

Searching For Human Face and the Legal Status of a Student in Nigeria University

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Abstract: *This paper examines the legal status of a student in Nigeria University and the principles of fair hearing. The paper argued in detail that it is often logical to make universities conform with the tenets of Natural Justice in the management of its own affairs, particularly with regard to student admission and disciplinary procedures. Short cut procedure should not be adopted by the university when expelling or suspending any erring student. Rather even if the student appeared guilty of the offence, he must still be seen to be treated fairly and in accordance with the law. The paper also brings to light that fair hearing incorporates a trial done in accordance with the rule of natural justice and natural justice carries with it the implication that justice should not only be done but should manifestly and undoubtedly be seen done. Right to fair hearing is so fundamental that it could neither be waved nor taken away by a statute whether expressly or by implication. Fair hearing is a judicial or administrative hearing conducted in accordance with due process. The law of God and man gives the party an opportunity to make defence if he has any in treatment of matters affecting him.*

Keywords: *Searching, Status and Student*

I. Introduction

Going through the Holy Bible, one would humbly submit that God was the first advocate of the need to hear from both side of a case before passing judgement. For when God created Adam, the lord God took him and put him into the Garden of Eden to dress it and keep it. And the lord God commanded the man saying of every tree of the garden thou mayest freely eat. But of the tree of knowledge of good and evil, thou shall not eat of it.¹ Adam failed in this regard, hence he was sent out of the Garden of Eden. As the Holy Bible put it, “lest Adam put forth his hand and take also of the tree of life and eat and live forever, therefore the Lord God sent him forth from the garden of Eden to till the ground from whence he was taken². Before the Lord God sent Adam out of the Garden of Eden for disobedience, the Lord God called him and said unto him, where art thou? And he said, I heard thy voice in the garden, and I was afraid, because I was naked; and I hid myself. And he said, who told thee that thou wast naked? Has thou eaten of the tree, whereof I commanded thee that thou shouldest not eat? And the man said, the woman whom thou gavest to be with me, she gave me of the tree, and I did eat. And the Lord God said unto the woman, what is this that thou has done? And the woman said, the serpent beguiled me, and I did eat. And the Lord God said unto the serpent, because thou has done this, thou art caused above all cattle, and above every beast of the field; upon thy belly shalt thou go, and dust shall thou eat all the days of thy life; and I will put enmity between thee and the woman, and between thy seed and her seed; it shall bruise thy head, and thou shalt bruise his heel. Unto the woman he said, I will greatly multiply thy sorrow and in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee. And unto Adam he said, because thou hast hearkened unto the voice of thy wife, and hast eaten of the tree, of which I commanded thee, saying, thou shalt not eat of it: cursed is the ground for thy sake; in sorrow shalt thou eat of it all the days of thy life ; thorns also and thistles shall it bring forth to thee; and thou shalt eat the herb of the field; in the sweat of thy face shalt thou eat bread, till thou return unto the ground; for out of it wast thou taken: for dust thou art, and unto dust shalt thou return³. In the light of the above it is humbly submitted that short cut procedure should not be adopted by the university when expelling or suspending any erring student as he has a right to fair hearing.

The existence of universities in modern society such as Nigeria poses quite a number of legal and constitutional issues. Ordinarily, some of the claims to academic freedom and autonomy are indispensable⁴. It is often logical to make universities conform to the tenets of National Justice in the management of its own affairs. To this end, this paper contains the last word on the following:

- What procedure should a university adopt when disciplining students especially when an offence is tainted with elements of criminality?
- Should the university resort to its internal disciplinary organs at all times in the discipline of their students?
- Are there matters that should specifically be investigated by the police and consequently prosecuted by the state so as to avoid double standard in our criminal justice system?

THE CARDINAL OBJECTIVES OF NIGERIA UNIVERSITY EDUCATION

The cardinal objectives of Nigeria University education are to develop student's talents, physical skill, character moulding, inculcate respect for elders and those in position of authority, develop intellectual skill, offer specific vocational training, inculcate a healthy attitude towards honest behaviour, participate in family and community affairs and to understand, appreciate and promote cultural heritage of the community at large. Frankly speaking, Ambrose Alli University is not an exception to the above stated objectives.

