COLLEGE OF HIGHER DEGREES AND RESEARCH
SCHOOL OF LAW

THE RIGHT TO A FAIR HEARING AND LEGAL REPRESENTATION OF THE
INDIGENTS: A CASE STUDY OF LEGAL AID SCHEME IN KANO
STATE, NIGERIA

BY

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MAY, 2018
DECLARATION

I declare that this is my original work and that no portion thereof has been submitted in support of an application for this or any other degree or qualification of this or any other University or institution of learning.

Signed

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MUHAMMAD SHA’ABAN ADO

DATED THIS.........DAY OF.........2018

Submitted with my consent

Signed

................................................

Dr. TAJUDEEN SANNI
Supervisor

DATED THIS.........DAY OF.........2018
DEDICATION

This work is humbly dedicated to the following people:

My deceased father, Malam Ado Jibril

My mother, Hajiya Mariya Saleh

My bountiful wife, Badriya Shehu Bala Solicitor and Advocate of the Supreme Court of Nigeria

My loving children Fatima Abidah, Muhammad Fatihu, Asiya and Ado Muhammad Sha’aban
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<td>AGF</td>
<td>Attorney-General of the Federation</td>
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<td>FLAR</td>
<td>Fundamental Legal Reform</td>
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<td>ICCPR</td>
<td>International Convention on Civil and Political Rights</td>
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<tr>
<td>LAP</td>
<td>Legal Aid Project</td>
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<tr>
<td>LCD</td>
<td>Lord Chancellor’s Department</td>
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<td>LEI</td>
<td>Legal Expense Insurance</td>
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<td>LFN</td>
<td>Laws of the Federation of Nigeria</td>
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<td>NBA</td>
<td>Nigerian Bar Association</td>
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<td>NGOS</td>
<td>Non-governmental organisations</td>
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<tr>
<td>NMW</td>
<td>National minimum wage</td>
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<td>PCT</td>
<td>Price competitive tendering</td>
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<td>USAID</td>
<td>United States Aid</td>
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ABSTRACT

The idea of legal aid in Nigeria was first conceived in 1961 with a Bill to establish the Legal Aid Act, which did not materialize as a result of the civil war. Legal Aid Association was formed by some lawyers with the purpose of providing legal aid to the poor, culminating in to the promulgation of the Legal Aid Decree no. 56 of 1976, which metamorphose in to the present Legal Aid Act 2011. In order to assess the state of legal aid scheme in Kano State with a view to ascertaining the right to fair hearing of the indigents given legal representation is safeguarded, the study analyses the provisions of the Legal Aid Act and that of the 1999 Constitution as amended in 2011 relating to fair hearing and also the constitutional safe guards to fair hearing. The doctrinal methodology was adopted to review both primary and secondary sources of information relating to the study. The study found that both rights to fair hearing and legal representation are constitutionally enshrined. The right to legal representation is limited to offences under the Penal Code Law as specified under the second schedule of the Legal Aid Act and therefore the two rights are not all encompassing, since legal representation does not cover all offences The amendment of the Constitution and the Legal Aid Act was recommended.
CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the study
Legal aid is the gratuitous provision of legal assistance to persons who cannot afford to employ the services of legal practitioners in order to assert their rights.¹ The system promotes access to justice for the most vulnerable in society and also the rule of law which in turn aid good governance.

The idea of legal aid had its origins from the Roman Civilization. Under the Roman law, the *legis actio*² was the earliest procedure of dispensing justice.³ By this procedure, a case was before a magistrate through a series of ritual acts and declarations established by the Statute and the Priestly lawyers who interpreted it.⁴ The parties themselves were not represented. These ceremonies were largely the secrets of Patrician Magistrate who used them to bar the claims of the Plebeian class.⁵ In 250 B.C., a Plebeian pontiff succeeded in making these secrets public, thus destroying the value of the *legis actio* as a class weapon and paving way for the more rational procedure that superseded it.⁶

Under the new procedure, claim of the parties in litigation is presented by *Advocati*, who are merely orators not trained lawyers. Their services were brought within the reach of the poor

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² This is a procedure of bringing a dispute before Magistrate for adjudication. It entails presenting the parties’ case only while their presence is dispensed with.
⁴ ibid. p.348.
⁵ ibid. p, 348.
⁶ ibid.
through the reach of the *Clientela* system. The system entails the weak and impoverished attached themselves to a powerful man, in return for certain services and political support, the patron assisted them in many of their difficulties, including litigation.

However, in the medieval world, the Church provided a different approach to the problem of the poor. Legal aid, like other assistance to the poor, was given in a form of charity by the Church and by Christian men as a pious work. Much of the legal protection received by the poor came from the spontaneous charity of individuals, such as Saint Yves of Brittany who was canonized for his work in representing the impoverished.

In addition, the Church and the temporal rulers produced two more organized forms of assistance. One was an official created by canon law who was employed in ecclesiastical courts. The second solution, which also spread to secular courts after it received canonical approval in several church councils was to command magistrates to forgive the court fees of poor litigants and sometimes assign a private lawyer to assist them gratuitously.

With the collapse of the nobility and the emergence of modern states based on secular principles, the state was viewed as a contract between the people and their government in which the former was bound to protect the latters’ natural rights. Justice was seen as a process by means of which the state preserved each citizen’s right from encroachment by the government and his fellow citizens. Hence, the securing of justice received major attention in both the American Bill of rights and the French Declaration of Rights of Man. It was from this new vision of justice that a new attempt to answer legal problems of the poor developed. The vision demanded that courts of law be equally accessible to all citizens.

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7 This is a less stringent procedure which replaced the legis actio. Under the system, poor persons are given legal representation in suits by wealthy persons through the use of Advocati, in consideration for certain services and political support.


9 ibid, p.349.

10 ibid, p. 351.

11 ibid, p.352.

12 ibid, 352.

13 ibid, 355.

14 ibid, 355.
In the modern day Democracies, the culmination of this new vision is seen in the inclusion of provision of legal aid in Constitutions and the enactment of legislations for the provision of legal aid to those with little or no means. What follows in the preceding paragraphs is a discourse on legal aid in some countries.\textsuperscript{15}

In Botswana, the Constitution guarantees every citizen who has been charged with a criminal offence the right to defend himself before a court in person or, at his own expense by a legal representative of his own choice.\textsuperscript{16} However, the Constitution imposes no obligation on the state to provide financial assistance to an indigent person who either wishes to defend himself in a criminal trial, or enforce or defend a right in civil procedure.\textsuperscript{17} This is despite the fact that majority of the population are living on P.6, 37(1 USD) or less per day.\textsuperscript{18}

Under the Roman – Dutch common law, there was little or no provision for legal aid for indigent litigants, although in exceptional circumstances, a lawyer could be appointed by the Court at the request of an accused.\textsuperscript{19} Also, leave to sue pro deo was provided by the rules of court. Thus when the Roman- Dutch law was received in Botswana in 1891, it came with its lack of provision for legal aid.\textsuperscript{20} However, some rudimentary schemes evolved over time.

Under section 56 of Botswana Legal Practitioners Act 1996, every member of the Law Society is committed to render pro deo or pro bono work. This requires the court assigning practitioners to cases in which the accused person cannot afford the services of a lawyer to handle their cases at a nominal fee. Currently, it is court practice that an accused charged with murder, and who cannot afford legal representation, be assigned a lawyer by court in his/her defence and that in the interest of justice, the accused has legal aid. The aid is offered after consultation between the presiding judge and the Registrar of the High Court.\textsuperscript{21} Other offences attracting pro bono services include treason, manslaughter, robbery, fraud and theft.\textsuperscript{22}

\textsuperscript{15} What informs the choice of the countries by the researcher is to bring forward various ways in which legal is given in the selected countries and also to present the problems affecting the rendering of legal aid if any, in those countries and how it is being addressed.

\textsuperscript{16} section 10 (2)(d) of the Constitution of Botswana.


\textsuperscript{18} ibid.

\textsuperscript{19} ibid., p. 512.

\textsuperscript{20} ibid.

\textsuperscript{21} ibid.

\textsuperscript{22} ibid.
The *pro bono* system was criticized because the remuneration is poor and the cases are generally taken by junior lawyers who lack the requisite motivation and experience. This unfortunate situation was demonstrated in the case of State *V.* Maauwe and Motswetla. This led to the suggestion that only experienced Criminal law lawyer should be assigned to pro bono cases. Lawyers were also encouraged to approach *pro bono* matters with the same commitment and professionalism as when privately instructed and that each lawyer should be held accountable for his/her obligation under section 56 L.P.A.

Jamaica is a post-slavery society ruled by elites with no concern for the poor. Most lawyers were from merchant or planter class with no deep roots in the Community. By 1960s, the middle class provided the majority of lawyers, although the lawyers from planter/merchant class still exercise control over the legal profession. The 1970’s saw a fundamental shift in the type of attorneys entering the legal profession. These new breed of lawyer is at least outwardly, more committed to representing and helping the poor. Also, they are more susceptible to pressures from such groups as small farmers, tenants and trade unions. As a result, the climate for legal representation of the poor is strong.

Legal aid Clinics in the Caribbean were first developed in Jamaica, resulting from a firm commitment by the members of the Bar to provide legal representation for the poor. Initially, the Jamaican government provided no monetary assistance to the clinics, but later changed this policy when both Kingston and Montego Bay legal aid clinics experienced financial difficulties. Government employed lawyers were also sent to work in the legal aid clinics. Despite this direct financial assistance, there was no attempt by government to dismantle the independent apparatus set up by the clinics by attaching strings to the aid.

References:

23 ibid, p.513.
24 ibid.
26 ibid p.380.
27 ibid p.382.
28 ibid p.384.
29 ibid 384.
30 ibid p.385.
However, in 1977 when government was anxious for legal action to be taken with regard to new landlord and tenant legislation which was aimed against land lords, there was suggestion that financial assistance would be granted only if the clinics involved themselves more in representing tenants in land lord and tenant disputes. Despite these complications, there has been a healthy growth of independent legal aid clinics which focus their attention on non-criminal cases, while the government legal aid scheme under the Poor Prisoners Defence Act has been directed toward representation of indigent defendants in criminal cases.

Proposals were drafted by the Jamaican Law Reform Division of the Ministry of Justice in 1976, for a national legal aid plan. The objective of the plan was to fuse the administration of civil and criminal legal aid as well as widen the scope of available legal representation. The plan received support from both the Bar and Government, but had not seen the light of the day due to financial difficulties faced by the Government.

Some of the problems of the Jamaican legal aid scheme include high caseload and financial pressure which often deter clinics from publicizing their services. Accordingly, the poor do not know what rights they have, that lawyers can help them, or even that free legal services might be available and people in Kingston have greater access to lawyers than rural Jamaicans because of preponderance of clinics in Kingston.

Under the Swedish legal system, the Legal Proceedings Act of 1919 empowers the court to exempt a party who is indigent from all costs of litigation civil or criminal, including the cost of serving process and witness fees. In addition, the court may order that the fees of the party’s attorney be defrayed by the state in an amount to be fixed by the court also the attorney’s disbursement for necessary expenses are similarly defrayed. There was also Public Institute for Legal Assistance, which conducts through their salaried staff, most of the litigation on behalf of the poor in the localities where they have been set up. One of the objects of the creation of the

31 ibid.
32 ibid p.385.
33 ibid.
34 ibid , p.388
36 ibid 215.
Institute was to relieve the poor so far as possible of the necessity of seeking counsel at state expense.\textsuperscript{37}

In July 1973, significant changes were made in Sweden’s system of legal assistance. Consistent with the egalitarian character of the Swedish society generally, the principal purpose of the reform is to equalize access to legal services by enabling everyone to obtain legal assistance in any matter in which he needs it.\textsuperscript{38}

In criminal cases, there has been a means test for court appointment and court would designate counsel even if the defendant had not requested and where the court determined that the defendant’s rights cannot be safe guarded without assistance.\textsuperscript{39} As a rule, the court would designate an advocate chosen by the defendant. The advocate’s fees were advanced by the government from public funds and were set by reference to the prevailing rates in the profession for comparable services. The same goes with disbursements, such as those for expert witness.\textsuperscript{40}

In civil cases, persons of limited means could apply to the lower court in which they were party for exemption from all the cost and fees of litigation. The court could also order reimbursement of the indigent person’s lawyer for necessary expenses and reasonable attorney’s fees, whether or not the person’s claim or defense was successful.\textsuperscript{41} However, there was no plan for providing poor, low income or moderate means with free legal advice or at reduced cost.\textsuperscript{42}

Further reforms were introduced with the aim of reducing public expenditure. They include shift from public to private legal aid and the introduction of Legal Expense Insurance (LEI) policy, which restricts assistance to a relatively narrow range of court cases.\textsuperscript{43}

In 1876, the first legal aid Society in America was incorporated in New York.\textsuperscript{44} The purpose of the German Legal Aid Society was to render assistance, gratuitously, to those of German birth, who may appear worthy thereof, but who from poverty are unable to procure it. The

\textsuperscript{37} ibid.
\textsuperscript{38} P. S. Muller, The Reform of Legal Aid in Sweden, The International Lawyer, vol. 9, no.3.
\textsuperscript{39} ibid p. 479.
\textsuperscript{40} ibid, p.480.
\textsuperscript{41} ibid. 481.
\textsuperscript{42} ibid.
Organisation was supported entirely by the German Society, German merchants and persons interested in assisting Germans.\(^{45}\)

In 1896, the Charter of New York Society was amended and the ‘word’ German was dropped. It thus became ‘The Legal Aid Society’.\(^{46}\) Changes were also effected in the internal organization of the society. Originally the attorney had received salary and was allowed to engage in private practice. Later, lump sum was paid to the attorney, out of which he paid salaries, expenses, retaining the balance as his salary.\(^{47}\)

In 1900, a group of Lawyers in Boston organized the Boston Legal Aid Society. Also, the year saw the birth of legal Aid Societies in major American cities and the term ‘Legal Aid’ became the standard and uniform nomenclature.\(^{48}\)

The birth of modern Legal Aid came as a result of the landmark decision of \emph{Gideon V. Wainwright}, where the United States Supreme Court interpreted the sixth Amendment of the United States Constitution which guarantees all persons accused of crime the right to counsel and require each state to provide counsel to any person accused of crime before he/she is sentenced to prison, if that person cannot afford to hire an attorney.\(^{49}\) The states have responded to the Court’s mandate in Gideon, by developing a variety of systems in which indigent defence services are provided. Some states and localities have created public defender programs, while others rely on the private Bar to accept court appointments.\(^{50}\) In most states, the right to counsel has been expanded by Legislation, case law and State Constitutional provisions. This expansion at the state level has contributed to the diversity of the system.\(^{51}\)

Two decades after Gideon, demand for indigent defence grew steadily. This was further aggravated by the war on crime and major increase in drug offences. It is not uncommon for indigent defence to represent up to 90 percent of all criminal defendants in a given jurisdiction.

\(^{45}\)Ibid.
\(^{46}\)Ibid, p. 21.
\(^{47}\)Ibid. p.21.
\(^{48}\)Ibid.
\(^{50}\)Ibid.
\(^{51}\)Ibid.
This led to escalation of cost of providing services, leaving the states to search for ways to contain the cost of indigent defence.\(^52\)

In Uganda, there is an acute unmet need for legal aid services for the indigent. This stems from the country’s lack of resources to implement a comprehensive national legal aid system. This leaves significant number of Ugandans without government-provided legal aid or resources to afford hired counsel.\(^53\) With regards to criminal trial, every defendant charged with an offence is entitled to legal representation at the state’s expense.\(^54\) However, only defendants charged with crimes which attract death or life imprisonment qualify for representation under the Constitution. Similarly, any party may retain an attorney for a civil suit, but the government does not provide free legal counsel in civil suits.

Due to the insufficient and limited nature of government sponsored legal aid coupled with large impoverished population, there is a severe unmet legal aid need in Uganda. There is also severe shortage of attorneys for the 37.5 million people. Also, because a large proportion of Uganda’s population lives below the poverty line, the lack of statutory free legal aid largely restricts the average citizen access to justice. Legal representation is only available in limited number of Uganda’s districts (as at 2011, it was as low as 16 percent).\(^55\) The Ugandan government, through the implementation of the Law Development Centre Act, established a Law Development Centre that, in part, is responsible for assisting in the provision of legal aid and advice to indigent litigants and accused persons as an attempt to address some of the obstacles to access to justice.\(^56\)

There are other nongovernmental organisations that play an integral part in offering legal aid to indigents. The Legal Aid Project (LAP) was established by Uganda Law Society in 1992 with assistance from the Norwegian Bar Association, with the aim of providing legal assistance to indigent and vulnerable people in Uganda.\(^57\) Also, the United States through its USAID

\(^{52}\) ibid.


\(^{56}\) ibid p.664.

\(^{57}\) ibid. p.644.
program, contribute to legal aid in Uganda. The USAID recently gave a grant and worked in partnership with local groups to establish an alternative dispute resolution program.\(^{58}\)

Furthermore, the Ugandan Law Society, piloted a \textit{pro-bono} scheme in partnership with the Ministry of Justice and Constitutional Affairs, supported by the Legal Aid Basket Fund in 2008.\(^{59}\) The project covers nine districts including Kampala through the satellite clinics of Legal Aid Project of the Uganda Law Society.\(^{60}\)

More so, the Law Council in its bid to enforce the provision of pro-bono services to the indigent enacted the Advocate \textit{Pro-bono} Services to Indigent Persons Regulation SI no.39 of 2009, which require advocates to provide forty hours of pro-bono services every year or make payment in lieu. The regulation also made the performance of such services by advocates, a condition precedent to the renewal of their practicing certificate.\(^{61}\)

The idea of legal aid in Nigeria was first conceived in 1961 when the then Chief Justice of Nigeria Sir Adetokumbo Ademola, during The African Conference on the Rule of Law held in Lagos, pointed the hollowness of a constitutional right to fair hearing, if the financial aspect of access was ignored.\(^{62}\) Consequently, a Bill was prepared by the then Attorney-General, Dr. T.O. Elias, entitled ‘Legal Aid and Advice Act 1961’, for Parliament, with a view to establish legal aid in Nigeria. Due to the civil war, the Bill did not see the light of the day.\(^{63}\)

In 1974, some Lawyers formed the Nigerian Legal Aid Association, with the sole purpose of providing legal aid for poor Nigerians. The Association was inaugurated on February 6\(^{th}\). A week later branches were inaugurated in Enugu and Cross River, East Central State, Lagos, Jos in Benue-Plateau, and Oyo in Western State.\(^{64}\)

The efforts of the Association culminated in the promulgation of the Legal Aid Decree no. 56 of 1976. The Decree came in to force on May 2\(^{nd}\) 1977. It was amended in 1986, 1994 and 2004. The Legal Aid Act Cap L9, 2004 was further replaced by the current Legal Aid Act 2011.\(^{65}\)

\(^{58}\) ibid. p.644
\(^{59}\) The pro-bono project of ULS, \url{https://www.uls.org.ug/projects/pro-bono} project, accessed on 07/10/2017.
\(^{60}\) ibid., p.2.
\(^{61}\) ibid p.3.
\(^{63}\) ibid.
\(^{64}\) ibid.
\(^{65}\) ibid p.4.
The Act provides for the establishment of one office in each of the thirty six states of the federation (including Kano, the study area). The office is headed by a legal officer who is responsible for the provision of legal aid service in the state. Legal aid is rendered in three areas namely; criminal defence, civil litigation and community legal service.

The state office also maintains a register of private legal practitioners willing to act for indigents (whether gratuitously or otherwise). A certain amount is payable to the lawyers by the Legal aid Council for their service. Also, Lawyers serving in the National Youth Service Corps may be directed to represent indigent persons at no cost. However, a stipend and travelling allowance is paid to such lawyers by the Council.

The Act also provide for nongovernmental organisations and Law Clinics to provide legal services to indigent persons subject to registering with the Council. The only NGO operating in Kano state is Partners West Africa- Nigeria. It started its operation in June, 2017. The program is a two year pilot program funded by NGOs. Although the program is at its infancy stage, it renders services to indigents on referrals and walk INS. The major challenges faced by the organization is payment of filing fees and other Court processes as against Legal Aid Council which pay no such fees.

Legal practitioners in private practice may render *pro bono* to indigents. But such cases must be registered with the Council. It is also the responsibility of the Council to monitor the progress of such matters. A discussion by the researcher with some inmates at Kurmawa Central Prison in Kano City revealed that, several private practitioners take up their cases as *pro bono*, but later abandoned such cases for no reason. This presupposes failure on the part of the council to discharge its function provided under Section 18(1) of the Act.

The researcher observes that, only lawyers under the pay roll of the Legal Aid Council represent indigent defendants. This is largely attributed to non-release of funds to the state Office from the Headquarters, with which to compensate lawyers for their services and to pay stipend to Youth Corps Lawyers. There is also reluctance on the part of the Youth Corps Lawyers to take up cases of indigent persons. This stems from their inexperience and the law does not permit them to

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66Section 6 (4), Legal Aid Act Cap L9, 2011.
67 Ibid Section 6(5).
68 Ibid section 14.
69 Ibid section 16.
70 Ibid section 18(1).
charge fees and the stipends they are paid is low compared to what they will be paid if employed in a Law office.

The researcher further observes that, a monthly running cost of #20, 000, is given to Legal Aid Council office in Kano state. Despite the fact that the amount is too insufficient to run such an office, the monthly subvention was last paid in March, 2017. Sometimes, the Office had to shut its doors to the indigents in need of their services, so as to reduce the number of people that may come in need of legal services.

Nigeria is a Federation consisting of states and Federal Capital Territory.\textsuperscript{71} There are thirty six States in the Federation of Nigeria,\textsuperscript{72} including Kano State, hereinafter referred to as the study area.

Under the Act, legal aid is provided in three areas namely; representation in criminal defence, civil litigation and rendering of legal advice. However, the civil litigation is limited to only claims in respect of accident and enforcement of fundamental rights as guaranteed under the Constitution. While the criminal defence is limited to only seven offences\textsuperscript{73} out of over two hundred offences under the Penal Code Law of Kano State. The offences include; culpable homicide punishable with death, culpable homicide not punishable with death, inflicting grievous bodily hurt, criminal force occasioning actual bodily harm, theft , rape and armed robbery. This leaves the indigents with no option than engaging private lawyers, with the attendant consequences of payment of high fees, which most defendants cannot afford because of poverty or defend themselves in person and hence, the trial becomes unequal and its fairness could hardly be ascertained.

Apart from criminal defence and provision of legal advice, the scope of the Act extends to rendering civil representation to indigent persons where the interest of justice demands, in order to secure, defend, enforce, protect or exercise any right, obligation, duty, privilege which that person is entitled to under the Nigerian legal system.\textsuperscript{74} Notwithstanding subsection (3) of section 8 of the Act, representation in civil litigation like criminal matters is also limited to civil matters as set out in the second schedule of the Act; civil claims in respect of accidents, employees

\textsuperscript{71} Section 2(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended in 2011.
\textsuperscript{72} ibid. Section 3(1).
\textsuperscript{73}Section 8(1) (2) Legal Aid Act Cap L9, 2011.
\textsuperscript{74} ibid. section 8 (3).
compensation, civil claims arising from criminal activities against persons who are qualified for legal aid under the Act.

Other initiatives for rendering legal aid to the indigents in Nigeria include the NBA *pro bono* programme, the AGF’S prison decongestion programme and the Police Duty Solicitor Scheme.

Under the NBA *pro bono* programme, both National Constitution and Branch Bye Laws provide for the rendering of *pro bono* to the indigents. The human rights committee at both national and branch level is saddled with the responsibility of rendering *pro bono* to the indigents.

The branch writes to the prison to furnish it with names of prisoners who are indigent and have no legal representation. A visit to the prison is also conducted in order to identify inmates worthy of receiving *pro bono* legal aid service. Other ways of getting indigents in need of *pro bono* include referral from NGOS and the Legal Aid Council. The Branch is currently handling 50 cases for the legal year 2017/2018.

