Public Service Commission* [1968] NMLR 102/106d.

<sup>28</sup> Singh B., *The Supreme Court of India as an Instrument of Social Justice* (Sterling Publishers PVT Ltd, 1976)

<sup>29</sup> Ibid.

<sup>30</sup> Clyde W. Summers, 'The Contract of Employment and the Rights of Individual Employees: Fair Representation and Employment at Will' [1984] 52 *Fordham L. Rev.* 1082. Available at: <https://ir.lawnet.fordham.edu/flr/vol52/iss6/3>> accessed 22 May 2024

<sup>31</sup> Ibid.

are justifiable and transparent.<sup>32</sup>

The integration of impartial hearing principles is not only a legal requirement in many jurisdictions but also an ethical practice that promotes a healthy workplace culture.<sup>33</sup> Various legislative frameworks mandate fair procedures for disciplinary actions and dismissals. For instance, the Employment Rights Act in the UK outlines specific steps employers must take to ensure procedural fairness.<sup>34</sup> Similarly, in the United States, employment law is underpinned by the concept of due process, which requires fair and impartial procedures.<sup>35</sup>

Judicial precedents have reinforced these legislative requirements by upholding employees' rights to a fair hearing and ruling against employers who fail to adhere to these principles.<sup>36</sup> Landmark cases have established important guidelines for employers, emphasizing the necessity of procedural fairness in employment decisions.<sup>37</sup> Implementing fair hearing principles in the workplace involves developing clear and transparent procedures for handling disciplinary and grievance issues.<sup>38</sup> Employers must communicate these procedures to employees and ensure that managers and HR personnel are adequately trained to apply them consistently and fairly. Documentation and record-keeping are also critical to maintaining transparency and accountability.

The evolving nature of work, driven by technological advancements and globalization, introduces new complexities to the application of fair hearing principles.<sup>39</sup> The rise of remote work, for instance, necessitates innovative approaches to ensure that fair

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<sup>32</sup> Robert Upex, *The Law of Termination of Employment* (4th Edition, Sweet and Maxwell) 127

<sup>33</sup> Wedderburn K.W., *The Worker and the Law* (London: Sweet and Maxwell, 3rd ed, 1986) 54

<sup>34</sup> Ewing K., *Working Life: A New Perspective on Labour Law* (London: IER, 1996) 46-47

<sup>35</sup> Ibid.

<sup>36</sup> Okpara Okpara, 'Right To Fair Hearing (Section 36 of the 199 Constitution)' in Okpara Okpara (Ed) *Human Rights Law and Practice in Nigeria* (Chenglo Limited Enugu, 2005) 181

<sup>37</sup> Ibid.

<sup>38</sup> John Rawls, *Theory of Justice* (Revised Edition, Harvard University Press, 2009) 102.

<sup>39</sup> Ibid.

hearing processes are maintained in virtual environments.<sup>40</sup> Employers must adapt their procedures to address the unique challenges posed by remote work, such as ensuring that employees have access to necessary information, reliable technology, and can effectively participate in virtual hearings.<sup>41</sup> This includes providing clear guidelines for virtual communication, secure platforms for sharing sensitive information, and ensuring that all participants have the means to engage fully in the process.<sup>42</sup>

The increasing use of artificial intelligence (AI) in human resources (HR) processes also raises significant concerns about fairness and bias. While AI can enhance efficiency by automating routine tasks and analyzing large data sets, it must be carefully managed to prevent biases that could undermine fair hearing principles.<sup>43</sup> Employers need to ensure that AI systems are designed and programmed to be transparent, and that the algorithms used are regularly audited for fairness. Additionally, decisions made by these systems should be reviewable and challengeable to ensure that they do not inadvertently perpetuate existing biases or create new forms of discrimination.<sup>44</sup>

Multinational companies face the additional challenge of navigating diverse legal standards and cultural expectations regarding fair hearing across different jurisdictions.<sup>45</sup> This requires a nuanced understanding of local laws and practices, as well as the ability to implement fair hearing principles in a way that respects these differences while maintaining overall fairness.<sup>46</sup> Companies must develop flexible

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<sup>40</sup> Thomas Bingham, *The Rule of Law* (Penguin Books 2019) 115.

<sup>41</sup> Katherine VW Stone, *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment* (Russell Sage Foundation 2020) 63

<sup>42</sup> Norman Selwyn, *Selwyn's Law of Employment* (22nd edn, Oxford University Press 2022) 16.

<sup>43</sup> Michael Armstrong, *Armstrong's Handbook of Human Resource Management Practice* (14th edn, Kogan Page 2021) 108.

<sup>44</sup> *Ibid.*

<sup>45</sup> Simon Deakin and Gillian S Morris, *Labour Law* (7th edn, Hart Publishing 2020) 19; Matthew W Finkin, *Comparative Labor Law* (Edward Elgar Publishing 2019).

<sup>46</sup> Katherine VW Stone, *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment* (Russell Sage Foundation 2020) 66.

policies that can be adapted to meet the specific legal and cultural requirements of each country in which they operate. This includes training HR personnel and managers to understand and respect local norms and legal requirements, while also upholding the core principles of fairness and impartiality that underpin the concept of fair hearing.<sup>47</sup>

However, the evolving nature of work due to technological advancements and globalization demands that employers continuously adapt and refine their fair hearing procedures. This involves addressing the challenges of remote work, ensuring the ethical use of AI in HR processes, and navigating the complexities of operating in multiple legal jurisdictions. By doing so, employers can uphold fair hearing principles, protect employee rights, and foster a just and equitable work environment.

### **1.3 Statement of Research Problem**

Despite the comprehensive legal frameworks and judicial precedents designed to enforce fair hearing principles, significant challenges persist in their practical application within employment contracts. One of the foremost issues is the resource constraints faced by many organizations, particularly small and medium-sized enterprises (SMEs). These businesses often lack the financial and human resources necessary to develop, implement, and consistently apply robust fair hearing procedures. This limitation can lead to inconsistent application of disciplinary and grievance processes, undermining the fairness that these principles are intended to ensure.

Additionally, the subjective nature of what constitutes “fairness” poses a considerable challenge. Interpretations of fairness can vary widely among different stakeholders, including employers, employees, and legal professionals. This subjectivity can lead to

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<sup>47</sup> International Labour Organization (ILO), Termination of Employment Convention, 1982 (No. 158) (ILO 2022) <https://www.ilo.org/>; United Nations, Universal Declaration of Human Rights (UN 2021) <https://www.un.org/>.> accessed 26 May 2024

disputes and inconsistencies in how fair hearing principles are applied in practice. Employers may have different thresholds for what they consider fair, and without clear, standardized guidelines, this can result in procedural discrepancies and potential injustices.

Inherent power imbalances between employers and employees further complicate the application of fair hearing principles. Employers typically hold more power in the employment relationship, which can influence the fairness of disciplinary and grievance proceedings. Employees may feel intimidated or reluctant to fully participate in these processes, fearing retaliation or negative consequences for challenging their employer's decisions. This imbalance can result in a lack of genuine fairness and transparency, even when formal procedures are ostensibly followed.

These challenges collectively raise significant concerns about the adequacy of current practices in protecting employees' rights and ensuring procedural fairness. The gap between the theoretical ideals of fair hearing principles and their practical implementation underscores the need for continuous evaluation and improvement of employment practices. Addressing these issues is crucial for fostering a just and equitable workplace where the rights and dignities of all employees are respected and upheld.

#### **1.4 Aim and Objectives of the Study**

The aim of this study is to appraise the application and impact of fair hearing principles in the context of employment contracts and identify best practices for ensuring procedural fairness. The objectives of the study are;

1. To examine the legislative and judicial frameworks that govern fair hearing principles in employment law.
2. To identify the emerging trends and challenges in implementation or application of fair hearing principles in modern workplace.

3. To examine the standpoint of the supreme court on the pragmatic application of the limitation laws to labour cases

### **1.5 Research Questions**

1. What are the key legislative and judicial frameworks that enforce fair hearing principles in employment law?
2. What are the emerging trends and challenges in implementation or application of fair hearing principles in modern workplace?
3. What is the standpoint of the supreme court on the pragmatic application of the limitation laws to employment contracts?
4. What best practices can be recommended to employers for ensuring procedural fairness?

### **1.6 Methodology**

The research will adopt a descriptive method. The research work will also use a doctrinal research including observational, evaluative and analytical research methods. It will consider primary as well as secondary sources of legal academic works for a proper appraisal of the subject. The primary sources encompass statutes such as the 1999 Constitution, the National Industrial Court Act, Trade Disputes Act, 2004 Cap. T9 Laws of the Federation of Nigeria 2004, Labour Act Cap L1 Laws of the Federation of Nigeria, and case laws which will provide insight to understand the application and challenges of fair hearing principles. It also adopts some secondary source of law relevant to the research work such as articles, Newspaper, books, and Journals which will provide an extensive review of existing literature on fair

hearing principles, legislative frameworks, judicial precedents, and employment contracts.

### **1.7 Scope of the Study**

This study covers the nature and application of fair hearing principles in relation to employment contracts across various industries and workplaces. Specifically, it appraises how these principles are integrated into employment contracts, examining their historical development and the legal frameworks that support them. The study will analyze the provisions of impartial hearing principles as stipulated by relevant laws, including the Constitution, the Administration of Criminal Justice Act, and other pertinent legislations such as the Criminal Procedure Act and Criminal Procedure Code. Additionally, it will consider international standards and conventions that influence fair hearing practices in employment law. Through this comprehensive analysis, the study seeks to evaluate the effectiveness, wholesomeness, and propriety of current fair hearing practices in ensuring justice and equity in the workplace.

### **1.8 Significance of the Study**

This study is crucial for several reasons. It provides essential insights into legal requirements for fair hearing principles, aiding employers in avoiding legal disputes and ensuring compliance. By emphasizing the importance of these principles, the study highlights their role in protecting employee rights and fostering a just work environment. It also offers practical recommendations for implementing fair hearing principles, promoting a workplace culture of transparency and respect. In Nigeria, where violations of fair hearing rights are prevalent, this research aims to enhance understanding among various stakeholders, including employees, employers, legal professionals, and government officials. By addressing these issues comprehensively

and comparing Nigerian practices with international standards, the study identifies areas for improvement. Ultimately, it seeks to ensure employees' rights are upheld, contributing to a more equitable and just workplace.

### **1.9 Limitation of the Study**

Some of the limitations that were encountered during the course of this research work could be briefly discussed as follows; Financial constraint poses a major problem or limitation during the course of this research and conducting investigation. Also, time is another problem that was encountered during the course of this study due to the limited time available to carry out the research. Electricity also pose challenge to this research due to shortage of electric supply in Nigeria and the scope of case studies and the depth of qualitative analysis may be limited by available resources and time. Subsequently, the study may also be limited by its focus on specific jurisdictions, which might not be fully representative of global practices.

Despite acknowledging the mentioned constraints, the researcher emphasizes that they are manageable and won't impact the research outcome. For instance, the researcher sought loans from banks to alleviate financial constraints. Additionally, to address electricity challenges, the researcher invested in both a generator and a solar system to supplement unreliable power supply. Furthermore, to overcome time constraints, 90% of the required materials for the research were sourced from online stores, libraries, and other resources.

### **1.10 Operational Definition of Terms**

**Fair Hearing:** The practice of providing individuals with a chance or an opportunity to present their case and respond to evidence before a decision is reached, ensuring procedural fairness.<sup>48</sup>

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<sup>48</sup> Merriam-Webster.com Dictionary, "A Fair Hearing"

**Natural Justice:** A legal philosophy embodying fundamental procedural rights, such as the right to a fair hearing and protection against bias, ensuring equitable treatment under the law.<sup>49</sup>

**Employment Contract:** A documented agreement that existing between a servant and his master spelling out the terms and conditions of service or employment, including responsibilities, compensation, and duration.<sup>50</sup>

**Disciplinary Procedures:** Established processes by employers to address employee misconduct or performance issues, typically involving investigation, notification, hearing, and imposition of sanctions if warranted.<sup>51</sup>

**Grievance Procedures:** Formal mechanisms allowing employees to raise complaints or concerns related to their employment, ensuring avenues for resolution and redressal.<sup>52</sup>

**Procedural Fairness:** The fairness of processes and methods employed in decision-making, characterized by impartiality, transparency, and adherence to established rules and standards.<sup>53</sup>

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<<https://www.merriam-webster.com/dictionary/a%20fair%20hearing>> Accessed 26 May 2024

<sup>49</sup> Ibid.

<sup>50</sup> <<https://www.contractscounsel.com/t/us/employment-contract>> Accessed 26 May 2024

<sup>51</sup> <[https://www.acas.org.uk/disciplinary-procedure-step-by-step#:~:text=A%20disciplinary%20procedure%20is%20a,'capability'%20\(performance\)](https://www.acas.org.uk/disciplinary-procedure-step-by-step#:~:text=A%20disciplinary%20procedure%20is%20a,'capability'%20(performance))> Accessed 26 May 2024

<sup>52</sup> Ibid.

<sup>53</sup> <<https://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Procedural-fairness-guidelines.pdf>> Accessed 26 May 2024

## **1.11 SYPNOSIS OF CHAPTERS.**

Chapter one introduces the research work which consists of the background of study, statement of the problem, objective of the study, research questions, research methodology, significance of study, scope of the study and synopsis of chapters.

Chapter two of the study reviews other works of writers available on the nature, principles and rights of fair hearing. It also discusses the cases related to the rights of parties in contract of employment during trial in Nigeria, the roles of the employers, the state and the court in the process of enforcing the rights .

Chapter three of the study examines the relevant legal framework on fair hearing principles in relationships to contract of employment.

Chapter four of the study discusses the emerging trends and challenges in the application of fair hearing principles in modern workplaces.

Chapter five gives summary to the study, conclusion, recommendation, contribution to knowledge and areas for further research.

## Chapter Two

### Literature Review

#### 2.1 Theoretical Framework

##### 2.1.1 Natural Justice Theory

Natural justice is a foundational principle in legal theory, emphasizing fairness, equity, and impartiality in decision-making processes. The two main aspects of elements of natural justice are the autonomy to an impartial hearing (*audi alteram partem*) and the rule or principle against bias (*nemo iudex in causa sua*).<sup>54</sup> In the context of employment contracts, natural justice theory underpins the necessity for fair hearing principles to ensure that employees have the opportunity to present their case and respond to evidence before any disciplinary or grievance decision is made.<sup>55</sup> This theory supports the idea that fair hearing principles are not just legal formalities but essential elements that uphold the integrity and fairness of employment relationships.

##### 2.1.2 Social Contract Theory

Social contract theory, was propounded and articulated by the likes of like John Locke and J.J Rousseau, posits that individuals consent to surrender some of their freedoms and also to submit to the authority of a governing body or organization in exchange for the protection of their remaining rights and the maintenance of social order.<sup>56</sup> This theoretical framework helps to understand the relationship between individuals and institutions, including in employment contexts. Individuals agree, either explicitly or implicitly, to abide by the rules and authority of an organization, forming a mutual social contract that establishes reciprocal obligations and expectations. In exchange for compliance and the surrender of certain freedoms, individuals expect the

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<sup>54</sup> William Wade and Christopher Forsyth, *Administrative Law* (11th edn, Oxford University Press 2014) 72-77.

<sup>55</sup> David J. Mullan, *Administrative Law* (Irwin Law 2001) 231.

<sup>56</sup> John Locke, *Two Treatises of Government* (Peter Laslett ed, Cambridge University Press 1988) 99.

organization to safeguard their remaining rights and ensure fair treatment.<sup>57</sup>

In employment, the employment contract can be viewed as a social contract where both the employer and the employee have obligations and rights. Employees agree to carry out or execute their allocated tasks, comply to company guidelines, and sustain professional conduct, while employers commit to providing fair compensation, safe working conditions, and respecting the legal and contractual rights of employees.<sup>58</sup>

Fair hearing principles are essential in maintaining this social contract balance. These principles ensure that employees are treated justly and that employers fulfill their duty to provide a fair process in employment disputes and disciplinary actions. Employees must have the chance or opportunity to present their side of the story in disciplinary or grievance procedures, ensuring their voices are heard and considered before any decisions are made. Employers must conduct these procedures impartially, without bias, and based on objective evidence. Procedures should be transparent and the criteria for decisions consistently applied to all employees, building trust and confidence in the fairness of the process.<sup>59</sup>

Fair hearing principles benefit the employment relationship by maintaining trust and morale. When employees have these beliefs that or they believe they will be treated fairly and their rights respected, the trust in the employer is strengthened, crucial for maintaining high levels of employee morale and engagement. Adhering to fair hearing principles also helps employers comply with legal standards and reduces the risk of legal disputes, as courts often uphold the necessity of these principles in employment decisions. Ensuring fair treatment promotes an equitable work environment, leading to higher job satisfaction, reduced turnover, and improved organizational performance.<sup>60</sup>

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<sup>57</sup> John Locke, *Two Treatises of Government* (Peter Laslett ed, Cambridge University Press 1988) 99.

<sup>58</sup> Jean-Jacques Rousseau, *The Social Contract* (Maurice Cranston tr, Penguin 1968) 154.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

John Locke's theory emphasizes on the safeguard or the protection of natural rights (life, liberty, and property) through the social contract, which translates in employment to protecting employees' rights through fair processes. Jean-Jacques Rousseau's theory highlights the collective agreement to form a just society, meaning in employment creating a fair and just workplace through mutual respect and adherence to agreed-upon rules.<sup>61</sup> By incorporating fair hearing principles, employers can uphold their part of the social contract, ensuring employees are treated justly and their rights protected, fostering a positive and productive work environment.

### 2.1.3 Equity Theory

Equity theory, propounded, articulated, and developed by John S.A and this theory postulates that employees seek to equate their inputs (such as effort, skill, and experience) and outputs (such as salary, benefits, and recognition).<sup>62</sup> According to this theory, employees constantly compare their job contributions, rewards or benefits with that of others in similar positions. When employees feels or perceive an imbalance between their inputs and outputs in comparison to others, and jealousy or envy can set in or they may experience feelings of distress, disappointment or dissatisfaction, demotivation, and even resentment.<sup>63</sup> Fair hearing principles are crucial in maintaining a perception of equity within the workplace. These principles ensure that all employees are treated fairly and that their grievances and disputes are addressed impartially and transparently.<sup>64</sup> By providing employees with the opportunity to present their case, respond to evidence, and receive an unbiased decision, fair hearing principles help mitigate feelings of unfairness and inequality.

When employees know that their concerns will be heard and addressed through a fair

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<sup>61</sup>Jean-Jacques Rousseau, *The Social Contract* (Maurice Cranston tr, Penguin 1968) 154.

<sup>62</sup> John Stacey Adams, 'Inequity in Social Exchange' in Leonard Berkowitz (ed), *Advances in Experimental Social Psychology* (Academic Press 1965) 223-246.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

process, it promotes a sense of fairness and equity. This assurance can enhance employee satisfaction and motivation, as employees feel their inputs are valued and appropriately rewarded.<sup>65</sup> Moreover, fair hearing principles contribute to a positive organizational culture where trust and respect are paramount, further fostering a motivated and engaged workforce. The application of equity theory in conjunction with fair hearing principles ensures that employees perceive their work environment as just and equitable.<sup>66</sup> This perception is vital for maintaining high levels of employee morale and productivity, as it reinforces the idea that the organization values fairness and is committed to treating all employees equitably. Thus, integrating fair hearing principles into workplace policies not only addresses immediate grievances but also supports long-term employee engagement and organizational success.

#### **2.1.4 Human Rights Theory**

Human rights theory is founded on the belief that individuals possess inherent autonomy and freedoms that must be respected, safeguarded and protected. This theory is essential in the context of employment, where fair hearing principles align with the broader human rights framework, advocating for safeguarding of individual autonomy and freedoms, including the right to fair treatment and due process.<sup>67</sup> The right to a fair hearing is a fundamental aspect of human rights, emphasized in international human rights instruments such as the Universal Declaration of Human Rights (UDHR) which established that everyone is entitled to a fair, impartial and public hearing by an independent and impartial tribunal.<sup>68</sup> This principle is echoed in other international treaties and conventions, highlighting its universal significance.

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<sup>65</sup> Jerald Greenberg, 'Organizational Justice: Yesterday, Today, and Tomorrow' [1990] 16(2) *Journal of Management* 399.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Article 10 of the UDHR, 1948.

Applying fair hearing principles within employment contracts ensures that employees' rights are safeguarded, reinforcing the commitment to human rights in the workplace. This includes guaranteeing that employees have the opportunity to present their case, respond to evidence, and receive an impartial decision in any disciplinary or grievance procedure.<sup>69</sup> By integrating human rights theory into employment practices, organizations affirm their dedication to respecting and upholding the inherent dignity and rights of every employee. This approach not only aligns with global human rights standards but also promotes a culture of fairness and respect within the workplace.

Ensuring fair hearing principles in employment contexts is crucial for several reasons:<sup>70</sup>

- a. Protection of Rights: Employees are assured that their rights to fair treatment and due process are upheld, providing a sense of security and justice.
- b. Legal Compliance: Adhering to fair hearing principles helps employers comply with national and international legal standards, reducing the risk of legal disputes and penalties.
- c. Positive Workplace Culture: A commitment to human rights fosters a positive organizational culture where respect, equity, and fairness are valued, leading to increased employee morale and engagement.
- d. Reputation and Trust: Demonstrating a strong commitment to human rights enhances an organization's reputation and builds trust with employees, stakeholders, and the broader community.<sup>71</sup>

Incorporating human rights theory and fair hearing principles into employment practices ensures that employees are treated with the respect and fairness they deserve. It aligns organizational practices with international human rights standards, promoting

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<sup>69</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 87.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

a just and equitable workplace environment.

