Natural Justice And Contract Of Employment

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1. Introduction

The rules of natural justice dictates that a person accused of a wrong must be heard before being punished. It is the rule of procedure which requires that a person should be tried by an independent tribunal as well as have the right to defend himself. It is the rule which in the conduct of human affairs demand fairness and normality amongst people."

Clearly, natural justice entails that any person accused of any allegations of any kind should be made to:

(a) state his own side of the story,
(b) know the nature of the accusation against him;
(c) be tried by an unbiased tribunal, where a tribunal is set up.:

The rules of natural justice are well accepted in the jurisprudence of civilized countries and are applicable in all branches of law. The rules are well accepted under Nigerian Law and it is infact enshrined in the constitution of the Federal Republic of Nigeria."

In contracts of employment, it is settled law that an employer can at any time subject to the law and without giving any reason terminate the employment of his employee. Also, the employer may summarily dismiss his employee where

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2 A. Emiola, Public Servant and the Law, p. 36.
4 Section 36 Constitution of the Federal Republic of Nigeria 1999: See also section 33(1) of the 1999 Constitution.
the conduct of the employee is not in the interest of the employer's business. Misconduct that will justify summary dismissal must be such as is incompatible with the faithful discharge of the servant's duties or inconsistent with the continuance of the relationship of master and servant." Cogent, compelling and convincing reason(s) must be given for the decision to dismiss. Moreover, any decision to dismiss an employee must satisfy the requirements of natural justice. In recent times, however, some pronouncement by the Nigerian Courts tend to suggest that the sacrosanct rules of natural justice particularly the *audi alteram partern* rule is no longer a mandatory rule of law and can be shoved aside and disregarded in appropriate cases. The purpose of this paper is to have a careful look at the application of the rules of natural justice especially the *audi alteram partern* rule in contracts of employment and to examine the limits or scope of the rule in the light of recent pronouncements by the Nigerian courts.

2. Judicial Attitude To Natural Justice In Contracts Of Employment

A. Nigerian Position

The rules of natural justice are well ingrained in the jurisprudence of Nigeria. This can be shown clearly by the attitude of Nigeria Courts to the rule. In *Eyutchae v N. TA*, Mr. Eyutchae who had been removed in breach of procedural requirements, asked the court for both a declaration and an injunction. Araka C.J. declared:

"It is my view that the trend of judicial opinion at the moment is towards making declaration of an employee's position in Law more solid if his dismissal or termination of appointment has been made, in breach of the rules of natural justice. In the eyes of Law, an employee who has been dismissed or whose appointment has been terminated, in breach of the rules of natural justice is deemed not to have been removed... and his contract of employment still subsists."

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In *Ayetan v. Nigerian Institute for Oil Palm Research*, the appellant was invited to testify, among others in an inquiry in respect of the stealing of N12,000.00. He was later charged to court for stealing but was discharged and acquitted. The respondent, appellant's employers dismissed appellant on the ground that the board found him guilty of negligence. No complaint was made against him and he was never requested or invited to answer any complaint or charge. The Supreme Court held that the appellant was not negligent and that he was not granted fair hearing. Obaseki, j.S.C explained that: *Section 33(1) of our Constitution is an omnibus provision the compliance with automatically ensures compliance with the rules of natural justice.*

Another case which illustrates the issue of natural justice in the area of public service is the case of *Adeyero v. Oyo State Public Service Commission* where the plaintiff a probationary deputy accountant general for Oyo State had his appointment terminated. There were no previous complaints of inefficiency or misconduct on the part of the plaintiff, and the letter of termination did not allege any. No reasons were given for the termination, and he was not afforded an opportunity to be heard. He sued in High Court on the ground *inter alia* that the procedure followed in terminating his appointment was improper and in breach of natural justice. At the trial, it was argued on behalf of the defendant, that since the plaintiff’s appointment was governed by the general orders and public service commission regulations, he had no enforceable contract with the government. Fakayode C.J. held, that the purported termination of the plaintiff’s employment was irregular, in bad faith, in breach of the constitutional rights of the plaintiffs to be heard, and also in breach of the rules of natural justice. He therefore declared the purported termination null and void and described the action of the defendant as "sheer administrative lawlessness". The supreme court of Nigeria also adopted the same attitude in the case of *Re Maclean Okoro Kilbeilje* where the public service commission of the Mid-West State wrote the applicant/respondent to accept a transfer from his post as Chief Magistrate to another post in the Mid-West state ministry of justice, or to consider himself to have been summarily dismissed from the public service of the state.