However, under the AGF’S Prison decongestion programme, list of awaiting trial inmates and those without legal representation are collated by the AGF’S office from various prisons throughout the Federation. The cases are then assigned to private legal practitioners upon application, to represent the indigents. A legal practitioner handling a case is expected to render progress report thrice: upon granting bail to indigent, during trial and at the conclusion of the trial. The sum of N 500,000.0 is payable for each case conducted payable in two installments. The Police Duty Solicitor Scheme on the other hand is a pilot scheme established in 2004 in conjunction with the Nigeria Police, the Open Society Justice Initiative, Rights Enforcement and Public Law Centre and the National Youth Service Directorate. The scheme provide legal advice and assistance to people that are arrested but their statement is not taken or before arraignment in a court of law. The scheme started with four focal states after which two more were added.

Under the scheme, a desk officer(duty-solicitor) is provided at every State Criminal Investigation Department and some designated police stations. The duty-solicitors are assisted by

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75 Section 12(c)(ii), The Nigerian Bar Association Constitution 2015 and section 9 (b) of the Bye Laws of Ungoggo Branch Kano State.

76 Interview via mobile phone with Mustapha I. Imam Esq, Chairman NBA Ungoggo Branch Kano, 30/05/2018 at 2210 hours EAT.

77 Interview via mobile phone with Salisu Muhammad Tahir, Chief State Counsel, MOJ Kano State, 31/05/2018 at 06 36 am EAT.

78 The States are; Ondo, Imo, Sokoto, Kaduna, Kebbi and Edo.
a police officer not below the rank of an Assistant Superintendent of Police, who must be a lawyer.

1.2 Statement of problem

The Legal Aid Council in Kano State is statutorily responsible for rendering legal aid services to the indigent persons in the state which has a population of over twelve million (12, 625, 500).\(^\text{79}\) Also, 76.4 percent of the total populations are living below poverty line\(^\text{80}\) and therefore qualify for legal aid. This render the provision of legal aid in Kano state an extraordinary difficult task. The research further observes that despite the teeming population, there are only six lawyers in the Legal Aid office, coupled with lack of adequate funding, mobility and absence of facilities such as books, computers and internet facilities. The level of crime is also on the rise as indicated by the crime statistics obtained by the researcher from Kano State Police Command.\(^\text{81}\) Also, constitutionally legal aid is within the exclusive legislative list. As such, states cannot make legislation on items that are within the legislative of the Federal government. This study therefore set to investigate whether indigent persons in Kano state are adequately represented in legal proceedings so as to guarantee their right to fair hearing as enshrined under Section 36 of the Constitution of the Federal Republic of Nigeria.

1.3 Objectives of the study

1.3.1 General objectives

The general objective of this study is to assess legal representation given to indigents under the Legal Aid scheme in Kano State.

1.3.2 Specific objectives

The study is predicated on the following specific objectives:

\begin{enumerate}
  \item To identify the legal rules governing legal aid in Nigeria.
\end{enumerate}


\(^{81}\) Appendix ii is a crime statistics report of offences recorded between January-June 2018. The record pertains only serious offences transferred to State Criminal Investigation Department from various Divisions within the state.
ii. To examine the notion of fair hearing as applicable to legal aid in Kano State.

iii. To determine the legal safeguards to fair hearing as applicable to legal aid in Kano State.

1.4 Research questions

i. What is the legal framework on Legal Aid in Nigeria?

ii. How does the legal aid scheme operate in Kano State?

iii. What are the legal safeguards aimed at ensuring fair hearing to indigents?

1.5 Scope of the study

The study concerned itself with the assessment of legal representation given to indigent persons in Kano state by the Legal Aid Council. The study will be limited to assessment of legal representation given to indigents in criminal matters, with a view to ascertain whether such representation is in conformity with Section 36 of the Constitution of Federal Republic of Nigeria 2011, relating to fair hearing. The justification for limiting the study to criminal matters is due to the high cost of prosecuting criminal case in Kano State from the defence side, which is pegged at about N 150, 000.0, which is far higher than the national minimum wage and therefore not affordable to most of the people in Kano State.

1.6 Significance of the study

The study is concerned with assessment of legal representation given to indigent accused persons by the Legal Aid Council in Kano state. The study is of significance to the Government at both Federal and state levels, private legal Practitioners, Researchers and the general public.

To the government at Federal level, it will assist in identifying areas in the Legal Aid Act in need of reform with a view to improving the quality of legal aid services in Nigeria. While at the state level, the study will assist in ushering in improvement in the Executive indigent brief system in criminal cases in the area of the study, so as to cover more offences or pave way for the upgrade of the system in to a state Legal Aid Service Scheme, through the enactment of state legislation to that effect.
To the Legal practitioners in Private Practice, the study will immensely assist in increasing sense of responsibility among lawyers towards the noble cause of rendering Pro-bono service to the indigents who are sorely in need of such services.

The study will also be a useful resource material to subsequent researches that may be carried out and will also serve as a gateway for further research in the area.

To the general public, the study will expose to them the plight of the Indigents and the Legal aid workers as well, so that they might provide support towards improving legal aid service to the indigents.

1.7 Methodology

The methodology of legal research denotes the exposition, description or the explanation and the justification of methods used in conducting research in the discipline of law. In view of this, this study adopts the doctrinal method, placing reliance on primary and secondary sources of information.

The primary sources includes; the Constitution of the Federal Republic of Nigeria 1999 as amended in 2011 and other relevant Constitutions, the Statute books such as the Legal Aid Act Cap L9, Laws of the Federation of Nigeria 2011, Government records as well as analysis of decided cases on the subject matter by Nigerian Courts and Courts of other jurisdictions.

The secondary sources on the other hand include; text books, Journal articles, Magazines, Newspapers, periodicals and other relevant materials that may be obtained from the internet.

According to McConville and Wing\(^82\), doctrinal or library based research is the most common methodology employed by those undertaking research in law. It asks what the law is on a particular issue. It is also concerned with the analysis of the legal doctrine and how it has been developed and applied\(^83\).

1.8 Literature review

This review deals with the analyses of body of literature relating to legal representation of indigent persons and matters related thereto. Works of writers pertaining to the study have been preferred which are mainly peer reviewed journal articles.

Legal aid is the provision of legal advice and representation, for free or at a nominal cost for persons who are financially unable to employ a lawyer.\(^84\) According to Peet Bekker legal aid refers to...
representation is today regarded as a necessity not a luxury. The necessity to legal representation in criminal trials flows from two fundamental principles that an accused is entitled to a fair trial and equality before the law and the application of these principles to the adversarial process. The relevance of legal representation can also be gleaned in its recognition in international and regional Human Rights Instruments such as the ICCPR and the African Charter on Human and Peoples’ Rights.

Smith, highlighting the importance of legal aid asserts that, if men; because of poverty, cannot secure counsel, the machinery of justice becomes unworkable, and that, in turn means that rights are lost and wrongs go unaddressed. When persons are barred from their day in court are effectively stripped of their only protection as if they had been outlawed. He further argued, for the municipality to provide legal bureau is just as much a civic duty as cleaning streets and providing water. A bureau to investigate and prevent imposition on the poor and ignorant and to defend those without means is just as much an obligation as to fill the office of the district attorney for the prosecution of crime.

A study carried out in India relating to the state of legal aid found that, there is a significant pointer to government’s reluctance to go beyond the most formalistic commitment to providing free legal assistance to the indigent despite the Supreme Court ruling delivered in 1978 that it was the duty of the state to provide free legal aid to prisoners … as laid down by the Constitution, by a suitable legislation or schemes or in any other way to ensure that opportunities for ensuring justice are not denied to any citizen by reason of economic or other disabilities. Rivlin Gary found that, despite the Supreme Court decision in Gideon V. Wainwright where it held that the Fourteenth Amendment required states to provide counsel to the indigent accused. Implementing the decision has been left to the states’ legislature and the cost of providing counsel continue to rise due to increase in crime rate, unemployment and the fees charged by private counsel. He further noted that, this has led to variation of indigent fees from state to state,

86 Article 14(3)(d) ICCPR.
87 Article 7(1)(c)ACHPR.
citing South Carolina at the end of the scale. The inability of indigent fees to keep pace with inflation has contributed to an exodus of experienced criminal attorneys. The failure of states to adequately budget for the criminal defence for the poor creates a denial of equal protection to the indigent and erodes the right to effective assistance of counsel.90

Antoine R.M., conducted a study on the state of legal aid in the Caribbean, it was found that legal aid cases attracts extremely low fees, and the practice is to give such cases to inexperienced attorneys, often with fatal consequences for the indigent. The attorneys are given little time to prepare these cases. It was further found that a typical case of a person facing capital charge is one where the accused is poorly defended. Important witnesses are not called; there is no proper cross-examination and no representation during an appeal. There is also a direct relationship between the low level of remuneration given to a legal aid counsel who defends these cases and the poor quality of the service offered. Thus, such lawyers spent little time preparing cases for trial, seeing the accused only briefly and often failing to interview witnesses. Flaws and weaknesses in the Prosecutor’s case often went unchallenged due to inadequate preparation on the part of counsel, inexperience of counsel or simply negligence due to lack of motivation.91

In an American study conducted in 2000, on the need for litigated Reform of indigent defence, it was found that nearly four decades after the decision in Gideon V. Wainwright, the states have largely failed to meet the Court’s constitutional command.92 The study noted grave inadequacies and severe deficiencies in indigent defence services. Lawyers representing indigent defendants often have unmanageable caseloads that run in to hundreds, far exceeding professional guidelines. These same lawyers receive compensation at the lowest end of the professional scale. The study further found that the tendency of litigators to seek to enforce the right to counsel retrospectively and individually with a view to rectify problems that have already arisen in particular cases, has led to a legal dead end. Such law suits were hampered by stiff procedural barriers governing such claims. The study advocated for the scope of Judicial oversight


An American study conducted in 2005, found that the problem affecting indigent defendants is not that their lawyers are incompetent, but that those lawyers, lack adequate resources to defend their clients. The study also noted that Public defenders are underfunded and overburdened.\footnote{ibid.}

Their caseloads and workloads have risen to crushing levels and caps on funding both for individual cases and for overall compensation levels have rendered many lawyers ineffective.\footnote{ibid 1742.}

The study further noted that despite the effects of funding shortage the Courts are reluctant to address the specific issue of indigent defence funding. The study cited three cases instituted due to ineffectiveness of counsel arising from underfunding; \textit{State V. Lynch}, \textit{State V. Smith} and \textit{State V. Peart}. In all the cases, the Courts gave decision retrospectively on individual cases rather than looking prospectively to demand reform of the system as a whole. Also, the decisions failed to put in place oversight mechanisms that would have ensured long term, sustainable solutions.\footnote{K. Craig, The rise and imminent fall of Legal Aid, Socialist Lawyer, no.45 (2006), p.25-26, available at http://www.jstor.org/stable/4294344, accessed on 21/09/2017.}

Craig, while commenting on the United Kingdom’s Fundamental Legal Aid Reform (FLAR) 2004, a policy in which fixed rate and price competitive tendering (PCT) for criminal legal services were introduced, asserts that the combined effect of those policies seems to be little more than a crude auctioning of justice. Such policy envisage firms competing for the right to take legal aid work. The fear is that, work will simply be allocated to the lowest bidder with minimum standards in relation to quality. It also highlights the Government’s obsession with market models and neo-liberal economics. He added that market models cannot simply be imposed on the provision of legal aid services. Justice and the law are not the same as commercial products.\footnote{ibid 2066.}
Fairfax observes that fifty years after the decision in *Gideon* and its progeny which established state’s obligation to provide counsel to indigent criminal defendants, it did not specify a blue print for the states and local governments charged with that obligation. Consequently, many jurisdictions have been unwilling to commit resources necessary to implement Gideon’s vision.  

Similarly, the overall broad criminalization and enforcement strategies that have helped to swell prison and jail cells (many of those caught up in this wave are indigent defendants), also contributed to unmanageable caseloads for attorneys delivering criminal defence services and tremendous fiscal cost of these criminal justice strategies drain the system of resources that indigent defence desperately needs. The end result is that the right to counsel and the quality of counsel representing indigent defendants and the quality of criminal justice suffer. He advocated for the introduction of Smart-on-crime approach which aims at saving costs and promoting alternatives to incarceration through strategies such as reclassification of minor offences and diversion of minor offenders with a view to reduce case loads and channel the resources saved to improve the quality of indigent defence services.

Huang-Thio, commenting on Article 8 of the Malayan Constitution relating to equality and equal protection of the law, opines that it is part of the requirement of equality before the law and equal protection that courts of law should be open to one and all, without discrimination, for the vindication of legal rights. However, as far as an indigent is concerned, the courts are not accessible to him if he is debarred, not by refusal to entertain his suit, but due to his impecuniosity. In the case of criminal prosecutions, which is also true of civil cases, an accused who is poor may not be able to retain counsel to represent him and his position vis-à-vis someone who is financially well-heeled, and hence able to have legal representation, can hardly be regarded as one of equal access to the courts in all senses of the word. This is more so when the absence of counsel seriously handicaps him, as a layman who possesses small and sometimes no skill in the science of law.

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100 Ibid, p. 2329.
102 Ibid, p. 1134.
Havinghurst and MacDougall carried out a study on the representation of criminal indigent defendants in the Federal District Courts. They found that in the Majority of the districts, the courts assign lawyers engaged in private practice to represent indigents accused of federal crimes, who happened to be in the courtroom when the indigents are arraigned and when taking plea. If too few lawyers are present, the judge contacts lawyers he knows and request them to appear.\textsuperscript{103} It was also found that among the factors that make it easy for the judges to find lawyers to represent indigents without remuneration, include the prestige of the Federal courts and some young lawyers, desire federal court experience and other attorneys would be reluctant to refuse judge’s request because they might later appear before him in an important matter.\textsuperscript{104} It was further noted that the uncompensated assignment system failed to provide adequate representation to indigent defendants because of dependence upon young, inexperienced lawyers who are not versed in technicalities of criminal law and has had little if any previous court experience.\textsuperscript{105}

Tucker notes that as the demand for legal services accelerated among the poor and more recently the middle class, the American Bar Association could hardly afford to stand nonchalantly on the side lines. The Bar should strive towards two objectives; to elevate its own standards; the other is for the common and public good. To achieve the second objective, the bar must recognize and impose a professional duty on each individual lawyer to provide representation or to make sure that representation is provided to all who seek it. This could be achieved by revising the code of professional responsibility and could be enforced through sanctions and disciplinary procedures.\textsuperscript{106}

In a study conducted in America in 1965, on the effective assistance of counsel for indigent defendants, it was found that, in an American adversary system, a defendant who has no counsel cannot be assured of fair trial, because he cannot be expected to mount an adequate defence

\textsuperscript{104} ibid, p. 591.
\textsuperscript{105} ibid, p.596.
without the special skill and training of a lawyer. It was also found that, the effectiveness of a defence counsel’s assistance would seem to inhere in the proper performance of those functions for which he is especially fitted by training and experience; to advice on the substantive law of crime; explain the intricacies of criminal procedure and to serve as strategist and tactician in the actual conduct of trial.

Oretuyi, while analyzing the effectiveness of Section 22(5) (c) of the Constitution of the Federation of Nigeria 1963, asserts that in the absence of any wide spread legal aid in the country, the provision does not provide enough protection for accused persons. He also noted that the problem in this respect is mainly economic and the average per capita income is very low, and the majority of the accused persons cannot afford to avail themselves of the services of competent lawyers. He further noted that the miniature legal aid system that existed at that time, suffers from three defects; inexperience of counsel, inadequate remuneration and inadequate time for the preparation of the accused’s defence.

Mayeux analyzing the state of legal representation in America before and after the landmark decision of Gideon V. Wainwright, it was found that before the decision, on the eastern coast of United States, indigent defence was viewed as a charitable bar initiative that aimed at helping poor, particularly those with innocent claims. While the day-to-day tasks of indigent defence were viewed as training fodder rather than fully professional legal work, suitable for recent law graduates who wanted to gain courtroom experience before joining a firm, it was also found that between 1963 and early 1970s, the decision had transformed criminal practice in America in two ways; it motivated the establishment and expansion of hundreds of Public defender offices, through the conversion or public subsidy of pre-Gideon private charities and expanded lawyers’ presence nationwide in low-level criminal proceedings. Before the decision, only a handful of states provided counsel in non-felony cases. It was further found that, since public defenders

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108 ibid.
110 ibid.
111 ibid, p. 339.
113 ibid, p.22.
114 ibid.
could not contain their ballooning caseloads by rejecting clients, post-Gideon public defenders redefined their duties as triage, moving away from intensive investigation and trial advocacy to selecting a few cases to investigate thoroughly and, the remaining cases, facilitating pleas. Hence, prisoners perceived their lawyers not as advocates but as middlemen who relay plea offers.\textsuperscript{115}

A careful perusal of the above literatures shows the gap which requires further consideration by future researcher. Most of the literatures considered lay emphasis mostly on legal representation. For instance, Peet Bekker found that legal representation is a necessity not a luxury and the necessity of legal representation in criminal trials flows from the fundamental principle that an accused is entitled to a fair trial and equality before the law. Smith argued that the machinery of justice becomes unworkable if indigents cannot secure counsel because of poverty. He further argued that the provision of legal aid bureau is just as much a civic duty as cleaning streets and providing water. While a study in India found that there is reluctance on the part of the government to provide free legal assistance to indigents despite the ruling of the Supreme Court that it was the duty of the state to provide free legal aid to prisoners as lay down by the Constitution.

Rivling Gary on the other hand found that despite the decision of the United States Supreme Court in Gideon v Wainwright which required states to provide counsel to the indigent, there are variation in indigent fees from state to state. The failure of states to adequately budget for the criminal defence for the poor creates a denial of equal protection to the indigents and erodes the right to effective assistance of counsel. Antione R.M. found that legal aid in the Caribbean attracts extremely low fees and the cases are handled by in experienced attorneys, often with fatal consequences for the indigents. Having Hurst and MacDougall found that the uncompensated assignment system failed to provide adequate representation to indigent defendants because of dependence upon young, inexperienced lawyers who are not skilled in technicalities of criminal law and had little previous court room experience. While Tucker in his study notes the acceleration in demand for legal services among the poor and the middle class. The study called on the bar to impose on lawyers the duty of providing representation to all who seek it and the revision of professional code and enforcement through sanctions and disciplinary procedures.

\textsuperscript{115} ibid, p.67.
Oretuyi analysed the effectiveness of section 22(5) (c) of the 1963 Constitution of the Federation of Nigeria relating to legal representation. He found that in the provision does not provide effective protection for the accused persons in the absence of wide spread legal aid programme. However, Mayeux analyzed the state of legal representation in America before and after the decision of Gideon. The study found that in some part of the United States indigent defence was viewed as a charitable bar initiatives to help the poor while in some part, it is viewed as a training ground than fully professional work for new lawyers before joining a firm. There was also transformation of criminal practice through expansion of public defender offices and presence of lawyers in low-level criminal proceedings.

From the literature highlighted above, a conceptual gap has been identified by the study. As there is no study similar to this research carried out in the area of the study.

The findings from this study will no doubt provide information on the state of legal aid in Kano State, its defects or shortcoming for possible improvement. It will also ascertain whether the rights of the indigents to fair hearing and legal representation are safeguarded.

1.9 Organizational lay out

This study consists of five chapters, with each chapter consisting of the following subs-headings: Chapter one covers the historical back ground of the study, problem statement, objectives of the study, research questions, scope of the study, significance of the study, methodology, literature review, definition of terms and arrangement of chapters.

Chapter two examines the legal frame work on Legal Aid in Nigeria.

Chapter three focuses on the twin principles of natural justice namely; the principles of impartiality (nemo judex in causa sua) and fairness (audi alteram partem) and their embodiment in the Nigerian Constitution. Judicial authorities enunciating the two principles will also be examined.

Chapter four looks at legal representation and other safeguards to fair hearing and chapter five discusses the findings, conclusion and recommendations of the study.
CHAPTER TWO

An examination of the provisions of Legal Aid Act Cap L9, Laws of the Federation of Nigeria, 2011

2.1 Introduction

This chapter seeks to identify the legal rules governing Legal Aid in Nigeria. The chapter consists of two parts. The first part, examines the Legal Aid Act Cap L9 Laws of the Federation of Nigeria 2011. The Act will be examined under the following subheadings: Establishment of the Legal Aid Council, Legal Advice, General fund and legal aid and access to justice fund, Panels of legal practitioners representing Indigent persons, Treatment of information received by the Council from Indigent persons and the penalty for false information.

The second part on the other hand, attempts a critical analysis of some of the provisions of the Legal Aid Act under the following: Community legal service, Merit and Indigence test, Legal aid to persons with income above the national minimum wage, Ascertainment of means, Determination of remuneration of legal practitioners representing Indigents other than salaried staff of the Council, Sources of fund and Enjoyment of privilege by lawyers applying for the conferment of the rank of Senior Advocate of Nigeria (SAN).

2.2 The Legal Aid Act Cap L9 Laws of the Federation of Nigeria, 2011

The first legal instrument enacted to govern Legal Aid was the Legal Aid Decree no. 56 of 1976, which came into force on May 2nd 1977. 116 The Decree went through series of amendments in 1986, 1994 and 2004, culminating in to the current Legal Aid Act Cap L9 Laws of the Federation of Nigeria, 2011 (hereinafter referred to as the Act).

The Act is composed of twenty five sections which are compartmentalized in to five parts. They are arranged in the following order: Part 1 Establishment of the Legal Aid Council, Part 2 Legal

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Aid Advice, Part 3 Financial Aspects of Legal Aid, Part 4 Legal Practitioners and Part 5, Miscellaneous and Supplementary. What follows is the analysis of the Act as set out seriatim.

2.2.1 Establishment of the Legal Aid Council

The Act established the Legal Aid Council (hereinafter referred to as the Council),\(^ {117}\) to be a body corporate with perpetual succession and capable of suing and being sued in its corporate name.\(^ {118}\) It is also saddled with the responsibility of providing legal aid, advice and access to justice to persons that are entitled to such services.\(^ {119}\)

The Council comprises of the Governing Board made up of the chairman and the members, the Director-General of the Council and supporting legal and other staff engaged for the performance of the duties and obligations of the Council as set out under the Act.\(^ {120}\) Some of the functions include:

1. Determination of salary and allowances to be paid to the Director-General with the approval of the Revenue Mobilisation, Allocation and Fiscal Commission.\(^ {121}\)
2. Determination of remuneration of staff of the Council after consultation with the Salaries and Wages Commission.\(^ {122}\)
3. Annual review of Panels of legal practitioners representing indigent persons.\(^ {123}\)
4. The conduct of inspection from time to time of prisons, police cells and other places where suspected persons are held in order to assess the circumstances under which such persons are detained.\(^ {124}\)

The Governing Board comprises of a Chairman, who shall be a retired judge or a legal practitioner of not less than fifteen years post call experience, and the representatives of the Attorney-General, representatives of Federal Ministry of Finance, representative of National Youth Service Corps Directorate, representative of the Inspector General of Police,

\(^ {117}\) Section 1 (1) Legal Aid Act Cap L9 Laws of the Federation of Nigeria, 2011.
\(^ {118}\) ibid. Section 1 (2).
\(^ {119}\) ibid. Section 1 (3).
\(^ {120}\) ibid. Section 1 (4).
\(^ {121}\) ibid. Section 4 (3).
\(^ {122}\) ibid. Section 4(4).
\(^ {123}\) Proviso to Section 15 of the Act.
\(^ {124}\) ibid. Section 19 (1).
representative of the Comptroller General of Prisons, four representatives from Nigerian Bar
Association, Nigerian Labour Congress, Women Group providing free legal aid services, Civil
Society based Organisation providing legal aid services, Nigeria Union of Journalists and the
Director-General.\textsuperscript{125}

The chairman and other members of the Governing Board are appointed by the President.\textsuperscript{126} The
function of the Board is the establishment of broad policies and strategic plans of the Council in
line with the provisions of the Act.\textsuperscript{127}

However, the Director-General of the Council is appointed by the President on the
recommendation of the Attorney-General of the Federation. He is the Chief Executive Officer of
the Council and responsible for the day-to-day management of the human, financial and material
resources in line with the provision of the Act.\textsuperscript{128}

There are three major Departments at the Council’s head office namely; Finance and
Administration, Litigation, International Relations, Corporate operation and Planning and
Research.\textsuperscript{129} The Council also operates a zonal office in each of the six geopolitical zones,
headed by a lawyer of appropriate rank who is responsible for the coordination of the state
offices and their activities.\textsuperscript{130} Also, the Council has one office in each of the States of the
Federation headed by an officer of appropriate rank. The State legal officer is responsible for the
provision of services in the state and reports to the Zonal officer in whose jurisdiction the state
belongs.\textsuperscript{131} Each of the state offices operates three legal service units namely; criminal Defence
unit, civil litigation unit and Community Legal Service unit.\textsuperscript{132}

\subsection*{2.2.2 Legal Aid Advice}

The Act provides for the grant of legal aid, advice and access to justice in three broad areas
namely; Criminal Defence Service, Advice and Assistance in Civil matters including legal

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{125} ibid. Section 2(1) (a-l).
\item \textsuperscript{126} ibid. Section 2 (2).
\item \textsuperscript{127} ibid. Section 3.
\item \textsuperscript{128} ibid. Section 4.
\item \textsuperscript{129} ibid. Section 6(1) (a-c).
\item \textsuperscript{130} ibid. Section 6 (2).
\item \textsuperscript{131} ibid. Section 6 (4).
\item \textsuperscript{132} ibid. Section 6 (5) (a-c).
\end{itemize}
\end{footnotesize}
representation in court and community legal service subject to merits and indigence tests for the parties.\textsuperscript{133}

Under the Criminal Defence Service, assistance to Indigent persons involved in criminal investigation or proceeding is limited to offences specified in the second schedule to the Act.\textsuperscript{134}

The offences are; culpable homicide punishable with death, culpable homicide not punishable with death, inflicting grievous bodily harm, and criminal force occasioning harm, armed robbery, rape and theft.