STUDENTS DISCIPLINARY COMMITTEE (SDC)

In the administration of university, problems of autonomy and academic freedom coupled with the discipline of students usually besets the management, essentially, the requirements of the pervading principles of Natural Justice which require that a person facing trial either before a regular court or disciplinary tribunal is entitled to benefit from *audi alterem partem* (hear the other side) and *Nemo iudex in causa sua* (no man should be a judge in his own case).⁵

Student disciplinary committee is a body or organ established by the University law. It is to assist the vice-chancellor in the onerous task of maintenance of discipline of the students in the University. Students who are dissatisfied with the verdict of the student's disciplinary committee have the right to appeal through the vice-chancellor to the Governing Council within seven days of the receipt of the letter communicating the decision of the senate⁶. It needs to be borne in mind here that offences are not categorized as it is the case in criminal and penal order respectively. However, such offences as examination malpractices, cultism, fighting, indecent assault and sex related offences feature in the University.

The student disciplinary committee is made up of the following membership:

1. Vice-chancellor or his nominee as chairman
2. Registrar or his representative – member
3. Dean of students Affairs – member
4. A lawyer from faculty of Law – member
5. Dean of faculty of student concerned
6. Three senate representatives
7. One academic staff
8. Deputy registrar (student) – secretary⁷

The committee's term of Reference, include:

- a. To advise the senate on matters of broad policy regarding students conduct and discipline in the University.
- b. To advise the senate on discipline of student generally and in particular in any matter referred to it.
- c. To deal with all matters relating to students discipline and report to senate through the vice-chancellor
- d. To consider and advice on any other matter referred to it by senate for decision to be taken

The function of the students' Disciplinary Committee bears directly to the theme of this paper.

WHO IS A STUDENT?

The term "student" would defy generic definition as it is better viewed from the point of the particular institution for which it is sought to be defined. Therefore, it is for the statue establishing the academic institution to define who a student of the institution is, such definition would espouse the necessary legal cum academic characteristics as would render the definition useful to the intent of the legislation. In line with this thinking, there are various definition of the term in respective Universities statutes. It must however be noted that with such method as individual statutory definition, a University definition of the term is and would be elusive in one of such statutes. A student of a University has been defined as a person receiving regular instruction in the University whether or not studying for a degree or other Award⁸. Again, a student is a person who has been admitted (matriculated) to a University for a full or part-time professional higher education, Bachelors, Masters or Doctoral study or study based on the integrated curricula of Bachelors or Masters Study. Section 2 of the Ambrose Alli University Law 1991 defined a student "to include an undergraduate or any person of such description, as may be prescribed for the purpose of this law. The section further provides that an undergraduate means a person in *statu pupillari*" of a University for the purpose of this law. Further, a graduate is defined by the same section as a person on whom a degree (other than an honorary degree) has been conferred by the University. Consequently, a student who has not written all his examination is still a student subject to the University disciplinary procedures until a degree is conferred on him⁹.

The meaning of the term "student" embraces not only those in full attendance degree programme but include also diploma students, certificate students, pre degree students and students pursuing higher degrees such as post graduate diploma.

DISCIPLINE OF UNIVERSITY STUDENTS

Students and all other person whatsoever attending the University for the purpose of instruction are subject to the disciplinary control of the university. The vice-chancellor is generally responsible to the council for maintaining the efficiency and good order of the University and for ensuring the proper enforcement of statutes, Acts and Regulations.¹⁰ this include the enforcement with respect to issues of discipline. The power to discipline given to the vice-chancellor is exclusive.¹¹ However, a statute may make provisions for any other body to exercise the responsibility of discipline without derogating from the powers of the vice-chancellor¹², in all circumstances, the power to discipline is wedged by the rules of Natural justice. The affected student is always given a hearing in such circumstances as would lead to disciplinary action being meted against him. Right to fair hearing is so fundamental that it could neither be waived nor taken away by a statute whether expressly or by implication¹³.