The commission did not give the applicant a hearing before the decision. The

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*Note:* *(1987) 6 S.c. 73.*

vt *1980) 1 FLR 448; see also Michael Oguche V Kana State Public Service Commission (1974) JNMLR 128

w (1971) JALL NLR (pt. JI) p. 269
Supreme Court held *inter alia* that the denial to the applicant of the right of audience on a decision to remove him from the public service of the state was a contravention of the principles of natural justice and therefore the decision must be quashed.

Mention may also be made of the case of *Adedeji V Police Service Commission*. In that case the appellant who was an assistant Superintendent of Police in the Nigerian Police Force was served with a letter in which he was accused of corruption and contravention of certain general orders. He was required by the letter to make representations why he should not be dismissed for those offences. The plaintiff, in a reply three pages long, sought to exculpate himself, but was eventually dismissed. He applied to the high court for an order of certiorari to quash the dismissal. The high court dismissed his applications, basing its decision on a counter-affidavit of the respondent, which contained allegations that were not in the letter sent to the applicant. On appeal to the Supreme court, part of the appellant's argument was that the facts or evidence upon which the police service commission relied for his dismissal were not at any time communicated to him and that this was a breach of the rules of natural justice. In allowing the appeal, the Supreme Court stated as follows:

"We are therefore not satisfied that when the circumstances of this case are looked into, adequate opportunity was given to the appellant to meet the case or factors of the case known to the commission. It is possible the appellant is corrupt and did commit the offence alleged against him; this is not what we have to consider. Was the case against him sufficiently brought home to him that one can say that the requirements of natural justice were sufficiently observed in the facts and the circumstances."

**The University Cases**

Three important cases affecting termination of University employee and natural justice are considered here: First is the interesting case of *Dr. Edet Akpan Udo V The University of Calabar*. It is very interesting because it raised a very important issue as to whether a statutory body has the power to terminate

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11 (1967) 1 ALL NLR 67
12 *per* Ademola, CIN at P 71
13 *Suit No. NSC/8178 (unreported); see also Dr. Essien v. University of Calabar 9190) NWLR (pt. 140) p. 605
the appointment of its employee, without complying with the principles of natural justice. A summary of the facts of the case is as follows: the appointment of the applicant, a senior lecturer in history at the University of Calabar was terminated by the respondent, without giving him any reason and affording him an opportunity to be heard. However, he was paid three months salary in lieu of notice. He brought an action in the Calabar High Court, challenging the legality of his termination. His main ground of action was that as the respondent was exercising a judicial or quasi-judicial power when he dismissed the applicant, he had to comply with Section 2 (8) and (9) of the conditions of service of the senior staff of the University which provided for fair hearing before the appointment of any senior staff could be terminated. For the respondent it was argued inter alia:

(i) That the applicant was not an office holder but a mere servant of the respondent, in which case the relationship was that of master and servant;

(ii) That the applicant was not at all dismissed, but merely had his appointment terminated; as such he may be entitled to damages or a breach of contract but not an order of certiorari.

The court found in favour of the applicant on the ground that his dismissal was effected in contravention of the principles of natural justice, as well as Section 2 (8) and (9) of the regulations provided by the University for its senior staff. The court further held that even if the applicant was not governed by regulations for his employment the rule of natural justice would still have been invoked to give him the right to know why his appointment was terminated by the council.