The import of the provision of section 8(2) of the Act is that legal assistance to Indigent persons in criminal matters in Kano State is limited only to the offences under the Penal Code Law listed in the second schedule of the Act. Also, assistance is given in respect of inchoate offences of abetment, attempt and conspiracy to commit any of those offences. This implies that an Indigent person charged with an offence other than those listed under second schedule of the Act, cannot have legal assistance in order to defend such charge.

Furthermore, under the Civil litigation Service, assistance to Indigent persons to access advice, assistance and legal representation in court in order to secure, defend, enforce or exercise any right is limited to civil claims in respect of accidents, employees’ compensation under the Employees Compensation Act, claims to cover breach of fundamental rights as enshrined under chapter 4 of the Constitution of the Federal Republic of Nigeria and civil claims arising from criminal activities against persons who are qualified for legal aid.\textsuperscript{135}

The Act goes further to define the scope of legal aid to be given to indigent persons to consist of assistance of a legal practitioner including all such assistance as is usually given to by a private legal practitioner before any court and such additional (including advice) as may be prescribed.\textsuperscript{136}

The Act also mandates the Council to establish and maintain a service known as the Community legal services and to ensure that individuals have access to services that effectively meet their needs. For this purpose community legal service include; the provision of general information about law and legal system and the availability of legal services, the provision of assistance in preventing or settling disputes about legal rights and duties, the provision of assistance in

\begin{itemize}
  \item \textsuperscript{133} ibid. Section 8 (1).
  \item \textsuperscript{134} ibid. Section 8 (2).
  \item \textsuperscript{135} ibid. Section 8 (3).
  \item \textsuperscript{136} ibid. Section 8 (5) (a-c).
\end{itemize}
enforcing decisions by which such disputes are resolved, the provision of assistance with regards to claims against public authorities, private organisations and individuals.\textsuperscript{137}

\textbf{2.2.3 General Fund and legal aid and access to justice fund}

Funds for the day-to-day administration of the Council and the rendering of legal aid to indigent persons are obtained from two major sources. Funds are appropriated annually by the National Assembly pursuant to section 46 of the Constitution and also sums are annually or from time to time appropriated by each State of the federation and the Federal Capital Territory in to the Legal Aid Fund.\textsuperscript{138} At the beginning of every financial year, the National Assembly appropriate funds to the Legal Aid Council. These funds are directly released by the Federal Ministry of Finance. Each of the State Offices of the Council submits AIE (Authority to Incur Expenditure), to the Headquarter through their respective Zonal offices for onward transmission to the Head office of the Council in Abuja. In the same vein, funds are then released on a monthly basis, to the State offices by the Head office through their respective Zonal offices. As to the State contributions, the legal officers of each State approach the State to collect such contributions through the State Ministry of Justice. However, due to the economic crunch prevailing in the country, the State contribution is not forth coming.\textsuperscript{139} For instance, in the case of the Area of study, the researcher was reliably informed that Kano State government have not given the State office of the Council a dime throughout the year 2017 as contribution. For the Federal grant, only five months allocation was paid to the office in 2017.\textsuperscript{140} The Council may also accept gifts of land, money or other property upon such conditions as may be specified by the person or organization making the gift.\textsuperscript{141} However, the Council is not entitled to accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the functions of the Council.\textsuperscript{142}

\begin{itemize}
\item \textsuperscript{137} ibid. Section 8 (7) (a-e).
\item \textsuperscript{138} ibid. Section 9.
\item \textsuperscript{139} An interview conducted with Alhaji Nuruddin Ishola esq, on 27\textsuperscript{th} January 2018, at about 13:59 hours East African Time.
\item \textsuperscript{140} An interview conducted with Mrs. Asiya Imam, a Legal Officer in Kano State office, on 27\textsuperscript{th} January 2018, at about 14:09 hours East African Time.
\item \textsuperscript{141} ibid. Section 12 (1).
\item \textsuperscript{142} ibid. Section 12 (2).
\end{itemize}
With regard to persons entitled to legal aid, the Act provides for the grant of aid only to persons whose income does not exceed the National Minimum Wage. Notwithstanding the provision of subsection (1) above, the Board may in exceptional situations, grant legal aid to a person whose earning exceeds the minimum wage. The Act also provide for the giving of legal aid on a contributory basis to a person whose income exceeds ten times the national minimum wage. On the condition that the Council is to recover the expenses incurred in giving legal aid to such persons by retention of an amount equal to ten percent of the damages awarded and the costs awarded to him. Where such person has been granted Legal Aid on a contributory basis, he is entitled to refund of his contribution from such costs.

2.2.4 Panels of Legal Practitioners representing Indigent persons

The Council maintains panels of legal practitioners who are willing to act for indigent persons whether gratuitously or otherwise. An interview by the researcher with one of the State legal officers through mobile phone revealed that, the list of the panels is prepared annually at the Council’s Headquarter in Abuja. However, a legal practitioner who is desirous of having his name included in any of the panels may also submit his name to the State legal officer of the Council for onward transmission to the Council’s headquarter and subsequent inclusion in to the list. He also informed the researcher that the list is not made public. A search in to the Council’s website by the researcher corroborated this fact, as the list was not on the site for public consumption. There may be separate panels for different purposes and for different Courts and different districts. A legal practitioner is entitled to have his name on the appropriate panel unless the designated staff of the Council thinks that there is a reason for excluding him. A legal practitioner aggrieved by such exclusion from any panel, may refer the matter to the Director-General. Where he is not satisfied by the decision of the Director-General, he may further refer

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143 The National minimum wage is presently fixed at eighteen thousand naira. It is determined by the representatives of the Federal government, Federal Ministries of Finance and Labour, Nigerian Labour Congress and Trade Union Congress of Nigeria. However, discussion is ongoing towards reviewing it to fifty six thousand naira in 2018.

144 ibid. Section 10 (2).

145 ibid. Section 10 (3) (a-c).

146 Section 14 (1) Legal Aid Act Cap. L9, 2011.

147 An interview conducted with Alhaji Nuruddin Ishola esq, on 27th January 2018, at about 13:59 hours East African Time.

148 ibid. Section 14 (2).
the matter to the Governing Board by way of appeal. A legal practitioner or other service providers that acted for an indigent person is to be paid for his service by the Council from its legal aid fund. As such, the legal practitioner or service provider cannot charge or recover from an indigent person any amount by way of costs in respect of work assigned by the Council to a private legal practitioner or by way of disbursement incurred on behalf of that person, except with the approval of the Council. The Act also makes void, any agreement entered in to in order to restrict, modify or exclude the operation of section 15 (1) of the Act.

However, in the case of legal practitioners serving in the National Youth Service Corps Scheme, the Council may direct such lawyers to act for indigent persons receiving legal aid and no professional fees is to be paid to such lawyers except stipend and travelling allowance. The Act further mandate the Council to maintain a register of non-governmental Organisations and law clinics that render assistance to indigent persons, (presently, only one non-governmental Organisation render legal assistance to indigent persons in the area of study). The Act also permits the Council to partner with such NGOs in a manner that is consistent with its mandate. The Council may also grant licences to persons who have undergone a prescribed course in paralegal services in appropriate situations.

Where a legal practitioner institutes or conducts pro bono cases on behalf of indigent persons, such cases must be registered with the Council. It is also the responsibility of the Council to keep record of such cases and accordingly, monitor the progress of such cases. It is also a professional misconduct for any legal practitioner to abandon or neglect such cases.

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149 ibid. Section 14(3).
151 ibid. Section 15 (2).
152 This is a scheme established in 1973 during the Military Regime of General Gowon. Under the scheme, University and Higher National Diploma graduates whose ages does not exceed thirty years, to be deployed to various States of the Federation other than their States of origin to serve a mandatory one year community service. Participants are paid monthly allowances by the Federal government and the State government in which they are serving.
153 ibid. Section 16.
154 ibid. Section 17 (1).
155 ibid. Section 17 (2).
156 ibid. Section 17 (3).
157 The term is a short for the Latin word pro bono publico (which means for the benefit of the public). It refers to professional work undertaken voluntarily and without payment.
158 ibid. Section 18 (1).
159 ibid. Section 18 (2).
2.2.5 Treatment of information received from Indigent persons

The Act provides that any information collected publicly or received by the Council in the discharge of its function is accessible to the public unless the disclosure of such information would be harmful to the safety and security of any person, cause avoidable damage to the best interest of a known child or a young person or irreparably damaging to the best interest of a known child or young person.\textsuperscript{160} It is an offence punishable on conviction a to fine of fifty thousand naira or a term of imprisonment not exceeding six months for any person to disclose information obtain by him otherwise than in compliance with the provision of the Act.\textsuperscript{161}

2.2.6 Penalty for false information

Similarly, if a person seeking or receiving legal aid or advice in furnishing any information, knowingly or recklessly makes any statement which is false, he commits an offence and is liable on conviction to a fine of fifty thousand naira or imprisonment for a term not exceeding six months or with both.\textsuperscript{162}

2.2.7 Power to make regulations

The Act also mandates the Governing Board to make regulations generally for the better carrying on the purposes of this Act; such regulations may make provisions for the following:\textsuperscript{163}

I. Anything which is to be or which may be prescribed under the Act;

II. The manner in which the means of any person who may be eligible for legal aid shall be computed;

III. The manner in which contributions by persons receiving legal aid or advice and in which sums owing from such persons to the Council may be recovered;

IV. Reports and information required by the Council for the purposes of this Act be supplied by public officers and other persons; and

V. Matters which appear to the Governing Council necessary or desirable for giving effect to the provisions of this Act or for preventing the abuse thereof.

\textsuperscript{160}\textsuperscript{160} Section 20 (1) (a-c), Legal Aid Act Cap L9, Laws of the Federation of Nigeria, 2011.

\textsuperscript{161}\textsuperscript{i}bid. Section 20 (3).

\textsuperscript{162}\textsuperscript{i}bid. Section 22.

\textsuperscript{163}\textsuperscript{i}bid. Section 23 (1) (a-e).
However, it is worth noting that the regulations made under the Legal Aid Decree no. 56 of 1976 which is the first enactment relating to the subject matter, as well as those made under the subsequent Acts of 2004 and 2011 respectively, are the same. The only difference is in the person empowered to make the regulations. Under the 1976 Decree, the power is vested in the Federal Executive Council. While under the 2004 and 2011 Acts, the power is vested in the Attorney-General and the Governing Board respectively.

2.3 Critic of provisions of the Legal Aid Act

2.3.1 Community legal service

Community legal Service is one of the three services a State office is to provide to indigent persons. The scope of the services rendered under community service is provided under section 8(5), paragraphs a-e of the Act. Paragraph (a), which relates to the dissemination of general information about law and legal system and the availability of legal services, is inadequate. The Act did not categorically state the means through which such information is to be relayed to the public. The most easiest and quick means of relaying information to the public in the area of study is the Radio and Awareness campaigns in public places such as the markets. However, the study found that the Council rarely carries out such activities due to lack of funds. One of the Council staff informed the researcher that, the only occasion when information about the Council and its services is relayed to the Public is when the Council obtained a verdict of acquittal infavour of their clients, the Staff use such opportunity to grant interview to Radio correspondents attached to the Court. Furthermore, the services outlined under the section are only available subject to the limit set aside by the Director-General as contained in the proviso to the section.

2.3.2 Merit and Indigent test

The provision of legal aid is subject to the ‘merit’ and ‘indigence’ test for the parties. However, the Act does not state in what way the merit of an indigent person’s case is to be assessed. For instance, under the German Legal Aid System, an indigent person must meet two

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164 Section 6(5)(c), Legal Aid Act Cap L9, Laws of the Federation of Nigeria 2011.
165 Ibid. Section 8 (1).
basic requirements to qualify for legal aid. The individual must show that he would be able to pay his legal fees without jeopardizing his ability to support himself and his family. He must also show that the litigation he wishes to undertake, or his defence if an action is filed against him, bears a reasonable chance of success and it is not foolhardy and reckless.\textsuperscript{166}

\textbf{2.3.3 Legal aid to persons with income above national minimum wage}

Under section 10 of the Act, legal aid is only granted to a person whose income does not exceed the National Minimum Wage.\textsuperscript{167} The Act also provides for the grant of legal aid to persons whose earning exceeds the national minimum wage and also, on contributory basis to those whose income is ten times the national minimum wage. It is the view of this study that the use of NMW as a qualification is not adequate. This is because not all persons are in government employment. More so, the law has set a bar so high as the majority of the indigent persons live below the national minimum wage that was used as a standard. Instead, the study advocates for a uniform standard as obtained in other jurisdictions. For example, under the British Legal Aid System, legal aid is not only limited to paupers, but also those who are financially able to pay part of the cost of legal services. Each applicant contributes to the cost in proportion to his means. The amount of contribution is calculated using a formula based on applicants’ disposable income\textsuperscript{168} and disposable capital.\textsuperscript{169} The certifying committee then sets the actual contribution-estimated probable costs- as contrasted with the maximum contribution, the upper limit derived from the means formula that the assisted party can be required to pay.\textsuperscript{170}

\textbf{2.3.4 Ascertainment of means}

Section 11 of the Act provides for the ascertainment of means of indigent person seeking legal aid assistance. The person’s personal income and his personal property are taken in to account in


\textsuperscript{167} The Nigerian national minimum wage is fixed at eighteen thousand naira. It is the least amount to be paid to an employee in the civil service of the Federation or a State.

\textsuperscript{168} This refers to money a person has available to spend after paying taxes, pension contributions etc.

\textsuperscript{169} This refers to consumer goods that are used up a short time after purchase, including perishables, newspapers, clothes etc.

ascertaining his means. The Act does not provide the formula through which means of a person seeking aid is to be computed so as to qualify for free legal aid or make contribution to the grant of legal aid. Where contribution is to be made, the upper and lower limits of amount to be contributed are not set.

Under the British Legal Aid, a client is eligible for free legal aid if his disposable income does not exceed certain limit. The maximum disposable income is 135 Pounds per week and the disposable capital limit is 935 Pounds. Where a client earns below 64 Pounds per week, advice is free. Between 64 and 135 Pounds, contributions are payable ranging from 5-75 Pounds. In the case of assistance by way of representation (ABWOR), the income limits are the same but the disposable capital limit is 3000 Pounds.\(^\text{171}\)

Although section 23 of the Act vests in the Board the responsibility of making regulations for the better carrying on the purpose of the Act, which includes the manner in which means of persons eligible for legal aid is to be computed, the Act does not state who is to carry out the computation. In the UK, the assessment of disposable income and capital of a client is carried out by the solicitor who handles the case.\(^\text{172}\)

This study subscribes to the UK system of assessment as the best and most objective. Reason being that, there is the existence of fiduciary relationship between the solicitor and the indigent person he is representing. And this calls for sincerity in disclosure of information requested by the solicitor. More so, verification of the information given by the indigent person as to his means can be easily done by the solicitor.

### 2.3.5 Determination of remuneration

Section 14 (1) of the Act, empowers the Staff of the Council in each State to prepare a list of legal practitioners who are willing to act for indigent persons whether gratuitously or otherwise. The legal practitioners are to be paid for their services from the legal aid fund.\(^\text{173}\) The

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172 ibid. p.99.
173 Section 15 (1), Legal Aid Act, Cap L9, Laws of the Federation of Nigeria, 2011.
suns payable is determine by the Council. However, the Act is silent as to what factors to be used in determining the sum payable to a legal practitioner.

Under the British Legal Aid System, there are two tiers of remuneration for civil and criminal legal aid cases. Remuneration for civil legal aid is determined by the Rules of Court, within which District Judges have discretion to apply different hourly rates reflecting local circumstances plus allowance for “care and conduct”, which in effect provides solicitor’s profit and reflects difficult or unusual features of the case. The care and conduct allowance can add between 30-50 percent to the total bill. Both the rates and allowances paid may vary between courts and between areas, with solicitors receiving different amounts for similar work. Remuneration for criminal legal aid on the other hand was set by the Lord Chancellor’s Department (LCD), on the basis of standard hourly rates and fees per item of service. Bills for works done in connection with criminal cases were then submitted to the Area Legal Aid Board Office for assessment and payment.

### 2.3.6 Sources of fund

Section 9 of the Act itemized two sources from which funds may be obtained for the provision of legal aid services to the indigents. These sources are; annual appropriation by the National Assembly as provided under section 46 of the Constitution and sums appropriated by the State governments and the Federal Capital Territory. However, the study notes that, under section 12 of the Act the Council may accept gifts of land, money or other property. It is the considered view of this study that such gifts should be considered as a part of source of funding legal aid. This is because such gifts were given in contemplation of realizing the objectives of the Council, which is none other than rendering legal aid service to the indigent.

Furthermore, section 10 (3) of the Act provides for the rendering of legal aid on a contributory basis to persons whose income exceeds ten times of the National Minimum Wage. This study is also of the view that such contribution should form part of the source of funding legal aid. In Singapore for instance, there are four different sources of financing legal aid scheme: the

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174 ibid. Section 15 (3).
176 ibid. p. 58.
government, applicants’ contributions, successful parties’ costs and legal Profession. 177 The Legal Aid Bureau, being a government department, has its office expenses charged from the State’s coffers. Contributions from applicants (the amounts which are determined by the Director of the Bureau in accordance with the general guidelines set out in the Act) are deposited in to the Legal Aid Fund maintained by the Bureau.178 So too, all costs recovered by successful applicants are retained by the Director for payment in to this Fund. From the Fund disbursements are made to meet the expenses of Private Practitioners who have been assigned cases as well as those who have been elected to sit on the Legal Aid Board.179

2.3.7 Enjoyment of privileges

Section 18 of the Act relating to pro bono and enjoyment of privileges, provides that a legal practitioner who apply to be appointed to the rank of Senior Advocate of Nigeria is required to show evidence of diligent conduct of not less than three pro bono cases in the legal year immediately preceding his application. This provision of the Act needs to be updated to reflect the current position as stipulated under the Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria, 2017. Under the guidelines, a candidate is only required to show his involvement in the provision of at least three pro bono cases and present documentation of such cases along with his completed application form.180

Furthermore, section 18 (3) of the Act makes it a professional conduct for any legal practitioner to abandon or neglect such cases. However, the study did not come across any petition filed by the Council to the Legal Practitioners Disciplinary Committee for abandoning pro bono cases. The study is of the view that a leaf should be borrowed from other jurisdictions, so that the rendering of pro bono publico be made mandatory upon all legal practitioners without distinction. In Uganda for instance, the Advocate Pro bono Services to the Indigent Persons Regulation SI NO. 39, 2009, makes it mandatory for advocates to provide forty hours of pro

178 Ibid.
179 Ibid.
bono services every year or make payment in lieu. The performance of such services by advocates is a condition precedent to the renewal of their practicing certificate.\textsuperscript{181}

\textbf{Conclusion}

In order for the Act to comprehensively serve the purpose for which it is enacted, there is the need to address the inadequacies highlighted above, especially those relating to assessment of means, funding and the offences in which legal assistance can be given to indigents. This can best be achieved by borrowing best practices from Legal Aid systems of other jurisdictions such as England and Singapore as indicated in this study or from any other jurisdiction.

\textsuperscript{181} The Pro bono project of uls, \url{http://www.uls.org.ug/projects/pro bono}, accessed on 07/10/2017.
CHAPTER THREE
The principles of natural justice and fair hearing

3.0 Introduction
This chapter seeks to examine the concept of fair hearing as applicable to legal aid in Kano State. In achieving this objective, the study will consider the principle of natural justice and its incorporation into section 36 (1) of the 1999 Constitution as amended in 2011, relating to fair hearing. The principle of impartiality and fairness as embodied in the Latin maxims; \textit{nemo judex in causa sua} and \textit{audi alteram partem} will also be examined.

Under the principle of impartiality (\textit{nemo judex in causa sua}), certain rules will be considered which require an adjudicator to be free or refrain from certain conducts for indulgence in to them, will vitiate proceedings by that adjudicator for want of fair hearing. They include; refraining from prior acquaintance with subject matter of litigation, sitting over opponent’s case and descending in to the arena.

In the same vein, in examining the fairness rule (\textit{audi alteram partem}), certain trial procedures will be considered which their non-observance renders a trial void for want of fair hearing. These include; hasty judgement, publicity of hearing, final address at the of conclusion trial, applications before a court, service of process, evidence and prejudging a suit at interlocutory stage of the trial.

Where necessary, judicial authorities enunciating the above mentioned rules and procedural steps will also be examined by the study.
However, fair hearing being a constitutional stipulation, the right to fair hearing will not be affected or denied to a person on account of indigence.

3.1 The Principle of Natural justice
The jurisprudential background of fair hearing is traceable to natural justice. It is difficult to define in precise language what natural justice means or what is its actual content. There is no doubt that its antiquated origin lies in natural law theory.\textsuperscript{182} However, an attempt may be made to say that natural justice connotes an inherent right in man to have a fair and just treatment at the hand of rulers or their agents.\textsuperscript{183}

The foundation of fair hearing is best located in the twin principles of natural justice expressed in the Latin maxims: *nemo judex in causa sua* (no man shall be a judge in his own cause) and *audi alteram partem* (hear the other side).\textsuperscript{184} Fair hearing is ambidextrous (having equal ability), and both limbs operate in tandem. That is to say, the operation of both *nemo judex in causa sua* and *audi alteram partem* can be invoked equally in a given proceeding. For instance, an adjudicator may exhibit a likelihood of bias and as a result, his judicial vision may be clouded leading to infringing some principles of fairness at the same time. They constitute a summary of the content of fair hearing in Nigerian law, embedded in the spirit and letter of the Nigerian Constitution. Although, the Constitution expanded the context in which fair hearing would be required or demanded. In criminal law, the Constitution of Nigeria stipulates additional safeguards, including those aimed at protecting a suspect ever before prosecution is contemplated.\textsuperscript{185} While *Audi alteram partem* is concerned with the hearing of both sides fully and fairly with equality of treatment. On the other hand, *nemo judex in causa sua* deals with the judge’s moral, ethical and legal qualification to adjudicate a case against the background of his relationship to one or some of the parties, or his connection with the subject matter, or his previous encounter with the case or its substance. Where either of the aphorisms is invoked, a key criterion for assessing their breach or observance is the impression that would be given to an impartial observer who witnessed the proceedings.\textsuperscript{186}

Relating to fair hearing, section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended in 2011, provides:

\[\text{In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person is entitled to a fair}\]

\textsuperscript{183} ibid.
\textsuperscript{184} ibid. p.2
\textsuperscript{185} ibid.
\textsuperscript{186} ibid.
hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.