### 2.1.5 Organizational Justice Theory

Organizational justice theory, developed by Jerald Greenberg,<sup>72</sup> explores how employees perceive fairness within their workplace. It encompasses three main dimensions: distributive justice, procedural justice, and interactional justice. Distributive justice concerns the fairness of outcomes, while procedural justice focuses on the fairness of processes, and interactional justice evaluates the fairness of interpersonal treatment.<sup>73</sup>

Fair hearing principles, closely associated with procedural justice, ensure that dispute resolutions, grievance handling, and disciplinary decisions are conducted transparently, consistently, and impartially. This means providing employees with the opportunity to present their perspective, considering evidence objectively, and adhering to established rules and policies.<sup>74</sup>

When organizations prioritize procedural justice and fair hearing principles, it fosters trust among employees in the organization's decision-making processes. This trust is vital for maintaining positive employee-employer relationships and cultivating a healthy organizational culture.<sup>75</sup> Moreover, perceptions of procedural justice contribute to higher levels of job satisfaction and organizational commitment among employees. When employees perceive that their contributions are valued and they are treated with respect or when they sense that they are appreciated and respected, they are more motivated to perform at their best and are less likely to engage in behaviors

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<sup>72</sup> Jerald Greenberg, 'A Taxonomy of Organizational Justice Theories' [1987] 12(1) *Academy of Management Review* 9.

<sup>73</sup> Ibid.

<sup>74</sup> Robert J. Bies and Jerald Greenberg, 'Justice, Jobs, and Organizational Behavior: Theories and Models of Organizational Justice' in Dennis R. Ilgen and Elaine D. Pulakos (eds), *The Changing Nature of Performance: Implications for Staffing, Motivation, and Development* (Jossey-Bass 1999) 134-149.

<sup>75</sup> Ibid.

detrimental to the organization.<sup>76</sup>

## 2.2 Literature Review

The principle of fair or impartial hearing, embedded in the doctrine of natural justice, is pivotal in employment law to ensure that disciplinary actions and termination proceedings are conducted with fairness and impartiality. Hugh Collins<sup>77</sup> provides a comprehensive definition of fair hearing, describing it as a procedural safeguard where individuals are given a reasonable opportunity to present their case and defend themselves before any adverse decision is made. Collins emphasizes that this principle is central to upholding procedural justice in employment relationships, ensuring that employees are not subjected to arbitrary decisions without being heard.

Expanding on Collins' definition, Gillian Morris<sup>78</sup> identifies the critical elements that constitute a fair hearing. According to Morris, these elements include the right to be informed of the charges, the right to present evidence, and the right to an impartial adjudicator. By ensuring these components, fair hearing principles provide employees with a genuine chance to defend themselves against allegations, which is crucial in preventing unjust outcomes. David Lewis<sup>79</sup> defines fair hearing as a procedural necessity in employment relations, which mandates that employees must be given a chance to respond to any allegations against them before decisions are made. Lewis highlights that this principle is fundamental to procedural justice, ensuring that employees are not subject to arbitrary decisions.

Michele DeStefano<sup>80</sup> expands this definition, noting that a fair hearing involves transparency in the disciplinary process, access to relevant information, and the

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<sup>76</sup> Robert J. Bies and Jerald Greenberg, 'Justice, Jobs, and Organizational Behavior

<sup>77</sup> Collins H., *Employment Law* (Oxford University Press, 2010) 67.

<sup>78</sup> Morris G., *Employment Law* (Butterworths, 2001) 91.

<sup>79</sup> Lewis D., *Employment Law in a Nutshell* (Thomson Reuters, 2004) 104.

<sup>80</sup> DeStefano M., 'Creating a Culture of Fairness: The Importance of Procedural Justice in Employment Law' [2012] *Yale Law Journal* 102-124.

opportunity for employees to present their case. DeStefano argues that these elements are essential for maintaining trust and fairness in the employment relationship. Simon Deakin and Gillian Morris<sup>81</sup> further elaborate on the concept by distinguishing between substantive and procedural fairness. Substantive fairness refers to the legitimacy of the reasons behind disciplinary actions, while procedural fairness pertains to the methods used to arrive at these decisions. This dual aspect of fairness ensures that both the reasons for taking action and the processes employed are just and equitable, thereby enhancing the overall fairness of the employment relationship. Similarly, Ruth Dukes<sup>82</sup> also emphasizes the dual aspects of fair hearing: substantive and procedural fairness. Substantive fairness involves the legitimacy of the reasons for disciplinary actions, while procedural fairness concerns the methods used to reach these decisions. Dukes asserts that both aspects are critical in ensuring that employees are treated justly and that decisions are not only justified but also arrived at through fair processes.

The necessity of fair hearing principles in employment law is widely acknowledged among scholars. Judy Fudge and Richard Owens<sup>83</sup> argue that fair hearing is essential for balancing the power dynamics between employers and employees. They assert that by allowing employees to present their side of the story, these principles help mitigate the inherent power imbalances that characterize employment relationships, thus fostering a more equitable workplace environment. Subsequently, Patricia Leighton<sup>84</sup> argues that fair hearing is integral to protecting employees' rights in disciplinary actions. Leighton suggests that without fair hearing procedures, there is a significant risk of power imbalances leading to unjust outcomes in the workplace.

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<sup>81</sup> Deakin S., and Morris G. S., *Labour Law* (Hart Publishing, 2005) 26.

<sup>82</sup> Dukes R., *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford University Press, 2014) 17-19.

<sup>83</sup> Fudge J., and Owens R., *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (Hart Publishing, 2006) 88.

<sup>84</sup> Leighton P., *Employment Law: An Introduction* (Palgrave Macmillan, 2007) 45.

However, Catherine Barnard<sup>85</sup> highlights the broader implications of fair hearing principles, asserting that adherence to these standards fosters a culture of trust and mutual respect in the workplace. Barnard argues that when employees perceive that they are treated fairly, it enhances workplace morale and productivity, ultimately benefiting both the organization and its workforce. This underscores the practical significance of fair hearing principles in promoting a positive and productive work environment. Furthermore, Keith D. Ewing<sup>86</sup> discusses the role of fair hearing in promoting democratic values within the workplace. Ewing argues that by ensuring employees have the right to be heard, fair hearing principles support a more participative and equitable work environment. This democratic approach enhances employee engagement and trust in organizational processes.

Subsequently, Niklas Bruun and Klaus Lörcher<sup>87</sup> analyze the impact of fair hearing principles on international labor standards. They argue that international frameworks, such as those provided by the ILO, establish essential benchmarks for procedural fairness in employment disputes. These standards help harmonize practices across different jurisdictions, promoting global equity in employment relations.

Despite the clear benefits, implementing fair hearing principles poses practical challenges. Mark Freedland<sup>88</sup> points out that there are often discrepancies between the theoretical standards of fair hearing and their application in real-world scenarios. Freedland identifies factors such as power imbalances, lack of awareness among employees, and inconsistent interpretations of what constitutes a fair hearing as potential obstacles that can undermine these principles' effectiveness. These challenges highlight the need for continuous efforts to ensure that fair hearing standards are not only legally established but also practically enforced.

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<sup>85</sup> Barnard C., *EU Employment Law* (Oxford University Press, 2012) 67.

<sup>86</sup> Ewing K. D., 'Democratic Values and the Right to Fair Hearing in the Workplace' [2003] *Industrial Law Journal* 207-211.

<sup>87</sup> Bruun N., and Lörcher K., *The ILO and the EU: Labour Standards as International and Supranational Law* (Hart Publishing, 2014) 45-56.

<sup>88</sup> Freedland M., *The Personal Employment Contract* (Oxford University Press, 2003) 71.

Alan Bogg<sup>89</sup> discusses the evolving nature of fair hearing principles in the context of globalization and changing labor markets. Bogg argues that as employment relationships become more complex and diverse, the application of fair hearing standards must adapt to new realities. He predicts that future developments in employment law will focus on enhancing procedural safeguards and providing greater protection for vulnerable workers. Bogg's analysis suggests that the principle of fair hearing will continue to evolve, adapting to new challenges and realities in the workplace.

The role of judicial oversight in enforcing fair hearing principles is crucial. Simon Deakin and Gillian Morris<sup>90</sup> emphasize that courts and tribunals are essential in ensuring that employers adhere to fair hearing standards. Judicial intervention often corrects procedural deficiencies in disciplinary processes, reinforcing the importance of fairness and impartiality. This oversight ensures that employees have access to just and equitable treatment in employment disputes, thereby upholding the principles of natural justice. The principle of fair hearing is a cornerstone of employment law, ensuring that disciplinary actions and termination proceedings are conducted with fairness and impartiality. Owens<sup>91</sup> highlighted its importance in maintaining procedural justice and balance in employment relationships.

### **2.3 Concept of Fair Hearing and Rules of Natural Justice**

Natural justice is a longstanding principle that has been practiced since ancient times. According to Chauhan,<sup>92</sup> the principle of natural justice encompasses fundamental rules essential for the proper exercise of power, extending beyond the judicial to the administrative spheres. These rules form the procedural requirements of common law

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<sup>89</sup> Bogg A., *The Democratic Aspects of Trade Union Recognition* (Hart Publishing, 2009) 66.

<sup>90</sup> Deakin S., and Morris G. S., *Labour Law* (Hart Publishing, 2005) 82.

<sup>91</sup> Okpara Okpara, 'Right To Fair Hearing (Section 36 of the 199 Constitution)' in Okpara Okpara (Ed) *Human Rights Law and Practice in Nigeria* (Chenglo Limited Enugu, 2005) 181

<sup>92</sup> Bogg A., *The Democratic Aspects of Trade Union Recognition* (Hart Publishing, 2009) 66.

necessary for valid decision-making. Consequently, even in the absence of statutory procedural rules, natural justice enables courts to require public bodies to adhere to certain minimum standards of procedural fairness.<sup>93</sup>

At its core, natural justice involves ensuring a fair hearing, which is articulated through two primary principles known as the twin pillars of justice. These principles are captured in the Latin maxims *Audi alteram partem* (hear the other side) and *Nemo iudex in causa sua* (no one should be a judge in their own cause). *Audi alteram partem* mandates that all parties involved in a decision must receive adequate notice and the opportunity to present their case. *Nemo iudex in causa sua* insists that adjudicators must remain impartial and unbiased.<sup>94</sup> Together, these maxims embody the essence of natural justice, though they do not exhaust its scope.

In *Been's case*<sup>95</sup> Lord Denning elucidated the relationship between fair hearing and natural justice. He observed that while the principles required by natural justice are analogous to those necessary for a fair procedure, they are not identical. A process can be deemed fair even if it does not include the specific hearing type typically demanded by natural justice principles. Conversely, impartiality might occasionally impose or enforce stricter standards than natural justice, such as the requirement to provide reasons for decisions.<sup>96</sup> Though not always demanded by natural justice, offering reasons is considered a fundamental aspect of good administration and procedural fairness.

The principle of a impartial hearing is fundamentally rooted in the twin maxims of natural justice: *Audi alteram partem* and *Nemo iudex in causa sua*. These maxims ensure that decision-making processes are not only just but are also perceived as

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<sup>93</sup> Bogg A., *The Democratic Aspects of Trade Union Recognition* (Hart Publishing, 2009) 66.

<sup>94</sup> Wook GT, Chang TF. 'The Ultimate Foundation of Human Dignity in Human Rights Paraphernalia' [2016] 3(8) *IOSR Journal of Humanities and Social Science (IOSR- JHSS)* 37-46.

<sup>95</sup> *Been v. A. E. U.* [1971] 2 QB 175, 191

<sup>96</sup> Osita Nnamani Ogbu, *Human Rights Law and Practice in Nigeria* ((2nd Revised Edition: Enugu Snap Press Ltd 2013) 24

just.<sup>97</sup> The provision for a impartial hearing incorporates but extend beyond these principles, requiring a broader commitment to procedural fairness. The concept of fair hearing thus demands that individuals affected by judicial as well as quasi-judicial decisions are accorded prior notice and sufficient time to respond before any decision is made.<sup>98</sup> Moreover, decision-makers are expected to provide justifiable reasons for their decisions and adhere strictly to established procedures.

Natural justice has evolved to meet the demands of various contexts and has been interpreted differently over time. Historically, it was synonymous with natural law, embodying the requirement that reasons be given for decisions and that decisions be based on probative evidence. Some even consider the legal maxim "Actus non facit reum, nisi mens sit rea" (an act does not make a person guilty unless there is a guilty mind) as a principle of natural justice, reflecting the broader ethical and procedural standards it encompasses.<sup>99</sup>

The Nigerian constitution exemplifies an expanded understanding of natural justice by providing additional criteria to ensure genuine fairness in decision-making processes. It goes beyond the traditional principles of natural justice, offering broader protections and expanding the contexts in which fair hearings are required. This ensures that the concept of fair hearing remains robust and adaptable to various legal and administrative scenarios.<sup>100</sup>

Natural justice is an enduring principle of fairness in decision-making that spans both judicial and administrative domains. Its core principles, encapsulated in the maxims *Audi alteram partem* and *Nemo iudex in causa sua*, ensure that decision-making processes are impartial and that affected parties have a fair opportunity to be heard.<sup>101</sup>

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<sup>97</sup> Fabian Ajogwu, *Fair Hearing* (Second Edition, CLDS Publishing 2020) 5.

<sup>98</sup> Ibid

<sup>99</sup> Ibid

<sup>100</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 20.

<sup>101</sup> Ibid.

While these principles form the foundation of procedural fairness, the concept of fair hearing extends beyond them, requiring comprehensive adherence to procedural justice. This ensures that natural justice remains a cornerstone of good administration, promoting public confidence in the legal system and safeguarding individual rights against arbitrary decisions.

Administrative authorities that perform quasi-judicial functions are required to act fairly, justly, and equitably, adhering to fundamental judicial norms known as the "principles of natural justice."<sup>102</sup> These principles are not codified rules but represent essential standards of judicial behavior integral to administrative law. Judges have developed these higher procedural rules, which every administrative body must follow when making decisions that negatively impact an individual's rights.<sup>103</sup> Fundamental to the exercise of power, these principles have been extended from the judicial to the administrative realm, emphasizing that natural justice is essential for upholding the rule of law.<sup>104</sup>

Although "natural justice" remains a general term, it has largely evolved into the broader "duty to act fairly." This duty encompasses legal ideas that ensure fair processes in legal proceedings, representing higher procedural principles established by the courts.<sup>105</sup> Natural justice mandates a fair procedure, including the right to a fair or impartial hearing and the autonomy to an unbiased, impartial and just decision-maker. As a common law concept, it imposes an obligation to provide a minimum level of fairness whenever an individual's rights are at stake in various factual contexts.<sup>106</sup>

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<sup>102</sup> Wook GT, Chang TF. 'The Ultimate Foundation of Human Dignity in Human Rights Paraphernalia' [2016] 3(8) *IOSR Journal of Humanities and Social Science (IOSR- JHSS)* 37-46.

<sup>103</sup> Ibid

<sup>104</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 20.

<sup>105</sup> Ibid.

<sup>106</sup> Nwagbara Chigozie, 'The Role of Fair Hearing in the Dispensation of Justice in Nigeria - A Legal Perspective' [2016] 4(4) *International Journal of Innovative Legal & Political Studies* 1-10.

The need to protect individuals from excessive organized power has given rise to the principles of natural justice, often referred to as "rules of fair play" or "procedural fairness." These principles ensure that decision-making processes are both fair and reasonable.<sup>107</sup> Over time, the concept of natural justice has taken on different meanings in different contexts. Historically, it was synonymous with natural law and has been interpreted to mean that decisions must be reasoned and based on probative evidence.

The principles or doctrine of natural justice are fundamental procedural rules that administrative authorities must follow to ensure fair decision-making. These principles include the right to a fair or impartial hearing and an impartial, independent and unbiased decision-maker, stemming from the common law's commitment to fairness and justice in the exercise of power. As such, they protect individuals from arbitrary actions by administrative bodies and uphold the rule of law through fair and reasonable processes.<sup>108</sup>

### **2.3.1 What Constitutes the Rules of Natural Justice?**

The principles or doctrine of natural justice aims to address and remedy situations arising from inherent injustices in decision-making processes. Its primary goal is to eliminate bias, whether imputed, apparent, or actual, in public decisions. Imputed bias, once demonstrated, renders a decision void without further investigation into the likelihood or suspicion of partiality or bias, whereas proving actual partiality or bias is much more challenging.<sup>109</sup>

The core doctrine of natural justice are captured in the Latin maxims "Audi alteram partem" (hear the other side) and "Nemo iudex in causa sua" (no one should be a

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<sup>107</sup> Okpara Okpara, 'Right To Fair Hearing (Section 36 of the 199 Constitution)' in Okpara Okpara (Ed) *Human Rights Law and Practice in Nigeria* (Chenglo Limited Enugu, 2005) 181.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

judge in their own case). These principles form the foundation of natural justice rules, collectively referred to as the duty to act fairly. This duty obliges those with administrative authority to ensure their decisions, which may adversely affect the public, are made impartially and fairly.<sup>110</sup>

The essence of natural justice rules is to establish a framework where justice is visibly served, fostering public confidence in the legal system. It emphasizes that individuals likely to be affected by judicial as well as quasi-judicial decisions must be accorded prior notice of the case and sufficient time to respond before any decision is reached.<sup>111</sup> Additionally, decision-makers are required to make available justifiable reasons or rationale for their verdicts and to adhere strictly to the prescribed procedures. The principles of natural justice are designed to ensure unbiased and fair decision-making processes in public administration. They mandate that affected parties receive adequate notice and time to present their case, and that decision-makers provide transparent and reasoned decisions, thereby upholding fairness and public faith or confidence in the legal system.<sup>112</sup>

### **2.3.2 *Audi Alteram Partem***

"Audi alteram partem," a Latin phrase meaning "hear the other side," is a fundamental principle of natural justice. It dictates that no one should be condemned without being heard. This principle underscores the importance of fairness and the necessity of listening to both sides before making a decision. It is akin to the reason why humans possess two ears and two eyes so as to listen to and observe both perspectives.<sup>113</sup>

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<sup>110</sup> Schulz William, *In Our Own Best Interest: How Defending Human Rights Benefits us All* (Boston: Beacon Press, 2017) 65; Martha C. Nussbaum, *Human Rights on the Eve of the Next Century: Beyond Vienna and Beijing* [2017] 66 *FoR- Ham L. Rev*, 295-296..

<sup>111</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 11-25

<sup>112</sup> Ibid.

<sup>113</sup> Ibid

The essence of this maxim is that all parties in a dispute must be given the opportunity to be heard, regardless of the perceived triviality of their case, before any verdict, judgment or decision is made against or in their favor. Historically, this principle was applied solely by courts in judicial decisions. However, the landmark case of *Ridge v Baldwin*<sup>114</sup> extended its application to administrative decisions as well, affirming that an accused must always be heard.

Loveland<sup>115</sup> outlines that a fair hearing could involve several elements, depending on the case's facts. These elements include receiving notice of a hearing, being informed of charges against them or accusations, the opportunity to address or respond to the evidence, a verbal hearing, legal representation, and the ability to or the right to cross-examine or question witnesses. Violating or breaching this principle can invalidate, nullify or render a decision null and void, implying or indicating that regardless of how sound, reasonable or justifiable the decision may be, it is void if the accused was not provided or given the chance or opportunity to present their case or defenses.<sup>116</sup>

For a verdict or judgment to be sound, reasonable, justifiable and legally valid, it must be issued after allowing disputed parties to defend themselves. In line with natural justice, *Audi alteram partem* is split into two components: notice and hearing. Affected parties must receive notice before proceedings commence, allowing them to understand the facts and issues at hand and prepare their defense. This notice is crucial for ensuring a fair hearing.<sup>117</sup>

The second component, the hearing rule, ensures that parties can present their case and be heard by the court. This principle, as old as time itself, was recognized by the

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<sup>114</sup> *Ridge v Baldwin* [1964] A.C. 40.

<sup>115</sup> Loveland I., *Constitutional Law, Administrative Law and Human Rights: A Critical Introduction* (6th ed. (Oxford: Oxford University Press, 2012) 16

<sup>116</sup> Ajomo M. Ayo. *The Concept of Human Right and Human Rights Abuse in Nigeria* (Lagos, Nigeria: Bit Press 2nd ed. 2017) 75.

<sup>117</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 20.

