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# RIGHT TO FAIR HEARING.



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## **RIGHT TO FAIR HEARING<sup>1</sup>**

The right to fair hearing is a fundamental right of a citizen provided for in Section 36 of the 1999 Constitution of the Federal Republic Nigeria<sup>2</sup>, as amended. The fair hearing provision in the Constitution is the machinery of justice<sup>3</sup>. It is a formidable and fundamental constitutional provision available to a party denied fair hearing. Fair hearing encompasses whether a party entitled to be heard had in fact been given the opportunity of hearing.

### **Nature of the right to fair hearing**

Fair hearing is one of the twin pillars of natural justice, expressed in Latin as *Audi Alteram Partem*, that is, hear the other side; the other pillar being *Nemo Judex in Causa Sua*, that is, one should not be a Judge in his own case<sup>4</sup>. Fair hearing is an issue which is at the threshold of the legal system and is in most cases synonymous with fair trial and natural justice. Fair hearing is fair trial.

### **What the Concept of Fair Hearing Entails**

The principle of fair hearing is not a technical doctrine, it is a substantive right and entails both fairness of the hearing and of the decision. The right to fair hearing cannot be waived or statutorily taken away. It entails that in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial court or tribunal established by law. The basic attributes of fair hearing include<sup>5</sup>:

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<sup>1</sup> Efemena Ighorimoto, LL.B (Afe Babalola University); BL (Nigerian Law School)

<sup>2</sup> Section 36 (1): *In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.*

<sup>3</sup> Adebayo V. A.-G., Ogun State (2008) 7 NWLR (Pt. 1085) 201

<sup>4</sup> See Adeyemi v. State (2022) LPELR-57342(CA)

<sup>5</sup> Kotoye v. CBN (1989) 1 NWLR (Pt. 98) 419; Ovunwo & ANOR v. Woko & Ors (2011) LPELR-2841(SC); Usani v. Duke (2004) 7 NWLR (pt.871) 116. Fagbunle v. Rodrigues (2002) 7 NWLR (Pt.765) pg.188 Bamgboye v. University of Ilorin (1999) 10 NWLR (pt.622) pg.290.



- a. That the court or tribunal shall hear both sides not only in the case but also on all material issues in the case before reaching a decision which may be prejudicial to any party in the case.
- b. That the court or tribunal shall give equal treatment, opportunity and consideration to all concerned.
- c. That all concerned shall be informed of and have access to such place of public hearing.
- d. That having regard to all the circumstances in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done

#### **Breach of Right to Fair Hearing, Test of Fairness/Fair Hearing and Effect Thereof**

In considering whether or not a proceeding or judgment of a Court was in breach of the right to fair hearing, the law is that each case of allegation of breach of the right must be decided on the peculiar facts and circumstances of each case. This is so because fair hearing is primarily a matter of fact. It is only when the facts are ascertained that the law would be applied to the facts so established to see whether or not such established facts constituted a breach of the party's right to fair hearing<sup>6</sup>.

It is well settled that any proceedings conducted in breach of a party's fundamental right to fair hearing, guaranteed under Section 36 of the 1999 Constitution, renders the entire proceedings null and void. Notwithstanding the merit or otherwise of the cases of the parties or indeed how meticulous the proceedings were conducted or even how sound the resultant judgment was on the merit, once there has been breach of fair hearing, the entirety of such case/proceeding/judgment is inevitably, a nullity.

The Court or tribunal has the duty to create an environment for fair hearing. Whether or not a party has been denied fair hearing is dependent on if the party was afforded this environment to be heard. Notably, the right of fair hearing does not extend to the extent of pursuing a recalcitrant party, as the Court cannot force any party to take the benefit.

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<sup>6</sup> Traxys Europe SA v. Ali & Ors (2022) LPELR-57434(CA)



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Where the Court creates an enabling environment for parties to be heard, the failure of a party to take advantage of the opportunity cannot be the basis for breach of fair hearing.

The true test of fair hearing is the impression of a reasonable man present at the trial and whether from his observation, justice has been done in the case<sup>7</sup>.

### **CONCLUSION**

The right enshrined in Section 36<sup>8</sup> is a both fundamental and constitutional right of every party to a dispute who is to be afforded an opportunity to present his case to the adjudicating authority without let or hindrance from the beginning to the end<sup>9</sup>. To deny a man his right to fair hearing is to deny a man the right to justice. Fair hearing envisages that the Court shall be fair, impartial and without showing any degree of bias in the determination of legal rights and obligations vis-a-vis court proceedings and judgment.

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<sup>7</sup> Unongo v. Aper Aku (1983) 11 SC 129

<sup>8</sup> Section 36 of the 1999 Constitution of the Federal Republic Nigeria, as amended.

<sup>9</sup> Ogli Oko Memorial Farms Limited & Anor V. Nigerian Agricultural and Co-Operative Bank Limited (2008) 12 NWLR (Pt. 1098) 1