The above Constitutional guarantee and its interplay with the common law principles of natural justice was considered in the case of *Udo v Cross River State Newspaper Corporation*, where the Court of Appeal held:

The provision of section 36 of the 1999 Constitution contains the two pillars of natural justice namely: *nemo judex in causa sua* and *audi alteram partem*. The court further held that apart from pecuniary interest which is the commonest disqualifying interest. A foreknowledge and previous knowledge of the facts of a pending case is also likely to bias or influence the mind of a judge. The Court identified three situations from which bias may arise namely; pecuniary interest in the litigation, blood filial or other personal relationship and mere aversion to the facts of a case on the part of a judge, such that reasonable persons sitting in the court could infer that there is a real likelihood of bias against one of the parties. In such situations, any decision reached by the court is vitiated for contravening the right to fair hearing of the party concerned.

Like jurisdiction, fair hearing is fundamental to any proceeding. As such, a complaint of want of or deficiency thereof must receive attention from the court and urgently dealt with before proceeding further. Although fair hearing rules appear to regulate procedure, they go beyond that to touch the root of proceedings. It is not merely of forensic value or procedural importance. It affects the very competence of proceedings. Where want of it is detected or even a reasonable fear entertained as to deterioration of proceedings in respect of fair hearing, steps should be taken to stem the drift and remedy the proceedings. The adjudicator himself is free to raise question of fair hearing wherever warranted, because of this fundamental character it possesses and its primacy. Even if a person failed to plead lack of fair hearing, say in administrative proceedings, before a court of first instance, he may raise it on appeal, and the court could even raise it on its own motion, in view of its essential nature. Where the issue of fairness or lack of it arises incidentally, the

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190 ibid.
court is nevertheless entitled to go in to it. In *Oyeyemi v Commissioner for Local Government, Kwara State*,\(^{191}\) where Nnaemeka-Agu JSC said:

No doubt, breach of rules of natural justice involving either of the twin pillars of justice: *audi alteram partem* or *nemo judex in causa sua*- could be raised substantively and formally, particularly in circumstances in which such a breach impinges on the Constitutional right to fair hearing enshrined in the Constitution... But, sometimes, the breach could arise incidentally in the course of proceedings. For example, part of a proceeding could be vitiated by want of hearing, even though a good part thereof is properly conducted. When such is the case, a Court of justice cannot shut its eyes to the breach of the rule or fail to give effect to its implications simply because it has not been raised on the pleadings. Rather, being a fundamental vice, the Court will yet go in to the matter though it has arisen incidentally, provided that, if in an appeal, there is sufficient material upon which it can reach a fair decision in the matter without any need for further evidence and that both parties to the conflict have had due notice of the material facts from which the material alleged breach has arisen.

Since fair hearing is a constitutional imperative, its breach cannot be excused on the ground that the adjudicator was merely following statutory procedure. Even if a hearing was in strict compliance with the provisions of any enactment, it would be unfair once it failed to meet the constitutional standards of fair hearing. Such a Statute would be inconsistent with the Constitution and to the extent that it is so inconsistent, null and void.\(^{192}\) This is because the Constitution supersedes all legislations in Nigeria. The supremacy clause of the Constitution provides:

> If any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.\(^{193}\)

However, where some other legislation is not in terms inconsistent with the Constitution, it must not be applied or interpreted in a manner as to defeat the intendment of the Constitution. Rather,

\(^{191}\) (1992) 2 NWLR (Pt 226) P. 661.
\(^{193}\) Section 1 (3) of the 1999 Constitution as amended in 2011.
it must be interpreted to conform to the Constitution. It cannot afford an excuse for any authority or person to fail to meet Constitutional standards. In the case of *Mohammed v. Nigerian Army*, counsel for the respondent essayed to excuse the Court-Martial president’s Hippy-Hallet-style descent in to the arena by resort to section 222 of the Evidence Act. Whereupon the Court of Appeal held that:

Although section 222 of the Evidence Act, empowers a Court-Martial to ask witness any question it pleases in order to obtain proof of relevant facts. Such powers given to a judge by that section is limited by the duty of fairness. The court went on to state that the provision of the Evidence Act or any enactment should not be used in such a way that it will infringe on the right of an accused person provided under the Constitution. Where the intervention of a judge discloses a likelihood of bias or infringes on the duty of fairness, such proceedings is void for want of fair hearing.

Similarly, parties cannot contract out of or negotiate away fair hearing desideratum. Nor can a body, association or organisation by its internal or domestic arrangement exclude fair hearing from its dispute resolution or adjudication mechanism. In *University of Ilorin v Oluwadare*, the Court of Appeal held that:

…the respondent’s complaint is basically against an infringement of his fundamental right of fair hearing which is constitutionally guaranteed right that cannot be taken away by any domestic arrangement between parties.

The fundamental rights have not been included in the Constitution merely for individual benefit, though ultimately they come in to operation in considering individual rights. They have been put there as a matter of public policy and therefore, the doctrine of waiver have no application to provision of law which have been enacted as a matter of Constitutional policy. Because of its Constitutional character, the right to fair hearing cannot be waived or compromised. In *Jang v Independent National Electoral Commission*, the Court of Appeal held that the right to be heard is so fundamental a principle of our adjudicatory process that it cannot be compromised on any ground.

Furthermore, a complaint founded on *audi alteram partem or nemo judex in causa sua*, can be made at any time notwithstanding the fact that a party took further steps in the proceedings after learning of, say, a judge’s bias, will not preclude him from complaining at any time thereafter of such deficiency in the judicial process.\(^{198}\)

There is a controversy regarding the standard of fair hearing required in administrative proceedings and judicial and quasi-judicial ones in Nigeria.\(^{199}\) This controversy arose in the case of *Udo v Cross River State Newspaper*,\(^{200}\) where the Court of Appeal drew the distinction between judicial and quasi-judicial proceedings on the one hand and administrative proceedings on the other.

With all due respect to the above decision of the Court of Appeal, it is the view of this study that the standard of fair hearing is the same in all proceedings irrespective of whether the proceeding is a judicial or administrative one. This view is also in agreement with the decision of Lord Dening MR in *Gaming Board exparte Benaim*,\(^{201}\) where the learned judge held that the standard of fair hearing is the same in both judicial and administrative proceedings. It is therefore settled that the standard of fair hearing is the same. However, the procedure by which fairness is attained differs between one type of proceeding and another. For instance, in judicial proceedings, procedure like examination in chief and cross examination of witnesses by parties to a case is a formal procedure peculiar to judicial proceedings towards the attainment of fairness. It follows therefore, administrative proceeding also have its procedure peculiar to it.

However, the idea that the principles of natural justice are not as applicable in administrative proceeding as they are in judicial proceedings was refuted by Lord Dening MR in *Gaming Board, exparte Benaim*, \(^{202}\) where he said:

> At one time it was said that the principles (of natural justice) only apply to judicial proceedings and not to administrative proceedings. That heresy was scotched in *Ridge v*

\(^{200}\) 2001) 14 NWLR (Pt 723) 116, p. 154.
\(^{201}\) (1970) 2 QB 417.
Fair hearing is the same whether proceedings are judicial or administrative, except for the form and procedure. The basic benchmark of fair hearing remains the same, though the procedure may of course differ, in levels of formality and indices of procedure. This was further substantiated in an orbiter by the Supreme Court of Nigeria in Osakwe v Nigerian Paper Mill, that trials differ of course from administrative hearings in terms of procedure and evidence. For example, while cross-examination is a necessary ingredient of fair hearing in court trials, this is not always the case in administrative proceedings.

However, what is important is that, both judicial and non-judicial hearings must conform to the constitutional imperative of natural justice as posited by the Court of Appeal in Tionsha v Judicial Service Committee, Benue State, where it was held that although administrative panel is not bound to follow the procedure and practice of court of law, it is bound to observe and comply with the principles of natural justice, that a person who may be adversely affected by its decision is entitled to be given adequate opportunity not only to know the case against him but also to answer it.

3.2 The Principle of impartiality

The Latin maxim *nemo judex in causa sua* (which translates, ‘no man shall be a judge in his own cause’) is also referred to as the rule against bias. Not only must an adjudicator be free from bias, but there must not even be the appearance of bias. In the case of Dimes v Grand Junction Canal, the House of Lords set aside a decree issued by Lord Cottenham LC, on the ground that he was a shareholder in the company in whose favour the decree was made.

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204 (1998) 10 NWLR (Pt 568) 1, p.12.
207 (1924) 1 KB 256, 259.
An adjudicator, needs not himself actually be a party for the maxim to apply. It is sufficient if he has a personal interest or association. Lord Evershed MR once recused himself from a case because he was an ex-officio member of the Church Commissioners of England, who were a party to the case.\textsuperscript{208}

However, the interest needs not be pecuniary or proprietary. In the case of Sunderland Justices,\textsuperscript{209} where councilors spoke in council on the very subject out of which a suit arose, and later as Borough justices issued an order on the matter, the Court of Appeal set aside the order on the ground of the borough justices’ earlier interest as councilors.

The principle of \textit{nemo judex in causa sua} would also be violated if the adjudicator were in substance, accuser, complainant or prosecutor as well.\textsuperscript{210} In \textit{Igwe v State},\textsuperscript{211} Ademola CJF stated that:

\begin{quote}
… Nowhere is it stated that a judge may represent the Crown as well as carry out the duties of a judge…The effect of the combination in one person of the duties of prosecutor and judge was examined in the case of \textit{R v Adau Haji Fama} (1948) AC 225, in which case the Crown was unrepresented throughout and the judge called and examined all the witnesses for the prosecution. In the course of his judgment, Sir John Beaumont, who delivered the judgment of the Board said their Lordships have no doubt that the trial judge did his best to be scrupulously fair to the accused, but it is impossible to be sure the judge, who himself examines the prosecution witnesses, escapes bias in favour of accepting their evidence. The accused and their friends can hardly feel assured that impartial justice, would be meted out to them by a judge who was acting as prosecutor.
\end{quote}

Similarly, it is also contrary to natural justice for a decision to be made in the presence of the prosecutor.\textsuperscript{212} In the case of \textit{Cooper v Wilson},\textsuperscript{213} a chief constable, who had provisionally dismissed a constable, was present at the meeting of a borough watch committee held to decide

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\begin{itemize}
\item \textsuperscript{208} Asuzu C. Op, cit., p.26.
\item \textsuperscript{209} (1901) 2 KB 351.
\item \textsuperscript{210} Law v Charted Institute of Patent Agents (1919) 2CH, 276.
\item \textsuperscript{211} (1959) 4 FSC 206, P. 207.
\item \textsuperscript{212} O Hood Philips Op. cit, p. 603.
\item \textsuperscript{213} (1937) 2 KB 309.
\end{itemize}
whether to confirm the sack. The Court of Appeal held the Watch Committees’ deliberation invalid. Also, in Alakija v Medical Disciplinary Committee, the registrar had functioned as the appellant’s prosecutor in the disciplinary proceedings before the respondent, he remained with the respondent while they deliberated on the appellant’s case. Abbot FJ held that:

…the principles of natural justice had, owing to the registrar remaining with the committee during deliberations, not been fully observed and we further held the view that this was a vital matter making the proceedings at the committee unsatisfactory. We therefore, held that the decision of the committee could not stand.

The rule against bias is premised not so much on actual bias as on appearance of bias and the desire to sustain confidence in the judiciary, in particular the confidence of litigants involved in a particular case. The safest thing to do for a trial judge is to recuse himself from a case once an allegation of bias is raised or labeled against him. But, an unreasonable invocation of the maxim would not attract review. Mere mention of the word ‘bias’ without more, would not invite appellate or judicial review of a case. Suspicion of bias must be reasonable. The test is objective; would a disinterested observer at the proceedings go away with the impression that the case was fairly decided, or with doubt about the adjudicator’s disinterest?

### 3.2.1 Fair hearing under the Nigerian Constitution

Under the Constitution, the stipulation as to the empanelling of the decision-making body “Court or tribunal…constitute in such a manner as to secure its independence and impartiality” in section 36 (1) of the 1999 Constitution as amended in 2011, guards against bias, thus clearly adding the two maxims: *nemo judex in causa sua and audi alteram partem* as ingredients of section 36 (1). This was considered in the case of Unibiz v Credit Lyonnais, where Ejiwunmi JSC held in the lead judgement that:

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214 (1959) 4 FSC, 38.
216 Denge v Ndakoji (1992) 1 NWLR (Pt 216) 221, p. 233.
…fair hearing in the context of…the Constitution… encompasses the plenitude of natural justice in the narrow sense of the twin pillars of justice- audi alteram partem and nemo judex in causa sua as well as in the broad sense of what is not only right to all concerned but also seems to be so.

Section 36(1) of the Constitution, provides:

In the determination of his civil rights and obligations, including any question or determination by or against 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 a manner as to secure its independence and impartiality.

If the above section of the Constitution were to be analysed in strict legal sense, it would appear that where the determination of civil rights and obligation is not in issue or where the panel is not a court of law or a tribunal established by law, fair hearing is not strico sensu required or the above provision is not applicable. However, courts have held that although a non-judicial tribunal is entitled to decide its own procedure and lay down its own rules for the conduct of enquiries regarding discipline, it is of utmost importance that the inquiry be conducted in accordance with the principles of natural justice.219

Similarly, in the celebrated case of Garba and others v University of Maiduguri,220 Obaseki JSC said:

‘I agree that ‘court or other tribunal’ can be guilty of denial of fair hearing but persons and authorities who assume jurisdiction where they have none are equally guilty. By the provisions of subsections (1) and (4) of section 33 of the Constitution, it is my view that the necessity for compliance with all the rules of natural justice, audi alteram partem and nemo judex in causa sua i.e. the twin pillars of natural justice have been adequately indicated, emphasized and expressly stated. Fair hearing is therefore not only a common law requirement in Nigeria but also a Constitutional requirement. The rules of natural justice must be observed in any adjudication process by any court or tribunal established

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219 Denloye v Medical and Dental Practitioners Disciplinary Committee (1968) 1 All NLR P. 308.

220 (1986) All NLR, P. 149.
by law acting in a judicial capacity...the Vice chancellor when he delegated his powers to
the Disciplinary Board, the Board became a tribunal bound to observe all the rules of
natural justice. But the Board was not independent and some of the members not
impartial. It is my opinion that when they took to investigate the crimes, identify those
involved and who participated in and their roles and apportion blame and recommend
suitable disciplinary measures to be taken against them, they were carrying out a trial of
the appellants for crimes committed. That was not a matter of internal discipline. The
crimes were in respect of the properties of the University. They were crimes against the
State. Having assumed judicial functions and were bound to act judicially and comply
with the Constitutional requirements of fair hearing.

In *Legal Practitioners Disciplinary Committee v Fawehinmi*,221 where the then Attorney-General
of the Federation(AGF), Richard Akinjide, wrote the respondent requiring him to show cause
within fourteen days why he should not face the appellant for unprofessional conduct consisting
in advertising. Within two days and without allowing the respondent to show cause as demanded,
the AGF leveled allegations of unprofessional conduct against the respondent, referred the matter
to the appellant, filed the complaint and charges against the respondent before the appellant, and
who was also the chairman of the appellant disciplinary body. Some members of the appellant
panel, executive officers of the Nigerian Bar Association (NBA), had attacked the respondent at
a bar executive forum with respect to the subject matter of the complaint, before the complaint
came before the appellant. The respondent sought the Court to prohibit the appellant from
proceeding because the membership of the AGF, who was the complainant and prosecutor, and
that the NBA members who had already taken a stand on the subject, meant that the appellant
was not “constituted in such a manner as to secure its independence and impartiality” as required
by section 33 (1) of the 1979 Constitution (now section 36 (1) of the 1999). The High Court
granted the respondent’s application and prohibited the appellant as prayed, on the grounds urged
by the respondent. The appellant appealed to the Court of Appeal and the Court dismissed the
appeal. The appellant further appealed to the Supreme Court, where the appeal was also
dismissed. The Supreme Court held as follows:

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221(1985) 2 NWLR (Pt 7) 300, p. 330-332.
1. The direction which the appellant would be called upon to make in the disciplinary proceeding against the respondent was a determination within the meaning of section 33 (1) of the 1979 Constitution, and therefore the appellant had to be constituted as stipulated in that section.

2. The appellant is a tribunal contemplated in section 33 (1) of the 1979 Constitution, and thus must meet the constitutional fair hearing requirement as well as the empanelling safeguards against partiality. Even if the appellant was such a tribunal, it would still be bound to satisfy the common law principles of natural justice.

3. The AGF’s rush to charge the respondent before the appellant without allowing him opportunity to show cause as he had been invited to do revealed the AGF’s bias against the respondent.

4. Had the appellant proceeded to try the respondent, the AGF would have been the accuser and the judge at the same time. Such a proceeding would obviously have been null and void, being an infringement of the principle of nemo judex in causa sua. The other members who had previous acquaintance with the subject matter and had made comments adverse to the respondent on the same subject were equally disqualified from sitting.

### 3.2.2 Prior acquaintance with subject matter

When a case is assigned to a judge, that should be his first acquaintance with that matter. Any undue previous acquaintance with the facts would offend against the rule against bias. Decided authorities have indicated that previous knowledge of the facts and issues to be determined in a case may raise a real likelihood of bias. Also, foreknowledge, or a previous knowledge of the facts of the pending case is something reasonably likely to bias or influence the mind of a judicial officer.

Furthermore, in *Kenon v Tekam*, the Supreme Court per Ayoola JSC, observed as follows:

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223 Legal Practitioners Disciplinary Council v Fawehinmi (1985) 2 NWLR (Pt 7) 300, p.342.
225 (2001) 14 NWLR (Pt732)12, p.22.
Foreknowledge of facts is one aspect of such bias. Where a judge has foreknowledge of the facts he does not come to the dispute with an openness of mind that would enable him to hold an even scale. Therein lies the unfairness. That is one aspect of bias that is alleged in this case. Another aspect is that the trial judge was likely to be biased in favour of his previous decision. As to foreknowledge of the facts, no one can doubt that foreknowledge of the previous facts disqualifies a judge.

Where a litigant feels that there could be a likelihood of bias on the part of the judge or justices of Appeal Court, it is his duty to draw the attention of the judge or justices to that fact.  

Similarly, when a judge is elevated to the higher bench, he cannot sit on appeal against his own decision. He cannot be a member of the panel reviewing a decision he made while sitting at the lower bench, as that would offend the impartiality principle. His prior acquaintance with the facts would disqualify him and he therefore ought to be recused.

In Nnamdi Azikiwe University v Nwafor, the same Examination Malpractice Committee which found the respondent guilty sat on his appeal against their finding although he had directed the appeal to the University Senate. This procedure vitiated the proceedings and the respondent’s suspension as well.

However, where it is not proved that the adjudicator actually had previous acquaintance with the facts of the case, the fact that his office or former office had received communication or information regarding the case will not have effect on the adjudicator’s conscience, if he never dealt with the communication or information. The species of prior acquaintance or previous knowledge referred to in this context is actual; deemed knowledge will not raise likelihood of bias.

3.2.3 Litigant cannot sit over opponent’s case

228 (1999) 1 NWLR (Pt 585) 116.
It is also a cardinal principle of rule against bias that a litigant cannot adjudicate over his opponent’s case. For instance, the mere fact that Q had previously sued Z in Z’s official capacity or on official matters is not sufficient to raise a real likelihood of bias on the part of Z against Q, so as to disqualify Z from adjudicating in a dispute in which Q is a party. However, the position would be different if the previous suit was a personal action. In *Anyebe v Adesiyun*, the Court of Appeal per Oguntade JCA held:

All the evidence I have here is that the appellant had on two occasion sued 1st - 4th respondents on matters which were official in nature not personal and iam unable to accept that alone would lead to a personal animosity or hostility between 1st – 4th respondents and appellant as would disqualify the former from investigating the shooting incident involving the appellant and his son.

Also, a pending suit by an adjudicator or some or all members of a panel of adjudicators against a person or against a company in which that person has majority share or equity or with which he has a notorious connection would disqualify the suing adjudicator or adjudicators from sitting in other proceedings in which that person or company is a party.

In *Abiola v Nigeria*, certain justices of the Supreme Court had a libel action against Concord press, in which the appellant had a majority equity and he was so connected to the company as to be regarded as its virtual owner. The libel suit was still pending when the appellant brought an appeal to the Supreme Court; he applied for the recusal of the suing justices of the Supreme Court from his appeal. The Supreme Court unanimously granted his application.

### 3.2.4 Potential litigant cannot sit over would be opponent

A judge who had a dispute or potential contest with one or some of the partners is of course disqualified as being judge in what is, in effect, his own cause. In *Alake v Abalaka*, the appellants were editor, correspondent and printer/publisher of Sunday Concord. While the case was pending at trial, the paper severely criticized the trial judge’s handling of the case, accusing him of helping the respondent. The judge, instructed his solicitors to write the paper complaining of its sharp criticism of him, and threatening suit. The appellants then applied for the judge to recuse himself from the case on the ground of bias. The judge declined, continued trying the case and eventually gave judgement for the respondent. The appellant appealed to the Court of

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233 (2003) 6 NWLR (Pt 815) 124, 143.
Appeal and the court allowed their appeal, on the ground that the trial judge’s threat of action against the appellants created bias or likelihood of bias. Mustapha JCA had this to say:

Bias or likelihood of bias covers a wide range of circumstances. It may arise if a judge, either explicitly or implicitly indicates partisanship in a case or matter before him, or (express) hostile opinion or hostile relationship… A right to fair hearing free from bias or likelihood of bias is a fundamental Constitutional right and its breach in any trial nullifies the trial. The law is also settled that it is not necessary for any person alleging a denial of fair hearing to establish any personal injury or prejudice before he may invoke the right to fair hearing.

3.2.5 Descending in to the arena

Even where there is no identifiable interest in the conduct of the judge evidencing likelihood of bias or having a pecuniary interest, his conduct of the trial may raise such bias as to vitiate the proceedings. In Akinfe v The State, where the trial judge overzealously interrogated and cross-examined the appellant and other witnesses. The Supreme Court held thus:

The record of the Court revealed the intensity of the cross-examination of the witnesses by the trial judge. The cross-examination of the star witness for the prosecution was two pages and the appellant’s a page. The court found that some of the questions asked by the judge were so incisive and destabilizing and it would be wrong to assume that the judge asked those questions in order to clear ambiguities as submitted by the respondent’s counsel.

The court further held that in an adversarial system of justice administration, parties, their counsel and the judge have different roles to play. The role of a judge is to hold the balance between the contending parties and decide based on the evidence adduced. Under no circumstance must a judge descend in to the arena, as his sense of justice will be obscure. Once a judge descends in to the arena, an impression must be created by the right thinking members of the society that the judge had taken sides with the prosecution against the appellant. Thereby destroying the image of even handed justice and the real likelihood of bias established.

However, in Okoduwa v State, the trial judge conducted a lengthy cross-examination of defence witnesses and virtually took over the prosecution. He terrorized the defence counsel in to abjection (for daring to apply for transfer), thus compromising his ability to stoutly defend his clients, which abridged the defendants’ right to counsel. The appellants were found guilty and they appealed. The Court of Appeal dismissed their appeal and they further appealed to the Supreme Court. The Court held that, in view of the trial judge’s undue interference with the

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234 (1992) 4 NWLR (Pt 234) 152, p. 182.
proceedings, coupled with the harsh treatment of appellants and their counsel, the appellant had not had a fair trial.