Greeks and enshrined in the scriptures.<sup>118</sup> An eighteenth-century judge, Fortescue J, traced this principle back to the Garden of Eden, highlighting that even God gave Adam an opportunity to defend himself before passing judgment.<sup>119</sup>

This principle is reiterated in English law and acknowledged by various legal systems. For instance, the Bible records instances where individuals were given opportunities to defend themselves. When God questioned Adam and Eve about their actions, and when He questioned Cain about Abel's whereabouts, these interactions exemplified early instances of cross-examination, emphasizing the importance of being heard.<sup>120</sup> The Court in *Garba's case*,<sup>121</sup> upheld this principle, with Justice Oputa, JSC, emphasizing the importance of hearing both sides, akin to God giving humans two ears. From numerous legal precedents, several propositions illustrate the implications of the rule or principles of *Audi alteram partem* :

- a. Each party or individuals appearing or presenting their case before any court or tribunal must have or be afforded an equal chance or opportunity to present their case. They must be informed of the accuser's identity and the accusations against them. Simply inviting the person as a witness is insufficient.<sup>122</sup>
- b. A tribunal's judgment must be grounded in evidence that holds probative value, and evidence will or must not be considered without the presence of the involved parties.
- c. An accused individual must have a fair, favorable and reasonable chance or opportunity to call or summon witnesses, who should also be heard.
- d. It is improper or inappropriate for an adjudicating body to conceal the nature of

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<sup>118</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination

<sup>119</sup> Mwita, Kelvin M, and Matilda Lameck. 'Right to Fair Hearing in Employment Disciplinary Proceedings Related to Misconduct in Tanzania' [2023] 4(2) *Batulis Civil Law Review* 143-57.

<sup>120</sup> Genesis 4:3-12; Genesis chapter 3, New King James Version (NKJV), Thomas Nelson Publishers, 1994.

<sup>121</sup> *Garba v University of Maiduguri* [1986] 1 NWLR (Pt. 18) 550.

<sup>122</sup> *Ibid.*

evidence from the accused before imposing punishment. The accused must have an impartial or a fair opportunity to make corrections pertaining to the evidence or contradict the evidence against them.<sup>123</sup>

- e. Any individual impacted by a decision, action, or proceeding must receive proper notification of the proposed actions. This ensures they can make representations, appear at hearings, or answer the case against them.
- f. The authority or the discretionary power to accord an adjournment must be judiciously carried out or with careful judgment. If done capriciously or unreasonably, it may constitute a denial or a grave violation of the principle of fair hearing.<sup>124</sup>

The doctrine of Audi alteram partem emphasizes the necessity of an impartial hearing, ensuring that all parties involved in a dispute or subject to a decision are given a chance to present their side of the story. This principle is a cornerstone of justice, safeguarding against arbitrary decisions and ensuring that fairness prevails in all judicial and administrative proceedings.<sup>125</sup>

### **2.3.3 *Nemo Judex In Causa sua***

The doctrine of bias, often encapsulated by the Latin maxim "*nemo judex in causa sua*" (no one should be a judge in their own cause), is a fundamental tenet of natural justice. This principle ensures that any person in a position of judicial or quasi-judicial authority must exercise their duties impartially and without any interest or whatsoever in the outcome of the proceedings, whether that interest is pecuniary or otherwise. The core idea is that justice should not only be done but should also be seen to be

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<sup>123</sup> *Udo v The State* [1988] 3 NWLR (Pt. 82) 316

<sup>124</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 20.

<sup>125</sup> *Ibid.*

done.<sup>126</sup>

The rule against bias serves to eliminate any possibility of an unfair or prejudiced decision by requiring decision-makers to be completely impartial. This means that anyone with an interest, be it a personal interest or whatsoever in a case must not participate in the decision-making process. The rule is based on the understanding that even a slight inclination towards one side can undermine the fairness of the process and lead to unjust outcomes.<sup>127</sup>

In *Dimes's case*,<sup>128</sup> a landmark case where the court overturned a verdict because Lord Cottenham, who had presided over the case, was a shareholder in the Canal Company. The Court held that his financial interest in the outcome rendered his judgment voidable, reinforcing the necessity for judges to be free from any appearance of bias.<sup>129</sup>

The principle that justice must be both impartial and appear impartial was further emphasized in *R v Sussex Justices ex parte McCarthy*<sup>130</sup> where Lord Hewart famously stated, "It is fundamentally important that justice should not only be done but should manifestly, unequivocally and undoubtedly be seen to be done."<sup>131</sup>

This doctrine applies equally to courts, tribunals, and administrative bodies. For instance, in *Wiseman v. Borneman*<sup>132</sup>, the House of Lords affirmed that the principles of natural justice, including the rule against bias, should guide those performing judicial functions. This means that administrative authorities, much like judicial bodies, must ensure their processes are free from any conflict of interest.

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<sup>126</sup> J.N.Nwazi, 'Scope of Disciplinary powers of Nigerian Universities on Examination Malpractice Offences' [2005] 2(2) *IFJR* 294.

<sup>127</sup> *Ibid.*

<sup>128</sup> *Dimes v Grand Junction Canal* [1852] 3 HLC 759.

<sup>129</sup> *Ibid.*

<sup>130</sup> *R v Sussex Justices ex parte McCarthy* [1924] K. B. 256; [1923] All E. R.

<sup>131</sup> *Ibid.*

<sup>132</sup> *Wiseman v. Borneman* [1971] AC 297.

Audi alteram partem (hear the other side) and nemo iudex in causa sua are the twin pillars of natural justice. While the former ensures that all parties have an equal chance or opportunity to present their case, the latter guarantees that the decision-maker does so without any partiality or bias. These principles are fundamental to ensuring fair hearing and just outcomes.<sup>133</sup> For example, in *Garba's case*,<sup>134</sup> the Supreme Court of Nigeria nullified the findings of an administrative panel chaired by the Deputy Vice-Chancellor, whose property had been damaged during student riots. The Court held that the Deputy Vice-Chancellor could not have approached the matter with the required impartiality given his personal stake in the events.<sup>135</sup>

Similarly, in *Esiaga's case*,<sup>136</sup> where several situations that could give rise to bias, including financial interests, familial relationships, or personal animosities was identified by the court. The Court emphasized that any of these could compromise the impartiality required in judicial or quasi-judicial proceedings. The rule against bias also extends to procedural fairness in investigations and disciplinary actions. Investigators must ensure there is no conflict of interest that would make their involvement inappropriate.<sup>137</sup> For instance, if a manager raises a complaint against an employee, they should not participate in the disciplinary process to avoid any perception of partiality.

In *Nnamdi Azikiwe University v Nwafor*<sup>138</sup> where a disciplinary action against a student for examination misconduct was overturned on the basis that those who accused the student (the members of the examination committee) also participated in the disciplinary proceedings. This dual role violated the *nemo iudex* principle,

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<sup>133</sup> *Wiseman v. Borneman* [1971] AC 297.

<sup>134</sup> *Garba v University of Maiduguri* [1986] 1 NWLR (Pt 18) 550

<sup>135</sup> *University of Calabar v Esiaga* [1997] 4 NWLR (Pt. 5020) 719 at 745.

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*

<sup>138</sup> *Nnamdi Azikiwe University v Nwafor* [1999] 1 NWLR (Pts 584-588) 116.

illustrating the necessity for clear procedural separation to maintain fairness.

The standard for determining bias is not the actual presence of bias but the likelihood of bias as perceived by a reasonable person. This principle ensures that even the existence of bias is more than enough to disqualify a decision-maker. For instance, in *Alakija' case*,<sup>139</sup> the Supreme Court restored a doctor's name to the medical register because the Registrar, who had prosecuted the case, also participated in the trial proceedings. This dual role breached the rule against bias. Judicial independence and impartiality are integral to the autonomy to an impartial hearing. An independent adjudicator should and must be neutral, having no financial, ownership stake or proprietary interest in the case. This neutrality ensures that decisions are made based on an unbiased assessment of the evidence and arguments presented.<sup>140</sup>

The rule against bias mandates that decision-makers must not have any personal interest in the outcomes of the cases they adjudicate. This rule applies across judicial and administrative contexts, emphasizing the importance of impartiality and fairness. By adhering to this principle, the legal system upholds the integrity of its processes and maintains public confidence in its outcomes.

#### **2.3.4 The Basic Exceptions to *Nemo Judex In Causa Sua* Rule**

The principle of Natural Justice, specifically *Nemo Judex In Causa Sua* (no one should be a judge in their own cause), has certain recognized exceptions. Scholars have analyzed and categorized these exceptions, although their approaches vary. According to Singh<sup>141</sup> the exceptions to this principle include:

a. Necessity

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<sup>139</sup> *Alakija v Medical Practitioners Disciplinary Committee* [1959] 4 F.S.C. 38.

<sup>140</sup> *Ibid.*

<sup>141</sup> Singh B., *The Supreme Court of India as an Instrument of Social Justice* (Sterling Publishers PVT Ltd, 1976)

- b. Contempt
- c. Waiver
- d. Purely Administrative Duty

Subsequently, Craig,<sup>142</sup> identifies only the first three exceptions—necessity, contempt, and waiver—excluding the fourth. The exception of purely administrative duty, as stated by Mr. Singh, is considered questionable because all authorities, including administrative panels, are legally required to adhere to the principles of natural justice.

### 2.3..5 Doctrine of Necessity

The doctrine applies in various contexts, particularly in emergencies, summarized by the legal principle: “What is otherwise unlawful becomes lawful out of necessity.”<sup>143</sup>

This doctrine can:

- a. Validate inherently unlawful actions, making them lawful;
- b. Complement and streamline the law when no alternative is available;
- c. Act as an implicit authorization from a legitimate sovereign to a rebel government;
- d. Waive or suspend adherence or compliance to due process in times of emergency;
- e. Prioritize citizens' welfare over strict adherence to the law during societal crises.

Historically, the *nemo iudex* rule (no one should be a judge in their own cause) was not observed, followed or adhered to by God when handling or dealing with Adam, as God was the complainant, witness, prosecutor, and judge. This necessity arose because no other being could adjudicate. Craig<sup>144</sup> encapsulates this by stating that

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<sup>142</sup> Craig P.P., *Administrative Law* (Sweet & Maxwell 1983) 86.

<sup>143</sup> *Ibid.*

<sup>144</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, ‘Jurisprudential Examination of the

bias rules are waived when the only empowered individual's impartiality is in question.<sup>145</sup> An extension of the necessity doctrine is statutory authority, where laws enacted by Parliament can override natural justice principles. Thus, if legislation mandates a person to preside over a matter despite potential bias, the *nemo iudex* rule is secondary to statutory authority and necessity.<sup>146</sup>

The court applied the doctrine in *Ex Parte Olakunrin*.<sup>147</sup> Here, statutory authority required the person alleged to be biased to adjudicate the case. Justice Nnamani JSC stated that a person *prima facie* precluded, disqualified, or ineligible for interest or partiality might still be competent to adjudicate due to necessity if no other qualified tribunal exists. Justice Bello JSC emphasized that natural justice must yield to necessity when absolutely necessary for decision-making.<sup>148</sup> The U.S. Supreme Court in *United States v. Will*<sup>149</sup> affirmed that the necessity doctrine prevails over disqualification standards.

It is crucial to understand that the necessity doctrine does not override the *nemo iudex* rule arbitrarily. It operates in exceptional circumstances when no alternatives exist. Additionally, the *audi alteram partem* rule (hear the other side) must still be observed, as emphasized by the Constitution.<sup>150</sup> Notwithstanding its acceptance in state administrative law, the rule of necessity is recognized as inherently unfair, posing a tension with the right to a fair, just and impartial decision-maker. Its application is often seen as a regrettable necessity, representing a difficult choice between two

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Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 90.

<sup>145</sup> *Ibid.*

<sup>146</sup> Jackson R. M., *The Machinery of Justice in England* (Cambridge University Press 1940) 311; Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 18.

<sup>147</sup> *Ex Parte Olakunrin* [1985] NWLR (PT. 4) 652; [1985] LPELR-SC 98; [1985] 5 S.C 161.

<sup>148</sup> *Ibid.*

<sup>149</sup> *United States v. Will* [1980] 499 U.S 200; *Ashok Kumar Yadav v. State of Haryana* [1985] 4 SCC 417; *Tata Cellular v. UOI* [1994] 6 SCC 651

<sup>150</sup> Section 36(2) of the 1999 Constitution.

evils.<sup>151</sup>

### 2.3.6 Contempt of Court

Jackson<sup>152</sup> stated that "Contempt of Court" has a complex history, with periods of both significant and minimal public interest. It encompasses various behaviors that bring the court into disrepute, which can be either civil or criminal in nature. Justice Agbaje JSC classified contempt into two categories: direct and constructive. Direct contempt occurs immediately and in the presence of the court, obstructing proceedings, known as "contempt in facie curiae."<sup>153</sup> Constructive or indirect contempt, on the other hand, arises from actions not occurring in or near the court's presence, referred to as "contempt ex facie curiae."<sup>154</sup>

The more common categories of contempt are civil as well as criminal which can be aligned with these two categories of direct and indirect contempt. However, only direct contempt committed in the court's presence serves as an exception to the *nemo iudex rule* (no one should be a judge in their own case).<sup>155</sup> For instance, if someone scandalizes the court, they can be swiftly or summarily punished to maintain the court's integrity. The policy underlying this exception is that while a judge's honesty and integrity cannot be questioned, their decisions can be challenged for legal or factual errors. Nonetheless, a judge may still be required to disqualify themselves on valid grounds.

The Criminal Code<sup>156</sup> states that courts of record have the authority to punish

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<sup>151</sup> ArnorldRochvarg, Is the Rule of Necessity Necessary in State Administrative Law: The Central Panel Solution' [1999] 19 *J.Nat'l Ass'n Admin.L Judges* available at <http://digitalcommons.pepperdine.edu/naalj/vol19/iss2/3>.

<sup>152</sup> Ibid

<sup>153</sup> Jackson R M., *The Machinery of Justice in England* (Cambridge University Press 1940) 317.

<sup>154</sup> Ibid.

<sup>155</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 36.

<sup>156</sup> Section 6 of the Criminal Code Act.

contempt summarily, ensuring that a person cannot be sanctioned two times for the same act or omission. The Constitution allows for laws that prevent the revelation of private or privilege information and maintain the courts' sovereignty, peer, authority and independence.<sup>157</sup> An individual who commits contempt directly (contempt in facie curiae that is, in the presence of the court) can be immediately punished by the presiding judge, without a formal trial, to preserve the court's integrity and authority, not the judge personally. This instantaneous sanction clearly violates or contravenes the nemo iudex principle, as the court (judge) will act in three capacities at the same time, this means that the judge will act as the complainant as well as the witness, prosecutor, and judge simultaneously.<sup>158</sup>

The Court in *Atake's case*,<sup>159</sup> affirmed that in summary judgment for contempt in the face of the court (contempt in facie curiae), the judge assumes multiple roles. This stands in contrast to the general principle stated in *LPDC v. Fawehinmi*,<sup>160</sup> where it was emphasized that judges should not prosecute and judge a case simultaneously, as highlighted by Stephen L.J in *Bolton v. St. Albans Crown Court*.<sup>161</sup> Such proceedings would be null and void as they violate the nemo iudex rule. The punishment for contempt in facie curiae must be invoked only when absolutely necessary for the interest of justice. It appears harsh and contrary to the doctrine of natural justice, and it is only justifiable if no other means are available.<sup>162</sup> However, while the instant punishment for contempt in facie curiae is a valid exception to the nemo iudex rule, caution and judicial restraint must always be exercised to ensure fairness and uphold the principles of justice.

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<sup>157</sup> Section 39(3)(a) of the 1999 Constitution.

<sup>158</sup> Ibid.

<sup>159</sup> *Atake v. A.G Federation* [1982] 11 SC 153; [1982] LPELR-SC 5

<sup>160</sup> *LPDC v. Fawehinmi* [1985] LPELR -SC.177/1984.

<sup>161</sup> *Bolton v. St. Albans Crown Court* [1975] 1 QBD 73 @ 9

<sup>162</sup> Ibid.

### 2.3.7 The Doctrine of Waiver

The concept of waiver refers to the intentional relinquishment of a right, claim, or privilege. This idea is an exception to the *nemo iudex* rule, which states that no one can be a judge in their own case.<sup>163</sup> The waiver doctrine is based on the logical and legal premise that an individual's silence or lack of objection implies consent. If a person chooses not to challenge an irregularity, they are deemed to have accepted it.<sup>164</sup>

As Craig<sup>165</sup> aptly stated, the ability to waive a right is based on the premise that it is the party involved may choose to ignore an issue, such as an adjudicator's conflict of interest, they do so at their own peril. However, this waiver doctrine only applies if the those affected fails to assert establish their constitutional rights. If they do choose to assert their rights, the waiver doctrine is no longer applicable.<sup>166</sup>

A fair hearing, as outlined in the constitution, involves conducting legal proceedings in a manner that is consistent with relevant laws, court rules, and natural justice principles. Natural justice is a fundamental feature of a impartial hearing, but it is not the only essential element.<sup>167</sup> Additional principles have been incorporated into the constitution to ensure a comprehensive and just legal process. These essential elements encompass the right to a fair, just and impartial tribunal, the right to be heard, and the right to a reasoned decision. In summary, waiver and fair hearing are important concepts in the legal system that are designed to guarantee or ensure that individuals are treated fairly and justly or receive fair and just treatment.<sup>168</sup>

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<sup>163</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 1-25 .

<sup>164</sup> *Ibid.*

<sup>165</sup> Craig P.P., *Administrative Law* (Sweet & Maxwell 1983) 94.

<sup>166</sup> *Ibid.*

<sup>167</sup> Patrick Okereke Nwajah, Cletus Ojumu and Aruwa Emeje, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 12-25

<sup>168</sup> *Ibid.*

## Chapter Three

### Legal Framework on Fair Hearing Principles in Relation to Contracts of Employment

#### 3.1 Introduction

Fair hearing principles are integral to employment law, ensuring that employees are treated justly in disciplinary and grievance procedures. International and regional legal frameworks have significantly shaped the principles of fair hearing in employment law. Fudge and Owens<sup>169</sup> discuss the impact of instruments such as the International Labour Organization (ILO) Conventions and the European Convention on Human Rights (ECHR) on national employment laws. These frameworks set minimum standards for fair hearing, promoting uniformity and fairness across jurisdictions. By requiring member states to incorporate fair hearing principles into their national laws, these international and regional frameworks ensure that employees' rights are protected during disciplinary actions and termination proceedings.

#### 3.2 International Legal Frameworks

##### 3.2.1 Universal Declaration of Human Rights (UDHR) 1948

UDHR is a foundational document in international human rights law. While it is not legally binding, it has profoundly influenced the development of national constitutions, international treaties, and various legal frameworks around the world. The UDHR articulates a broad range of fundamental autonomy and liberty to which all people are entitled, setting a global standard for human rights protection.<sup>170</sup>

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<sup>169</sup> Fudge J. and Owens R., *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (Hart Publishing, 2006) 69.

<sup>170</sup> *Ibid.*

The UDHR in its provisions stipulates that every individual has the autonomy or are entitled to fair, just, equal and public hearing by an independent, fair, just, unbiased and impartial court or tribunal, in the evaluation or determination of his rights as well as obligations regarding any criminal offense or charges against him.<sup>171</sup> This article is pivotal in guaranteeing the right to a fair trial and procedural justice, emphasizing two critical components: equality before the law and the necessity of an impartial adjudicating body. While Article 10 explicitly addresses the context of criminal charges, its principles have been broadly interpreted to encompass various civil matters, including employment disputes. The insistence on “full equality” and an “independent and impartial tribunal” has become a cornerstone in ensuring fair processes across a wide array of legal and administrative proceedings.<sup>172</sup>

In the context of employment law, Article 10 ensures that employees are afforded fair procedures when facing disciplinary actions or termination. This means that employees must be given the opportunity to present their side of the story. This includes explaining their actions, providing evidence, and responding to any allegations made against them.<sup>173</sup> Also, employees should have access to all significant or relevant information that pertains to their case. This transparency is crucial for preparing an effective defense. However, decisions regarding disciplinary actions or termination must be made by an unbiased and independent tribunal or body. This ensures that judgments are not influenced by any undue pressure or conflicts of interest.<sup>174</sup>

The principles enshrined in Article 10 have been incorporated into various national laws and employment regulations, promoting fair hearing standards globally. By emphasizing the need for equality and impartiality, Article 10 of the UDHR has helped shape a more just and equitable employment landscape. It has encouraged the

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<sup>171</sup> Article 10 of the Universal Declaration of Human Rights (UDHR) 1948.

<sup>172</sup> Ibid.

<sup>173</sup> <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed we on 28 May 2024

<sup>174</sup> <<https://amnesty.ca/universal-declaration-human-rights/>> accessed we on 28 May 2024

adoption of practices that protect employees' rights, ensuring that they are treated fairly and that their grievances are heard in an unbiased manner. Consequently, Article 10 serves as a vital benchmark in promoting fair employment practices and safeguarding the procedural rights of employees worldwide.

### **3.2.2 International Labour Organization (ILO) Conventions**

The International Labour Organization (ILO), is a UN specialized agency, establishes global labor standards through conventions and recommendations, which become binding treaties once ratified by member states. Two significant ILO conventions that address fair hearing principles and employment rights are Convention No. 158 and Convention No. 135.<sup>175</sup>

ILO Convention No. 158, known as the Termination of Employment Convention (1982), provides comprehensive protections against unfair dismissal. Employers must provide valid reasons for termination related to the employee's capacity, conduct, or the operational requirements of the enterprise. Employees are entitled to an opportunity to defend themselves against the reasons for their dismissal.<sup>176</sup> This convention mandates procedural fairness, including the right to be informed or notified of the reasons or rationale for dismissal and the right to respond before any final decision is made, ensuring that terminations are conducted justly and without arbitrariness. Countries that ratify this convention must incorporate its principles into their national legislation, which typically involves adopting laws that reflect these standards and developing employer policies that ensure fair treatment of employees.<sup>177</sup>

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<sup>175</sup> Atilola B., 'Legal Redress for Wrongful Termination of Contract of Employment: What Lawyers Must Note' [2011] 5(2) *NJLIR* 12.