STUDENTS DISCIPLINE AND THE PRINCIPLE OF FAIR HEARING

Black "Law Dictionary defined fair hearing as" a judicial or Administrative hearing conducted in accordance with due process". The Cambridge international dictionary of English define fair hearing as having the opportunity to explain something or give one's opinion without other people trying to influence the situation.

It must be borne in mind that the principle "fair hearing" has been treated in various legal literature and different writers all over the world expressed different opinion. However fair hearing is a universal principle on which fairness and justice is hinged. In the light of the above, it is humbly submitted that a university cannot deprived a person of his academic degree without notice of hearing. This is the rule of audi alterem partem which simply means hear the other side.

Another cardinal principle of this doctrine is that the judge, tribunal or panel must be free from bias. In the case of Okoduwa V. State¹⁴ the Supreme Court described fair hearing in the following languages; "Fair hearing incorporates a trial done in accordance with the rule of natural justice and Natural Justice carries with it the implication that justice should not only be done but should manifestly and undoubtedly be seen done".

Fair hearing as a concept in law is a major principle of Natural justice closely related to the rule of law. Emiola¹⁵ posited that natural justice as a concept is believed to have developed from natural law which dominated the thinking of the early Romans. Karibi-Whyte, JSC (as he then was) described it as a universal principle. Similarly, Forksque J¹⁶ saw it as required by the laws of God and judges resorted to the concept whenever, it become necessary to fill the lacuna created by the inadequacy of judicial procedure and made it an immutable rule of common law. In a judgement he declared that the objection for the want of notice can never be got over. The law of God and man both give the party an opportunity to make defence, if he has any in the treatment of matters concerning criminal conduct. The 1999 constitution under section 36 equally provides for the right of fair hearing. Fair hearing also means the same thing as fair trial. The true test of fair hearing is a reasonable man test i.e. what would a reasonable man infer from the circumstances of the case?

We shall examine a few cases illustrating the application of this principle by the courts.

TRIAL OF MISCONDUCT AMOUNTING TO A CRIME BY THE UNIVERSITY INSTEAD OF THE COURT

In the case of Garba V. University of Maiduguri¹⁷ there was a riot at the University of Maiduguri sometimes in 1983 which results in mass destruction of properties and infliction of injuries to others in the university. The vice-chancellor set up a disciplinary investigation panel to identify the principal organizers and perpetrators of the disturbances, apportion blames or give credit as the case may be and to recommend suitable disciplinary measures to be taken against the culprit. In conducting the investigation, the panel invited witnesses, who included students some of whom were identified in the panel's report as haven taken part in the riot. The senate thereafter constituted itself into a disciplinary board, based on the report of the panel the senate advised the vice-chancellor to take appropriate measures against the students named in the report.

The vice-chancellor went ahead to expel the students so identified in the report, the expelled students brought an action at a Maiduguri High Court under the fundamental right (Enforcement procedure.) rule 1979 seeking re-instatement to the University on the ground that they were denied fair hearing by the panel. The action succeeded on all grounds. Upon an appeal the decision was revised. The students then appealed to the Supreme Court. The main issues for determination were whether the University had jurisdiction to inquire into such an allegation as well as imposing disciplinary measures for an offence which amounted to a crime under the penal code. The Supreme Court unanimously held that the University had no such power. The Court invoked section 33(1) and 4 of the 1979 constitution (now section 36(1) and (4) of the 1999 constitution.

The Court held that the disciplinary board as constituted by the vice-chancellor was neither a Court nor a tribunal established by law within the purview of the laws and so whatever it did was illegal null and void.

NEMO JUDEX IN CAUSA SUA (NO MAN SHOULD BE A JUDGE IN HIS OWN CASE)

The case of state civil service commission & Anor V. Buzugbe¹⁸ illustrates the operation of the rule against bias. Buzugbe was a civil servant in the defunct Bendel state. He had written a very critical and scurrilous petition against the head of service. A committee presided over by the same head of service investigated the conduct of Buzugbe in writing the petition. Based on the committee's recommendation he was reduced in rank. He challenged the decision reducing him in rank in court and succeeded on the ground that the head of service being the target of the petition written by Buzugbe ought not to have presided over the committee that investigated the conduct of Buzugbe for writing the petition. The civil service commission appealed to the Supreme Court which upheld the decision of the trial court. Nemo judex in causa sua is a latin maxim meaning that, you cannot be judge in your own matter.