Similarly, in *Bakoshi v Chief of Naval Staff*, there was undue interference in the Court-Martial proceedings by the president of the General Court-Martial. The Court of Appeal per Ekpe JCA held:

> The principles of fair hearing enshrined in the Constitution provides that in any determination of his civil right and obligation or any determination by or against government or authority a person is entitled to fair hearing by a court or tribunal established by law and constituted in a manner as to ensure its independence and impartiality. From the records, the court found that the appellants were not given fair hearing. This is because the President of the General Court-Martial dominated the hearing and descended in to the arena as if it were a battle between him and the appellants and did not restrain himself in the manner he asked questions to the prosecution, not realizing that as a judge, he was holding an impartial position in the case and should have no personal interest.

Still on duty of fairness, the Court of Appeal held that the Court-Martial like any other court or tribunal established by law for the determination of civil rights and obligations, has a duty of fairness, in proceedings before it.

3.3 The Principle of fairness

The maxim *audi alteram partem* translates simply: “hear the other side”, and is also known as fair hearing. The twin principles are related and at times intertwine and on occasion perhaps in separable. This is because a biased adjudicator could not genuinely hear the party against whom he is determined to rule. He may hear the words such a party says, but his capacity to actively listen to that party would have been compromised as to result in judicial deafness.

However, Lord Dening MR in *Kenda v Government of Malaya* was of the view that the twin principles are distinct and separate. Concerning the twin principles, he said:

> The rule against bias is one thing. The right to be heard is another. Those two rules are essential characteristics of what is often called natural justice. They are twin pillars supporting it. The Roman put them in two maxims: *Nemo judex in causa sua*, and *audi...*
alteram partem. They have been put in two words, impartiality and fairness. But they are separate considerations.

Under the Nigerian Constitution however, some elements embodying the right to fair hearing are also provided in section 36(1) of the 1999 Constitution as amended in 2011. This assertion was supported by the decision of Ndukauba v Koloma,240 where Oguntade JSC enumerated the elements as follows: there must be fair hearing, the court or tribunal must be established by law, the adjudicatory process must be conducted within a reasonable time and the adjudicator must be independent and partial. He further states thus:

…any decision by a constituted authority such as court of law or administrative tribunal that determines “a person’s civil rights and obligations without giving the person…the opportunity of making representations must be declared void… The decision stands in conflict with section 36 of the 1999 Constitution and shall not survive for that very reason.241

3.3.1 Hasty judgement

It is trite principle that judgement or ruling should not be hasty. Where a court delivered its judgement or ruling in haste, it would often compromise fair hearing.242 In Etim v Presbyterian Church,243 the respondent sued the appellant at the High Court over a piece of real estate. The respondent’s writ was filed on 8th December, 2000, along with a motion for interlocutory injunction to restrain the appellant from developing the property. The motion was billed for 19th December, 2000. The writ and the motion were never served on the appellant until 14th December. The days following the service were public holidays and a weekend. The appellant entered appearance on 21st December, within the time limited by the rules. Meanwhile, because of obvious time constraints, the appellant’s lawyer wrote the court on the hearing date requesting for an adjournment. The court went ahead to take the respondent’s motion and granted it, saying that the appellant had been served. The appellant appealed to the Court of Appeal. The court held that the appellant’s right to fair hearing had been transgressed. The judgement of the court read thus:

The trial judge did not apply the law governing the grant of interlocutory injunction which requires giving the other party the opportunity of opposing the application. The court further held that, hearing cannot be fair, if a court reached a decision on the evidence of one side alone ignoring the other side. That fair hearing in the context of section 36 (1) of the Constitution encompasses fair hearing in the narrow technical sense

of the twin pillars of justice; as well as the broad sense of what is not only fair to all concerned but also seems to be so.

Consistent with the principle, that judgement of the court must not be hasty, the Constitution requires court established under it to deliver its decision in writing not later than 90 days after the conclusion of evidence and final address and furnish all the parties to the matter determined with duly authenticated copies within seven days of the delivery of the judgement.\textsuperscript{244}

However, a decision will only be set aside or treated as a nullity on the ground of non-compliance with section 294(1), when the court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason of the non-compliance with the provision of section 294 (1).\textsuperscript{245}

### 3.3.2 Public hearing

The 1999 Constitution as amended in 2011, stipulates that court proceedings be held in public except under certain few exceptions. Section 36(3) and (4) provides:

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that:

(a) A court or such tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice;

(b) If in any proceedings before a court or such tribunal, a minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be disclosed publicly, the court or tribunal shall make arrangements for evidence relating to that

\textsuperscript{244} Section 294 (1) of the 1999 Constitution as amended in 2011.

\textsuperscript{245} ibid section 294(5).
matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

The provisions of section 36(3) and (4), stipulates that proceedings of a Court or Tribunal must be in public. Sub section (3) requires that all determinations of civil rights and obligation of parties before the court must be in public. The publicity is not only limited to trial but, also cover pronouncement of decisions reached by court or a tribunal in a matter before it. Members of the general public must be given access to the court in order to watch the conduct of proceedings from commencement to judgement stage. This access to the court by members of the public is subject to availability of space to sit and good conduct.

However, under subsection (4), there are situations where a court or tribunal limits the number of attendees to a proceeding to only the parties to a case, their legal representatives, witnesses and the courts personnel. The power of the court to exclude members of the public from its proceedings is predicated on considerations such as the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained eighteen years and the protection of the lives of the parties to the case. The exclusion of the public from watching the proceedings under subsection (4) of section 36 is an exception to the general rule requiring trial to be held in public. It is therefore constitutional and does not infringe on the right to fair hearing.

In order for a court or tribunal to conduct proceeding in camera pursuant to section 36(4) of the Constitution, a Minister of the Federal government or a Commissioner of a State must apply to the court that it would not be in the public interest to disclose certain matters in evidence publicly. Once that is done, the court will then invoke the provision of subsection (4) of section 36 of the Constitution and such evidence will be heard in private without the presence of members of the general public in court.

Furthermore, the Court of Appeal in Mikailu, underscore the importance of fair hearing and the right to be heard in open court, where it held:

The learned trial judge did not take oral speeches of counsel in open court. Rather he ordered written addresses which were exchanged amongst counsel representing parties. The addresses filed and exchanged were not subsequently read in open court. Can this be said to be in compliance with clear and unambiguous or unequivocal provision of the Constitution?

I do not think so... in my respectful opinion, I do not think the addresses exchanged by counsel and not read in open court can be said to have met the demand of the provision of section 33(13) of the 1979 Constitution. At least, the address stage cannot be held to be held in public. It follows that the trial is not wholly in public.

…the right to fair hearing comprehends and includes the right to be heard in open court in
defence of one’s good character and good name. Constitutionally entrenched provisions
should not be lightly trampled upon. The trial, being one, is not of the nature the law permits
to be truncated, for a part to be heard in public and the balance elsewhere as it happened in
the present case, by ordering written addresses to be submitted by learned counsel
representing the parties.

Similarly, in *Nigerian Arab Bank v Bari Engineering*, where judgement was delivered in
chambers. The Supreme Court held that such judgement was invalid.

However, in *Oyeyepo v Oyinloye*, the appellants neither filed their brief of argument within
time nor applied for extension of time within which to file their brief. Pursuant to applicable
rules, the respondent applied for the dismissal of the appeal for want of prosecution. The
Supreme Court sat in chambers, and dismissed the appeal for want of prosecution. The appellants
filed an application to set aside the dismissal as being contrary to section 33(1)(13) of the 1979
Constitution then in force, provisions which stipulates fair hearing and publicity of proceedings.
With regard to the first issue, the appellants were never notified of the date the respondents
dismissal motion would come up for hearing (although they were served with the motion with
no indication of hearing date), and this, they contended, infringed their right to fair hearing: As
to the second issue, they claimed that failure to hear and determine the dismissal application
violated section 33(13) of the 1979 Constitution which required sitting to be in public, which
provision they asserted superseded any court rules allowing chambers business. The Supreme
Court dismissed the application and held that:

1. The Supreme Court lacks the jurisdiction to review the decision it rendered validly.
2. That Order 6 Rule 9 of the Court was made pursuant to section 216 of the 1979
   Constitution and therefore not unconstitutional.
3. The rules of natural justice are applicable to the hearings of the court whether sitting in
   Chambers or in open Court.
4. A party who failed to fulfill conditions precedent to being heard cannot complain of lack
   of fair hearing. The appellants having failed to file their brief within time and to apply
   for leave to file same out of time, have not earn the right to be heard and a right not in
   existence cannot be breached.

**3.3.3. Final address**

At the conclusion of taking evidence, parties to a case have the right to address the court before
judgement is delivered. Denial of the right of address to a party to a case is tantamount to denial

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247 (1995) 8 NWLR (Pt 413) 257.
248 (1987) 1 NWLR (Pt 50) 356.
of fair hearing. In *Obodo v Olomo*, the appellant sued the respondent for trespass to land, claiming damages and injunction. At the close of the parties’ respective cases, the judge directed the parties to file written addresses, and adjourned for judgement. Only the respondent filed their address, which they never served on the appellant. As such, the appellant could not file any address in reply. Relying on the submissions in the respondent’s address, the trial judge dismissed the appellant’s claim. The appellant appealed to the Court of Appeal and his appeal was dismissed. The court holding that: the appellant had disobeyed the court’s order to submit an address and could not then blame the court for relying on the respondents’ address exclusively; and that even if the appellant had filed an address; the trial court’s judgement would have been the same.

The appellant further appealed to the Supreme Court. Allowing the appeal, the Supreme Court held as follows:

1. Address is not meant for the consumption of the bench alone, but also for the attention of the opposite side. They form part of parties’ cases, and should therefore be revealed to the other party much as other aspects of the cases are disclosed. Address must be duly served. The court must ascertain that addresses are exchanged between the parties.
2. Since addresses form part of parties’ respective cases, the court must receive addresses from all sides of the litigation.
3. Speculation on what decision might have been had addresses been exchanged is idle and fruitless. Addresses are vital and can tilt the balance, making a difference in the result.
4. Denial of right of address or opportunity to address is not a mere irregularity but such a fundamental deficiency in the proceedings as could vitiate them.
5. Denial of right of address is a breach of the Constitutional right to fair hearing, and thus cannot be waived. Even if the appellant had acceded to the procedure adopted at trial, which is not the case, he can still complain.

However, in *Offor v The State*, the trial court omitted to allow the appellant exercise her right of address after the prosecution had exercised its. The Court of Appeal held that the appellant’s right to fair hearing had been infringed by the failure to take her address.

Where a party filed an address but the court failed to consider it, the party’s right to fair hearing has been infringed, rendering the proceedings a nullity.

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249 (1987) 3 NWLR (Pt 59) 111.
Similarly, failure to address cannot, without more, amount to breach of fair hearing. The cause of failure should be probed to ascertain whether it arise from want of opportunity or the professional negligence of lawyers?252

Also, failure by a party or his counsel to seize a clearly open opportunity to deliver his address cannot be viewed as an infringement of fair hearing. In Chidoka v First City Finance,253 Galadima JCA, stated that:

It is trite law that where a counsel deliberately fails to avail himself of the opportunity of delivering address or where the argument is unanswerable, the fact that counsel did not address the court cannot be denial of fair hearing which could vitiate the judgement.

3.3.4 Applications pending before a Court and their priority

A Court must make a ruling on every application duly filed and pending before it. Failure to do so would amount to denial of fair hearing.254 In the case of Afro Continental v Co-operative Association of Professionals,255 the Supreme Court held that:

It is a settled law and mandatory that a court must make a decision and pronounce on every application which is before it and failure to do so is breach of fair hearing...The refusal of the judge to fix a date for the hearing of the application or to decline to hear an application duly filed in the registry amounts to a deliberate refusal to hear the application. It is therefore a breach of fundamental right to fair hearing as enshrined in the Constitution. All proceedings which followed such a breach will be a nullity.

The rule that all applications must be heard and ruled upon by the court also extends to preliminary objections.256 The rule also covers oral applications made before the court.

In Amoo v Alabi,257 the Court of Appeal, heard and granted the respondent’s application, and ignored the appellant’s preliminary objection to it. The Supreme Court held that this violated the appellant’s right to fair hearing.

Similarly, Aliyu v Chairman, Rent Tribunal,258 after several adjournments, the appellant who had a pending application, applied for yet another adjournment, claiming to have just discovered grave errors in lower tribunal’s records, which necessitated his postponing moving his

256 Asuzu C., Op. cit, p. 73.
application, and which he would substantiate at a future date to be appointed by court. On the date he made his last request for adjournment, his application was up for definite hearing. Respondent objected to yet another adjournment, whereupon the judge discharged an extant ex-parte order in appellant’s favour, refused adjournment, and remitted the matter back to the lower tribunal. On appeal, the Court of Appeal held that refusal of adjournment in the circumstances, as well as effectively refusing to hear the appellant’s substantive motion, constituted a breach of fair hearing.

Furthermore, a court cannot grant an application that was never argued or moved. In *All Peoples’ Party v Ogunsola*, the respondent filed an originating summons against the appellants, who responded with a counter-affidavit and filed an application challenging the Court’s jurisdiction. Only the appellant’s application was moved and argued, the originating summons never came up in court. On the next sitting when the court ought to have ruled on jurisdiction, the trial judge disposed of the case, giving judgement in favour of the respondent. He did not even rule on jurisdiction objection. Moreover, the appellants were never heard on the originating summons. The Court of Appeal held this to be a gross desecration of the appellant’s right to fair hearing.

With regard to priority of applications pending before a court, the general rule is that, where there are several motions competing simultaneously for court’s attention, priority should be given to constructive as against destructive motions. A constructive application is one aimed at saving the proceedings or some aspects or phase of them, while a destructive application is one that seeks to terminate the proceedings or part of them.

In the context of postponement, where there is a motion to dismiss and a motion to adjourn, the one to postpone should be heard first. This is because if the case is dismissed, there would be nothing to adjourn.

Apart from the above priority rule, in the context of adjournments, motions for adjournment should not only be taken first, but ought to be granted. If it is refused, the court rather than dismiss the case, should invite the applicant to proceed. Such an applicant would then have an opportunity to proceed as directed or withdraw if he has little to go on. In *Ceekay Traders v General Motors*, where after several adjournments at the instance of the appellant, the respondent opposed a “last adjournment” and asked the trial court to dismiss the appellant’s suit. After argument on the postponement application, the trial judge dismissed the appellant’s case for want of prosecution. The appellant appealed to the Court of Appeal and his appeal, was dismissed. Whereupon he appealed to the Supreme Court, allowing the appeal, it held as follows:

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259 (2002) 5 NWLR (Pt 761) 484.
261 ibid.
262 ibid. p.78.
263 (1992) 2 NWRL (Pt 222) 132.
1. Dismissal was the wrong order to be issued when a case is not heard on merits. The order to be given should have been one that does not permanently prevent parties from attaining justice. Upon refusing adjournment, the judge ought to have called on the appellant to proceed. Upon his refusal to proceed, the court could then dismiss.

2. Exercise of discretion to grant or refuse adjournment must be supported with reasons. The failure of the trial judge to give reasons for refusing adjournment did not give the appellate court the opportunity to know whether he exercised his discretion.

3. Refusal of postponement in this case was not such an improper exercise of discretion as to warrant appellate interference.

4. Dismissal of the case without inviting the appellant to proceed after refusal of postponement and without hearing the appellant on dismissal application violated the appellant’s right to fair hearing.

5. Where the court is simultaneously confronted with two applications, one for adjournment and the other for dismissal, the former should be taken before the latter.

Going by the above decision, it could be discerned that application for extension of time should be considered first before one praying for dismissal of a case. This is because, the one for extension of time is constructive, and that of dismissal, being destructive of the case.

However, objection to the jurisdiction of the court ought to have priority over all other process, because of the fundamental nature of jurisdiction. If the objection succeeds, the court will have nothing further to do with the proceedings, and other matters calling for the court’s attention cannot be attended to. This is because a successful objection to the jurisdiction of the court is in effect destructive of the suit. Hence, this principle may be considered as an exception to the rule relating to the priority of applications.

### 3.3.5 Service of Court process

Service is a condition precedent to assumption of jurisdiction by a court. A party who has not been given notice of any proceedings by service of a relevant process does not come under the jurisdiction of the court. It is often the starting point of compliance with the *audi alteram partem* rule.264

In the earlier stages of the development of the rule in English law, it was applied in summary proceedings before justices. And service of summons upon a party affected was regarded as a condition of the validity of such proceedings,265 not only in criminal matters but also in levying taxes and other charges, imposed by public authorities upon the subjects. Justices

who adjudicated summarily without having issued a summons were at one time punishable in
the Court of King’s Bench for misdemeanor.\footnote{ibid.}

Service of a court process could be personal or by substituted means. Where personal service
is required, for instance in service of originating process, the court may on application, allow
substituted service if satisfied of the difficulty or impossibility of personal service. Leave for
substituted service of named process does not extend to processes not named or included in
the order.\footnote{Asuzu C. Op, cit. p.97.}

To serve any process by substituted means; a party must obtain a specific court order
allowing such service. In \textit{African Continental Bank Plc v Losada Nigeria Ltd},\footnote{(1995) 7 NWLR (Pt 407) 26.}
the High Court gave leave to the appellant to serve its writ, pleadings and processes filed by posting
them on the respondent’s last known place of abode. This was done. When the respondent
failed to enter appearance or file a defence, the appellant brought a motion for judgement,
which it then purported to serve by the same substituted means. The appellant moved the
application and it was granted. The judgement was executed. Then the respondent filed for
setting aside of the judgement and its execution, and for leave to file defence. When moved
accordingly, the trial judge set aside both judgement and execution. The appellant appealed
to the Court of Appeal and the appeal was dismissed. The appellant further appealed to the
Supreme Court, where the appeal was unanimously dismissed. The Court held that:

Motion for judgement ought to have been served personally on the respondents. Order for
substituted service is only sought from court when personal service failed. It is the court’s
discretion to make or refuse order for substituted service. The order of the trial court
made on 21\textsuperscript{st} March 1988 was restricted to service of writ of summons, statement of
claim and other processes filed only. The order cannot be extended to cover subsequent
processes filed. The motion for judgement filed on 13\textsuperscript{th} June 1988, was outside the ambit
of that order. It was therefore essential for the motion to have been served as the court has
no jurisdiction over a person who has not been served, unless he submits to the
jurisdiction of the court.

Where an adjournment is made in the absence of a party, a hearing notice ought to be ordered
and served on, or some other adequate form of notification made to him for the next
adjourned date; if he fails to attend the next date, whether or not a hearing notice was ordered
and served the previous time, one should now be ordered and served for the next
adjournment.\footnote{COP Benue State v Iheabe (1998) 11 NWLR (PT575) 666.}
The party, though delinquent, is entitled to be notified of the day the matter is
to be heard. Even though, it may be heard in his absence. Failure to notify him would violate his right to fair hearing, but proceeding in his absence after proper notification would not.\textsuperscript{270}

Where the court, on application or otherwise, brings forward a hearing date, so that it falls on a date closer than the one earlier fixed of which parties had been notified or were aware, all absent parties must be notified of the abridgement of time and the new date.\textsuperscript{271}

Notification need not be by hearing notice. Oral communication in open court will suffice and has been held to be the best form of notification.\textsuperscript{272}

Where, court sitting falls on a public holiday, the court is under no obligation to notify parties of the next date. Rather, it is the duty of counsel to go to court registry, or indeed the open court, on the next working day after the public holiday to take or be given a subsequent date when the matter is to come up.\textsuperscript{273}

Finally, a party who loses his legal representation in the course of proceedings should receive personal service of current and subsequent processes, unless and until he engages another counsel. Thereafter service may be effected through the new counsel engaged in appropriate cases. In Padawa v Jatau,\textsuperscript{274} a notice of motion had been served on some parties’ lawyer just before he resigned from further representation. The court entertained the motion without serving the parties with a fresh notice of the motion. Upon appeal, the Appeal Court held that failure to serve the parties afresh violated their right to fair hearing.

\textbf{3.3.6 Evidence}

The principle of fair hearing do not demand that any number of witnesses must be called for any side, that all parties must give evidence, or every member of a group that constitutes a party or side must give evidence. This proposition was considered by the Supreme Court of Nigeria in Orugbo v Una,\textsuperscript{275} where it held that:

\begin{quote}
There is no law known to me that all parties to an action must give evidence at the trial. Parties are free to pick witnesses they think can give cogent evidence in proof of their case.
\end{quote}

\textsuperscript{270} Akpabuyo Local Government v Edim (2003) 1 NWLR (Pt 800) 23.
\textsuperscript{271} Nwosu v Nwosu (2000) 4 NWLR (Pt 653) 351.
\textsuperscript{272} Jonason Triangles v Charles Moh and Partners (2002) 15 NWLR (Pt 789) 176, 192.
\textsuperscript{273} Mirchandani v Pinheiro (2001) 3 NWLR (Pt 701) 557, p. 571.
\textsuperscript{274} (2003) 5 NWLR (Pt 813) 247.
\textsuperscript{275} (2002) 18 NWLR (Pt 729) 175.
Also, a party should be allowed to furnish all the evidence he wishes to tender. In *Aghahomovo v Eduyegbe*, the trial judge restrained the respondents from pursuing a certain line of inquiry and expunged some evidence they had given in the proceedings. The Supreme Court held that both the suppression and exclusion were a breach of the respondent’s right to fair hearing.

In the same vein, Ademola FSC, held in *Kano Native Authority v Obiora*, that:

We agree that natural justice requires that an accused must be given the opportunity to put forward his defence fully and freely, and to ask the court to hear any witness whose evidence might help him...

Unlike regular courts, customary courts in Nigeria are not governed by the Evidence Act which regulates proceedings in the regular courts. However, they are enjoined to comply with the rules of natural justice, especially as to evidence. On this note, Ademola CJF in *Guri v Hadejia Native Authority*, said:

We approve of Danjuma’s case which is an authority for saying that in a trial in a native court, an accused person must be given an opportunity to call all witnesses to establish his defence of an alibi. We are of the opinion that the principle in Danjuma’s case should not be limited to a defence of alibi alone, but that it is applicable in every case including a *hiraba* case. We are of the view that a procedure which does not permit an accused to put forward his defence is repugnant to natural justice, equity and good conscience.

Similarly, in *Avong v Kaduna Refining and Petrochemical Company*, the appellant had pleaded a document in his statement of claim, but when he sought to tender it, the trial judge refused to allow it, although there was no objection to its admissibility. The trial judge did not give reasons for rejecting the document. On appeal, the Court of Appeal held that by peremptorily rejecting a party’s evidence, the trial court had prevented him from fully stating his case, thus violating his right to fair hearing.

However, in *Alhaji v Ma’aji*, the appellant proposed to call three witnesses at the trial before an Area court. After one witness testified, the others being absent, the trial court proceeded with the

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276 (1999) 3 NWLR (Pt 549) 170.
278 These are courts that administer Islamic law or Native law and customs of a particular community. Shari’ah courts use principles of Islamic law of evidence to regulate their proceedings. While customary courts use customs prevalent in the community in which the court is situate to regulate their respective procedure.
279 (1959) 4 FSC 44, P. 46.
280 An Arabic word for the offence of Armed robbery.
rest of the trial without affording the appellant the opportunity to call the other two witnesses. The trial court gave judgement for the respondent. The appellant appealed to Upper Area Court and High court respectively and lost. He further appealed to the Court of Appeal, which allowed the appeal and held that the failure to let the appellant to call all his witnesses amounted to a contravention of his right to fair hearing.

When a witness to any party to a case give his testimony, the other party to the case have the right to cross-examine such witness. The right to cross-examine is a vital ingredient of right to fair hearing. This is because cross-examination aimed at eliciting evidence or discrediting the evidence that has been given. Therefore, failure to allow cross-examination violates the right to fair hearing of the party who would have cross-examined.