<sup>176</sup> A B, Ahmad, 'Ratification and Domestication of Treaties: The Role of the Legislature' (Being a Paper Presented at The Africa Legislative summit at the International Conference Centre Abuja, 2013). .

<sup>177</sup> Ibid

ILO Convention No. 135, or the Workers' Representatives Convention (1971), focuses on the protection of workers' representatives. It stipulates that these representatives must not be dismissed or prejudiced due to their representative activities.<sup>178</sup> This includes protections against any form of disadvantage or discrimination resulting from their role in advocating for workers' rights. Workers' representatives must be given the opportunity to defend themselves against any allegations, ensuring they are not unfairly targeted for their advocacy work.<sup>179</sup> Ratifying countries are required to integrate these protections into their national laws, enacting legislation that specifically safeguards workers' representatives from unfair dismissal and discrimination, and establishing mechanisms for redress in cases of unfair treatment.<sup>180</sup>

Overall, these ILO conventions significantly influence national employment laws by embedding principles of fairness and procedural justice. Convention No. 158 ensures that all employees are protected against unfair dismissal through fair and transparent procedures, while Convention No. 135 specifically safeguards the rights of workers' representatives. The incorporation of these conventions into national legislation strengthens labor laws, promoting justice and fairness in the workplace globally.<sup>181</sup>

### 3.2.3 European Convention on Human Rights (ECHR)

ECHR was established in 1950 as a fundamental regional human rights instrument enforced by the European Court of Human Rights. The ECHR<sup>182</sup> guarantees the right to a fair trial, which applies to civil as well as criminal proceedings, ensuring that

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<sup>178</sup> Lloyd, D, "Law and Public Policy," (1955) *Current Legal Problems*,42, 60; Munson, F C, "From Law to Action: The Administrative Dimension to Labour Laws' [1955] 1 *Indian Journal of Industrial Relations*,413-415.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> Munson, F C, "From Law to Action: The Administrative Dimension to Labour Laws' [1955] 1 *Indian Journal of Industrial Relations*,413-415.

<sup>182</sup> Article 6 of the European Convention on Human Rights (ECHR)

employment disputes are subject to fair hearing standards.<sup>183</sup> This article ensures that employees involved in legal disputes over employment issues have entitlement to a impartial and public hearing within a reasonable timeframe by an unbiased, unprejudiced, non-partisan, non-discriminatory, anti-discrimination, disinterested, uninvolved, independent, neutral and impartial tribunal. The fair hearing principles encapsulated in Article 6 include the autonomy to be heard, the autonomy to an impartial, just and fair tribunal or court, and public hearing right.<sup>184</sup> In the context of employment disputes, this means employees must have access to fair procedures and an unbiased adjudicator to resolve their issues. Article 6 has significantly influenced employment laws within European countries, compelling them to provide mechanisms for fair hearings in employment disputes.<sup>185</sup>

Article 8 of the ECHR protects the right to respect for private and family life.<sup>186</sup> Although primarily focused on privacy, Article 8 has been interpreted to protect employees against unfair dismissal that affects their private, personal and family life. In the context of dismissals, this article ensures that any decision impacting an employee's private life is justified, proportionate, and made following fair procedures. Article 8 reinforces the necessity for fair procedures in employment decisions that significantly affect an employee's personal life, further emphasizing the importance of fair hearings.<sup>187</sup>

Ultimately, the ECHR, through Articles 6 and 8, provides critical protections for employees within the context of employment disputes and dismissals. Article 6 mandates fair trial standards, ensuring impartial and public hearings, while Article 8 protects the right to respect for private and family life, ensuring that employment decisions impacting personal life are fair and proportionate. These articles collectively

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<sup>183</sup> Article 6 of the European Convention on Human Rights (ECHR)

<sup>184</sup> Article 6 of the European Convention on Human Rights (ECHR).

<sup>185</sup> Ibid.

<sup>186</sup> Article 8 of the European Convention on Human Rights (ECHR).

<sup>187</sup> Ibid.

influence employment law in European countries, promoting fair hearing principles and safeguarding employees' rights.<sup>188</sup>

### 3.2.4 European Union (EU) Directives

EU directives are legislative acts that require member states to achieve specific outcomes while allowing flexibility in the implementation process. Two critical directives that impact employment and fair hearing principles are the Employment Equality Directive and the Information and Consultation Directive.<sup>189</sup>

The Directive mandates equal treatment in employment and occupation, forbidding discrimination based on numerous grounds such as race, gender, disability, and sexual orientation. It ensures that employees can challenge discriminatory practices through fair and transparent mechanisms. The directive includes provisions for fair procedures in handling grievances and disputes related to discrimination, guaranteeing that employees have access to processes that allow them to contest unfair treatment effectively. Member states are required to transpose this directive into their national legislation, creating legal frameworks that support equal treatment and ensure fair hearing principles in employment.<sup>190</sup>

The Information and Consultation Directive provides or establishes a framework for informing as well as consulting employees about significant business decisions that affect their employment. This directive promotes transparency and fairness in employer-employee relations by ensuring that employees have the autonomy to be heard and consulted on matters impacting their work conditions. It emphasizes the importance of fair procedures in managing changes within a company, allowing

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<sup>188</sup> J.N.Nwazi, 'Scope of Disciplinary powers of Nigerian Universities on Examination Malpractice Offences' [2005] 2(2) *IFJR* 294.

<sup>189</sup> *Ibid.*

<sup>190</sup> <[47](https://eur-lex.europa.eu/EN/legal-content/summary/european-union-directives.html#:~:text=Directives%20form%20part%20of%20the,law%20in%20the%20Member%20States.> accessed 26 May 2024</a></p></div><div data-bbox=)

employees to participate in discussions about business decisions that may influence their employment. Member states must adopt measures to guarantee employees' rights to information and consultation, integrating fair hearing principles into their national laws.<sup>191</sup>

Both directives play a crucial role in promoting fair hearing standards and protecting employees' rights within the EU. By mandating equal treatment and ensuring employees are informed and consulted about significant workplace decisions, these directives enhance transparency, accountability, and fairness in the employment context. The implementation of these directives across member states strengthens the legal frameworks that uphold these principles, ensuring that all employees receive fair and equitable treatment in their workplaces.<sup>192</sup>

### **3.3 Constitutes of Fair Hearing Under the Constitution**

An impartial hearing as encapsulated in the 1999 constitution, refers to the act conducting of proceedings in adherence or in compliance with applicable laws, court rules, and principles of natural justice.<sup>193</sup> Impartial hearing must entail adherence to natural justice; however, additional requirements have been incorporated into the natural justice principles within the constitution, which is very crucial in a fair or impartial hearing.<sup>194</sup>

#### **3.3.1 Hearing within a Reasonable Time**

The concept of a trial conducted within a reasonable timeframe is often equated with a

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<sup>191</sup> Uvieghara, E.E *Labour Law in Nigeria* (Lagos, Malthouse Press 2001) 103.

<sup>192</sup> Cletus Ojumo, Aruwa Emeje and Patrick Okereke, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal* (ALJ) 1-25

<sup>193</sup> Ibid.

<sup>194</sup> *Kotoye v CBN* [1989] 1NWLR (Pt. 98) at 426; Uvieghara, E.E *Labour Law in Nigeria* (Lagos, Malthouse Press 2001) 77.

speedy trial. The notion of what constitutes a "reasonable time" is dependent on the specifics of each case. The 1999 Constitution<sup>195</sup> mandates not only impartial hearing but also hearing within a rational, sensible and well grounded within the timeframe, as delayed justice equates to denied justice. This raises the critical question: are trials in our courts concluded within a reasonable timeframe? The consensus is that the Nigerian judiciary has failed in this regard. Judicial proceedings are notoriously lengthy, sometimes outlasting both the witnesses and litigants involved. It is not uncommon for cases initiated over fifteen years ago to still be pending at the trial stage. Even when favorable judgments are eventually rendered, the prolonged process often renders them ineffective due to irreversible and unproductive changes that have occurred in the interim.<sup>196</sup>

The legal implications of such prolonged delays are significant. Does an undue delay invalidate a trial? The answer is that it depends on the circumstances of each case. For instance, if a judge is unable to accurately recall or assess the evidence and witness testimonies due to the delay, this can lead to a miscarriage of justice, thereby vitiating the trial. Conversely, if the judge's memory and ability to evaluate the credibility of witnesses remain intact, the trial might not be considered compromised.<sup>197</sup> The term "reasonable time" is inherently ambiguous and cannot be determined in isolation but must be contextualized within the facts of each case. What is reasonable in one scenario might not be in another. It is suggested that a reasonable time is one that does not unduly burden the parties and their witnesses in the pursuit of justice. It is a period that ensures justice is served in a manner that is perceived as fair and just by a reasonable observer.

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<sup>195</sup> Section 36 of the 1999 Constitution; Article 7 of the African Charter on Human and People's Right (Ratification and Enforcement) Act.

<sup>196</sup> *Nnaji v NFA* [2010]11 NWLR (pt. 1206) 443; *JFS Inv. Ltd v Brawal Line Ltd* [2010] 18NWLR (Pt 1225) P. 508; *UAC (Nig) Ltd v Global Transport S.A.* [1996] 5NWLR (pt. 448) 291.

<sup>197</sup> *M.V. Caroline Maersk v Nokoy Inv. Ltd* {2002} 12NWLR (pt. 782) 472.

### 3.3.2 Trial by a Court or Tribunal Established by Law

By the virtue of the Nigerian Constitution, an individual is entitled to a fair or impartial hearing within a reasonable time by a court or tribunal created and founded by law and structured to ensure or guarantee its neutrality and impartiality.<sup>198</sup> This provision implicitly guarantees the right to have one's case adjudicated by a neutral, unbiased or impartial body. It is insufficient to merely invoke the term "fair hearing" from section 36(1) of the Constitution as protection against government actions without considering the full scope and meaning of its provisions.<sup>199</sup> Misinterpretation and confusion arise when section 36(1) is relied upon without understanding its comprehensive implications.

The essence of fair hearing, as guaranteed, necessitates that it occurs in a court of law, justice or tribunal recognized by law and fully constituted to secure its unbiased, unjust, unfair, independent and impartiality. Thus, the cornerstone of impartial hearing encompasses fairness, justice, independence as well as impartiality of the judicial or quasi-judicial body. If a court or a tribunal is not legally established and properly constituted from the outset, the Constitution does not acknowledge it as capable of ensuring fair hearing. The proper constitution of a court or tribunal is crucial as it affects its jurisdiction and ability to meet constitutional obligations for fair hearing.<sup>200</sup>

### 3.3.3 Proceedings to be Held in Public.

The provision of section 36(3) of the Constitution, encapsulates that all court or tribunal proceedings regarding civil autonomy, obligations, as well as criminal offenses, encompassing the pronouncement of judgments, must be conducted in public. This provisions was upheld by the Supreme Court in *Kotoye v. CBN*,<sup>201</sup> which

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<sup>198</sup> Atsenuwa K.B, *Industrial Relations: Theory and Practice* (Port Harcourt, Tomlupa Publishers 2005)

<sup>199</sup> Section 36(1) of the 1999 Constitution.

<sup>200</sup> Wright M, *Labour Law* (Plymouth; Macdonald & Evans 1979) 92.

<sup>201</sup> *Kotoye v. CBN* [1985] 1 NWLR (pt 98) 419.

stated that court proceedings, in line or compliance with section 33(3) of the Constitution, must be conducted in public, ensuring that all parties involved are provided access to and are made aware of the place of public hearing. Delivering judgments in chambers is deemed inappropriate. It has been ruled that even if both parties consent, a ruling delivered in chambers is a nullity and void due to the mandatory nature of section 36(3).<sup>202</sup> This is on the basis that a judge's office or chambers can not be regarded as an open court; it lacks the regular courtrooms' public accessibility where people have the right to enter and leave freely.

However, there are exceptions where court proceedings can be held in private but on livestream. This entails that certain persons, other than the disputing parties as well as their lawyers, others may be precluded or excluded from the proceedings. In camera sessions are permissible in specific circumstances such as in the interest of defense, public safety, public order, public morality, and the welfare of individuals under the age of 18. Additionally, proceedings may be held in camera to protect and safeguard the private lives of the individuals involved or to avoid publicity that would be contravenes the general pursuits of justice.<sup>203</sup>

Holding proceedings in public ensures transparency and accountability within the judicial process. It upholds the principle that justice must not only be done but must also be seen to be done. This openness allows public scrutiny, which is a safeguard against potential judicial misconduct or bias.<sup>204</sup> Nonetheless, the provision for in camera sessions recognizes that there are situations where privacy and confidentiality are paramount to protect sensitive information or vulnerable individuals. Balancing these needs ensures that the justice system can operate effectively while maintaining public confidence and trust. While the Constitution mandates that court proceedings generally be held in public to ensure transparency, it also provides for exceptions

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<sup>202</sup> J.N.Nwazi, 'Scope of Disciplinary powers of Nigerian Universities on Examination Malpractice Offences' [2005] 2(2) *IFJR* 294.

<sup>203</sup> *Salawu v Adza* [1997] 11 NWLR (Pt. 527) 36 CA; *Nuhu v Ogele* [2004] FWLR (Pt. 193) 362

<sup>204</sup> *Nigeria Arab Bank v Barr Engineering (Nig) Ltd* (1995) 8 NWLR (Pt. 413) 257 at page 290

where privacy and protection of sensitive interests are necessary.<sup>205</sup> This dual approach ensures that the judicial process is both open and fair, safeguarding the rights of individuals while maintaining public order and morality.

### 3.3.4 Presumption of Innocence

The Constitution establishes a fundamental legal principle that anyone accused of a criminal offense retains the presumption of innocence, meaning they are considered innocent until sufficient evidence proves their guilt in a court of law.<sup>206</sup> This principle is a cornerstone of the adversarial criminal justice system, wherein the prosecuting counsel holds the responsibility of establishing the culpability of the defendant. The presumption of innocence dictates that every individual charged with a criminal offense is regarded as innocent until there is enough evidence to prove otherwise. This presumption must be upheld regardless of the severity of the alleged crime or the public profile of the accused. It serves to protect the autonomy of individuals and ensure fairness in legal proceedings.<sup>207</sup>

The implication of this presumption is that the responsibility for proving the accused's guilt lies solely with the prosecution. The accused is not required to demonstrate their innocence; instead, it is the accuser's obligation to prove the accused's guilt. However, the prosecution is not tasked with proving guilt beyond all possible doubt. Rather, they must provide sufficient evidence to establish guilt to a reasonable standard, ensuring that the accused's rights are upheld throughout the legal process. In the accusatorial system, this presumption ensures that the accused person does not bear the burden of proof.<sup>208</sup> Instead, the prosecution must present sufficient evidence to

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<sup>205</sup> OkparaOkpara, 'Right To Fair Hearing (Section 36 of the 199 Constitution)' in OkparaOkpara (Ed) Human Rights Law and Practice in Nigeria (Chenglo Limited, Enugu, 2005) 181.

<sup>206</sup> Section 35(5) of the 1999 Constitution

<sup>207</sup> *Nwodo v The State* [1996] 4 NWLR (Pt. 185) 341 at 355; *Ogbunjo v The State* [1996] 6 NWLR (Pt 4520 at 9

<sup>208</sup> *Ibid.*

convince the court of the accused's guilt. The standard of proof required is "beyond a reasonable uncertainty," which means that the proofs presented must be so convincing that existence of reasonable doubt regarding the accused's guilt is absent. This standard does not require eliminating every possible doubt, but it does require a high level of certainty before a conviction can be secured.<sup>209</sup>

The presupposition of innocence is a cornerstone of impartial trial rights and is essential in preventing miscarriages of justice. It ensures that individuals are not unjustly punished based on unproven accusations. This principle also underscores the importance of a rigorous and fair judicial process, where the prosecution must thoroughly investigate and present credible evidence to substantiate their claims.<sup>210</sup> Section 35(5) of the 1999 Constitution enshrines the presumption of innocence for individuals charged with criminal offences. This principle shifts the burden of proof to the prosecution, requiring them to establish the accused's guilt beyond a reasonable doubt. The presumption of innocence is crucial in safeguarding the rights of the accused and ensuring that justice is administered fairly and impartially.<sup>211</sup>

### **3.3.5 The Five Cornerstones of Fair Trial under Section 36 (6) of the Constitution**

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) outlines five fundamental rights that ensure a fair trial for individuals accused of criminal offences.<sup>212</sup> These rights, often referred to as the "cornerstones" of a fair trial, are:

- a. Prompt Information on the Charge: An accused person must be promptly informed, in a language they understand and with sufficient detail, about the nature of the offence they are charged with. Failure to do so can be grounds for

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<sup>209</sup> Martinez, Maria, and Charles Johnson, 'Fair Hearing in Diversity and Inclusion Initiatives: Legal and Practical Challenges' [2021] 4(3) *Journal of Employment Diversity* 301.

<sup>210</sup> Ibid

<sup>211</sup> Section 35(5) of the 1999 Constitution

<sup>212</sup> Section 36(6) of the 1999 Constitution

appeal and can nullify the proceedings. For instance, in the case of *Kajubo v. State*,<sup>213</sup> the Supreme Court ruled that proceedings were nullified because the count charges or charges in the indictment were not read to the understanding of the accused nor explained to the defendant.

- b. Time to Prepare a Defense: The accused must be accorded adequate time to prepare their defense. Courts should not hinder this process. If an individual accused of a crime requests an adjournment to secure legal representation and is denied, it constitutes a breach of this right and can invalidate the trial on appeal. However, adjournment requests based on frivolous grounds may be denied to prevent disruption of the trial process.
- c. Right to Legal Representation: The accused has the right to defend themselves either personally or through a legal representative of their choice. In cases involving capital offences, the court must provide legal representation if the accused cannot afford one. Inadequate or ineffective representation by an inexperienced lawyer is considered a denial of the right to a fair hearing. The counsel must be a Nigerian citizen and must not have any legal disabilities regarding entrance and exit from Nigeria. In *Uzodinma v. Commissioner of Police*,<sup>214</sup> it was held that denying an accused the right to legal representation nullifies the trial.
- d. Right to Call and Cross-examine Witnesses: The accused has the autonomy to thoroughly investigate witnesses called by prosecuting counsel and to summon and examine their own witnesses under the same conditions as those applied to prosecution witnesses. This right ensures that the defense can challenge the prosecution's evidence and present its own case fully.<sup>215</sup>
- e. Right to an Interpreter: If the accused cannot understand the language of the court,

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<sup>213</sup> *Kajubo v. State* [1988] 1 NWLR (Pt 73) 721.

<sup>214</sup> *Uzodinma v. Commissioner of Police* [1982] 3 NLR 323 or (1982) 1 NCR 27

<sup>215</sup> *Ibid.*

they are entitled to the assistance of an interpreter at no cost. The accused must or is required to request for an interpreter during the trial. If the accused proceeds without requesting an interpreter, they cannot later claim a breach of this right. The interpretation must be precise, translating sentence by sentence rather than summarizing the proceedings.<sup>216</sup>

The 1999 Constitution stipulates that all criminal proceedings must be meticulously documented, emphasizing the necessity of written decisions to ensure transparency and accountability in the judicial process.<sup>217</sup> This requirement, as highlighted in the legal precedent set by *Arlidge's* case,<sup>218</sup> underscores the fundamental right of individuals to access and understand the basis of decisions made against them, empowering them to seek recourse through appeals if necessary. By providing written decisions, courts and tribunals not only uphold the principles of due process but also demonstrate their commitment to fairness and justice.<sup>219</sup>

Furthermore, the significance of a well-defined disciplinary procedure cannot be overstated. When an employer adheres to a carefully crafted disciplinary process, it establishes a framework that promotes consistency and equity in addressing workplace issues. Over time, such procedures become ingrained within the organizational culture, fostering a presumption of regularity and fairness.<sup>220</sup> Consequently, individuals alleging misconduct by their employer face a formidable burden of proof, as the prevailing assumption is that the established procedures have been faithfully followed, thus safeguarding the rights of both employees and employers within the realm of workplace discipline.<sup>221</sup> These rights collectively ensure that an accused person receives a fair and just trial. They are designed to

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<sup>216</sup> Martinez, Maria, and Charles Johnson, 'Fair Hearing in Diversity and Inclusion Initiatives: Legal and Practical Challenges' [2021] 4(3) *Journal of Employment Diversity* 301-325..

<sup>217</sup> *Ajayi and Jakande Jos v Zaria Native Authority* [1964] NMLR 61

<sup>218</sup> *Local Government Board v Arlidge* [1915] AC 120

<sup>219</sup> *Ibid.*

<sup>220</sup> *Gwonto v The State* [1983] SC 69; *Uwaekweghinya v The State* [2005] 9 NWLR (Pt. 930)227

<sup>221</sup> *Ibid.*

protect the integrity of the judicial process and uphold the principles of justice, transparency, and equality before the law.