The court's decision finds ample support in the case of Metiri V Proriuua/ Council of the University of Benin & Ors. In that case, the appellant applied to the High court for an order of certiorari for the purpose of quashing a decision allegedly made by the respondents contained in a letter dated 1st November, 1977, whereby the appellant was removed from office as a lecturer at the University of Benin. He argued that his appointment was terminated by the respondent, without making any formal allegation of any misconduct against him, thereby contravening not only the rules of natural justice, but also Section 16 of the University of Benin Act, 1975 which provided for fair hearing before the appointment of any senior member of the University could be terminated. It

14 Suit No. B/IM/78 (unreported)
was held by Akpata J. that the respondent breached both Section 16 of the Act and the rules of natural justice by his failure to take necessary steps before terminating the appointment of the applicant. The judge therefore declared the termination a nullity and ordered that an order of certiorari be issued forthwith, to bring the record of its decision to the court for purpose of being quashed.

Finally, in Oluniyan v. Unilag, Prof. Ade Ajayi was removed and Prof. Adadevoh was appointed Vice Chancellor of the University of Lagos. The appellants were alleged to have acted in concert with others to make it difficult for the new Vice Chancellor to effectively or successfully function in his new office. A visitation panel came with a report and recommended that the appellants be removed as they were not fit for any position of responsibility in the University of Lagos. The Council of the University acted on the report and terminated their appointments. The Supreme court held that their removal was contrary to the rules of natural justice, irregular, unlawful and void.

In effect, the rules of natural justice apply to the proceedings of a domestic tribunal adjudicating upon disciplinary charges likely to lead to the dismissal of an employee and require that:

(a) no member of the tribunal has an interest, pecuniary or otherwise in the matter,

(b) The parties are duly notified when and where they may be heard and then given full opportunity of knowing what is in dispute and stating their views, including opportunity of hearing and cross-examining adverse witnesses and calling witnesses themselves and

(c) the tribunal decides on the matter honestly and without bias; and if the rules of natural justice are not observed, the tribunal’s decision and findings are voidable.

B. Views From England

There is no doubt that the rules of natural justice are well accepted in the jurisprudence of other civilized countries. They are entrenched in various statutes and judicial decisions. The courts definitely apply these rules when called upon

15 (1985) 2 NWLR (pt. 9); (1985) ALL NLR 363
to decide on matters relating to employment so as to ensure fairness and justice to the parties.\textsuperscript{16}

In R. v. Chancellor of Cambridge University,\textsuperscript{1} alluding to the example set by God himself for guidance in our behaviour, Fortescue, J. said

"I remember I have heard it observed by a very learned man upon an occasion that even God himself did not pass sentence upon Adam. He was called upon to make his defence. Adam (says God) where art thou? Hast thou not eaten of the tree whereof I commanded thee? thou shouldst not eat? And the same question was put to Eve."\textsuperscript{18}

The dictum of the indomitable Lord Denning in Kanda v. Government of Malaya\textsuperscript{2} is perhaps more illuminating. According to him:

"If the right to be heard is a real right, it must carry with it a right to the accused man to know the case against him. He must know what evidence has been given and what statements have been affecting him, and then be must be given a fair opportunity to correct or contradict him."\textsuperscript{19}

Again, in Board of Education v. Rice,\textsuperscript{20} Lord Chancellor Loreburn stated very significantly that:

"Tribunals charged with the responsibility of deciding issues of law and fact must act in good faith and listen to both sides for that is a duty lying upon everyone who decides anything...."\textsuperscript{21}

Commenting further on the need to always apply the sacrosanct rules of natural justice, Professor Wade was quite right when he stated that the rules are usually taken for granted in the administration of justice in courts of law. They should be applied to the decisions of statutory tribunals, and to all administrative courts.\textsuperscript{22}