Concerning the right to cross-examination, Aderemi JCA, in Tewogbade v Agbabiaka,\textsuperscript{283} observes thus:

\begin{quote}
But where either the plaintiff or defendant or any of the witnesses called by either of them to testify has been sworn before giving evidence, the opposite party has a right, even if in practice the examination in chief is waived, or if the counsel changes his mind and ask no questions, or when the examination in chief is closed, to cross-examine such sworn party or witness…it does not matter that the opposite party, a defendant, has not filed a statement of defence or he does not have one which is validly before the court. To deny such a party the right to cross-examine is to deny him the right to fair hearing guaranteed by section 36(1) of the 1999 Constitution.
\end{quote}

What is discernible from the above dictum is that, once a party or witness called by either side of a case is sworn to give testimony, the right to cross-examine such witness or party has arisen in favour of the party other than the party calling the witness. This right subsists even if the party calling the witness did not examine the witness or waive such right. This is because the other party may elicit evidence favorable to his case from cross-examination. Denial of that right to cross-examine the witness means preventing the other party to obtain evidence to establish his case. As such, his right to fair hearing is therefore violated.

However, mere absence of cross-examination will not vitiate any trial, so long as the opportunity to cross-examine is there. It is the denial of the opportunity to cross-examine that violates right to fair hearing. Where, a party chooses or neglects, or omits to cross-examine, he cannot later be heard to complain of violation of his right to fair hearing.\textsuperscript{284}

All admission of evidence whether oral, documentary or real, must be done in open court, in the presence of both parties and their respective counsel. Also, the party against whom evidence is sought to be tendered must have a chance to object to its admissibility or otherwise comment on.

\textsuperscript{283} (2001) 5 NWLR (Pt 705) 38, p. 52.
The court must not use or examine any material in any case behind the back of any party as illustrated in *Ajagungbade III v Adeyelu II*,\(^{286}\) where some material reached the trial judge otherwise than in open court and received mention in his judgement, the Court of Appeal held this to violate the appellant’s right to fair hearing.

### 3.3.7 Prejudging the substantive suit at interlocutory stage

Prejudging the substantive suit at interlocutory stage would also infringe upon the right to fair hearing of the party prejudiced by the ruling. It need not to take the form of rendering final orders or decisions, but may be Freudian slips which bring out the inner mind of the judge.\(^{287}\)

The judge’s comments or remarks, or an order or ruling he issues, may show he has made up his mind about the substantive action or suit, thereby deciding the result of the litigation ever before it is concluded.\(^{288}\) In *Mobil v Kena*,\(^{289}\) Edozie JCA, had this to say concerning prejudging of suit at interlocutory stage:

> I take it as a sound and correct proposition of the law that a court of law must not decide the very same question which is to be determined on the substantive case before it at the interlocutory stage. Judicial authorities are legion on this principle...In the case of *D.O. Orji v Zaria Industries Ltd and Another* (1992) 1 NWLR (Pt 216) 124, the Supreme Court restate the principle thus:

> It is the duty of the trial court when dealing with interlocutory matters to avoid making statements giving the impression that it has made up its mind on the substantive issue on trial before it as justice must not be done but must be seen to be done. In the instance case, although the appeal fails, since the learned trial judge had expressed a view on the substantive issue before it, the interest of justice demands that the case to be heard by another judge.

> To decide at an interlocutory stage an issue in the substantive case before the court is to compromise a party’s Constitutional right to fair hearing which renders such a determination null and void...

### Conclusion

\(^{286}\) (2001)16 NWLR (Pt 738)126.  
\(^{289}\) (2001) 1 NWLR (Pt 695) 555, p. 564.
The notion of fair hearing in Kano State and Nigeria as a whole is a Constitutional stipulation provided for under section 36 of the Constitution. The section mandates that impartiality and fairness must be done to all and sundry.

It is therefore imperative for any adjudicator not to allow tendencies of bias to manifest in his conduct while adjudicating. All procedural steps stipulated under the Constitution and other enactments towards the promotion of fair hearing must also be observed. For their non-observance will render the whole proceedings a nullity for want of fair hearing.
CHAPTER FOUR

Safeguards to fair hearing

4.0 Introduction

This chapter sets to determine whether Indigent persons represented by legal aid in Kano State get fair hearing as enshrined under the Constitution of the Federal Republic of Nigeria 1999 as amended. To achieve this objective, the study will look at the legal safeguards stipulated by the Constitution so as to ensure fair hearing.

These safeguards are contained under chapter four of the Constitution dealing with fundamental human rights. They include; presumption of innocence, the right to inform an accused person of the offence with which he is to stand trial, the provision of adequate time and facility for the accused to prepare his defence, the right of the accused to legal representation, the right to examine witnesses called by the prosecution and the right to an interpreter.

Just like the right to fair hearing, the constitutional safeguards are stipulated by the constitution. As such, a person standing trial is entitled to their benefit irrespective of whether he is an indigent or not.

4.1 Presumption of Innocence

The right to presumption of innocence is provided under section 36(5) of the 1999 Constitution as amended as follows:

Every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty.

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

The implication of the above section is that an accused person standing trial is considered innocent, until the prosecution who is responsible for establishing the guilt of the accused has successfully done that using credible evidence as required by law. In establishing the guilt of the accused, the prosecution must establish all the ingredients of the offence charged as required by the substantive law creating the offence beyond reasonable doubt. Where the standard of proof is
not attained or there is any doubt, it must be resolved in favour of the accused person. In the case of *Odunayo v The State*,\(^{290}\) the Court of Appeal held that the presumption of innocence is an essential foundation in our adversary adjudicatory system, has secured a place in our criminal justice and is constitutionally guaranteed by section 36(5) of the 1999 Constitution. The court went on to state that by the aforementioned constitutional provision, the accused person is presumed innocent, until proved guilty. The provision squarely places the burden of establishing the guilt of an accused person on the prosecution. And the standard of proof in criminal cases is proof beyond reasonable doubt.

Similarly, in *Adamu Yakubu v The State*,\(^{291}\) the Court of Appeal held that the principle of presumption of innocence under section 36(5) of the 1999 constitution imposes on the prosecution the burden of proving the guilt of an accused and the standard is beyond reasonable doubt. Where the standard of proof beyond reasonable doubt is not attained, the benefit of doubt will be in favour of the accused person.

The decisions in Odunayo and Adamu have further restated the implication of the burden proof as contained under sections 135(1) and 138(1) of the Evidence Act, which is always on the prosecution. However, looking at proviso to section 36(5) of the Constitution, it recognizes that despite that the burden is on the prosecution to prove the guilt of an accused person; the law may impose the burden of proving certain particular facts on an accused person. Also, the presumption does not relieve the accused of the burden of facts that are especially within his knowledge as contained under section 142 of the Evidence Act.

The above view of the researcher is also supported by the decision of Court of Appeal in *Etumioni v Attorney-General Delta State*,\(^{292}\) where the court held that in criminal cases, generally, unless otherwise provided by a statute, a notable example being the Customs and Excise Management Act Cap 84, 1990 Laws of the Federation of Nigeria, the presumption of innocence of an accused person enshrined in section 33(5) 1979 constitution, now 36(5) of 1999 constitution, casts on the prosecutor the legal burden of proving beyond reasonable doubt every ingredient of the offence.

Similarly, in *Aliyu v State*,\(^{293}\) the appellant and two others were arraigned before the Oyo State High Court in Ibadan for the offences of conspiracy to commit armed robbery and armed robbery. There was no direct evidence linking the accused persons with the alleged offences and their confessional statements were not direct, positive and unequivocal pointing at the commission of the offence. Despite that they were convicted and sentenced to death by hanging. Dissatisfied with the decision of the trial court, the appellant appealed to the Court of Appeal.

\(^{290}\) (2013) LPELR-21495 (CA).
\(^{291}\) CA/YL/4C/2014 (Unreported decision).
\(^{292}\) (1994) LPELR-14361 (CA).
\(^{293}\) (2014) LPELR-23253(CA).
Among the issues contended by the appellant’s counsel was the constitutional right of presumption of innocence of the accused and how the prosecution can rebut such presumption.

The Court of Appeal held that the presumption of innocence is a first class shield for an accused person. To rebut such presumption which is a creation of the Constitution, the burden of proof placed on the prosecution as in section 138 of the Evidence Act must be discharged. To discharge that burden the evidence before the court must establish every ingredient of the offence beyond reasonable doubt.

Also, the presumption can be invoked by an accused person where a prima facie case has not been established to convince the court in exercising its discretion in favour of an accused person in granting him bail pending trial in capital offence. In Idoko v Commissioner of Police, the Court of Appeal held that the constitutional presumption of innocence enshrined under section 36(5) of the 1999 constitution as amended can be invoked in a capital offence where a prima facie case has not been established against the accused. However, the court went on to state that the issue of the presumption cannot arise if there is sufficient probability of guilt on the part of the accused. This is because if the constitutional provision is applied to the letter in a bail decision, then every accused must be released on bail awaiting trial and this will not be in the interest of enforcement of the criminal process. And that such chaotic situation was never intended by the makers of the constitution.

It is trite that bail is at the discretion of the court. However, it is the view of this research that the presumption will not operate in favour of an accused in granting of bail simply because a prima facie case has not been established against him. For an accused to have the benefit of the provision of section 36(5) of the Constitution, he must satisfy the conditions stipulated in section 341(2) (a-c) of the Criminal procedure Code of Kano State. The accused must show to the court that by granting of bail, the proper investigation of the offence would not be prejudiced, that no serious risk of the accused escaping from justice and that no ground exists for believing that the accused, if granted bail, would commit an offence.

However, where the accused is able to satisfy the conditions lay down in section 341(2) (a-c) of the Criminal Procedure Code, leading to the exercise of the discretion of the court in his favour by granting him bail. The bail so granted may still be revoked pursuant to section 350 of the Criminal Procedure Code, upon an application by the Attorney-General. If circumstances arise which in the opinion of the Attorney-General, would justify the court in cancelling the bail.

294 Capital offences are offences which are punishable with imprisonment for a term exceeding three years. A part from raising presumption of innocence, an accused must also satisfy the conditions set out in section 341(2)(a-c) of the CPC namely; that by granting bail accused would not prejudice the investigation of the offence, that he would not escape from justice and that he would not commit another offence if released on bail.

Furthermore, the presumption is only invoked when an accused person is charged to court for an offence and not during the conduct of investigation. In Inspector General of Police v Ubah and others, a complaint of forgery, money laundering, stealing, obtaining by false pretences and economic sabotage was filed against the respondents by the Presidential Committee on verification and reconciliation of subsidy payments to Petroleum Marketers. During the conduct of investigation, the respondents were detained by the police as a normal routine investigation procedure. They filed an application under the Fundamental Right Enforcement Procedure before a Federal High Court claiming that their right to presumption of innocence under section 36(5) of the constitution has been breached and sought for an injunction to restrain the police. The court granted the injunction as prayed. Dissatisfied by the order the Inspector General of Police appealed to the Court of Appeal against the order of injunction.

The Court of Appeal held that it is the duty of the Police to investigate criminal allegations against citizens. The Courts cannot stop the Police from performing its statutory functions. If there is evidence of an infringement of any of the fundamental rights of the applicant, the situation can be remedied but not stopping police investigation. For there to be an infringement of the right to be presumed innocent under section 36(5), the accused must be charged to court. Presumption on the part of the prosecution during investigation does not arise because their business is to ascertain whether there is sufficient evidence to sustain the charges and then to prosecute the offender. The court further held that there was no infringement of section 36(5) committed against the respondents. The presumption does not apply at the stage when the police are still investigating the commission of the offence.

What can be inferred from the decision of Inspector General of Police and Ubah above is that, there is a relationship between investigation and charging of suspect to court over an alleged commission of an offence. Investigation is the collection of evidence by a police officer in order to establish the commission of an offence to warrant charging the suspect to court. It precedes charging of suspect to court and it is an executive process guided by the provisions of the Criminal Procedure Code. The essence of investigation is to enable a police officer to collect evidence which may be real, documentary or oral from eye witnesses, in order to establish a prima facie case against a suspect. A suspect may be searched both in his person and premises and may also be detained for questioning and yet, he is not entitled to the benefit of the presumption of innocence.

However, as soon as investigation is concluded and a prima facie case is established against a suspect, the suspect will be charged to court either on a First Information Report (FIR), in the case trial in a Magistrate Court or on a charge, if the trial is before a High Court to answer to the alleged offence or offences as disclosed from the investigation. Charging of suspect before a court marks the beginning of judicial process and that is when the presumption can be invoked by an accused person.

296 (2014) LPELR-23968 (CA).
It's also worth noting that, the presumption is only applicable in criminal trials. It has no place in civil trials and as such, it cannot be invoked in forfeiture case that has not arisen from criminal conviction. In *Dame Mrs. Patience Ibifaka Jonathan v Federal Republic of Nigeria*, the respondent filed an application before the Federal High Court under section 17 of the Advance Fee Fraud and other Fraud Related Offences Act no. 14, 2006 and section 44 (2) (k) of the 1999 Constitution as amended, seeking an interim order of the to forfeit the sums of 5,842,316.66 UDS and N 2, 421, 953, 522.78 found in accounts no. 2110001712 and 2022000760 respectively belonging to the appellant. The application was heard and the interim forfeiture order sought by the respondent was granted. The court further ordered the appellant to file an affidavit showing cause within fourteen days of the publication of the order of the court why the sums of money referred in the respondent’s motion should not be forfeited to the Federal Government of Nigeria.

Dissatisfied with the ruling, the Appellant appealed to the Court of Appeal alleging that the interim forfeiture order granted pursuant to section 17 of the Advance Fee Fraud Act violated her right to presumption of innocence under section 36(5) of the 1999 Constitution.

The Court of Appeal held that the Appellant in the instance case was never on trial for a criminal offence; therefore the doctrine of presumption of innocence is not applicable to the circumstances of the case. The issue of innocence of the Appellant does not come in to play in a non-conviction based forfeiture proceeding.

Finally, there is exception to the principle of presumption of innocence where an accused person admits the commission of the offence charged by pleading guilty. Under such situation the question of establishing legal burden of proof no longer arises as there is no burden of proof on the prosecution, since the burden has been discharged by the admission of the accused.

In *Chukwu v Federal Republic of Nigeria*, where the appellant was arraigned before the Federal High Court in Abuja on a charge of possession and transportation of ten kilograms of Indian hemp. When the counts were read to the appellant, he pleaded to each of the counts in the presence of his counsel who was present in court. The trial court convicted and sentenced the appellant to fifteen years imprisonment in count one and five years in count two without option of fine.

Aggrieved with the conviction and sentence, the appellant appealed to the court of Appeal. The court held that where an accused admits the facts in the charge there is nothing to be proved. There is no issue. Section 36(5) of the 1999 Constitution on presumption of innocence will not arise. The right to presumption of innocence is tied to plea of guilty. When an accused pleads

297 (2018) LPELR-43505 (CA).
298 (2013)12NWLR 9Pt 1369) 488 at p.504.
guilty the right to presumption of innocence is eroded and therefore, there will be nothing to be proved.

However, it is the view of this research that the exception rule established in the case of Chukwu is only applicable in offences that attracts the punishment of term of imprisonment. This is because under section 187(2) of the Criminal Procedure Code, if an accused pleads guilty to an offence punishable with death sentence, the presiding judge is to enter plea of not guilty on behalf of the accused. The implication of this is that the burden of proving the guilt of the accused person beyond reasonable doubt is still on the prosecution until it is discharged.

4.2 Information as to nature of offence

It is also among the constitutional safe guards to fair hearing to inform an accused person of the nature of the offence with which he is charged before a court. Section 36 (6) (a) of the 1999 Constitution as amended in 2011 provides:

Every person who is charged with a criminal offence shall be entitled to-
(a) Be informed promptly in the language he understands and in detail of the nature of the offence.

In compliance with the above constitutional provision, an accused person must be informed of the nature of the offence with which he is charged at the arraignment stage. The charge is first read out and explained to the accused in English. Where the accused does not understand the language of the court, an interpreter will be directed by the court pursuant to section 241 and 242 of the Criminal Procedure Code, to explain the charge to the accused in the language he understands. With regards to arraignment, the Criminal Procedure Code of Kano State provides:

When the High Court is ready to commence the trial of accused shall appear before it and the charge shall be read out in court and explained to him and he shall be asked whether he is guilty or not guilty of the offence or offences charged.299

The essence of section 36(6) (a) of the Constitution is to enable an accused person to know the nature of the offence with which he is standing trial before a court of law. In order to comply with the Constitutional imperative in section 36(6) (a), the Criminal Procedure Code of Kano State provide arraignment of accused persons in section 187 for trials at the High Court and section 156 for summary trials in the Magistrate Courts.

299 Section 187(1) Criminal Procedure Code.
Where an accused is conversant with the language of the court, the charge will be read and explained to him in English. However, if the accused does not understand English, the imperative of the Constitution that require explaining the offence in the language understood by the accused must be satisfied. The court must engage the services of an interpreter who is to read and explain the charge to the accused person to the satisfaction of the court. Before an interpreter interprets the charge to the accused, he must be bound by an oath or a solemn affirmation as required by section 242 of the Criminal Procedure Code.

Decided authorities over the years have spelt out the requirement of a valid arraignment of an accused person. For instance, the Supreme Court in Omokuwajo v Federal Republic of Nigeria,\(^{300}\) states the requirement as follows:

1. The accused must be placed before the court unfettered unless the court see reason to order otherwise
2. The charge or information must be read over and explained to the accused to the satisfaction of the court by the registrar or other officer of the court
3. The charge must be read and explained to the accused in the language he understands
4. The accused must be called upon to plead.

Where an accused is arraigned in contravention of the above stated procedure, the trial is a nullity. This is because the provisions of sections 36 (6) (a) of the constitution and 187 (1) of the Criminal Procedure Code are mandatory provisions.

In Kajubo v The State,\(^{301}\) the Appellant, Sunday Kajubo was tried on a two count charge of armed robbery punishable under section 402 (a) of the Criminal Code Law of Lagos State. He was convicted and sentenced to death. His appeal against the conviction and sentence to the Court of Appeal was dismissed.

The Appellant further appealed to the Supreme Court, upon one ground of appeal in which the competence of the trial was challenged because the accused was not arraigned in accordance with section 215\(^{302}\) of the Criminal Procedure Law. Also the record of the trial court did not show where the charge was read and explained to the accused.

The Supreme Court held that an arraignment consists of charging the accused and reading over and explaining the charge to him to the satisfaction of the court, followed by taking his plea. The court went on to state that section 215 of the CPL is mandatory and not directory. The mandatory nature of the section is further confirmed by section 33(6) (a) of the 1979 Constitution (now

\(^{300}\) (2013) LPELR-20184 (SC).

\(^{301}\) (1988) LPELR-1646 (SC).

\(^{302}\) There are two procedure codes regulating criminal trials in Nigeria. The CPC operates in the north and the CPL in the southern states. Section 215 CPL is the corresponding section to section 187(1) CPC, which provides for arraignment in the CPL.

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section 36 (6) (a) of 1999 as amended), which requires informing the accused of the charge against him in the language he understands.

The Court further held that the two provisions are not for formality sake but are specifically provided to guarantee the fair trial of an accused person. The trial judge has a bounden duty to secure compliance with the two provisions by showing that in his record.

Similarly, in Rufai v The State,\(^\text{303}\) the Appellant and two others were arraigned before the Oyo State High Court in Ibadan for the offence of murder. At the conclusion of the trial, the first accused was convicted by the trial court and the two other co-accused persons were discharged. The Appellant appealed to the Court of Appeal in Ibadan which unanimously dismissed the appeal confirming the conviction of the Appellant.

The Appellant further appealed to the Supreme Court. One of the issues contended at the appeal by the Appellant’s counsel was noncompliance with section 215 CPL and Section 33(6) (a) of the 1979 Constitution (now section 36(6) (a) of 1999 constitution as amended). In that the appellant’s plea was not properly taken and recorded.

The Supreme Court held that since the accused speaks no other language than Yoruba and the record of proceeding did not show that the charge was read and explained to the appellant in Yoruba language in compliance with sections 215 CPL and 33(6) (a) of the 1979 constitution. The contraventions of those provisions have rendered the entire trial null and void.

What is to be understood from the decision of Rufai is that apart from the requirements of arraignment set out in decided authorities such as Kajubo and Omokuwajo, a trial court must reflect in its record that the charge has been read out and explained to the accused to the satisfaction of the court. As the essence of section 36(6) (a) and procedural provisions relating to arraignment is to protect accused persons who are not literate in English language. This view of the researcher is also in line with the decision of the Supreme Court in Idemudia v The State,\(^\text{304}\) where Katsina Alu JSC, held that the section 215 CPL and section 33(6)(a) of the 1979 Constitution (now section 36(6)(a) of 1999 constitution as amended), is aimed at protecting the vast majority of the people in Nigeria who are not literate in English language. And that is why the phrase “in the language he understands” was inserted in section 33(6) (a) of the 1979 constitution (now section 36(6) (a) of 1999 as amended).

Where there is more than one accused person jointly charged on an information or charge containing more than one count, the charge can be read and explained to the accused persons in block. However, their plea must be taken separately.

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\(^{303}\) (2001) LPELR-2963 (SC).
\(^{304}\) (1999) LPELR-1418 (SC).
In *Mohammed v The State*, the Appellant along with two others were arraigned on a six count charge of conspiracy to commit armed robbery and armed robbery. They all pleaded not guilty and ten witnesses were called by the prosecution to establish the charge. Two of the accused were subsequently convicted and sentenced to death while the third was discharged and acquitted.

The Appellant appealed to the Court of Appeal Ibadan which dismissed his appeal. He further appealed to the Supreme Court. One of the contentions of the appellant was non-compliance with section 215 CPL Ogun State. In that the charges were read to the accused persons in block and were not made to plead separately to each count.

The Supreme Court held that a block reading of the charge to joint accused persons does not vitiate a criminal trial. The Court went on to state that there is no complaint by the Appellant that he did not understand the charge against him, but rather he should have been asked to plead each count. The intention and purpose of section 215 of the CPL of Ogun State as well as section 36(6) (a) of the 1999 Constitution were fully complied with in the arraignment of the appellant and the taking of his plea.

What is discernible from the decision of Mohammed is that it is permissible for a court to read to charges in block to accused persons, if they are more than one and charged on a charge sheet that contains more than one charge. What is important is that the court must ensure that each of the accused persons understood the charge against them. Thereafter the court will take the plea of each of the accused persons separately.

One of the reasoning behind the permissibility of block reading of the charges is to save the time of the court. This was buttressed by one of the justices that heard the appeal, when he retorted that when the issue of reading the six counts to each of the accused persons separately: what if the number of the accused persons is twenty and not two? How much time will it take the court to read and explain to the understanding of the twenty accused the six count charges?

### 4.3 Provision of adequate time and facilities to prepare defence

The right to adequate time and facilities to prepare defence is another safeguard to fair hearing provided under the Nigerian Constitution. It is provided under section 36 (6) (b) of the 1999 Constitution as amended in 2011. The section provides:

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Every person who is charged with a criminal offence shall be entitled to be given adequate time and facilities for the preparation of his defence.

The import of the above section is that, the right of every person charged with an offence to be given adequate time and facilities for the preparation of his defence is an integral part of the right to fair hearing. However, the question to be asked is, whether the right of the accused to such adequate time and facilities for the preparation of his defence is self executory by the accused, or recourse must be made to the Courts for an accused person to enjoy such right. This was the issue considered by the Supreme Court in the case of *Nweke V State*, the appellant and four others were charged for the offences of conspiracy to commit murder and attempted murder. The appellant served a Notice to produce on the prosecution requesting the latter to produce certain materials for his inspection for the purpose of preparing his defence in accordance with the provisions of sections 36 (6) (b) of the Constitution. However, the documents were not produced by the prosecution. Consequently, the appellant submitted a petition to the Attorney- General of the State complaining that the prosecution was keeping back some documents required in defending the charges brought against them. When there was no response, the appellants filed an application contending that their fundamental human right to be given adequate facilities for the preparation of their defence had been violated and that such had vitiated the information and other process filed by the prosecution. The case was dismissed both at the High Court and Court of Appeal. The Appellants further appealed to the Supreme Court, where the Court held that:

The service on a person of a Notice to produce an original document does not compel the served party to produce that document. A notice to produce only entitles the person seeking the production to rely on secondary copies of the document in place of the original. It was therefore futile for the appellant to serve a notice to produce on the prosecution when he did not have the secondary copies of the documents which he was seeking the production of. The Court define the term ‘facilities’ used in section 36 (6) (b) of the Constitution to mean ‘resource’ or ‘anything’ which would aid the accused person in preparing his defence to the crimes for which he is charged...where an accused person want some facilities which are not made available to him by the prosecution, a mere request from the accused to the prosecution will not suffice because the prosecution is not obliged to accede to the request of the accused. The accused person must formally apply to the court for the facilities which he require for his defence, then the Court will make order compelling the prosecution to comply... even though the accused has a right to reasonable time and facilities to prepare his defence, that right is not a self executory or absolute right, but one which judicial intervention is required to achieve, as the exercise of such right may need to be weighed by the court against competing interests such as national security and the need to protect witness at risk of reprisal. Therefore, the

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failure of the prosecution to furnish the appellant with the documents requested did not automatically amount to a breach of his right to adequate time and facilities to prepare his defence.