### **3.3.6 Right to be given record of proceedings.**

The accused has the right to obtain the documentation of their trial. When an individual is prosecuted for a criminal offense, the courts are required to keep a detailed documentation of the proceedings. The defendant or any person authorized by them is entitled to obtain certified true copies of these records.<sup>222</sup> Additionally, the accused is entitled to a copy of the judgment within seven days of the conclusion of the case. However, the prompt preparation and production of these records are rarely achieved due to various factors, including the incompetence and insufficiency of personnel in the judiciary's secretarial department, insufficient energy supply, and funding shortages. As a result, this constitutional provision often serves more as a formal right than a practical one, as the accused typically obtains the record of proceedings only after several weeks.<sup>223</sup>

The legal consequence of failing to provide a detailed documentation of the proceedings and judgment to the defendant within the stipulated seven days remains a contentious issue. One learned scholar argues that failing to make these documents available (even if not strictly within the seven-day period) constitutes a breach of the right guaranteed constitution.<sup>224</sup> This view likely takes into account the aforementioned logistical and operational challenges within the judiciary. However, the language of the Constitution uses the word "shall," indicating a mandatory obligation that must be followed. Therefore, it can be argued that the seven-day period is not merely a guideline but a strict requirement that must be adhered to.

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<sup>222</sup> Section 36(7) of the 1999 Constitution of the Federal Republic of Nigeria (as amended); Animashaun O., 'Foisting A Willing Employee on an unwilling Employer: The Remedy of Re-instatement Revisited' [2009] 3(2) *NJLIR* 66.

<sup>223</sup> *Olatunbosun v NISER Council* [1988] 3 NWLR (pt. 8) 25 at p.40.

<sup>224</sup> *Ibid.*

Non-compliance with this timeframe can be viewed as a breach of the constitutional rights of the accused.<sup>225</sup>

While the right to receive trial records and judgments promptly is enshrined in the Constitution, practical challenges often delay this process. Nevertheless, the use of "shall" in the constitutional text suggests a peremptory obligation, implying that the seven-day period should be strictly observed to ensure the accused's rights are fully protected.<sup>226</sup>

### 3.3.7 Absence of Retrospective Legislation (*ExPostFacto*Laws)

Legislation is considered retrospective when it is intended to take effect from a date prior to its enactment. The constitution<sup>227</sup> prohibits legislation that applies retroactively in criminal law and procedure. This subsection stipulates that no person shall be deemed guilty of a criminal offence for an act or omission that did not constitute an offence at the time it occurred. Additionally, no penalty shall be imposed for a criminal offence that is heavier than the penalty in force at the time the offence was committed.<sup>228</sup>

In criminal law, the Constitution expressly prohibits the application of laws in a way that would give them retrospective effect. This means that individuals cannot be prosecuted under laws that were not in place at the time their actions took place.<sup>229</sup> Retrospective criminal laws are often associated with military rule, where such constitutional safeguards are typically suspended. When the military takes power, they frequently suspend constitutional provisions, including those against retroactive legislation, thereby enabling the enactment of laws that can criminalize past actions

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<sup>225</sup> *Eperokun v Unilag* [1986] 4 NWLR (Pt 34)162 at p.201.

<sup>226</sup> *Ibid.*

<sup>227</sup> Section 36(8) of the 1999 Constitution.

<sup>228</sup> *Ibid.*

<sup>229</sup> Martinez, Maria, and Charles Johnson, 'Fair Hearing in Diversity and Inclusion Initiatives: Legal and Practical Challenges' [2021] 4(3) *Journal of Employment Diversity* 301-325..

and impose penalties retroactively.<sup>230</sup>

This prohibition is a fundamental principle of justice, ensuring that individuals are not unfairly punished under laws that did not exist at the time of their actions. It maintains the rule of law and protects against arbitrary and ex post facto penal measures. The constitutional safeguard against retrospective legislation is vital in preserving the legal certainty and fairness required in a just legal system.<sup>231</sup>

### 3.3.8 Rule Against Double Jeopardy

The law forbids bringing an individual for trial twice for an offense that contains the exact components as a previous offence for which they have already been tried. Specifically, it states that no individual who has appeared in court for any offense and tried by a competent court or tribunal and has either been sentenced, convicted or acquitted shall be tried again for that same offence or for a criminal offence containing the same ingredients, except when ordered by a superior court.<sup>232</sup>

This principle is widely recognized as the "rule against double jeopardy." It enshrines the common law doctrines of "autrefois acquit," which means that an individual has been previously tried and found not guilty, and "autrefois convict," entails that a person has been previously tried and found guilty. The ability for a defendant to invoke "autrefois acquit" or "autrefois convict" hinges on whether the proof available is necessary to support the conviction in the new charge. This rule protects individuals from being tried multiple times for the same offense, ensuring fairness in the justice system.<sup>233</sup> However, for an successful plea of the "rules against double jeopardy," by an individual, several conditions must be met:

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<sup>230</sup> *Afolabi v Governor of Oyo State* [1985] 2 NWLR (Pt. 9 768 at 675

<sup>231</sup> Cletus Ojumo, Aruwa Emeje and Patrick Okereke, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal* (ALJ) 16.

<sup>232</sup> Ibid

<sup>233</sup> Anozie M C, *Notes on Nigeria Constitutional Law* (Revised Edition, Enugu: Pymonak Printing & Publishing Co. 2000) 223.

- a. There must have been a previous prosecution.
- b. Competent Court: The prosecution must have occurred in a court of competent jurisdiction.
- c. Conviction or Acquittal: The defendant must have been either found guilty or not guilty of the original offense. It is essential to recognize that simply dismissing a complaint or discharging the accused does not qualify as an acquittal in the context of invoking double jeopardy.
- d. Same Offence or Ingredients: The second trial must be for the same offense as the first, or both offenses must share the same elements.

It is also sacrosanct to note that in cases where an appeal results in an order for retrial by another court, or if the prosecution appeals an acquittal or a conviction resulting in a lenient sentence, the accused cannot invoke the double jeopardy defense. This constitutional protection ensures that individuals are not subjected to repeated prosecutions for the same conduct, safeguarding against harassment and abuse of the judicial process.<sup>234</sup> The principle of double jeopardy is fundamental in promoting fairness and justice within the legal system, ensuring that once a person has been duly tried and either convicted or acquitted, they can move forward without the threat of being prosecuted again for the same offence.<sup>235</sup>

### **3.3.9 Enjoyment of Pardon**

The 1999 Constitution of the Federal Republic of Nigeria kick against or prohibits the trial of any individual who can demonstrate that they have been pardoned for an criminal offence.<sup>236</sup> This provision means that if a person commits an offence and is subsequently granted a pardon by the either the State Governor or the President or

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<sup>234</sup> *Nafiu Tabiu v State* [1980] 8-11 SC 130 at 164-166

<sup>235</sup> *Ibid.*

<sup>236</sup> Section 36(10) of the Constitution

both, depending on the circumstances or whether the offence is at the state or federal level, they cannot be tried for that same offence. This pardon occurs irrespective of whether the person was acquitted or convicted; it can even happen before the trial.<sup>237</sup>

To prove a pardon in court, the individual must present a duly signed copy of the pardon instrument. This should not be an unsigned paper listing names of those allegedly pardoned by the President or Governor. Alternatively, proof can be provided through a gazette that includes the documents of mercy. The impacts of a mercy was elaborated by the court in *Falae's case*.<sup>238</sup> The court held that a pardon essentially creates a new status for the person pardoned, removing all disadvantages and legal consequences that would have followed from the offence. It fully restores the rights of the individual concerning the offence for which they were pardoned.<sup>239</sup>

This constitutional protection emphasizes the significance of executive clemency in the Nigerian legal system. A pardon effectively wipes the slate clean for the individual, allowing them to regain their civil rights and eliminating any stigma or legal impediments resulting from the offence. This process underscores the power and impact of a pardon in providing a fresh start and preventing further legal proceedings for the same offence.<sup>240</sup>

### **3.3.10 Right Against Self-incrimination**

The right to remain silent is a fundamental principle in criminal trials, and it is enshrined in Section 36 (11) of the Constitution. This provision ensures that an accused person cannot be compelled to testify against themselves during their trial. This right is exclusive to the accused person, and it is designed to prevent

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<sup>237</sup> *Obidike v State* [2001]17 NWLR (Pt. 743) 601

<sup>238</sup> *Falae v. Obasanjo* [1999] 4 NWLR (Pt. 599) 476 CA

<sup>239</sup> *Ibid.*

<sup>240</sup> *Dapere Gira v The State* [1996] 4 NWLR 375 SC

self-incrimination.<sup>241</sup> Although other witnesses, including those summoned by the prosecution, may be compelled to testify regardless of their reluctance, the accused person has the constitutional right to remain silent. However, it is important to note that this right is not absolute. If a clear and accusation is made directly against the accused person in their presence, and they fail to deny, refute, or protest against it, this can be taken as admission by conduct or evidence by conduct.<sup>242</sup>

This does not mean that the defendant's decision to remain silent can be used as evidence against them. Rather, it is an exception to the general rule that an accused person's silence cannot be used as evidence against them. It is important to emphasize that the accused person's decision to remain silent does not constitute an admission of guilt.<sup>243</sup> Furthermore, the presiding judge should exercise caution when commenting on an individual's decision to stay mute. Strong comments or adverse inference drawn from the accused person's silence can be seen as evidence of prejudice or bias and may constitute basis for appeal. Therefore, any comment made by the court on the accused person's silence should be moderate and not condemning, as it contradicts the presupposition of innocence, which is a fundamental doctrine of impartial hearing.<sup>244</sup>

### **3.3.11 Offence and Penalty must be contained in a Written Law**

Section 36 (12) of the Constitution *supra* provides a fundamental principle in criminal law, stating that a person or an individual cannot be convicted of a criminal offence unless that offence is written and defined with sanction or the penalty being prescribed in a said law.<sup>245</sup> This means that the offence must be created by a law

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<sup>241</sup> Section 36 (11) of the 1999 Constitution

<sup>242</sup> *Garba v State* [1997] 3 NWLR (Pt. 492) 144 SC

<sup>243</sup> Agomo C K., *Nigerian Employment and Labour Relations Law and Practice*, (Lagos: Concept Publications Limited, 2011) p. 111.

<sup>244</sup> *Ibid.*

<sup>245</sup> Cletus Ojumo, Aruwa Emeje and Patrick Okereke, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal* (ALJ) 22.

enacted by law makers, either directly or through subordinate legislation, such as delegated legislation.<sup>246</sup> The Constitution defines written law which includes Acts of the National Assembly, laws from State Houses of Assembly, and other regulations arising from delegated legislation. This indicates that uncodified rules of Customary law or Sharia law cannot be employed to try, convict, or acquit a citizen. This is because these laws are not written and therefore do not meet the constitutional requirement.<sup>247</sup>

In the case of *Aoko v Fagbemi*,<sup>248</sup> the applicant was sentenced for adultery for cohabiting with a different man who is not her husband and without a formal judicial dissolution of marriage or separation in the Customary Court. However, upon appealing to the High Court, the court determined that the applicant had not violated any written law, stating that the trial court verdicts regarding her conviction was inconsistent with section 36(12) of the 1999 Constitution, which safeguards the right to a fair hearing. As a result, her conviction was overturned. It is crucial to highlight that, according to the Criminal Code, which is applicable in the Southern States of Nigeria, adultery is not considered a criminal offense. Nonetheless, the courts possess inherent powers under section 6(6)(a),<sup>249</sup> which gives them the enablement to impose penalties for the common law offense of "contempt of court,"<sup>250</sup> which is literally not recognized by a written law as a crime. This highlights the importance of ensuring that criminal offences are defined and penalized in written laws, to avoid arbitrary convictions and ensure justice and fairness in the legal system.

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<sup>246</sup> Cletus Ojumo, Aruwa Emeje and Patrick Okereke, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal* (ALJ) 22.

<sup>247</sup> *Ibid.*

<sup>248</sup> *Aoko v Fagbemi* [1961] 1 ALL NLR 400

<sup>249</sup> Section 6(6) (a) of the 1999 Constitution

<sup>250</sup> *Ibid*

### **3.3.12 The Mind of the Adjudicator must be Free so that there is no Possible Element of Bias**

The principles of impartiality and fairness are foundational to the dispensation of justice. The Constitution ensures that individuals have the right to a impartial hearing within a reasonable time, before a court or tribunal that is established by law and constituted to secure its independence, unbiased and impartiality.<sup>251</sup>

Impartiality is essential in ensuring that judges or tribunals do not bring personal interests or biases to the decision-making process. As stated in the leading case of *Dimes v Grand Junction Canal*, even the appearance of bias can be enough to set aside a decree. In *Nwafor Elike v. Ihemereme Nwankwoala & Ors*,<sup>252</sup> Oputa JSC emphasized that judges must be impartial, and not hear evidence from one-sided without the other's knowledge. Furthermore, the Wednesbury rule in administrative law requires decision-makers to consider all relevant evidence and exclude irrelevant factors. This ensures that decisions are made on the merits of the case, rather than on arbitrary or whimsical grounds. As stated by Uwaifo, JCA in *West African Examination Council v Mbamalu*,<sup>253</sup> the panel must consider material with probative value and not spin a coin or consult an astrologer.

Finally, the requirement that reasons be stated for conclusions reached minimizes the chances of arbitrariness and abuse of power. It ensures that the decision-making process is transparent, and that affected parties can challenge the decision if necessary. This promotes accountability and fairness in the administration of justice.<sup>254</sup> Ultimately, impartiality, fairness, and transparency are essential principles in the administration of justice. Judges and tribunals must ensure that they are impartial, consider all relevant evidence, and provide reasons for their decisions to promote fairness and accountability.

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<sup>251</sup> Section 36 of the 1999 Constitution

<sup>252</sup> *Nwafor Elike v. Ihemereme Nwankwoala & Ors*, [1984] 12 LLJR-SC301; [1994] ALL NLR 505

<sup>253</sup> *West African Examination Council v Mbamalu*, [1992] 3 N.W.L.R. (pt. 230) 481 at 493-494

<sup>254</sup> *Ibid.*

### 3.3.13 An Employee should be Accused of Specific Misconduct

The Constitution of Nigeria mandates that an individual charged with a criminal offence, must be notified or informed promptly and in detail of the particulars, circumstances and nature of the offence in a language they understand.<sup>255</sup> However, employers often investigate allegations by inviting suspects to testify without levelling specific accusations, and then punish them with retirement, termination, or dismissal. Courts have criticized this practice, highlighting the distinction between testifying as a witness and defending one's reputation and career.<sup>256</sup>

In *Aiyetan's case*,<sup>257</sup> the appellant was summoned to give oral evidence about a lost sum of N12,000 intended for salary payments. After testifying, he was dismissed. The Supreme Court ruled that the dismissal was wrongful and unconstitutional, as he was entitled to a formal notice of the charge (stealing) and an impartial hearing on that charge. This case emphasizes the importance of following due process and ensuring that individuals are informed of specific allegations against them, allowing them to defend themselves accordingly.

### 3.3.14 Employee should Know the Case he has to Meet

This encompasses the right of an individual to be fully notified of the allegations made against them, including the specific facts and arguments put forth by their accuser. It prohibits any element of surprise or ambush tactics, ensuring that the accused is adequately prepared to respond to the charges brought against them.<sup>258</sup>

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<sup>255</sup> Section 36(6)(a) of the 1999 Constitution.

<sup>256</sup> Cletus Ojumo, Aruwa Emeje and Patrick Okereke, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal* (ALJ) 1-25

<sup>257</sup> *Aiyetan v Nigerian Institute For Oil Palm Research* [1987] 3 NWLR (Pt. 59) 48

<sup>258</sup> Cheng, Jenny, and Peter Jones, 'Global Workforces and Fair Hearing Principles: Challenges in Cross-Border Employment Disputes' [2020] 3(6) *International Journal of Comparative Labour Law and Industrial Relations* 87-108..

Central to this principle is the opportunity for the accused to not only hear the evidence supporting the allegations but also to engage in cross-examination to challenge the veracity of such evidence. This process allows the accused to present their perspective and refute any claims made against them, thereby upholding the principles of impartiality and due process in legal proceedings.<sup>259</sup>

### **3.4 Emerging Trends in the Application of Fair Hearing Principles in Modern Workplaces**

The application of fair hearing principles in modern workplaces is undergoing rapid evolution due to several emerging trends that shape how disputes are managed and resolved. These trends reflect broader societal shifts and technological advancements that influence organizational dynamics and employee expectations. One significant trend reshaping fair hearing practices is the digital transformation of work environments.<sup>260</sup> The advent of remote work and the widespread adoption of digital communication tools have necessitated the adaptation of traditional hearing processes to virtual platforms.<sup>261</sup> Virtual hearings and online dispute resolution mechanisms are now commonplace, requiring the development of new protocols to ensure fairness in these digital environments.<sup>262</sup> Unlike in face-to-face settings, interpreting non-verbal cues such as body language becomes more challenging, emphasizing the need for clear guidelines that promote transparency and equitable treatment.<sup>263</sup>

Furthermore, the increasing focus on diversity, equity, and inclusion (DEI) has prompted organizations to reevaluate how fair hearing principles accommodate

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<sup>259</sup> Cheng, Jenny, and Peter Jones, 'Global Workforces and Fair Hearing Principles

<sup>260</sup> Jones, Sarah, and Emily Davis, 'Fair Hearing During Crisis: COVID-19 and Its Implications for Workplace Due Process' [2012] 1(4) *Journal of Business Ethics* 511-532..

<sup>261</sup> Ibid.

<sup>262</sup> Smith, John, 'Comparative Analysis of Fair Hearing Principles in International Employment Law' [2019] 2(8) *International Journal of Comparative Law* 201-225.

<sup>263</sup> Sargeant, Malcolm, and Jacqueline Weiner, 'Procedural Fairness in the Workplace: Emerging Trends' [2016] 45(3) *Industrial Law Journal* 301-325.

diverse perspectives and backgrounds. Workplace cultures that value inclusivity must ensure that hearing processes consider cultural sensitivities, language differences, and various communication styles.<sup>264</sup> This evolution underscores the importance of fostering environments where all employees feel respected and have confidence that their grievances will be heard and addressed impartially.<sup>265</sup>

Legal and regulatory changes also play a pivotal role in shaping fair hearing practices. Labor laws are increasingly incorporating provisions that mandate fair treatment in dispute resolution processes, compelling organizations to adhere to rigorous standards of procedural fairness.<sup>266</sup> Compliance with these evolving legal frameworks requires continuous review and adaptation of internal procedures to uphold the rights of employees and ensure consistency in decision-making.<sup>267</sup>

Moreover, technological advancements, particularly in artificial intelligence (AI) and automation, are transforming how organizations approach fair hearings. AI is being integrated into HR processes to streamline conflict resolution and grievance handling.<sup>268</sup> While AI can enhance efficiency, there is a critical imperative to ensure these technologies are designed to uphold fair hearing principles and mitigate biases. Transparency in automated decision-making is crucial to maintaining trust and fairness, preventing potential algorithmic biases from compromising the integrity of hearing outcomes.<sup>269</sup> In a large social media company, like Facebook, Instagram, Twitter (x) and many more have utilized AI algorithms to handle disputes and appeals regarding content moderation.<sup>270</sup> When users appeal decisions to remove content, AI

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<sup>264</sup> Sargeant, Malcolm, and Jacqueline Weiner, 'Procedural Fairness in the Workplace:

<sup>265</sup> Smith, David R., 'Fair Hearing and Confidentiality: Balancing Rights in Workplace Investigations' [2019] 3(2) *Business Law Review* 215-235.

<sup>266</sup> Ibid.

<sup>267</sup> Cheng, Jenny, and Peter Jones, 'Global Workforces and Fair Hearing Principles: Challenges in Cross-Border Employment Disputes' [2020] 3(6) *International Journal of Comparative Labour Law and Industrial Relations* 87-108..

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Green, Sarah, 'Virtual Hearings: Challenges and Opportunities for Fairness in Employment Tribunals' [2020] 32(4) *Journal of Employment Law* 448.

analyzes the context, historical data, and community guidelines to suggest fair resolutions.<sup>271</sup> This automated approach not only speeds up the review process but also ensures consistent application of policies across millions of users, fostering transparency and fairness in content moderation outcomes.<sup>272</sup>

Employee empowerment and advocacy represent another significant trend influencing fair hearing practices. As employees become more informed about their rights and expectations in the workplace, they are increasingly vocal about demanding fair treatment and transparency in decision-making processes.<sup>273</sup> Organizations are thus compelled to adopt more participatory approaches that empower employees to voice their concerns and contribute to the resolution of disputes, reinforcing a culture of fairness and accountability.<sup>274</sup>

Furthermore, globalization has led to the rise of cross-cultural workforces, necessitating fair hearing practices that are adaptable to diverse legal systems, cultural norms, and languages. Multinational organizations must navigate the complexities of harmonizing core principles of fairness while respecting local variations in the application of these principles.<sup>275</sup> This requires sensitivity to cultural differences and a commitment to ensuring equitable treatment across geographically dispersed teams.<sup>276</sup>

The evolution of fair hearing principles in modern workplaces is shaped by interconnected trends that reflect broader societal changes and technological advancements.<sup>277</sup> Organizations must navigate the complexities of virtualization,

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<sup>271</sup> Burrell, Fiona, 'Algorithmic Decision-Making and Fairness in Employment' [2021] 3(3) *Harvard Journal of Law & Technology* 490.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid.

<sup>274</sup> Brown, Michael, 'Judicial Interpretations of Fair Hearing Principles: Contemporary Issues and Case Studies' [2018] 2(5) *Employment Law Quarterly* 301-320..

<sup>275</sup> Ibid.