AUDI ALTEREM PARTEM (HEAR THE OTHER SIDE)

The case of Egwu v. University of Port-Harcourt¹⁹ is another case of disciplinary action against a student. The student herein was dismissed for alleged examination malpractice. He was not asked to appear before any panel, neither was he accorded any hearing by the vice-chancellor who was vested with disciplinary power by the university of Port-Harcourt Act. He was only requested to see two lectures independently who asked questions. He was therefore expelled from the University. The High Court dismissed the student's case challenging his expulsion but the court of Appeal saw merit in his case and nullified his expulsion on the ground that he was denied fair hearing.

The high point of the decision was the condemnation in very strong terms of the short cut procedure adopted in expelling the student. It was the view of the court that even if the student appeared guilty of the alleged offence he must still be seen to be treated fairly and in accordance with the law. A similar decision was reached in Adekunle v. University of Port-Harcourt²⁰. In Clement Anoghena Ifalume v. Ambrose Alli University & 3 others²¹, the applicant was alleged of examination malpractice. He was not given any malpractice form to fill as required by law. Moment later a committee was set up to try him. Yet he was not allowed to cross examine the witnesses of the respondents. The court held that non compliance with s.11(c) and s.25(1) (d) of Ambrose Alli University student handbook which requires service of the examination malpractice form on a student guilty of misconduct as well as the refusal by the respondent to allow the applicant to cross examine the witnesses brought by the respondent constitute a breached of fair hearing.

In Sierra-Leone, the procedures governing a student right to defend himself in exercise of any disciplinary powers shall be consistent with the Laws of Natural Justice and a student shall entitled to be represented to call witnesses in his own defence and to cross examine adverse witnesses and adduce such evidence as he may deem necessary for his defence²².

II. Conclusion And Recommendation

CONCLUSION

In this work serious attempts has been made to look at the legal status of student in Nigerian Universities and disciplining of students in such a manner that will not violate their Rights or legal status, vis a vis compliance with the process stipulated in the Laws establishing the universities most especially on the fair hearing provision as enshrined in section 36 of the 1999 constitution. The study revealed that the non-adherence to the provisions of the constitution consequently leads to flagrant disregard to the right of a student and the principles of the rule of law and observance of the rule of Natural Justice.

It was observed that very often the vice-chancellors relying on the provisions of the enabling law of the university fail to follow due process in the handling of disciplinary matters and this has often resulted in litigations.

Statutory bodies, authorities or persons vested with adjudicatory powers must always bear in mind that the need to comply with fair-hearing is paramount and cannot be short-circuited. As observed by the Supreme Court in Olaniyan v. University of Lagos²³.

The procedure adopted by the council may be quick and convenient and time saving, but the dictates at justice demand that the legal principles of audi alterem parterm must be obeyed no matter how cumbersome and inconvenient it may appear to the council.

It is in recognition at this that the Governing council at the Ambrose Alli University in accepting the report of the committee on students crisis in the university sometime in 2001 advised that the management of the university should exercise a little more-care and patience in reaching the security report, which were never made known to those against whom allegation of misdeeds were often made. The governing council further agreed that allegations do not themselves constitute proof.

It was noted that the clause in the Ambrose Alli University law that the authority uses a sledge hammer in the discipline of students in every sorts of grounds, which reads "Nothing in this section shall be construed as preventing the restricting or termination of a student's activities at the university otherwise than on the ground

of misconduct".²⁴ Again, another clause reads thus "the council, acting in accordance with the advice of the vice-chancellor and senate may make regulations governing the discipline of students and may prescribe in such regulations what acts or omissions on the part of students shall, for the purpose of this section, constitutes misconduct and until such regulations are made, the expression "misconduct" shall mean any such act or omission as the vice-chancellor may from time to time, so designate²⁵". With due respect, these clause appear to give the authority of the university unfettered powers. It should be borne in mind that in designating offences as "misconduct" which comes within the disciplinary powers at the university, cognizance should be taken in regard to offences that are criminal in nature. Such offences are not within the jurisdiction of the university to prosecute but ordinarily ought to be referred to court of competent jurisdiction to ensure fitness, since the university cannot be a judge in its own cause.