\textsuperscript{15} (1963) A.C. 322
\textsuperscript{17} (1716) I Str. 557 referred to as Dr. Bentley's case (1723) E.R. 698
\textsuperscript{18} At p. 704 of 93 E R. ibid.
\textsuperscript{19} (1975) A.C. 179.
\textsuperscript{20} (1992) A.C at 322, 337, 338, r.c.
\textsuperscript{21} (1975) A.C. 179
\textsuperscript{22} Wade, Administrative Law (1961) p. 127
It is important that all powers should be exercised fairly both in appearance and reality. The rules of natural justice will still apply even if there are no express stipulations in a statute to that effect. As the court stated in *Cooper v. Wandsworth Board of Works*:

> "Although there may be no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

Clearly, therefore, the principles of natural justice constitute the bastion of the rule of law in a civilized and organized society, Lord Reid sums it up in *Ridge v. Baldwin* when he declared that:

> "I find an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence and explanation."

### 3. New Judicial Attitude

The emerging judicial attitude in Nigeria tends to show that the sacrosanct rules of natural justice is after all not of pervasive effect in the administration of justice in Nigeria as in other jurisdictions. It would seem that the rules cannot possibly be mandatory rules of law. In *Palomo v. L.S.SPS.C.* the Supreme Court noted that:

> "...a duty on the part of an administrative body to act judicially and fairly in the sense of applying the principles of audi alteram partem - may be excluded expressly or by necessary implication"

Similarly in *Olive & Ors v Obi Ezenwali & Ors* the supreme court held that the right to fair hearing entrenched in *Section 33(1)* of the Nigerian constitution.

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25 (1863) CB (NS) 180
27 (1964) A.C.40, 71
28 (1977) 5 S.C. 51, 62
29 (1976) 1 N.M.L.R. 44
1979 may be waived. From the pronouncements, what the Nigerian courts are saying is that the parties to a contract of employment may exclude the right to fair hearing. In other words, it is not in all cases that principles of natural justice may be invoked. From the decisions it seems the principles do not apply in certain circumstances such that:

(a) Where statute provides for an unfettered discretion in the dismissal of an employee, the rules of natural justice will not apply. In the *Head of the FMC V. The Military Governor, Mid-Western States of Nig, Exparte Obiyan*, Section 61(5) of the constitution of Mid-Western Nigeria provides that a member of the PSC may be removed or dismissed summarily from office "if the Military Governor is satisfied that...". The court refused to grant an order of certiorari and held *inter alia* that it was not satisfied that the Governor had no unfettered discretion.

(b) Where the parties themselves have excluded the application of the rules of natural justice- either expressly or by necessary implication. The recent case of *Udemah V. Nigerian Coal Corporation* lends ample support to this position. In that case the appellant's claims in the High Court against the respondent were for:

(a) N250,950.00 damages for wrongful termination of employment;
(b) A declaration that the letter terminating his appointment with the respondent was null and void;
(c) A declaration that his suspension for 3 months without pay ran contrary to natural justice and therefore void;
(d) A declaration that the report of an Investigation Panel set up by the respondent was null and void, and
(e) A declaration that he was still on the permanent and pensionable employment of the respondent and therefore entitled to his salaries and other emoluments until retirement age of 60 years.

The appellant was employed as Chief Accountant by the respondent in 1977. He rose to the post of assistant General Manager of the respondent corporation.

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29 (1973) i ALL NLR (pt. 11) 297
29 (1991) 3 NWLR (pt. 180) 477, 490
Sometime in 1982, an administrative enquiry was set up to investigate some allegations of malpractices in the respondent corporation. The appellant failed twice to honour the invitation to appear before the Panel.

On 8th November, 1982, the respondent wrote a letter of suspension to the appellant. While the suspension was still on, the appellant's appointment was terminated with effect from 8th November, 1982 by a letter dated 12th January, 1983, that is with retrospective effect. Two days later, by a letter dated 14th January, 1983, the appellant was sent a cheque for the sum of N677.03 being one month salary in lieu of notice.