<sup>276</sup> Burrell, Fiona, 'Algorithmic Decision-Making and Fairness in Employment' [2021] 3(3) *Harvard Journal of Law & Technology* 457-486..

<sup>277</sup> Ibid.

diversity, legal compliance, technological innovation, employee advocacy, and globalization to ensure that fair hearing processes remain robust and equitable. By embracing these evolving dynamics and continually refining their approaches, organizations can foster environments where disputes are resolved fairly, and employees feel valued and respected.

### 3.5 Effect of the Breach of a Right to Fair Hearing

When an individual is accused or charged in a criminal or civil case is denied any crucial component of a fair hearing as guaranteed by the Constitution, it results in a violation of their right to a impartial hearing. Such infringements of Section 36 of the Constitution can be addressed through prerogative orders like certiorari, prohibition, and mandamus, as well as through the writ of habeas corpus. Furthermore, the enforcement of these rights can be implemented under the Fundamental Rights (Enforcement Procedure) Rules, 2009, which were established under the authority of the Chief Justice of Nigeria. These legal remedies ensure that individuals can pursue justice and protect their constitutional rights when they have been infringed upon.<sup>278</sup>

In legal precedent, as apprised in *Otapo v Sunmonu*,<sup>279</sup> any violation of the principles of natural justice and fair hearing renders the proceedings null and void. Furthermore, in instances like dismissal from public service, as seen in *Olaniyan's case*<sup>280</sup> a breach of fair hearing provisions leads to the invalidation of the dismissal, entitling the affected public officer to retain employment. It's crucial to note that a breach of fair hearing doesn't automatically result in a claim for damages. Unsatisfied individual must demonstrate that the act in question constituted a violation of agreement, statutory duty, an another recognized tort or civil wrong.<sup>281</sup>

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<sup>278</sup> Cletus Ojumo, Aruwa Emeje and Patrick Okereke, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ)* 29.

<sup>279</sup> *Otapo v Sunmonu* [1961]3 WLR 1405 at 1409

<sup>280</sup> *Olaniyan v University of Lagos* [1987] 2 NWLR (Pt 68) 587 SC

<sup>281</sup> *Ibid.*

As emphasized by the Court of Appeal in *Idris Rabiu v State*,<sup>282</sup> the right to impartial hearing is a fundamentally enshrined or guaranteed in the 1999 Constitution, and any violation thereof impacts the legitimacy of the proceedings. Fair hearing encompasses providing reasonable time and resources for adequate preparation of one's defense, emphasizing its indispensable nature in any judicial decision-making process. The Supreme Court, as noted in the case of *State v Onagoruwa*,<sup>283</sup> underscores that fair hearing resides in the procedural fairness of the determination, not solely in the sound, reasonable of the decision. Failure to adhere to the principles of impartial hearing renders the proceedings as well as their outcomes devoid of meaning and legitimacy.

### **3.6 The National Industrial Court of Nigeria in the Application of Fair Hearing in Master and Servant Relationship**

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) is a significant obstacle to effectively implementing international labour standards in the country. Section 12(1) thereof provides that no treaty with another country will be operational or will have the force of law unless such treaty is enacted and domesticated by the National Assembly.<sup>284</sup> This means that treaties and conventions ratified but not domesticated cannot be legally enforced in Nigeria. Consequently, Nigeria may enter into international agreements without necessarily implementing them domestically. The Constitution clearly specifies that treaties only become enforceable after being legislated by the national legislature.<sup>285</sup> The subsequent issue to consider is the status of a treaty, once ratified and domesticated, relative to other national laws. In some countries, treaties hold a constitutional status superior to national laws.

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<sup>282</sup> *Rabiu v State* [2005]1 NCC 578

<sup>283</sup> *State v Onagoruwa* [1992] 2 NWLR (pt 221) 33

<sup>284</sup> Section 12(1) of the 1999 Constitution

<sup>285</sup> Smith, John, 'Comparative Analysis of Fair Hearing Principles in International Employment Law' [2019] 2(8) *International Journal of Comparative Law* 201-225..

However, in Nigeria, treaties that have been domesticated including labour standards, do not supersede the Constitution, which is the country's supreme law. Thus, if there is a conflict or inconsistency between the Constitution and a treaty, the Constitution prevails. The Supreme Court in *Abacha v. Fawehinmi*<sup>286</sup> clarified two key points: that domestication by the National Assembly is essential for a treaty to have a force of law at the municipal level, and that domesticated treaties do not have a higher status than other non-treaty legislations. The Court noted that international treaties have no legal force in Nigeria until enacted by the National Assembly. Once enacted, such as the African Charter incorporated through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, these treaties become binding, and courts must treat them as they would any other law.

In *Abacha v. Fawehinmi*,<sup>287</sup> the court considered Section 12(1) of the Constitution of the Federal Republic of Nigeria and concluded that an international treaty, regardless of its benefits to the country or its citizens, remains unenforceable unless enacted into law by the National Assembly. Similarly, in *Oshevire's* case, Justice Ejiwunmi noted that an international treaty is an expression of agreed principles by contracting states and is generally independent of municipal laws in terms of its application and interpretation.<sup>288</sup>

However, a shift from this constitutional impediment in implementing labour treaties was introduced in the Third Alteration to the Constitution, which grants the National Industrial Court jurisdiction over matters related to the application or interpretation of international labour standards. This raises the question of whether ILO conventions, such as the ILO Termination of Employment Convention, can be applied in Nigeria without domestication by the National Assembly as required by Section 12 of the

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<sup>286</sup> *Abacha v. Fawehinmi* [2001] 4 SCNJ 400.

<sup>287</sup> *Abacha v Fawehinmi* [2000] 6 NWLR (Pt. 660) 228.

<sup>288</sup> Atilola B., 'Legal Redress for Wrongful Termination of Contract of Employment: What Lawyers Must Note' [2011] 5(2) *NJLIR*, 12.

Constitution.<sup>289</sup>

Agomo<sup>290</sup> argues that the provisions of ratified ILO conventions can indeed be applied by the National Industrial Court without domestication. This view is supported by Amucheazi and Abba,<sup>291</sup> and Agomo further asserts that Section 7(6) of the National Industrial Court Act provides a legal basis for treating non-domesticated conventions as examples of international best practices.<sup>292</sup> This perspective is endorsed by Justice Kanyip, who believes Section 7(6) allows Nigeria to leverage international labour jurisprudence in resolving domestic issues.<sup>293</sup> Adejumo also supports this interpretation, arguing that any constitutional interpretation aimed at negating the applicability of ILO conventions undermines Nigeria's international obligations. He also maintains that such a narrow interpretation should not be used to defeat the fulfillment of voluntarily entered and ratified international commitments, particularly those concerning ILO conventions.<sup>294</sup>

Section 254C (1)(f) & (h) of the Constitution of the Federal Republic of Nigeria (Third Alteration Act) grants the National Industrial Court exclusive jurisdiction over matters related to unfair labour practices and international best practices in labour, employment, and industrial relations.<sup>295</sup> Additionally, Section 254C (2) specifies that, notwithstanding any other constitutional provisions, the National Industrial Court has exclusive jurisdiction over the utilization of any global convention, treaty, covenant,

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<sup>289</sup> Animashaun O., 'Foisting A Willing Employee on an unwilling Employer: The Remedy of Re-instatement Revisited'[2009] 3(2) *NJLIR* 5.

<sup>290</sup> Agomo C K., *Nigerian Employment and Labour Relations Law and Practice*, (Lagos: Concept Pub. Ltd, 2011) p. 103

<sup>291</sup> Amucheazi O D., and P U, Abba, *The National Industrial Court of Nigeria: Law, Practice and Procedure* (UK: Wildlife Pub. House, 2013) p. 294.

<sup>292</sup> *Ibid.*

<sup>293</sup> Cheng, Jenny, and Peter Jones, 'Global Workforces and Fair Hearing Principles: Challenges in Cross-Border Employment Disputes' [2020] 3(6) *International Journal of Comparative Labour Law and Industrial Relations* 111.

<sup>294</sup> Smith, John, 'Comparative Analysis of Fair Hearing Principles in International Employment Law' [2019] 2(8) *International Journal of Comparative Law* 234.

<sup>295</sup> Cheng, Jenny, and Peter Jones, 'Global Workforces and Fair Hearing Principles: Challenges in Cross-Border Employment Disputes' [2020] 3(6) *International Journal of Comparative Labour Law and Industrial Relations* 119

or protocol domesticated by Nigeria concerning labour, employment contracts, workplace, or industrial relations. This provision suggests a constitutional priority over Section 12(1), which restricts the enforceability of non-domesticated international treaties. This prioritization implies that Section 12 is subordinate to Section 254C (1) & (2). It is a legal principle that when two laws conflict, the later provision prevails, effectively implying that the earlier one is repealed.<sup>296</sup>

The National Industrial Court of Nigeria is currently empowered to directly apply ratified international conventions or international labour standards as best practices. Justice B.B. Kanyip, in *Aero Contractors Co. of Nigeria Limited v National Association of Aircrafts Pilots and Engineers (NAAPE), Air Transport Services Senior Staff Association of Nigeria (ATSSSAN), and National Union of Air Transport Employees (NUATE)*,<sup>297</sup> stated that the Constitution (Third Alteration) Act 2010, which inserted Section 254C (1)(f), (h), and (2), effectively meets the ratification requirements of Section 12 of the 1999 Constitution. The adjustments was passed and ratified by the President and a majority of the Houses of Assembly, thus fulfilling Section 12's requirements. Furthermore, the court emphasized that the two subsections (1) and (2) of Section 254C begin with "Notwithstanding," which overrides any conflicting constitutional provisions, including Section 12. The Supreme Court has judicially considered the use of "notwithstanding" in statutory instruments, reinforcing its overriding effect.<sup>298</sup>

In *Peter Obi vs. INEC & Ors*,<sup>299</sup> the Supreme Court referenced *NDIC vs. Koen Ltd and anor*,<sup>300</sup> stating that when the term "notwithstanding" is used in a statute, it aims to negate the impact of any conflicting provisions within the statute or related

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<sup>296</sup>Cheng, Jenny, and Peter Jones, 'Global Workforces and Fair Hearing Principles:.

<sup>297</sup> *Aero Contractors Co. of Nigeria Limited v N.A.A.P.E, A.T.S.S.S.A.N, and N.U.A.T.E*) Suit No: NICN/LA/120/2013

<sup>298</sup> Ibid.

<sup>299</sup> *Peter Obi vs. INEC & Ors* [2007] 11NWLR (Pt. 1046) 565 at 636 '634 per Aderemi, JSC. [2004] 10 NWLR (Pt. 880) 107 at 182/182

<sup>300</sup> *NDIC vs. Koen Ltd and anor* [2004] 10 NWLR (Pt. 880) 107 at 182

legislation, allowing the section to operate independently. Similarly, in Section 254C (1)(f) and (h) and (2) of the 1999 Constitution, as amended, the use of "notwithstanding" nullifies the effects of Section 12 or any other conflicting sections of the Constitution. Therefore, no provision in the Constitution can undermine Section 254C (1)(f) and (h) and (2). Justice B.B. Kanyip further clarified that the National Industrial Court has the authority to apply any international convention, treaty, or protocol ratified by Nigeria, along with the associated ILO jurisprudence. Nigeria ratified both the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) on October 17, 1960. Thus, the argument that the court cannot apply these ILO Conventions is invalid.<sup>301</sup>

In *Aloysius vs. Diamond Bank Plc*,<sup>302</sup> the Court relied on Article 4 of the ILO Termination of Employment Convention and its Recommendation to declare the claimant's termination wrongful due to the lack of a valid reason. Similarly, in *Bello Ibrahim vs. Eco Bank Plc*,<sup>303</sup> the court used Article 4 of the same ILO Convention to rule the termination wrongful and ordered the claimant's reinstatement, applying the ILO Convention as an example of international best practice despite it not being ratified by Nigeria.<sup>304</sup>

The National Industrial Court has also applied ratified ILO Conventions in cases involving gender issues. In *Ejieke's case*,<sup>305</sup> the court referred to the CEDAW and the ILO Discrimination (Employment and Occupation) Convention to define workplace sexual harassment. The Court of Appeal upheld the National Industrial Court's decision in *Ferdinand's case*,<sup>306</sup> which relied on these conventions to define sexual

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<sup>301</sup> *NDIC vs. Koen Ltd and anor* [2004] 10 NWLR (Pt. 880) 107 at 182

<sup>302</sup> *Aloysius vs. Diamond Bank Plc* [2015] 58 NLLR (Pt. 199) 92.

<sup>303</sup> *Bello Ibrahim vs. Eco Bank Plc*, Suit No: NICN/ABJ/144/2018

<sup>304</sup> *Ibid.*

<sup>305</sup> *Ejieke Maduka vs. Microsoft Nigeria and others* [2014] N.L.L.R (Pt. 125) 67

<sup>306</sup> *Ferdinand Dapaah & Anor vs. Stella Ayamodeh* [2019] 16 ACELR 154 at 181-182.

harassment. These cases demonstrate that the National Industrial Court has applied both ratified and non-ratified ILO Conventions as international best practices in labour matters. The court's reliance on these conventions remains valid even if they are introduced during the final address of counsel, rather than being pleaded initially.

### 3.7 Dissatisfaction with Judicial Developments

Some labor law scholars like Wedderburn<sup>307</sup> and Anderman<sup>308</sup> express reservations about the ability of judges in common law jurisdictions to adequately protect the interests of employees. They argue that the judiciary often exhibits a predisposition towards employers, both in terms of their socioeconomic class or background and their perceived skepticism towards trade unions.<sup>309</sup> Additionally, concerns linger regarding the influence of outdated master and servant laws on contemporary employment contracts.

While some scholars initially held a more optimistic view of the common law's capacity to safeguard employee rights, dissatisfaction has grown following two significant legal rulings by the Court. The first case, *Johnson v Unisys Ltd*,<sup>310</sup> the court determine that the implied term of reciprocal trust and confidence, inherent in all employment contracts, does not extend to the mannerisms in which the dismissal hold its stance. Primarily, this decision was motivated by concerns that recognizing such a term at common law would encroach upon statutory provisions governing unfair dismissal claims. Subsequent criticism of this ruling stemmed from the perception that it established statutory limitations as a ceiling for common law developments, rather than a minimum standard.<sup>311</sup>

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<sup>307</sup> Wedderburn K.W., 'The Worker and the Law (London: Sweet and Maxwell, 3rd ed, 1986) 56.

<sup>308</sup> Vissombat K. V., 'Individual Employment Contracts in the New Labour Codes' [1968] 18 *International Labour Review* 121-136.

<sup>309</sup> Hepple B., 'Restructuring Employment Rights'[1986] 83 *ILJ* 69.

<sup>310</sup> *Johnson v Unisys Ltd* [2001] UKHL 13; [2001] IRLR 279 [28].

<sup>311</sup> *Ibid.*

Shortly after Johnson, the House of Lords further solidified its stance in *Eastwood's case*,<sup>312</sup> *McCabe's case*,<sup>313</sup> establishing what became known as the "Johnson exclusion zone." This ruling clarified that the limitations set forth in Johnson applied specifically to the moment of dismissal, rather than the entirety of the disciplinary process. However, it allowed for claims of breach of trust and confidence if misconduct occurred prior to dismissal.<sup>314</sup> *Edwards's case*,<sup>315</sup> *Botham's case*<sup>316</sup> a contentious case extended the implications of Johnson to explicitly incorporated workplace disciplinary procedures. The Supreme Court concluded that such procedures, intertwined with statutory unfair dismissal laws, were exempt from contractual damages unless explicitly stated otherwise. This decision faced criticism for its lack of clarity regarding the relationship between disciplinary procedures and unfair dismissal laws, as well as its perplexing remedial consequences.<sup>317</sup>

Critics also questioned the majority's reasoning in Edwards, particularly concerning the availability of damages without express contractual provisions. The ambiguity surrounding the majority opinion and the dissenting voices further complicated the understanding of the case's legal implications.<sup>318</sup> Moreover, the revival of older legal precedents, such as *Addis v Gramophone Co Ltd*,<sup>319</sup> raised concerns about the coherence of contemporary employment law jurisprudence. Academic discourse surrounding these landmark cases has evolved over time. While initial reactions to Johnson were largely critical, subsequent scholarship has recognized its significance as a matter of constitutional principle. Conversely, Edwards continues to attract widespread condemnation, with scholars advocating for its reconsideration or

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<sup>312</sup> *Eastwood v Magnox Electric Plc* [2004] UKHL 35.

<sup>313</sup> *McCabe v Cornwall County Council* [2004] IRLR 733 43

<sup>314</sup> *Ibid.*

<sup>315</sup> *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2011] UKSC 58.

<sup>316</sup> *Botham v Ministry of Defence* [2012] IRLR 129.

<sup>317</sup> *Ibid.*

<sup>318</sup> Vissombat K. V., 'Individual Employment Contracts in the New Labour Codes' [1968] 18 *International Labour Review* 121-136.

<sup>319</sup> *Addis v Gramophone Co Ltd* [1909] AC 488 (HL).

overruling in future legal proceedings.<sup>320</sup>

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<sup>320</sup> *Addis v Gramophone Co Ltd* [1909] AC 488 (HL).

## Chapter Four

### Emerging Trends and Challenges in the Application of Fair Hearing Principles in Modern Workplace

#### 4.1 Introduction

In modern workplaces, applying fair hearing principles encounters new challenges and opportunities influenced by technological advancements and organizational changes. Organizations seek efficiency and transparency in resolving conflicts and managing grievances, navigating trends like automation and other innovations. These developments aim to simplify operations but require thoughtful implementation to maintain fundamental fair hearing standards. Additionally, with diverse workforce demographics and evolving regulations, ensuring impartial decision-making remains essential while emphasizing the urgent need for organizations to adapt their approaches to uphold fairness and accountability in contemporary workplaces.

#### 4.2 The Supreme Court's Stance on the pragmatic application of the Limitation Laws to Employment Contracts

The Court has encountered a series of divergent rulings concerning the application of limitation laws, especially the Public Officers Protection Act (POPA), within the context of employment contracts. This judicial oscillation has introduced uncertainty within legal circles and lower courts, challenging the foundational principle of legal certainty in the judicial system.<sup>321</sup> The debate gained prominence following the *Johnson*' case<sup>322</sup> where the Court ruled on the non-applicability of Section 2 of

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<sup>321</sup> Tunde Ahmed Adejumo, *The Pendulum of Precedent: Examining the Supreme Court's Oscillating Stance on the Applicability of Limitation Laws to Employment Contracts* (2024). Available at <[https://thenigerialawyer.com/the-pendulum-of-precedent-examining-the-supreme-courts-oscillating-stance-on-the-applicability-of-limitation-laws-to-employment-contracts/#google\\_vignette](https://thenigerialawyer.com/the-pendulum-of-precedent-examining-the-supreme-courts-oscillating-stance-on-the-applicability-of-limitation-laws-to-employment-contracts/#google_vignette)> accessed 29 of June 2024.

<sup>322</sup> *N.R.M.A. & F.C. v. Johnson* [2019] 2 NWLR (Pt. 1656) 247.

POPA to disputes arising from employment contracts.

In its verdict, the Supreme Court emphasized that the three-month limitation period prescribed by Section 2 of POPA does not extend to contract of service disputes. The court clarified that the respondents' claim clearly pertained to a contract of service, distinct from matters covered under POPA. The ruling underscored that employees engaged in contractual relationships with public officers cannot be shielded under the protective provisions of POPA to bar actions against them beyond the stipulated timeframe of three months. The court's stance affirmed that the legal protection afforded by POPA does not encompass disputes arising from employment agreements, thereby upholding the lower court's verdicts that the appellants were not immune to legal actions under POPA in this contractual context.<sup>323</sup>

This decision has sparked ongoing debate among legal experts and practitioners regarding the consistent application of statutory limitations in employment-related litigation involving public officers. The evolving jurisprudence reflects a complex interplay between statutory interpretation and the rights of contractual parties, highlighting the need for clarity and coherence in judicial pronouncements to maintain legal certainty across the Nigerian legal landscape.

However, the ruling in *Abdulrahman v. N.N.P.C.*,<sup>324</sup> marked a significant change in the legal framework regarding limitation periods in employment disputes, particularly those involving public entities like the NNPC. While the case primarily centered around the interpretation of Section 12(1) of the NNPC Act, the Supreme Court uttered an obiter dictum proposing that the 12-month limitation period for lawsuits against the NNPC should also be applicable to employment dispute and termination cases. This observation introduced uncertainty into what was previously considered established law. The court implied that claims related to employment termination, even if not directly contesting the termination, could fall under the NNPC Act's limitation rules.

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<sup>323</sup> Ibid, p. 270 – 271, paras. F – B.

<sup>324</sup> *Abdulrahman v. N.N.P.C.* [2021] 12 NWLR (Pt. 1791) 405.

The court further reasoned that claims for post-employment rights, such as pension and medical benefits, should not be considered statute-barred within the first 12 months after termination.

This development led to a reassessment among legal practitioners who had previously abandoned challenges pertaining to jurisdiction regarding limitation periods in employment cases before the National Industrial Court. The Supreme Court's dictum in *Abdulrahman v. N.N.P.C.* underscored the need for careful consideration of statutory interpretations in employment disputes involving public entities, highlighting the potential for nuanced applications of limitation laws even where they may not seem directly applicable. Consequently, this case exemplifies the evolving nature of jurisprudence in Nigeria, where judicial statements, whether binding or *obiter*, can significantly influence legal strategies and interpretations, particularly in complex areas such as employment law and statutory limitations.