However, in *Okoye and others v. Commissioner of Police and others*, the appellant charged the respondents to Chief Magistrate Court 1 Awka on a seven count charge of conspiracy to commit felony to wit serious assault on police officers and damage to properties. The Respondents’ plea was taken and all pleaded not guilty. They applied to the court to direct the prosecution to avail them with all documents (namely, statement of witnesses and police investigation report relating to the case) to enable them prepare their defence as provided under section 36(6)(b) of the 1999 Constitution as amended. The prosecution replied that being a summary trial, furnishing relevant documents up front is not provided for in the Criminal Procedure Law as in the case of trial on information. The Court granted the application of the accused persons. The prosecution appealed to the High Court against the ruling of the Chief Magistrate. The High Court dismissed the appeal and affirmed the ruling of the trial Chief Magistrate. Dissatisfied with the judgement, the prosecution appealed to the Court of Appeal. At the Court of Appeal, counsel for the Respondent accused argued that whether in civil or criminal actions, parties are compelled through front loading to disclose evidence to each other before hearing. He further contended that in criminal trials, by virtue of section 36(6)(b) of the Constitution, where rights of accused to adequate facilities have been guaranteed and protected, full disclosure of evidence prior to trial is mandatory. The Court of Appeal disconterenced the submission of the Respondents and set aside the decision of the High Court and remitted the case to the Chief Magistrate Court for the plea of the accused to be taken before proceeding to trial.

Aggrieved with the decision of the Court of Appeal, the Appellants appealed to the Supreme Court. The appeal was hinged on one issue namely; when is an accused person entitled to facilities for the preparation of his defence as provided under section 36(6)(b) of the 1999 Constitution as amended and what are the facilities?

The Supreme Court held that when the appellant applied to the trial court to direct the prosecution to furnish the defence with statement of witnesses and police investigation report, the appellant was invoking his constitutional right as provided under section 36(6)(b) of the 1999 Constitution as amended. The Court went on to state that although the word “facilities” was not defined in the Constitution, it is defined it to mean “that which promotes the ease of doing any action, operation, transaction or course of conduct… the word facilities embraces anything which aids or makes easier the performances of the activities involved in the business of a person or corporation”.

The Court went on to state that the facilities that must be afforded to the accused person are the resources or anything which would aid the accused person in preparing his defence to the crimes.

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for which he is charged. These no doubt include the statement of witnesses interviewed by the police during their investigation which might have absolved the accused of any blame or which may assist him to call such favourable witnesses the prosecution may not want to put forward to testify. Therefore, for the Appellant to be on equal footing with the prosecutor at the commencement of the trial, the Appellant should be given the statement of witnesses made to the police and all relevant materials relating to the case such as photographs of the property they are accused of damaging.

The Court further held that the moment an accused is facing a charge, his personal liberty is at stake and before that liberty is taken away, he must be given the opportunity to defend himself. It is immaterial whether he elects to be tried summarily or on information. Once he become aware that a charge is hanging over his neck for an offence and makes a request either orally or in writing for any facilities to prepare for his defence, the court must accede to his request and the prosecution has to comply.

What can be inferred from the decision in Okoye is that once an accused is charged for an offence, he has every right to request for facilities from the prosecution with which to prepare his defence against the charge. This is irrespective of whether the offence is triable summarily before a Magistrate Court or upon a charge or information before a High Court. The accused is to make such an application when the allegation against him is ventilated before a court and not at the investigation stage as indicated in the decision of Nweke. It is also the Constitutional right of the accused to make such a request. Once it is made, it becomes imperative on the court to direct the prosecution to comply with the request of the accused. Failure to do so will be tantamount to violating the Constitutional right of the accused person.

However, what is to be observed from the decision of Nweke is that it is inappropriate for the accused to serve a notice to produce on the prosecution. This is because notice to produce under the rules of evidence is only served on the adverse party to produce primary evidence in his possession which the other party is to rely upon at the trial. Failure to produce the primary evidence, will entitled the party making the request to rely on secondary evidence of the document in his possession. And that is not the case in Nweke, as the accused/appellant was not in possession of secondary document he sought from the prosecution/respondent.

Similarly, the accused ought to have applied to the court to direct the prosecution to furnish him with the facilities with which to defend the charge against him as provided under section 36(6) (b) of the 1999 Constitution as amended in 2011. Once such an application is made to the court, the court must grant it by directing the prosecution to furnish the accused with the documents he requested. And the prosecution has no option than to comply with the order. Since the provision of section 36(6) (b) is mandatory. Also compliance with the provision apart from being in
consonance with the rule of fairness, it will also have the effect of putting the prosecution and the defence on equal footing in the trial of the offence.

4.4 Legal representation

The right to legal representation is central to the realization of a fair trial and a fundamental pillar in the administration of justice. Generally, free legal assistance is dependent on the’ interest of justice’ and insufficient means to procure the services of counsel. However, the term ‘interest of justice’ is vague and there are no accepted established criteria to determine if it is in the interest of justice that an accused person be given legal aid, thereby leaving the right open to abuse. Under the Principles and guidelines on the right to a fair trial and Legal Assistance in Africa, an accused or party to a civil case has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment if the accused or party to the civil suit does not have sufficient means to pay for it. In criminal matters, interest of justice is determined by the seriousness of the offence and the severity of the sentence. While in civil cases; by the complexity of the case and the ability of the party to adequately represent himself or herself, the rights that are affected and the likely impact of the outcome of a case on the wider community.

However, the United Nations Human Rights Committee has firmly held that under International law, legal representation, at least in cases, where the penalty is loss of life, is a fundamental right. The Committee noted that article 14(3) (d) of the ICCPR stipulates ‘that everyone shall have legal assistance assigned to him, in any case where the interest of justice so require’, believes that it is axiomatic that legal assistance be available in capital cases. This is so even if the unavailability of private counsel is to some degree attributable to the accused himself, and even if the provision of legal assistance would entail adjournment of proceedings…the absence of counsel constituted unfair trial.

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309 ibid.
311 ibid.
The Constitutions of some countries provide for legal representation to an accused person at the State expense if he or she cannot afford one. For instance, under the Ethiopian Constitution, an accused person has to be provided with legal counsel by the state, if he cannot afford it and miscarriage of justice will result. Similar provisions are also provided in the Gambian Constitution, Malawi and Uganda.

In Nigeria, the right to legal representation is provided under section 36 (6) (c) of the 1999 Constitution as amended in 2011. The section provides:

> Every accused person who is charged with a criminal offence shall be entitled to -
> defend himself in person or by, legal practitioners of his own choice;

It was also judicially held that the right to legal representation is a component of the right to fair hearing. In State V Ogboh, the Miscellaneous Offences Tribunal proceeded in the absence of the Appellants’ counsel even though the Appellants were present. The case had suffered numerous adjournments, often at the State’s instance, and it could not be shown that the Appellants’ counsel had been notified of this particular date on which the tribunal proceeded. The Appellants were convicted and their appeal to the Court of Appeal was dismissed. They further appealed to the Supreme Court. The Court unanimously allowed the appeal on the ground that the Appellants’ right to fair hearing had been breached. Delivering the lead judgement, Ogwuegbu JSC held:

> the attitude of Courts to the provisions of fair hearing is to seek after the highest possible ideal of justice and fairness and that being the judicial attitude, iam unable to agree with the Courts below that the appellants’ right to fair hearing was never breached having regard to the realities and circumstances of the case. I have no doubt that if they had been represented by counsel, the outcome of this case would have been different…The right to counsel is at the root of fair hearing and its necessary foundation.

The risks to which a legally unrepresented litigant is exposed are such as to compromise his right to fair hearing, or render it meaningless. Court room procedures and the courtroom environment thrive on and are sustained by serious professionalism with which is most legally untrained persons would be at best uncomfortable without learned support.

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314 Article 24 (3) (d) of the Gambian Constitution 2001.
315 Article 42(2) (f) (v), the Constitution of Malawi 2001.
Some Jurist argues that the appearance of a litigant in person is, in many ways, antithetical to the requirements for high levels of professionalism in the conduct and operations of Courts.\textsuperscript{319} Stressing the importance of legal representation, justice Nicholson of Australia says:

The adversarial system...is dependent upon the expertise of judges, counsel and solicitors to operate at its best. It is a highly interdependent system. Professionalism is required from the time at which instructions are taken through the time in which pleadings are drafted, and the time when judgement is delivered. This professional environment of the Court is therefore not one which encourages or invites litigants in person indeed, they are at great risk.\textsuperscript{320}

Furthermore, judicial decisions have held that breach of section 36 (6) (c) which stipulates the right to legal representation in criminal cases is not only breached when a party is denied legal representation, but also when his legal practitioner is not notified of the date of hearing.\textsuperscript{321}

The right to counsel includes within it the right to choice of counsel. In \textit{Attorney-General of the Federation V Institute of Charted Accountants of Nigeria},\textsuperscript{322} the Court of Appeal held that:

It has been long recognized a Constitutional right of a client to decide either to conduct his case in person or to place himself in the hand of a counsel to conduct his case on his behalf. This is an inalienable right of any citizen in any environment which upholds the rule of law...The right to be heard necessarily includes the right to the choice of counsel by a party.

In \textit{Ofor},\textsuperscript{323} counsel who held brief for the Appellant’s main lawyer having withdrawn from representing the Appellant, the trial court disallowed the main lawyer from defending the Appellant on the ground of the withdrawal of his temporary assistant. The Court of Appeal found that the trial Judge’s refusal of choice of counsel to the Appellant seriously troubling where it held:

As narrated above Mr. Uwandu appeared on the next adjourned date and announced his appearance for the Appellant which was refused on the ground that Mr. Nosiri withdrew his legal representation (and) in so doing as he held brief of Uwandu the latter cannot appear...Iam at a loss under which rule of practice or ethics learned trial Judge relied upon. By his refusal, the Appellant was denied the fundamental right of freedom of choice of counsel.

\textsuperscript{319} ibid.
\textsuperscript{320} ibid.
\textsuperscript{322} (2002) 10 NWLR (Pt 776) 492, p. 505.
\textsuperscript{323} (1999) 12 NWLR (Pt 632) 608.
However, the choice of counsel includes choice of no counsel at all. A litigant has the right to conduct his case, or a portion thereof by himself. Where a litigant chooses to do so, he cannot later complain of lack of fair hearing on the ground that the proceedings were conducted in the absence of his lawyer. This was illustrated in *Okeke V Oruh*, where the Supreme Court held:

In the present case, although the appellant’s learned counsel applied in writing to the court for an adjournment of the case, it is on record that the third appellant nevertheless decided to proceed with the hearing of the case without their counsel. I think I agree with the submission of learned counsel for the respondent that the appellants by their apparent voluntary decision to prosecute their case without their counsel turned down his application for adjournment. This conduct of the appellants, in effect, rendered it no longer necessary for the learned trial judge to rule on the application for adjournment as it was apparent that the party for whose benefit the application was made had rejected it outright and opted to lead evidence and conduct their case in person. This course of action they were perfectly entitled to take. The position would... have been different if the trial court had compelled the Appellants to conduct their case in the absence of their counsel...

This study is of the view that the above position pertains to civil matters only. In criminal matters, indigent defendants must be represented by legal practitioner at the expense of the State especially in capital offences. This is also in line with the position of the Human Rights Committee that in capital trials, unavailability of legal representation amounts to violation of Articles 6 and 14 of the ICCPR. Under the African Charter, unavailability of representation amounts to a violation of article 7 (1) (c) of the Charter.

Furthermore, the underlying reason behind the establishment of the Legal Aid Council under the Legal Aid Act Cap L9, Laws of the Federation of Nigeria is to render legal services including legal representation to the Indigents. Despite the fact that the representation is limited to certain offences as set out in the second schedule to the Legal Aid Act, pursuant to section 8(2), it is an established practice under the Nigerian Legal System that trial of an accused in capital offences do not go on without legal representation been assigned to the accused. This is irrespective of whether the accused is an indigent or he has the means but, lost his representation for one reason or the other.

However, the position under the American Jurisprudence is different. This is despite the right to counsel contained under the Six Amendment. In *Fareha V California*, where the majority of the US Supreme Court held that a defendant in a criminal trial had a Constitutional right to proceed without counsel if he voluntarily and intelligently chooses to do so . The State cannot compel him to use legal counsel if he is determined to conduct his own defence.

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324 (1999) 6 NWLR (Pt 606) p. 177.
Where any adjudicator frustrates legal counsel’s attempt to contribute to the proceedings, that would compromise the fair hearing rights of the party represented by that counsel. Such obstructions may take the form of excessive interruption of counsel’s examination or speech. In *Olaye V Chairman, Medical and Dental Practitioners Investigating Panel*,327 there was excessive interruption and obstruction of the appellant’s counsel by the respondent who chaired the Investigating Panel. The Court of Appeal held that the Appellant had not been given fair hearing before the disciplinary tribunal of which the Respondent was the chairman.

Similarly, the African Commission while elaborating on the meaning of the right to legal representation of counsel of one’s choice, guaranteed under Article 7(1)(c) of the Charter in the Commission’s decision in *Constitutional Rights Project (in respect of Lekwot) V Nigeria*,328 requires that counsel representing the accused should not be intimidated or harassed during trial. The Commission further found that intimidation and harassment of counsel to the extent that they withdraw from a case would amount to a violation of right to representation. Also, if after such withdrawal, the accused is not given the opportunity to procure the services of another counsel; his right to be represented by counsel of his choice is violated.329

4.5 Examination of witnesses called by the prosecution

Examination of witnesses is a term that refers to the questioning of witness where the witness is under oath in court. It is that procedure in which a party to an action intending to further buttress his case before the court presents witnesses to give evidence in his favour.330 Under the Nigerian Constitution, the right of an accused person to examine witnesses called by the prosecution and to examine witnesses called by him on the same conditions applying to the prosecution is guaranteed. Section 36 (6) (d) of the 1999 Constitution provides:

> Every person who is charged with criminal offence shall be entitled to;
> examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution.

The application of the constitutional provision is tied to the Evidence Act and other laws regulating the taking of evidence in civil and criminal trials. The order in which witnesses are produced and examined is regulated by the law and practice relating to civil and criminal

329 ibid.
procedure, and in the absence of any such, by the discretion of the court.\textsuperscript{331}\ The examination of witness by the party calling such witness is called examination in chief. \textsuperscript{332}\ While the examination of witness by a party other than the party calling the witness is called cross examination.\textsuperscript{333}\ However, where a witness has been cross examined and is examined by the party who called him, such examination is called re-examination.\textsuperscript{334}

Where an accused, is denied the opportunity to conduct examination in chief of his witnesses, or to cross-examine, witnesses called by the prosecution, or to re-examine witnesses called by the accused after cross-examination by the prosecution, amounts to violation of his right under section 36(6) (d) of the 1999 constitution.

In \textit{Innocent v The State},\textsuperscript{335} the appellant and three others were charged with conspiracy to commit armed robbery, armed robbery and rape. During the conduct of the trial, PW4 a Commissioner of Police, testified and exhibits linking the accused with the offence were tendered through him. Trial within trial was conducted before the statements of the accused were admitted in evidence. However, the prosecution closed its case and the defence opened its case, without PW4 concluding his examination in chief in the main trial and subsequently cross-examined by defence and possibly re-examined by the prosecution. The court convicted the appellant and two others of conspiracy and armed robbery and sentenced them to death.

The appellant appealed to the Court of Appeal alleging the breach of section 36(6) (d) of the 1999 Constitution arising from failure to give the appellant the opportunity to cross-examine PW4 through whom vital exhibits were tendered which the court relied upon in convicting the Appellant.

The Court of Appeal held that a blunder was committed by the prosecution, the defence and even the lower court. In that none of them advert their mind to the fact that PW4 had not concluded his evidence. In the sense that until PW4 is cross-examined by or on behalf of the three accused persons, his evidence before the court is incomplete. The court went on to state that the normal procedure is that at the end of evidence in chief by a witness be it the prosecution or defence witnesses, the court asks the question whether adverse party wants to cross-examine such witness. In other words an opportunity must be given to a party or his counsel to cross-examine a witness called by adverse party. Failure to comply with that procedure is a fundamental vice and a breach of constitutional right to fair hearing especially in criminal cases, more so in a trial involving a capital offence.

What can be inferred from the decision in Innocent’s case is that the inadvertence of not concluding the evidence in chief of PW4 in the main trial, which denied the appellant the

\begin{footnotesize}
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\item\textsuperscript{331} Section 185 Evidence Act, Cap 112 Laws of the Federation of Nigeria 2011.
\item\textsuperscript{332} Ibid. section 188(1).
\item\textsuperscript{333} Ibid. section 188(2).
\item\textsuperscript{334} Ibid. section 188(3).
\item\textsuperscript{335} (2013) LPELR-21200 (CA).
\end{itemize}
\end{footnotesize}
opportunity to cross-examine PW4 was attributed to both parties to the case and the court alike by the Court of Appeal. However, the trial was rendered a nullity because it violates the right of the accused provided under section 36(6) (d) of the Constitution.

It will also be an infringement of the constitutional right provided under section 36(6) (d) for a judge to deliberately stop a witness while giving evidence in chief so as to enter judgement without giving the accused the opportunity to cross-examine such a witness.

In *Onwuchuruba v Onwuchuruba*, the appellant sought a declaration at the High Court that under the customary law of Umoukwar, Akokwa, the defendant lost the succession to the headship of Onwuchuruba Obidinnu family as a result of Stephen Onwuchuruba, the late father of the defendant dying during the life time of his father Onwuchuruba Obidinnu.

The parties exchanged pleadings. In joining issues with the appellant, the respondent in his pleadings denied the appellant’s claim. At the close of the appellant’s case, the respondent opened his defence. During examination in chief, he openly admitted the reliefs sought by the appellant contrary to his pleadings. The trial judge stopped the proceeding and gave judgement in favour of the appellant, without allowing counsel for the appellant cross-examining the respondent.

The Court of Appeal held that it amounts to a denial of fair hearing for a trial judge on his own motion during proceeding, to stop a case after a defendant had testified in chief but, before being cross-examined by the plaintiff, who with his counsel present in court and never waived his right to cross-examination.

What is discernible from the decisions of Innocent and Onwuchuruba is that, the denial of the opportunity to examine, cross-examine or reexamine a witness by court or any of the party to a proceeding renders a trial nullity for noncompliance with section 36(6)(d) of the Constitution. However, it will not be a violation of the constitutional right where a party was given the opportunity, but failed to utilize it for reasons best known to him.

Apart from the right of the parties to call witnesses in order to establish their case, the Kano State Criminal Procedure Code empowers a court to summon or call witnesses for the just determination of a matter before it.

A court may at any stage of the trial or judicial proceeding summon or call any person as a witness if his evidence appears to the court to be essential to the just decision of the case or on the application of the Attorney -General. Where such application is made, the accused shall have similar right on applying to the court. The court may examine or allow the prosecutor or complainant or accused as the case may require, any witness called upon the application of the

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336 (1993) 5NWLR (Pt 292) 185 at p. 197.
If the person summoned or called as a witness was examined by the prosecutor or complainant, he must be cross-examined by the accused and then re-examined by the prosecutor. Where he is examined by the accused person, the prosecutor or the complainant must cross-examine the witness and then re-examined by the accused person. However, where the person summoned or called as a witness was examined by the court, he must be cross-examined by the prosecutor or complainant and by the accused person. Also, the powers of the court to summon or call a witness may be exercised irrespective of whether the person to be called and examined has already been examined as a witness in the proceedings.

However, under section 223 of the Evidence Act, the court or any other person empowered by law to take evidence may in order to discover proper proof of relevant facts, may ask any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, without the leave of the court, to cross-examine any witness upon answers given in reply to any such question. What can be observed from the provisions of section 237 of the Criminal Procedure Code and section 223 of the Evidence Act is that the two sections empowers a court to call a witness to testify if his evidence is relevant to the just determination of a matter before the court. The major difference between the two is that section 223 of the Evidence Act, permits the court to call a witness and it also cover documents which can be used to prove relevant facts. Section 237 of the Criminal Procedure Code on the other hand, empowers the court to call a witness and recall a witness that had already testified in a proceeding. The section also gives the accused opportunity to examine and cross-examine witness called or recalled by the court or upon the application of the Attorney-General, in line with section 36(6) (d) of the constitution. Under section 223 of the Evidence Act, a witness called by the court will only be cross-examined with the leave of the court. It is the view of this research that where the court refuse to give leave to cross-examine a witness on deserving circumstances, such denial will be viewed as a contravention of section 36(6) (d) of the constitution. And such decisions will be nullified by the Appeal Court.

Apart from the provisions of Criminal Procedure Code and the Evidence Act relating to call and recall of witnesses, judicial authorities have also indicated that an accused can apply for the recall of a witness under certain circumstances. In Ally v The State, the accused persons were arraigned on a murder charge. They pleaded not guilty. The prosecution called six witnesses. The defence changed counsel and after series of adjournments, applied to the court for a recall of some of the prosecution witnesses. The trial court refused the application. Aggrieved, the accused persons appealed to the Court of Appeal.

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338 ibid. Section 237(2).
339 ibid. section 237(3)(a-b).
340 ibid. section 237(4).
It was contended on behalf of the appellants whether the trial judge was right in refusing the application to recall prosecution witnesses for the purposes of further cross-examination and whether the provisions of section 200 of the Criminal Procedure Code, cannot be relied on by the parties to apply for the recall of witnesses.

In allowing the appeal, the Court of Appeal held that it is the court that recalls a witness under section 200 CPA, after it had determined that the evidence of the witness is essential to the just determination of the case. Where a court recalls a witness under the section, even at the instance of the party to the proceeding, it is the court that can examine and re-examine a witness so recalled.

The court went on to state that a party applying to recall a witness must show sufficient facts to the court relating to why he wants the witness recalled and what he intends to put to the witness. The power to grant an application by a party to the proceedings to recall a witness to be re-examined by that party cannot be exercised under section 200 of the CPA. There being no statute enabling the court in that regard, the court must fall back on its inherent power to ensure that justice is done in a given case. The court ought to have granted the appellant’s application for a recall of some witnesses under its inherent powers and that it was contravention of section 36(6) (d) on the part of the court to turn down the application.

The lesson to be taken home from the decision of Ally is that, there is no provision for the recall of witness who had already testified in the Nigerian Evidence Act and that only a court can recall a witness pursuant to section 200 of the Criminal Procedure Act. Where there is no provision dealing with an issue before a court, the court must fall back on its inherent powers in order to resolve such an issue. The Court of Appeal set aside the decision of the lower court because of its refusal to grant the appellants application under its inherent powers.

Similarly, it is also a breach of section 36(6) (d) for the prosecution to refuse to call some witness in order to deny the accused the opportunity to cross-examine such witnesses. In Eze v The State, the appellants were arraigned before Ikeja High Court on a lone count charge of murder.