The learned trial judge declared the suspension which lasted without pay for 3 months invalid but merely awarded the appellant the sum of N2,181.09 to cover the salary and transport allowance for that period. The trial Judge also declared that the termination of the appellant's appointment was irregular and that the suspension was unlawful and offends the principle of natural justice but dismissed the appellant's other claims, as regards the Report of an Investigation Panel and the appellant's claim to be regarded as being in continued employment.

Dissatisfied with the judgement of the trial court, the appellant appealed to the Court of Appeal. The respondent also cross-appealed against the finding of the learned trial judge on the status of the appellant's employment as being more than a mere master and servant relationship.

The relevant conditions of service for determining the appellant's employment was tendered in evidence and clause 10 (1) of the schedule to the conditions of service provides, inter alia –

"The corporation may at any time determine the engagement of the person engaged on giving him three month's notice in writing or on paying him one month's salary....."

The court after an exhaustive assessment of the case held that:

"Natural justice of andi alteram partem is not a sleepless and restless ombudsman or an ever weeping Jeremiah prying into or pleading over every private arrangement between parties for it to be modified in its implementation in order to achieve a particular result. When a valid and
lawful contract has been entered between two parties, there can be no room for invoking or invoking natural justice to intervene if there are no, particular Rules and Regulations in support of that course; or if there are no special occasions making a hearing or indeed the observance of the rules of natural justice imperative. The performance and observance of such contract may well depend entirely on its terms and conditions, not on the intervention of natural justice, as some hope descended in white robes through the clouds as an arbiter.

The court went further to state that:

"To rely on the rule of natural justice of audi alteram partem to support a cause of action, a plaintiff must show that he is entitled to a hearing in the particular circumstances; that he was denied was given was unfair (and therefore no hearing at all. I think these basic principles cannot be disputed. When the term 'natural justice' misapplied or used indiscriminately, it does not help the course of justice at all. It simply creates a confusion and generates an euphoria that a supposed wrong is about to be corrected by the Court through the instrumentality of natural justice. This is made to portray a posture which it cannot manifest—an empty focus or prospect."

4. Conclusion

The application of the rules of natural justice is clearly of universal and pervasive effect and therefore applicable as much to Nigeria as to all civilized countries. It is not confined to the conduct of strictly legal tribunals but it applicable to every tribunal or body of persons invested with authority to adjudge on matters involving civil consequences to individuals.

Our concern, however, is that as universal and pervasive as the principles of natural justice might be, the pronouncements of our courts tend to show that Nigerian courts are forging a new judicial attitude to the application of natural justice as it affects contracts of employment, thus debunking the absolute sanctity, or holiness of the much acclaimed principles.

34 At p. 490, per Uwaifo. CA
It is submitted that our courts must retrace their steps to ensure that the hallowed settled principles of natural justice are not unduly distorted by the somewhat uncomfortable judgments we are beginning to witness. Natural justice is guaranteed by the Nigerian Constitution. and since the Constitution is the highest law of the land it supersedes every other law. Since the Constitution recognizes natural justice, it has become a constitutional provision and no more an ordinary law to be compromised for whatever reason. We entirely agree with the decision of the court in very recent case of University of Agriculture V. Jack when it declared that:

"The age-long principle which requires an accused person to be afforded an opportunity to be heard before a decision is taken against him forms a fundamental pillar in our Legal system. It has been further strengthened in that it has become a constitutional provision. Section 33(1) of the 1979 constitution has guaranteed citizens the right to fair hearing. It thus ceases to be an ordinary law by its inclusion in the constitution, in which event it stands above the ordinary laws of the land. Consequently, strict compliance with the said constitutional provision cannot be overemphasized. Indeed, it cannot be compromised."

The rules are clear and fundamental to the effective administration of justice. Judges should continue to spare no effort in stating and restating these principles in order to usher in a just society where fairness reigns.

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32 Section 33(1) of the 1979 constitution; section 36(1) of the 1999 Constitution.  
33 (2000) FWLR. (pt. 20) 720, 725; See also Ransome Kuti VA. G., Fed. (1985) 2 NWLR (pt. 6) 2 JJ