In 2021, the legal landscape regarding the applicability of Section 2 of the Public Officers Protection Act (POPA) to employment contract disputes underwent further complexity with the judgment in *Idachaba's* case.<sup>325</sup> This case presented a direct contradiction to the Supreme Court's previous stance. The Supreme Court magnanimously and unequivocally ruled that Section 2 of POPA does indeed apply or is not applicable to cases involving employment contracts. The court's decision was grounded in the factual acknowledgment that the appellants were employees of the University of Agriculture, Makurdi, and thus public officers within the scope of POPA. It emphasized that despite any grievances between the parties, the termination of the appellants' employment occurred on a specified date, and according to POPA, any legal action regarding such terminations should have been initiated within three months of the cause of action arising.

This ruling starkly contrasted with the earlier interpretations that had suggested otherwise, thereby causing further uncertainty in legal circles. It underscored the

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<sup>325</sup> *Idachaba v. University of Agriculture, Makurdi* [2021] 11 NWLR (Pt. 1787) 209..

statutory obligation for public officers, including those under employment contracts, to adhere strictly to the prescribed limitation periods under POPA. The court's position reaffirmed the applicability of POPA's provisions in employment contexts, emphasizing the need for timely legal recourse in disputes arising from public office appointments.

The decision marked a significant shift from the principle established in *Johnson's case*. The Court of Appeal, faced with precedents that were inconsistent, sought to mitigate, amend or reconcile them in *Abdulrahman's case*.<sup>326</sup> The Court saw that the verdicts in *Idachaba's case*, being more recent, superseded the earlier ruling in *Johnson*. Consequently, it applied Section 2(a) of POPA to determine that the suit before it was statute-barred. Justice Peter Olabisi Ige, JCA, noted that "It is accurate that the Apex Court of law held in *Johnson's case*<sup>327</sup> per Ariwoola, JSC (Now retired CJN) that the Protection Act would not be applicable to contracts of service.

However, the Apex Court seems to have migrated from this orientation in the *Idachaba's case*,<sup>328</sup> "the law is well established that where there are inconsistencies pertaining to verdicts made by the Apex Court, this Court is mandated to follow the latter decision...I firmly believe that in light of the Apex Court's decision in *Idachaba's case*, the provision of the Protection Act, Section 2(a), and Section 13 of the Tetfund Act will apply or are applicable to the Respondent's case or suit. Since the suit was filed more than three months after the Respondent's seclusion letter was issued and served, the Respondent's suit, filed on 18/1/2021, cannot be entertained by the court due to such suit being statute-barred, and the autonomy to sue had been extinguished."<sup>329</sup>

In numerous cases, the National Industrial Court (NIC) has applied and relied on the

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<sup>326</sup> *Tertiary Education Trust Fund (TETFUND) & Anor v. Dr. Aminu Abdulrahman Anas* [2022] LPELR-58704 (CA).

<sup>327</sup> *N.R.M.A. & F.C. v. Johnson & Ors* [2019] 2 NWLR (Pt. 1656) 247 at 270, D – H to 271, A – C .

<sup>328</sup> *Idachaba & Ors v. University of Agriculture, Makurdi* [2021] 1 SCM 53 at 64, H – I to 66,

<sup>329</sup> *Tertiary Education Trust Fund (TETFUND) & Anor v. Dr. Aminu Abdulrahman Anas* p. 39 – 47 (n24)

Idachaba precedent. Notable examples include *Goddy's case*<sup>330</sup> and *Akudo's case*.<sup>331</sup> In these cases, the NIC ruled that limitation laws only apply to or are applicable to employment contracts, however, the court declined power or jurisdiction to entertain the suits as they were statute-barred.

However, the Supreme Court introduced a new twist in *Adefila's case*<sup>332</sup>. This decision seemingly overturned the Idachaba ruling, signaling a return to the Court's original position that POPA is not applicable to employment contracts. The Court emphasized that the matter at hand involved a dispute over an employment contract. The court clarified, "Based on the facts presented, it is undisputed that the disagreement between the parties pertains to their employment contract. The respondents, acting as plaintiffs, initiated this suit to challenge the alleged changing, and adjustment of their retirement age from sixty-five to sixty years by the appellants, which did not align with their mutual agreement." The Court reaffirmed its long-standing principle that the Protection Act, upon which the appellants based their disagreements to the validity of the suit, is inapplicable in cases of breach of contract. This ruling reasserted that POPA's protections are not meant to shield public officers in employment disputes related to contract violations, especially where the parties' terms of employment have been altered without mutual consent. In *Rahamaniya's case*,<sup>333</sup> The court firmly reiterated that the Protection Act was not designed or enacted by the law makers to be applicable to contractual matters. "Therefore, as the respondents' current case is based on a contract, the defense raised by the appellants is legally ineffective. I so hold."<sup>334</sup>

The recent ruling by the Apex Court has reignited debates and increased legal

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<sup>330</sup> *Goddy Ezezobu Obaneke v. NDLEA* (unreported Suit No: NICN/ABJ/77/2023, delivered on 20th July 2023)

<sup>331</sup> *Akudo Akwarandu v. Jbis Integrated Resources Limited* (unreported Suit No: NICN/PHC/04/2023, delivered on 29th May 2024).

<sup>332</sup> *Rector Kwara Poly v. Adefila* [2024] 9 NWLR (Pt. 1944) 529.

<sup>333</sup> *Rahamaniya United Nigeria Limited v. Minister of Federal Capital Territory* [2021] LPELR – 55633 (SC); [2021] 17 NWLR (Pt. 1806) 481

<sup>334</sup> *Rector Kwara Poly v. Adefila*. pg. 544, paras. E – H (n 30)

uncertainty. Currently, there is a clear arising inconsistencies between two lines of Supreme Court verdicts. *Johnson's case* and *Adefila's case* on one hand, and *Idachaba's case* on the other. This conflict has resulted in a challenging legal habitat for litigants, legal representatives or practitioners, as well as the lower courts, all of whom must contend with these precedents that are inconsistent when addressing similar legal matters.

This condition is particularly hard or difficult for the Court of Appeal, which is the final authority for reviewing verdicts from the NIC. In cases like *Tetfund*, the Court may dismiss an appeal based on its understanding of the prevailing Supreme Court position, only for that stance to be subsequently overturned by the Supreme Court. This unpredictability creates a challenging legal environment and complicates the Court of Appeal's decision-making process, as it must carefully interpret and anticipate shifts in Supreme Court rulings.<sup>335</sup> These changing precedents weaken legal certainty, which is a cornerstone of our judicial system. It is essential for the Supreme Court to seize hold of the next available chance to deliver a clear, unchanging, unvarying and unswerving ruling on this issue. Doing so would restore much-needed clarity and predictability in employment law, allowing litigants, legal practitioners, and courts to navigate such cases with confidence and stability.

#### **4.3 Challenges in the Application of Fair Hearing Principles in Modern Workplaces**

The evolution of fair hearing principles in modern workplaces is accompanied by several critical challenges that organizations must navigate to ensure these principles are effectively applied across diverse environments and circumstances. One primary challenge lies in maintaining consistency across various platforms, especially in the

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<sup>335</sup> Tunde Ahmed Adejumo, *The Pendulum of Precedent: Examining the Supreme Court's Oscillating Stance on the Applicability of Limitation Laws to Employment Contracts* (2024). Available at <[https://thenigerialawyer.com/the-pendulum-of-precedent-examining-the-supreme-courts-oscillating-stance-on-the-applicability-of-limitation-laws-to-employment-contracts/#google\\_vignette](https://thenigerialawyer.com/the-pendulum-of-precedent-examining-the-supreme-courts-oscillating-stance-on-the-applicability-of-limitation-laws-to-employment-contracts/#google_vignette)> accessed 29 of June 2024.

increasingly prevalent hybrid and remote work settings.<sup>336</sup> In *Adeniji v. University of Ibadan*,<sup>337</sup> Adeniji, a senior lecturer at the University of Ibadan, was demoted from his position without prior notice or an opportunity to contest the verdict. The demotion was based on administrative decisions within the university. Adeniji argued that Adebayo who was previously the senior lecturer in the university was procedurally demoted and in the instant case, procedure have not been followed. However, the court found that Adeniji's demotion violated his right to fair hearing under the university regulations and constitutional provisions. The court emphasized that academic institutions, as autonomous bodies, must uphold fair and transparent procedures in their administrative actions affecting staff members and must be consistent in so doing. Ensuring consistent application of fair hearing principles across different cases and departments is crucial. Without standardization, there can be significant variability in how hearings are conducted, leading to perceptions of unfairness.<sup>338</sup> Standardized procedures and guidelines help guarantee that every single employee are treated equally and also to ensure that the hearing process is impartial and objective. This includes establishing clear criteria for evaluating cases, uniform documentation practices, and consistent communication protocols.<sup>339</sup> Consistency in applying these principles fosters trust in the fairness and reliability of the process.

Continuous training and education for those involved in the hearing process are necessary to maintain high standards of fairness. Regular training helps to keep everyone informed about best practices, new regulations, and emerging challenges.<sup>340</sup> Training programs should cover topics such as unbiased decision-making, effective

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<sup>336</sup> Green, Sarah, 'Virtual Hearings: Challenges and Opportunities for Fairness in Employment Tribunals' [2020] 32(4) *Journal of Employment Law* 421-440..

<sup>337</sup> *Adeniji v. University of Ibadan* [2012] 9 NWLR (Pt. 1300) 1

<sup>338</sup> *Ibid.*

<sup>339</sup> Schwartz, Paul, and Daniel Solove, 'Privacy and Fairness in Workplace Investigations: Legal and Ethical Considerations' [2020] 2(1) *Yale Journal of Law and Technology* 89-112.

<sup>340</sup> Smith, David R., 'Fair Hearing and Confidentiality: Balancing Rights in Workplace Investigations' [2019] 3(2) *Business Law Review* 215-235..

communication skills, and updates on legal and regulatory changes. By ensuring that all participants, including hearing officers, Human Resource (HR) personnel, and employees, are well-versed in these areas, organizations can uphold the integrity of the hearing process and adapt to evolving workplace dynamics.<sup>341</sup>

Bias and discrimination represent another significant hurdle in the fair hearing process. Implicit biases, often unconscious, can influence decision-making during hearings, potentially leading to unfair treatment of individuals or marginalized groups.<sup>342</sup> To mitigate this risk, organizations must implement bias awareness training for decision-makers, utilize diverse panels to adjudicate disputes, and deploy AI tools designed to minimize bias in the evaluation of evidence and arguments. These measures are essential in fostering an environment where impartiality and fairness are consistently upheld.<sup>343</sup> However, in *Bridges v. City of Richardson*,<sup>344</sup> where a police officer employed by the City of Richardson, Texas, was terminated from his position following allegations of misconduct related to his conduct during a high-speed pursuit. Bridges argued that the termination process was rushed and biased against him, denying him a fair opportunity to challenge the allegations and present evidence in his defense. The Fifth Circuit Court of Appeals found that Bridges' due process rights were violated during the termination process. The court emphasized that a fair hearing requires not only notice of the charges and an opportunity to respond but also impartial decision-making by those adjudicating the case. In Bridges' situation, the hurried nature of the hearing and the biased handling of the allegations compromised his ability to adequately defend himself. This case highlighted the importance of procedural fairness in employment decisions, particularly in sensitive sectors like law enforcement.<sup>345</sup> Subsequently, in *Akinsiku v. Lagos State University*,<sup>346</sup> Akinsiku, a

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<sup>341</sup> Smith, David R., 'Fair Hearing and Confidentiality: Balancing Rights in Workplace Investigations'

<sup>342</sup> Martinez, Maria, and Charles Johnson, 'Fair Hearing in Diversity and Inclusion Initiatives: Legal and Practical Challenges' [2021] 4(3) *Journal of Employment Diversity* 301-325..

<sup>343</sup> *Ibid.*

<sup>344</sup> *Bridges v. City of Richardson* [1991] 812 F.2d 713 (5th Cir.).

<sup>345</sup> *Ibid.*

lecturer at Lagos State University, was terminated from his employment following allegations of academic misconduct. He was dismissed without being given notice of the charges against him or an opportunity to present his defense. The court found that Akinsiku's dismissal was procedurally unfair and contravened his autonomy to impartial hearing as guaranteed under Nigerian law. The court emphasized that academic staff, like other public officers, are entitled to procedural fairness before any adverse employment decisions are made. The ruling highlighted the importance of providing employees with notice of allegations and an opportunity to respond, particularly in disciplinary proceedings within academic institutions. However, in *Loudermill v. Cleveland Board of Education*,<sup>347</sup> where a security guard employment was terminated without prior notice or a hearing. The termination was based on accusations of dishonesty related to his employment. Loudermill challenged his dismissal, arguing that he was entitled to a pre-termination hearing to present his part of the story and contest the allegations before the termination decision was finalized. The Supreme Court in U.S ruled that Loudermill, as a public employee with a interest in property as well as in continued employment, was entitled to a minimal pre-termination hearing. The purpose of this hearing was to provide him with an opportunity to respond to the charges against him and to ensure that the decision to terminate his employment was not arbitrary or unfounded. The Court emphasized that even though public employment may be terminable at will, due process requires some procedural safeguards to protect employees from unjust dismissals.<sup>348</sup>

Furthermore, striking the right balance between maintaining confidentiality for the parties involved and ensuring transparency in the process is a critical challenge. Organizations must guarantee that hearing processes is impartial and open while protecting the privacy of individuals involved. This balancing act is complex because transparency is essential for building trust and accountability, while confidentiality is

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<sup>346</sup> *Akinsiku v. Lagos State University* [2005] 2 NWLR (Pt. 911) 207

<sup>347</sup> *Loudermill v. Cleveland Board of Education* [1985] 470 U.S. 532.

<sup>348</sup> *Ibid*; *Heckler v. Campbell* [1983] 461 U.S. 458.

necessary to protect sensitive information and the privacy rights of individuals.<sup>349</sup>

Protecting sensitive information while complying with data privacy laws and regulations is essential. Ensuring that personal and sensitive data is handled appropriately and securely is a major concern in maintaining both confidentiality and transparency.<sup>350</sup> Organizations need to effectuate a robust data protection strategies or steps, encompassing encryption and access restrictions to safeguard against unauthorized access and data breaches. Compliance with regulations such as General Data Protection Regulations (GDPR) or Health Insurance Portability and Accountability Act (HIPAA) adds another layer of complexity, requiring ongoing monitoring and adaptation of privacy policies and practices.<sup>351</sup>

Resource constraints present another obstacle, particularly for smaller organizations that may lack the financial and human resources necessary to implement comprehensive fair hearing procedures. To address this challenge, organizations can explore cost-effective alternatives such as third-party mediation services and online dispute resolution platforms.<sup>352</sup> These resources can help maintain adherence to fair hearing principles without imposing undue burdens on organizational resources.

The rapid pace of technological change also demands continuous adaptation from organizations. Keeping abreast of technological advancements and ensuring that new tools and platforms comply with fair hearing principles require ongoing effort.<sup>353</sup> Technological barrier is another significant hurdle in the application of fair hearing principles in a modern workplace. Not all employees may have equal access to the necessary technology for virtual hearings. This can create disparities and hinder the

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<sup>349</sup> Jones, Sarah, and Emily Davis, 'Fair Hearing During Crisis: COVID-19 and Its Implications for Workplace Due Process' [2012] 1(4) *Journal of Business Ethics* 511-532.

<sup>350</sup> Ibid.

<sup>351</sup> Green, Sarah, 'Virtual Hearings: Challenges and Opportunities for Fairness in Employment Tribunals' [2020] 32(4) *Journal of Employment Law* 421

<sup>352</sup> Ibid.

<sup>353</sup> Brown, Michael, 'Judicial Interpretations of Fair Hearing Principles: Contemporary Issues and Case Studies' [2018] 2(5) *Employment Law Quarterly* 301-320..

fair application of hearing principles, especially for remote or under-resourced employees.<sup>354</sup> Inequities in access to reliable internet, up-to-date hardware, and appropriate software can disadvantage certain employees, making it difficult for them to fully participate in the hearing process. Organizations must address these lacuna or disparities by providing the necessary technological support and resources to ensure all employees can engage effectively.<sup>355</sup>

Ensuring the security and integrity of virtual hearings and protecting against cyber threats is vital. As organizations move towards digital processes, safeguarding against hacking, data breaches, and other cyber risks is a significant challenge. Virtual hearings must be conducted on secure platforms with robust encryption and authentication measures to protect sensitive information.<sup>356</sup> Additionally, regular security audits and updates are necessary to identify and mitigate potential vulnerabilities. Organizations must also train employees on best practices for cybersecurity to prevent accidental breaches and ensure the confidentiality and integrity of the hearing process.<sup>357</sup>

Cultural sensitivity presents a unique challenge in multinational organizations where diverse cultural norms and practices may influence perceptions of fairness and procedural justice.<sup>358</sup> Establishing adaptable frameworks that respect local cultural contexts while upholding core fair hearing principles is essential. This approach may involve incorporating cultural competence training for decision-makers, developing flexible hearing procedures that accommodate diverse cultural perspectives, and fostering a workplace culture where all employees feel valued and treated fairly

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<sup>354</sup> Brown, Michael, 'Judicial Interpretations of Fair Hearing Principles: Contemporary Issues and Case Studies' [2018] 2(5) *Employment Law Quarterly* 301-320

<sup>355</sup> Burrell, Fiona, 'Algorithmic Decision-Making and Fairness in Employment' [2021] 3(3) *Harvard Journal of Law & Technology* 457-486..

<sup>356</sup> *Ibid.*

<sup>357</sup> Sargeant, Malcolm, and Jacqueline Weiner, 'Procedural Fairness in the Workplace: Emerging Trends' [2016] 45(3) *Industrial Law Journal* 301-325..

<sup>358</sup> *Ibid.*

regardless of their cultural background.<sup>359</sup>

Coordinating fair hearings across different locations and time zones can be difficult. This is especially true in global organizations where employees and hearing panels may be spread across multiple regions. Scheduling hearings that accommodate participants in various time zones requires careful planning and flexibility. Moreover, differences in local laws, cultural norms, and workplace practices can complicate the standardization of hearing procedures.<sup>360</sup> Organizations need to develop strategies that allow for efficient and fair coordination, such as using scheduling tools, setting clear guidelines, and ensuring that all participants have access to necessary resources and support.

Ensuring effective communication and understanding when parties are not physically present poses a challenge. Miscommunications or misunderstandings can easily occur in virtual settings, impacting the fairness and effectiveness of the hearing process. Non-verbal cues, which are crucial for understanding context and emotions, are often missed in virtual communications.<sup>361</sup> Technical issues, such as poor internet connections or software glitches, can further hinder clear communication. To mitigate these challenges, organizations should invest in high-quality communication tools, provide training on effective virtual communication, and establish protocols for managing technical difficulties during hearings. Regular check-ins and feedback mechanisms can also help ensure that all parties feel heard and understood throughout the process.<sup>362</sup>

Ultimately, while the application of fair hearing principles in modern workplaces is evolving positively, organizations must address significant challenges to ensure these

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<sup>359</sup> Cheng, Jenny, and Peter Jones, 'Global Workforces and Fair Hearing Principles: Challenges in Cross-Border Employment Disputes' [2020] 3(6) *International Journal of Comparative Labour Law and Industrial Relations* 87-108..

<sup>360</sup> Smith, John, 'Comparative Analysis of Fair Hearing Principles in International Employment Law' [2019] 2(8) *International Journal of Comparative Law* 201-225..

<sup>361</sup> Schwartz, Paul, and Daniel Solove, 'Privacy and Fairness in Workplace Investigations: Legal and Ethical Considerations' [2020] 2(1) *Yale Journal of Law and Technology* 89-112.

<sup>362</sup> *Ibid.*

principles are consistently and effectively applied. By proactively tackling issues such as consistency in virtual environments, bias awareness, confidentiality, resource constraints, technological advancements, and cultural sensitivity, organizations can foster environments where fair hearing processes promote transparency, inclusivity, and trust among employees.<sup>363</sup> Continuous improvement, training, and adaptation are key to overcoming these challenges and maintaining robust fair hearing practices in the face of ongoing organizational and societal change.

#### **4.4 Enhancing Procedural Fairness in Employment Contracts**

Procedural fairness in employment contracts is crucial for fostering a positive workplace environment and ensuring that employees feel valued and respected. It encompasses the proposition of transparency, equity, as well as accountability in the processes that govern the terms of employment.<sup>364</sup> With an increasingly diverse workforce and evolving legal standards, employers face the challenge of creating contracts that are not only legally compliant but also fair and accessible to all employees.<sup>365</sup> This highlights the importance of enhancing procedural fairness in employment contracts to build trust, reduce disputes, and promote a culture of mutual respect between employers and employees. By implementing best practices in contract management and communication, organizations can create a more equitable work environment that ultimately benefits both parties.

To enhance procedural fairness in employment contracts, employers should make sure that the terms as well as the conditions are clearly communicated in an understandable language, addressing any ambiguities before the contract is signed. Involving employees or their representatives in discussions about the terms fosters transparency

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<sup>363</sup> Martinez, Maria, and Charles Johnson, 'Fair Hearing in Diversity and Inclusion Initiatives: Legal and Practical Challenges' [2021] 4(3) *Journal of Employment Diversity* 301-325..