RECOMMENDATIONS

From the study, it is clear that the disciplining of students in the University has somehow presented an uphill task to the management, but to ensure effective disciplinary measure in accordance with the rule of law, the following recommendations are being made:

1. The university should recognize the fact that every disciplinary process should comply with the rule of natural justice and fair-hearing. These are the basic principles of fundamental rights of every civilized society and which the constitution seeks to protect and guarantee.
2. The legal unit of some Universities in Nigeria, is poorly equipped as there are few law reports and law books for research.
3. The legal unit should take it as a point of duty to give legal advice and recommendations to the management, before taking any decision in such a manner that it will not affect the right of any student.
4. It is sad to note that hitherto, apart from few administrative lawyers that provide clerical services in the legal unit matters involving the university, are still being handled by outside lawyer, rather than the university employing its own lawyers who should be more committed as they are paid employees.
5. Finally, it is our candid suggestion that the university should resort to its internal machinery for disciplining of minor cases involving simple offences. However, for felonious offences such as rape, murder, armed robbery, mass destruction of properties, infliction of injuries to others in the university, etc; resort must be made to the court as the university lacks the jurisdiction to impose disciplinary measures for offences which amounted to crime.

References

- [1] The Holy Bible (King James' Version) Genesis chapter 2:5-17
- [2] Ibid chapter 3:22-23
- [3] Ibid chapter 3:9-19
- [4] Hon. Justice Kalu Anyah (Rt), NUC, Resource Management in the University system in proceeding of the NUC/CVCIBC international services Abu, Zaria Nov. 9-10 (1987) P.84-98
- [5] Nwabueze, B.O. Constitutional Law in Nigeria (Ibadan, Spectrum Books Ltd) 2001 P.49-51
- [6] Supra footnote 4
- [7] Supra footnote 4
- [8] Section 9 of the Ahmadu Bello University law.
- [9] Akintemi V. O. Nwanmechichi: (1985) 3 NWLR PT.13 P.504
- [10] See article 3(2) (6) statute 3 Ahmodu Bello University Law
- [11] Adekunle V. Alele Williams 2 NPILR 363
- [12] Section (2)(g) Edo State University Law 1991 as Amended Osumah V. Edo Broadcasting Service (2005) All FWLR PT.253 P.773 (1988) 2 NWLR PT.76 P.333 also in Matinisebi V. Obafemi Awolowo University 91996) FHCLR 407. There is an interesting provision in article 31(5) of the Universities Act 2005 Sieria-Leone (not found in any of the relevant statues in Nigeria) it states that in effect that the procedures governing a student right to defend himself in exercise of any disciplinary powers shall be consistent with the laws of Natural Justice and a student shall be entitled to be represented to call witness in his own defence and to cross examine adverse witnesses and to adduce such evidence as he may deem necessary for his defence.
- [14] Emiola Akintunde. Public servant and the law (Ogbomosho Emiola publishes Ltd 2000)
- [15] (1723) 1 str.55, Gen 3 8-19 the principle of fair hearing has a venerable history in the Garden of Eden, God did not condemn Adam and Eve without first calling on them to answer allegation of disobedience to his divine command.
- [16] (1986) INWLR (PT.18) P.550
- [17] (1984) 7 SC P.19
- [18] Egwu v. Uniport (1995) 8 NWLR(PT.414) P.419 of 444. The court of Appeal held as follows, the language of the status should be given its natural meaning especially when they are clear and unambiguous. The language of S.17(1) (1) uses expel and it shall be used not dismissal. (1991) 3 NWLR PT.18 P.534.
- [19] HEK/MISC/11/2010 unreported Article 31 (5) of the universities Act 2005 (1985) 2 NWLR (Pt.9) P.599
- [20] S.21 Ambrose Alli University 1991 as amended Ibid S.21 (18)