The proof of evidence listed five witnesses, but the prosecution called only the woman police that investigated the case to give evidence. All the exhibits in relation to the case namely: petition by the deceased’s wife and her statement (exhibits A and D), statement of one Innocent Nwawe (exhibit E), the pestle mortar and iron rod allegedly used in the commission of the offence (exhibits F-F1) and a post-mortem report (exhibit G) were all tendered by the same woman police who was not the maker. At the conclusion of the trial, the appellants were convicted and sentenced to life imprisonment.

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342 (2016) ALL FWLR (Pt 823) P.1911 at1937.
Dissatisfied with the judgement, the appellants appealed to the Court of Appeal. It was argued on behalf of the appellants that exhibits A, D, E, F, F2 and G were wrongly admitted. Because the documents were tendered by another witness who is not the maker and thereby denying the appellants their constitutional right provided under section 36(6)(d) of the 1999 Constitution.

The Court of Appeal held that the maker of a document is expected to tender it in evidence. There are two exceptions to this principle of law; (a) the maker is dead (b) the maker can only be procured by involving the party in so much expense that could be outrageous in the circumstances of the case. The court went on to state the rationale behind the principle is that a maker of a document is in a position to answer question on it, the non-maker of it is not in such a position. Where a document tendered by the prosecution was not tendered by the makers and the appellant had not the opportunity to cross-examine them on the documents, the trial court acted in violation of section 36(6) (d) of 1999 Constitution by admitting and relying on those documents.

4.6 Right to an Interpreter

Section 36(6)(e) of the 1999 Constitution as amended in 2011, provide for the right of an accused person to have the services of an interpreter without payment in a criminal trial if the accused does not understand the language used in the trial of the offence. In Nigeria, trials in Magistrate Courts and all Superior Courts\(^{343}\) are conducted in English. Where an accused is standing trial and he does not understand English language, the materiality of section 36(6) (e) of the Constitution comes in to play.

With regards to the right to an interpreter, section 36(6) (e) of the 1999 Constitution as amended in 2011, provides:

> Every person who is charged with a criminal offence shall be entitled to-

> have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence

In the case of *Madu v The State*,\(^{344}\) the Supreme Court states the purpose of section 33(6) (e) of the 1979 Constitution (now section 36 (6) (e) of 1999 Constitution as amended) as follows:

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\(^{343}\) The Superior Courts are; the Supreme Court, Court of Appeal, Federal High Court, State High Courts, the National Industrial Court, Shari’ah Court of Appeal and Customary Courts of Appeal for the States.

\(^{344}\) (1997) LPELR-1808 (SC).
…the main purpose of the provision of section 33 (6) (e) of the 1979 Constitution is for an accused person to understand the proceedings of the court that is called upon to try the allegations of crime against him. The absence of an interpreter in a criminal trial where an accused person does not understand the proceedings of the court is a clear violation of his Constitutional right and denial of his right to fair hearing.

Furthermore, the Court of Appeal in *Udosen v The State*, interpreting section 36 (6) (e) of 1999 Constitution, states that this requires that there shall be adequate interpretation to the accused of anything said in a language which he does not understand and equally that there shall be adequate interpretation to the court of anything said by the accused in a language which the court does not understand.

Since the essence of right to interpreter is to enable the accused to understand the proceedings where he does not understand the language of the court, the question is when can an accused invoke the right to an interpreter? This question was considered in the case of *Locknan and another v The State*, where the Appellants appealed against the decision of Kwara High Court which sentenced them to death for beating the deceased with canes resulting in his death. The Appellants were represented by counsel at the trial court. Counsel for the Appellants contended at the Supreme Court that the record of the lower court shown that the Appellants to have spoken Hausa and an interpreter affirmed on the 16th of June 1971, before the charge was read to the accused to interpret English in to Hausa and vice versa. But it was not shown on the record to have been present on certain subsequent days of the trial.

The Supreme Court held that where an accused has not expressly asked for the assistance of an interpreter and he is represented by counsel at the trial, he cannot invoke the right conferred by section 21(5) (e) of the Constitution as a ground for setting aside a conviction unless he claimed the right at the proper time and was denied.

The implication of the above decision is that for an accused to invoke the right to interpreter as a ground of setting conviction of a lower court, he must have expressly asked for an interpreter at the lower court and the request was denied by the lower court. This request may be made by counsel if the accused is represented or by the accused if unrepresented.

In addition to section 36 (6) (e) of the Constitution, section 241 of the Criminal Procedure Code which regulates the conduct of criminal trials in Kano State requires that when any evidence is to be given in a language not understood by the accused, it shall be interpreted to the accused in the language understood by him. Where an interpreter is to be employed in a trial, he shall be bound by an oath or affirmation to state the true interpretation of the evidence. The record of

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346 (1972) LPELR-1788 (SC).
347 Section 242 (1) of the Criminal Procedure Code.
the court proceeding must also state the name of the interpreter, the languages in which he
interprets and the fact that he has sworn to an oath or solemn affirmation.  

In *State v Gwanto*, the Supreme Court held that sections 241 and 242 of the Criminal
Procedure Code are mandatory provisions. It went on to state that although the wording of
section 241 is similar to section 33(6) (e) of the Constitution (now section 36 (6) (e)), it is the
constitutional provision which guarantees the right of an accused to an interpreter. It further held
that the provision of section 242 (2) has to be strictly complied with and it is not enough as it
used to be the practice merely for the trial court to record “section 242 complied with”. The
whole details in that subsection must be recorded.

Generally, it is imperative whenever evidence is to be given in a language other than English in a
trial, to engage the services of an interpreter to translate from vernacular to English and vice
versa. This rule also covers document tendered in evidence that are not in rendered in English.
This rule was established by the Supreme Court in the case of *Damina v State*. The Appellant
in that case was arraigned before Niger State High Court on a charge of culpable homicide and
was convicted. He appealed to the Court of Appeal which affirmed the decision of the trial court.
Dissatisfied, he appealed to the Supreme Court. One of the issues raised at the appeal was that
the trial judge translated the Appellant’s confessional statement while rejecting that of the
investigating police officer.

The Court held that there have been breaches of serious provisions of fair hearing as well as
statutory and Constitutional provisions designed for the protection of the Appellant. The court
went on to state that the linguafranca of Nigeria and the official language of superior courts is
English. Therefore, when a witness testified in any proceedings in any Nigerian language, such
testimony must be translated by the court interpreter into English for the benefit of the court and
the parties. Where it is a document in a language other than English, tendered by the parties to
prove their case, it has to be translated into English. Where the party omits to translate the
document, the court has a duty to translate the document by the official Interpreter (not the
judge), who must be fluent and competent to do so. A court cannot reject a document properly
tendered on the grounds that it was not written in English.

What is discernible from the decision in Damina’s case is that testimony whether oral or
documentary may be given in any language other than English language which is the language of
the court. For the court to act on such evidence, it has to be translated into English. It is also the
duty of the court interpreter who is bound by sections 241 and 242 of the Criminal Procedure
Code to interpret such evidence. Compliance with these provisions of the Criminal procedure
Code is mandatory. Also, the duty of translating evidence whether oral or documentary in a
proceedings lies squarely on the official interpreter of the court and not any other personnel. One

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348 ibid section 242 (2).  
of the reasons why the Supreme Court allowed the appeal in that case was discarding of the Appellant’s confessional statement translated by the Police investigator and instead of assigning the Court’s interpreter to further translate the statement; the trial judge went ahead and translated the statement by himself.

The essence of conducting proceedings in a trial court with an interpreter was considered in *Umar v The State*, where the appellant was charged with culpable homicide by stabbing the deceased with scissors on the chest resulting in his death. He was convicted and sentenced to death by the High Court. Dissatisfied with the decision, he appealed to the Court of Appeal which affirmed the decision of the lower court. He further appealed to the Supreme Court. His counsel contended that the confessional statement of the accused at the trial court was not regularly and properly admitted at the trial court. Since the confessional statement was not translated in to English, the court’s language. However, the record shows that the registrar of the court affirmed to translate Hausa to English, but there was no such translation.

The Supreme Court held that section 242 (2) of the Criminal Procedure Court makes it mandatory for the record of any criminal proceedings at which an interpreter has been used to state the name of the interpreter, the languages which and in which he interprets and that he has been bound by oath to state the true interpretation of the evidence. Failure to comply with these conditions would render the whole trial a nullity. It went on to state that the record of the court must show that this procedure is followed. It is a good practice, for the trial court to specifically record that: “charge was read over and fully explained to the accused to the satisfaction of the court.”

Other pertinent questions to ask is when is the right to an interpreter under the Constitution becomes available to an accused person and when will such right becomes unnecessary in a criminal trial? These questions were considered in the following decided authorities. In *Ibrahim v State*, the accused Appellant and three others at large were charged for the offences of criminal conspiracy and armed robbery before the Kaduna High Court. The prosecution called two witnesses in order to establish its case. At the conclusion of the trial, the accused was convicted and sentenced to twenty one years imprisonment. Dissatisfied with the conviction and sentence, he appealed to the Court of Appeal which dismissed the appeal. He further appealed to the Supreme Court. Counsel for the Appellant contended that the Appellant understood both Hausa and English. Despite that fact throughout the duration of the trial, it was only once that the lower court recorded that the Appellant understood both English and Hausa. The Supreme Court held that the provision of section 33(6) (e) of 1979 constitution (now section 36(6) (e) of 1999 as amended), inures for the benefit of an accused person who does not understand the language of

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351 (2014) LPELR- 23190 (SC).
the proceeding. Where an accused understands the language of the proceedings no miscarriage of justice is occasioned by the failure to provide an interpreter.

The court further held that where a trial court is further satisfied that an accused speaks and understands English language (the language of the court), in which charge is read over and explained to the accused, the requirement for the charge to be interpreted and explained to the accused in any other language he claims to understand becomes unnecessary and cannot render an arraignment invalid.\textsuperscript{353}

Similarly, in \textit{Nwachukwu v State},\textsuperscript{354} the Appellant contended that his right to interpreter was violated as the charge was not read and explained to him in Igbo language which he understood. However, the record of the proceedings indicated that the Appellant understood the language of the court. For the information was read and explained to him in English language and there was no indication that he did not understand English language.

The Supreme Court held that where the accused person understands the language of the proceedings, no miscarriage of justice is occasioned by failure to provide an interpreter.

The implication of the decisions of Ibrahim and Nwachukwu is that once an accused understands the language of the court which is English that obviates the need for interpreter at the trial of such an accused person. And such accused person could not complain of miscarriage of justice arising from want of interpreter.

However, the question of necessity of an interpreter in a trial was considered in the case of \textit{Onyia v State},\textsuperscript{355} where the appellant was convicted of murder of one Ugwuochi Amadiegun by the High Court in Imo State and sentenced to death by hanging. His appeal to the Court of Appeal against the judgement was dismissed and he further appealed to the Supreme Court. He contended that the non-interpretation of evidence of Prosecution witnesses 1, 2, 3, and 4 rendered in Igbo language in to English language violated his right to interpreter.

The Supreme Court held that the Appellant’s right to fair hearing was not violated. The Court went on to state that an interpreter only becomes necessary where a person charged with a criminal offence does not understand the language used at the trial. The Court citing its decision in Nwachukwu further held that where an accused understands the language of the proceedings, no miscarriage of justice is occasioned by failure to provide an interpreter.

Another issue is at what point in time can an accused person invoke his constitutional right to interpreter? This was considered in \textit{Olatunji v State},\textsuperscript{356} where the appellant was charged with the murder of his wife at the High Court in Ogun State by shooting her with a gun during a quarrel.

\textsuperscript{353} ibid p. 34-35.
\textsuperscript{354} (2007) LPELR-8075(SC).
\textsuperscript{355} (2008) LPELR-2743(SC).
\textsuperscript{356} (2009) LPELR-8880 (CA).
from which the wife demanded money with which to feed their child. At the conclusion of the trial, the trial judge convicted the appellant and sentenced him to death. One of the contentions of the Appellant on appeal to the Court of Appeal was that part of the trial was conducted in a language not understood nor interpreted to the appellant.

The court held that the constitutional right to an interpreter could not be invoked on appeal by an appellant who had been represented by counsel at the trial as a ground of setting aside a conviction unless he claimed that right at the trial court and was denied of it. It is also for the Appellant or his counsel to bring to the notice of the court at the earliest opportunity or as soon as the situation has arisen. If does not claim the right at the proper time, he may not have a valid complaint afterwards on appeal.

The implication of the above decision is that the right to interpreter can only be claimed at the trial court not on appeal. An accused person can only complained of denial of such right on appeal when claimed the right by himself or through his counsel at the trial court and was denied. Where an accused failed to make such claim for an interpreter at the appropriate time, his complaint for infringement of that constitutional right cannot be entertained.

Finally, the right to interpreter though constitutional, may be dispensed by the accused person if he so wishes. In Bayo v Federal Republic of Nigeria, the Court of Appeal held that although it is constitutional requirement to have adequate and free interpretation to the accused of anything said in a language, which he does not understand, the right may be dispensed with where the accused so wishes and the trial judge is of the opinion that the accused does not require any interpretation of the proceedings. The court went on to stress that the right of the accused to an interpreter cannot however, be raised on appeal unless he claimed that right during his trial and was denied.

**Conclusion**

The legal safeguards to fair hearing in Kano State are enshrined in the Constitution for the protection of the right of accused persons whether indigents or otherwise. Also, some of the safeguards are tied to some statutory provisions of the Kano State Criminal Procedure Code and the Evidence Act in their operations. For instance; the right to interpreter and right to inform the accused about the nature of the offence are tied to provisions of the Criminal Procedure Code while the right to presumption of innocence and the right of the accused to examine witness called by prosecution are tied to the provisions of the Evidence Act. More so, the Constitutional safeguards and the statutory provisions they are tied to are mandatory provisions. A trial court must comply with these provisions or the proceedings be rendered a nullity for non-compliance with those provisions.

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An accused person is automatically entitled to the benefits of some of the legal safeguards during trial while others such as the right to interpreter, the right to facilities with which to defend the charge and the right to inform the accused of the nature of the offence in the language he understands, are only enjoyed by an accused upon making a request to the court for the enjoyment of those rights.

However, in terms of paramountcy, the right to legal representation precedes the remaining rights. This is because the other rights can only be enjoyed to the maximum, if an accused has legal representation. Also, due its supremacy, the right to legal representation is acclaimed in international and regional instruments such as the International Covenant on Civil and Political Rights and the African Charter. It is also the foundation upon which Legal Aid Scheme is established in Nigeria in order represent the indigents.
CHAPTER FIVE

5.0 Conclusion

This chapter is set forth to bring out the summary of findings, conclusion and recommendations of the study.

The Constitution of the Federal Republic of Nigeria 1999 as amended in 2011, provide for the right to fair hearing, incorporating in it, the principles of impartiality and fairness contained in the two pillars of natural justice namely; \textit{nemo judex in causa sua and audi alteram partem}. Being a constitutional stipulation, fair hearing must be observed by adjudicators in all its ramifications in all proceedings. Non observance of tenets of fair hearing by an adjudicator renders the whole proceeding a nullity.

The right to legal representation is also constitutionally enshrined as one of the safeguards to fair hearing. It is an important component of fair hearing and has been held to be at the root of fair hearing and its necessary foundation. Indigents who are unrepresented are exposed and their right to fair hearing is likely to be compromised, rendered nugatory or even meaningless.

Looking at it from the professional perspective, lack of legal representation is antithetical to professionalism. This is because court room environment and its procedures are sustained by high level of professionalism, and a legally untrained indigent would hardly be comfortable to assert his rights let alone defend an allegation of crime without the support of a legally trained person. Hence, legal representation to the indigents becomes imperative.

However, despite its importance, legal representation to the Indigents in Kano State is limited only to offences set out in the Legal Aid Act Cap L9, Laws of the Federation of Nigeria 2011. Also, even the limited representation rendered is beset with inadequate funding. The limiting of legal representation to offences set out in the second schedule of the Legal Aid Act has the effect of limiting the rights of Indigents to legal representation and also their right to fair hearing in offences not contained in the Legal Aid Act.

Hence, the study concludes that the right to fair hearing and legal representation to the Indigents in Kano State is not all encompassing, since legal representation given to the Indigents does not cover all offences. However, even in offences covered by the Legal Aid Act, the right of the indigents to legal representation in Kano State is affected by lack of adequate funding from both the Federal and State governments with which to render legal aid to the indigents.
5.1 Summary
The study was able to identify the legal rule that regulate the rendering of legal aid in Kano State. The Legal Aid Act 2011 is the extant law regulating the rendering of legal aid to the indigents in Kano State. The Act is a federal legislation meant to operate in every state of the federation of Nigeria.
The study also realized its second objective of examining the notion of fair hearing in Kano State. The notion of fair hearing in the area of the study is constitutionally enshrined and every court or tribunal must uphold it in its determination of the civil rights and obligation in any proceedings irrespective of whether it is civil or criminal.
The also realized its third objectives of determining the legal safeguards to fair hearing in Kano State. These safeguards are also a constitutional stipulation.

5.1.2 Summary of findings
The study found out that there exists in Kano State an enactment which regulates the rendering of legal aid to the indigents. The Legal Aid Act is a Federal legislation operating in all the States of the Federation of Nigeria. And that the State cannot run a legal aid outfit since legal aid is among matters under exclusive legislative list as such, only the federal government legislates on such matters.

The study also found out that legal representation in criminal matters, is only limited to the offences under the Penal Code Law as specified under the second schedule of the Legal Aid Act namely; culpable homicide punishable with death, culpable homicide not punishable with death, inflicting grievous hurt, criminal force occasioning harm, armed robbery, rape and theft.

Apart from indigent persons whose income does not exceed the national minimum wage, the study found that legal aid is also rendered to persons whose earning exceeds the national minimum wage and it is also given on contributory basis to persons whose income exceeds ten times the national minimum wage.

The study found out that there is lack of adequate funding with which to render legal aid to the indigents in Kano State. Despite the fact that funds were appropriated annually by the National Assembly and by the State government for such purposes, it was found out that only five months allocation was received by the Kano State Legal Aid Office from the Federal grant in 2017. As
for the state grant, a penny was not received by the Legal Aid Office from Kano State government throughout the year 2017.

It was also found out that monies accruing to the Legal Aid Council through gifts and those realized through the rendering of legal aid to persons on contributory basis are not included among the sources of funds with which to render legal aid to the indigents.

The study also found out that notion of fair hearing in Kano State is a constitutional stipulation. It also incorporates the principles of fairness and impartiality embodied in the two maxims namely; *nemo judex in causa sua and audi alteram partem* as indicated in the decisions of *Udo v Cross River State News Paper Corporation and Unibiz v Credit Lyonnais*.

It is also found out that, the standard of fair hearing in both judicial and administrative proceedings are the same. However, the procedure employed in the two in attaining fair hearing differs.

The study also found out that the right to fair hearing cannot be waived or compromised by a party. Breach of any fair hearing consideration by a court renders a proceeding void.

It is also found out that the Constitution of the Federal Republic of Nigeria 1999 as amended in 2011, provide for the right to fair hearing under section 36(1). And that the observance of the right to fair hearing is not limited to cases of accused indigents who are standing trial. Rather, the observance fair hearing is imperative upon any court or tribunal established by law, in its determination of civil rights and obligation of any person that is before such court or tribunal.

The study found that akin to the principle of fair hearing, the legal safe guards to fair hearing in Kano State are also constitutionally enshrined.

It is also found out that the legal safe guards in their operation are tied to some statutory provisions which are mandatory. For instance, the right to presumption of innocence is tied to sections 135(1) and 138(1) of the Evidence Act, the right to inform the accused of the nature of the offence with which he is charged, is tied to section 187(1) of the Criminal Procedure Code and the right to interpreter on the other hand, is tied to sections 241 and 242 of the Criminal Procedure Code of Kano State.

The study also found out that some of the legal safe guards operate automatically in favour of an accused person once he is standing trial over an alleged offence. While others such as the right to interpreter and the right to facilities with which to defend the charge against an accused, must be invoked by the accused for them to operate in his favour.

It is also found that, in order to safeguard the right to fair hearing of an accused in a criminal trial, the Constitution of the Federal Republic of Nigeria 1999 as amended in 2011, provides for the right to legal representation to every person charged with a criminal offence under section 36(6)(c) of the Constitution.
The study also found out that in order to foster the right to legal representation of persons charged with a criminal offence, the Legal Aid Act Cap L9, Laws of the Federation of Nigeria 2011, was established to regulate the rendering of legal aid to indigent persons.

However, the study found out that the right to legal representation given to the indigents under the Legal Aid Act is not all encompassing. The right is limited to some offences under the Penal Code Law by the provision of section 8(2) of the Legal Aid Act 2011.

Finally, the study found that noncompliance with the constitutional safe guards and the mandatory provisions with which they are tied to in a trial, renders the whole trial a nullity.

Based on the foregoing finding, the study will base its conclusion on the provisions of section 36(1) and 36(6) (c) of the Constitution of the Federal Republic of Nigeria 1999 as amended in 2011 and the provisions of sections 8(2) and 9 of the Legal Aid Act Cap L9, Laws of the Federation of Nigeria 2011.
5.2 Recommendations

Based on the foregoing summary of findings and conclusion, the study proffer the following recommendations:

5.2.1 Amendment of the Constitution of the Federal Republic of Nigeria 1999

The study recommend the amendment of the Constitution of the Federal Republic of Nigeria 1999 by transferring matters relating to legal aid from the exclusive legislative list to the concurrent legislative list. This will allow for Kano State to enact a law in order to establish State Legal Aid Board that will operate side by side with the existing Federal Legal Aid system rendering legal assistance to the Indigents.

5.2.2 Amendment of the Legal Aid Act Cap L9 Laws of the Federation of Nigeria

The study also recommends the amendment of section 8(2) of the Legal Aid Act Cap L9 Laws of the Federation of Nigeria 2011, which limits the rendering of legal aid to only seven offences under the Penal Code as set out in the second schedule to the Act. The number of offences under the second schedule should be increased or in the alternative, the subsection be deleted so that legal aid can be given in all offences.

5.2.3 Mandatory pro bono service

The study further recommends the inclusion in to the Legal Aid Act, a provision making it mandatory for all Lawyers to render pro bono to the indigents. The provision should also provide for an option of commuting such pro bono service with payment of some stipulated amount of money in to the legal Aid Council’s coffers. Strong enforcement mechanism and sanction against defaulters should also be provided.

5.2.4 Establishment of Monitoring and Evaluation Unit

The study further recommends the inclusion in to the Act, a section which will establish a unit saddle with the responsibility of monitoring and evaluating the rendering of pro bono legal aid
service to the indigents. This will assist in fishing out lawyers who have defaulted in discharging the mandatory *pro bono* services.

### 5.2.5 Mandatory posting of Youth Corps Lawyers to Legal Aid Council

The study also recommends that all lawyers that have been drafted to take part in the compulsory National Youth Service Corps Scheme, be posted to Legal Aid Council for their primary assignment. This will have the effect of increasing the number of lawyers rendering legal aid services and at the same time, the young lawyers will have the opportunity of improving their professional skills and prepare themselves for the challenges ahead in their professional career, after the conclusion of the exercise.

### 5.2.6 Expansion of sources of funding Legal aid

The sources of funding legal aid should be expanded to include gift of money or land granted to the Council, and monies accruing to the Council through rendering of contributory legal aid to persons whose income exceeds the national minimum wage.

### 5.3.7 Increasing the amount of monthly allocation

The study also recommend that the monthly allocation given to Kano State Legal Aid Office from the Legal Aid Council Headquarter, be increased from twenty thousand naira to an appreciable sum that can cater for the monthly needs of the office and should be promptly paid. The State government should also show its commitment to the cause of the indigents through prompt settlement of its financial obligation to the State Legal Aid Council Office.
BIBLIOGRAPHY


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*The Pro-bono Project of ULS*, [https://www.u/s.org.ug/projects/pro-bonoproject](https://www.u/s.org.ug/projects/pro-bonoproject), accessed on 07/10/2017

*The UN Global Multi-dimensional Poverty Index 2015*, available at [http://www.citypopulation.de.nigeria](http://www.citypopulation.de.nigeria), accessed on 18/10/2017