<sup>364</sup> Amucheazi O.D and Anushiem M.I., 'The National Industrial Court of Nigeria and the Application of Fair Hearing in Master-Servant Employment Disputes: A Critique' [2018] 5(2) *UNIZIK Journal of Commercial and Property Law* 201

<sup>365</sup> Vissombat K. V., 'Individual Employment Contracts in the New Labour Codes' [1968] 18 *International Labour Review* 121-136.

and fairness, allowing employees to have a voice in shaping their agreements.<sup>366</sup> Employers should also give employees sufficient time to seek legal advice prior to signing the contract, supporting this by providing a reasonable review period. It is essential to ensure that contract terms are non-discriminatory, treating all employees equally regardless of gender, race, religion, or age.

Additionally, the employment contract should specify a clear, fair, and transparent process for handling disciplinary actions, including the opportunity for employees to defend themselves. Providing a right to appeal against disciplinary actions or termination decisions further enhances procedural fairness by allowing employees to contest what they believe to be unjust decisions.

Regularly reviewing and updating employment contracts is important to reflect changes in laws and industry standards, ensuring continued fairness and legal compliance. Lastly, training for management and HR personnel on best practices related to procedural fairness in contract management, employee rights, and dispute resolution is crucial. Implementing these steps contributes to a fairer and more transparent employment process, fostering trust and reducing disputes between employers and employees.

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<sup>366</sup> Hepple B., 'Restructuring Employment Rights'[1986] 83 *ILJ* 69.

## Chapter Five

### Conclusion

#### 5.1 Summary of the Study

The employment contract, like any other agreement, assumes a voluntary relationship where parties establish terms within legal boundaries. However, employees often lack the bargaining power and equality typically expected in contract relationships.<sup>367</sup> Under common law, except in cases of employment with constitutional or statutory implications or flavour, the employment relationship is viewed purely as contractual.<sup>368</sup> This means that the terms agreed upon by the parties govern their relationship, including provisions for termination with notice.<sup>369</sup> Common law traditionally permits an employer to abort an employment agreement of an employee for whatsoever reason, whether good, bad, or without reason, without delving into moral considerations or requiring a fair hearing in the termination process.<sup>370</sup>

International legal frameworks, such as those established by the International Labour Organization (ILO) and human rights treaties, play a critical role in setting global standards for fair hearing principles in employment law. These frameworks emphasize procedural fairness, requiring that employees are informed of charges against them, given the opportunity to defend themselves, and provided with an impartial decision-making process.<sup>371</sup> Despite these global guidelines, challenges arise in the practical implementation of these frameworks across different local jurisdictions. The degree to which these international standards are enforced depends heavily on

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<sup>367</sup> Cletus Ojumo, Aruwa Emeje and Patrick Okereke, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal* (ALJ) 16.

<sup>368</sup> Ibid

<sup>369</sup> Brown, Michael, 'Judicial Interpretations of Fair Hearing Principles: Contemporary Issues and Case Studies' [2018] 2(5) *Employment Law Quarterly* 301-320.

<sup>370</sup> Ibid

<sup>371</sup> Smith, John, 'Comparative Analysis of Fair Hearing Principles in International Employment Law' [2019] 2(8) *International Journal of Comparative Law* 201-225..

national legal systems and their willingness to adopt or adapt such principles.<sup>372</sup> In many countries, including Nigeria, there is a gap between the global ideals and local practices, especially in sectors with vulnerable workers, where fair hearing rights are less rigorously enforced.

Under the 1999 Constitution of Nigeria, impartial hearing is a fundamental right guaranteed to all citizens, including employees. Section 36 of the Constitution ensures that everyone is given a fair opportunity to present their case before an impartial tribunal. In employment law, this means that employees must be provided with adequate notice of allegations, access to evidence, and the chance to defend themselves against disciplinary actions or dismissals.<sup>373</sup> Nigerian courts have consistently upheld these constitutional protections, reinforcing the importance of procedural fairness in employment disputes. However, the specific application of these principles can vary depending on the context of each case, and there remains a need for clearer guidelines to ensure consistent enforcement.

The concept of fair hearing, rooted in natural justice principles, has been integral to legal and quasi-judicial proceedings since ancient times. In Nigeria, these principles are enshrined in the 1999 Constitution, particularly in Section 36, and supported by various international treaties and statutes.<sup>374</sup> Fair hearing ensures procedural fairness in legal processes, safeguarding individuals' rights throughout pre-trial, trial, and post-trial stages. Central to fair hearing is the autonomy to be regarded and treated equally before the law, ensuring individuals are informed of allegations against them, given a chance to respond, and heard by an impartial adjudicator.<sup>375</sup> This principle extends to employment law, where fair hearing underpins disciplinary procedures, grievance handling, and termination processes. It requires employers to provide

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<sup>372</sup> Smith, John, 'Comparative Analysis of Fair Hearing Principles in International Employment Law'

<sup>373</sup> Kehinde M Mowoe, *Constitutional Law in Nigeria* (Malthouse Press Ltd 2008) 361

<sup>374</sup> Ibid

<sup>375</sup> Cletus Ojumo, Aruwa Emeje and Patrick Okereke, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal* (ALJ) 16.

employees with access to information, an opportunity to defend themselves, and decisions made without bias.<sup>376</sup>

Emerging trends in the modern workplace, such as remote work, gig economy jobs, and the increased use of digital surveillance tools, present new challenges for enforcing fair hearing principles. Workers in non-traditional roles often lack the same protections as full-time employees, and the use of digital monitoring can lead to disciplinary actions without full transparency.<sup>377</sup> This raises concerns about the fairness of such processes, particularly when employees are unaware of the evidence used against them.

The Apex Court in Nigeria has clarified the issue of limitation laws in employment contracts, particularly regarding the timeframe within which employees can bring cases to court. The Court has ruled that limitation laws do not apply to employment contracts in the same manner as they do to other civil matters. This special treatment of employment cases reflects the Court's recognition of the sensitive nature of employment disputes and the need for extended timeframes to address fair hearing violations adequately.<sup>378</sup> This ruling has significant implications for both employers and employees, allowing more time for disputes to be resolved through legal channels, especially in cases involving procedural fairness concerns.

The implementation of fair hearing in employment contracts is crucial for upholding justice and equity in workplace relations. It supports transparency and trust between employers and employees by ensuring that decisions affecting employment status are based on fair and justifiable grounds. This principle is reinforced through legislative frameworks such as the Employment Rights Act in the UK and due process requirements in the United States.<sup>379</sup>

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<sup>376</sup> Cletus Ojumo, Aruwa Emeje and Patrick Okereke, [2022] 10(1) *ABUAD Law Journal* (ALJ) 16

<sup>377</sup> Brown, Michael, 'Judicial Interpretations of Fair Hearing Principles: Contemporary Issues and Case Studies' [2018] 2(5) *Employment Law Quarterly* 301-320..

<sup>378</sup> Martinez, Maria, and Charles Johnson, 'Fair Hearing in Diversity and Inclusion Initiatives: Legal and Practical Challenges' [2021] 4(3) *Journal of Employment Diversity* 301-325.

<sup>379</sup> Fabian Ajogwu, *Fair Hearing* (Second Edition, CLDS Publishing 2020) 66.

Chapter one of the research begins by providing a comprehensive background to the study, highlighting the significance of fair hearing principles within the context of employment contracts. It identifies the primary research problem as the inconsistent application of these principles in practice, particularly in relation to disciplinary proceedings and termination disputes. The objectives are clearly outlined, focusing on examining legislative frameworks, analyzing practical challenges, and proposing recommendations to enhance procedural fairness. Research questions are formulated to guide the study towards a thorough exploration of fair hearing principles in Nigerian employment law. The methodology chosen is doctrinal approach, utilizing both primary sources such as legal statutes and case laws, and secondary sources including scholarly articles and relevant literature. The significance of the study is underscored by its potential to contribute valuable insights into improving fair hearing practices, thereby promoting justice and equity in the workplace. Lastly, the scope of the study is defined to encompass the historical development of fair hearing principles, their legal foundations, and their application across various industries and workplaces. Chapter two undertakes a comprehensive review of existing literature on fair hearing, focusing on its fundamental nature, underlying principles, and the rights it guarantees in legal proceedings. It examines seminal court cases in Nigeria concerning fair hearing rights within the framework of employment contracts, exploring judicial interpretations and the evolving role of stakeholders such as employers, governmental bodies, and the judiciary. The chapter critically evaluates how these parties contribute to the enforcement and protection of fair hearing rights, highlighting key legal precedents that have shaped current practices.

Furthermore, chapter three meticulously examines the statutory and constitutional provisions that underpin fair hearing principles in relation to employment contracts in Nigeria. It analyzes constitutional guarantees, legislative enactments such as the Labour Act and Trade Disputes Act, and international conventions that influence Nigerian labor laws. This chapter elucidates the legal rights afforded to employees during disciplinary actions, grievance procedures, and termination processes, emphasizing the procedural safeguards mandated by law. It also explores how these

legal frameworks align with global standards of procedural fairness and natural justice.

However, in chapter four, emerging trends and contemporary challenges in the application of fair hearing principles within modern workplaces are critically discussed. The chapter explores the impact of technological advancements, globalization, and evolving employment practices on fair hearing procedures. It addresses issues such as remote work arrangements, the ethical implications of artificial intelligence in HR processes, and the complexities faced by multinational corporations in adhering to diverse legal standards across jurisdictions. This chapter provides insights into how these trends influence the effectiveness of fair hearing mechanisms and suggests strategies for overcoming challenges to ensure consistent application of procedural fairness. Additionally, the study explored how fair hearing principles are applied within the framework of employment contracts. It investigated the mechanisms through which these principles ensure procedural fairness in various employment-related decisions, such as disciplinary actions and termination.

## **5.2 Conclusion**

Based on the discussion and analysis presented, it is evident that the concept of fair hearing in employment contracts remains a critical but complex issue within legal frameworks. While traditional common law principles afford employers significant discretion in terminating employees without stringent procedural requirements, statutory interventions have introduced safeguards to protect employees from arbitrary dismissal. These statutory protections, rooted in principles or doctrine of natural justice, mandate that employees must be given a fair chance or opportunity to respond to allegations and defend themselves before any adverse employment actions are taken.

International legal frameworks, such as those established by the International Labour Organization (ILO), offer a solid foundation for fair hearing principles in employment law. These frameworks emphasize procedural fairness, requiring employers to give

employees an opportunity to defend themselves before disciplinary actions are taken. However, these international standards must be better integrated into Nigeria's local employment laws. Nigeria, like many developing countries, faces challenges in aligning local labor practices with global standards, particularly in sectors with vulnerable workers, such as domestic work, agriculture, and informal labor markets. To bridge this gap, stronger mechanisms are needed to ensure that employers in Nigeria adhere to international best practices, ensuring fairness for all workers, regardless of their employment status.

The Nigerian Constitution, specifically under Section 36, guarantees the autonomy to an impartial hearing in employment disputes. The judiciary has largely upheld these protections, ensuring that employees are given a chance to present their side of the case before any decisions are made. However, the application of these principles in complex or modern employment scenarios, such as remote work or gig economy jobs, presents new challenges. While the judiciary plays a key role in maintaining these protections, more consistent enforcement is necessary to ensure that employers do not sidestep procedural fairness, especially in cases where the traditional employer-employee relationship is less clear. Employers are mandated to comply with the doctrine of natural justice, especially the *audi alteram partem* rule, ensuring both sides are heard. In Nigeria, a landmark case illustrating this principle is *Olaniyan & Ors. v. University of Lagos*,<sup>380</sup> where employees' dismissals without fair hearings were deemed invalid under Section 17 of the University of Lagos Act, 1967, highlighting the importance of procedural fairness in termination decisions.

Contracts with statutory flavor, on the other hand, are governed by specific statutory provisions that dictate the conditions under which appointments can be made or terminated. Unlike ordinary contracts, these statutory contracts cannot be terminated solely at the discretion of the parties involved but must comply with statutory prerequisites for valid termination or appointment. This distinction underscores the

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<sup>380</sup> *Olaniyan v University of Lagos* [1985] 2 NWLR 599

varying legal standards and protections afforded to employees depending on the circumstances or the nature of their employment contract. Meanwhile the traditional common law stance on employment termination emphasizes employer autonomy, modern legal frameworks increasingly recognize the importance of fair hearing principles. These principles not only protect employees from arbitrary actions but also contribute to a more equitable and just employment environment. Moving forward, the integration and consistent application of fair hearing principles in employment contracts are crucial to upholding employee rights and fostering harmonious workplace relations.

### **5.3 Recommendations**

1. Organizations should revise and update their policies to explicitly incorporate these principles, ensuring clarity and consistency in decision-making processes. Subsequently, training programs should be implemented for managers and HR personnel to enhance their understanding of fair hearing procedures and promote compliance.
2. Employees in the private sector can be terminated without cause, prompting a call for courts to vigilantly prevent unscrupulous employers from exploiting and subsequently dismissing their workers. Courts should scrutinize employment conditions and, where absent, invoke equity principles to ensure justice for aggrieved employees. Termination should strictly adhere to the terms specified in employment contracts. However, the dismissal or termination should not retroactively deprive an employee of salary, especially during periods of absence due to legal issues, unless the contract explicitly states otherwise. Employees accused of misconduct deserve a fair hearing to defend themselves against allegations that could result in job loss or disciplinary measures.

3. In sectors with statutory regulations, courts are encouraged to enforce these statutes, potentially ordering reinstatement in cases where natural justice was not observed during dismissal and courts should have the authority to enforce specific performance in cases of unfair dismissal unless there are compelling reasons not to do so. However, where reinstatement is not feasible, courts should award general damages, possibly punitive, based on the severity of the employer's conduct. Also the prevailing belief that employers can terminate employees for any reason should be reevaluated. Employers should substantiate allegations leading to dismissal, adhering to the principle that the burden of proof lies with the accuser.
4. Statutory intervention is necessary to reduce or mitigate the adverse effects of job insecurity, requiring employers to adequately compensate employees dismissed unfairly. The National Assembly could draw on the experiences of other common law jurisdictions to enact laws protecting employees from unfair dismissal. Legislation should empower courts to consider factors like malice, bad faith, and emotional distress when awarding compensation for wrongful termination.
5. The legal precedent set by the case of *Olaniyan's case*, which prevents termination of statutory employment without due process, should be codified to avoid conflicting judicial decisions. Introducing laws against unfair dismissal and termination, applicable to both public and private sectors, would safeguard employees from arbitrary dismissal contrary to statutory provisions.
6. The UK's Employment Protection (Consolidation) Act 1978, as amended by the Employment Act 1980, could serve as a model for the National Assembly. In cases involving criminal allegations against an employee, internal administrative processes should not circumvent criminal adjudication, respecting the accused's autonomy to a fair or impartial trial. However, regular reviews of practices against evolving legal standards are advised to maintain legal compliance and minimize the risk of litigation or reputational harm.

#### **5.4 Contribution to Knowledge**

This study contributes to the existing body or current knowledge base by providing a thorough analysis of fair hearing principles within the context of employment contracts. It offers practical insights into the challenges and opportunities associated with these principles, emphasizing their impact on organizational justice and employee relations. By synthesizing empirical findings and theoretical perspectives, the research enriches understanding of how fair hearing principles operate in practice and their implications for organizational policy and legal compliance.

#### **5.5 Suggested Areas for Further Research**

The study suggests several avenues for future research to deepen understanding and improve practices related to fair hearing principles in employment contexts. Comparative studies could explore variations in the application of fair hearing principles across different industries or countries, shedding light on factors that contribute to these differences. Research on employee perceptions of fairness in disciplinary procedures could provide insights into their impact on job satisfaction and organizational commitment. Additionally, investigating the role of technological innovations in enhancing transparency and efficiency in fair hearing processes presents opportunities for advancing procedural fairness in contemporary workplaces. Finally, studies on the effectiveness of legislative reforms aimed at strengthening fair hearing rights in employment contracts could inform policy development and organizational practices.

## Appendix

Section 254C of the Constitution of the Federal Republic of Nigeria, 1999 (as amended, 2011)

“(1) Notwithstanding the provisions of sections 251, 257, 272, and any other part of this Constitution, and in addition to any other jurisdiction granted by an Act of the National Assembly, the National Industrial Court shall hold and exercise exclusive jurisdiction over civil cases and matters-

a) Relating to or connected with any labour, employment trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;

b) Relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws:

c) Relating to connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in further of a strike, lock-out or any industrial **action and matters**  
**Connected therewith or related thereto:**

d) Relating to connected with an dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employers association or any other matter which the Court has jurisdiction to hear and determine:

e) Relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom:

f) Relating to or connected with unfair labour practice or international best practices in labour employment and industrial relation matters:

**g) Relating to or connected with** any dispute arising discrimination or sexual harassment at workplace:

**h) Relating to, connected with** or pertaining to the application or interpretation of international labour standards:

**i) Connected with related to** child labour, child abuse, human trafficking or any matter connected therewith or related thereto:

**j) Relating to** the determination of any question as to the interpretation and application of any-

(i) Collective agreement;

(ii) Award or order made by arbitral tribunal in respect of a trade dispute or a trade union dispute;

(iii) Award or judgement of the Court

(iv) Term of settlement of any trade dispute;

(v) Trade union dispute or employment disputes may be recorded in a memorandum of settlement;

(vi) Trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place

(vii) Dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;

**k) Relating to or connected with** disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits, or any other entitlement of any employee, workers, political or public office holder, judicial officer, or any civil or public servant in any part of the Federation and matters incidental thereto;

(i) Relating to-

(i) Appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;

(ii) Appeals from the decisions or recommendations of any administrative body or commission of enquiry. Arsing from or connected with employment, labour, trade unions or industrial relations; and

(iii) Such other jurisdiction, civil or criminal and whether to the exclusion to any other court or not, as may be conferred upon it by an Act of the National Assembly;

(m) relating to or connected with the the registration of collective agreements.

2 Notwithstanding any provisions to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol ratified of which Nigeria has ratified relating to labour, employment, workplace, industrial relations, or matters connected therewith.

3. The National Industrial Court may establish an Alternative Dispute Resolutions Centre within the court premises on matters which jurisdiction is conferred on the court by this Constitution or any Act or Law: provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal, commission, administrative body, or board of inquiry in respect of any matter that the National Industrial Court has jurisdiction to entertain or any other matter as prescribed by an Act of the National Assembly or any law in force in within any part of the Federation.

4. The National Industrial Court shall have and exercise jurisdiction and power to entertain any application for the enforcement of the award, decision, ruling, or order made by any arbitral tribunal or commission, administrative body, or board of inquiry, relating to, connected with arising from or pertaining to any of which the National Industrial Court has jurisdiction to entertain.

5. The National Industrial Court shall have and exercise jurisdiction and powers criminal cases and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any Act of the National Assembly, or any other Law.

6. Notwithstanding anything to the contrary in this Constitution, appeal shall lie from the decision of the National Industrial Court from matters in subsection 5 of this section to the Court of Appeal as of right.

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- i. Master of Law (LLM in view) 2024
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- iii. Bachelor of Laws (LL.B Hons.) 2018
- iv. Master of Business Administration 2002

- v. Post Graduate Diploma in Educational Management 2004
- vi. General Certificate of Education “A” Level , Economics and law 1976
- vii. Higher National Certificate in Business Studies 1978
- viii. Post Graduate Diploma in Management Studies 1980
- ix. Final Diploma of the Institute of Purchasing & Supply 1980
- x. West African School Certificate (O Levels) 1970

#### **10. RESEARCH THESIS**

An Appraisal of Fair Hearing Principles in Relation to Contract of Employment (LLM) 2024

#### **11. RESEARCH INTERESTS:**

Labour Law, Constitutional Law, Land Law, Human Rights Law and Customary Law.

#### **12. EMPLOYMENT HISTORY**

Date	Position	Employer	Reason for Leaving
1971-1972	Clerk	Costica Nig. Ltd	To Join Public Service
1972-1974	Operator	N.E.T Ltd	Overseas Studies
1981-1982	Lecturer	N.Y. S.C	To Join Public Service
1982-1993	Secretary	State Govt	To Form Company
1993-2000	Chairman	M.O.C.C Ltd	Further Studies
2000-2004	Student	A.A.U	Further Studies
2005-2009	Student	L.C.U	Law Studies
2010-2018	Chairman	M.O.C.C Ltd	Law School
2020-To Date	Advocate	Self-Employed	

#### **13. OTHER MAJOR ACHIEVEMENTS TO DATE**

Pioneer Lecturer, Purchasing & Supply Management, The Polytechnic, Ibadan  
1981-1982

Pioneer Lecturer (Part Time) Sales Management, Moshood Abiola Polytechnic,  
Abeokuta, Ogun State 1989 -1990

### **SKILLS AQUURED**

Advocacy and Lecturing Skills

### **MEMBERSHIP OF PROFESSIONAL BODIES**

Fellow, Chartered Institute of Marketing, Nigeria, 2005

Associate Member, Institute of Chartered Mediators and Conciliators of Nigeria,  
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### **NAMES AND ADDRESSES OF REFEREES**

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## University Compliance Certificate

This is to certify that this thesis by Michael Kolawole AMUSAN in the Department of Private and Business Law, Faculty of Law, Lead City University, Ibadan is in full compliance with the approved University Format and Style.

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**Name**

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**Date**

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