

SUPREME COURT OF NIGERIA
4TH JUNE, 2010, SC. 206/2004
CORAM:- N. TOBI, I. F. OGBUAGU, F. F. TABAI,
C. M. CHUKWUMA-ENEH, J. A. FABIYI, JJSC

THE FEDERAL REPUBLIC
OF NIGERIA

..... APPELLANT

AND

JOE BROWN AKUBUEZE

..... RESPONDENT

COURTS - Contempt charges - Invocation - Rationale - It is the need to vindicate the dignity of the court as an institution - Not to bolster the power or ego of the judge as an individual (H1)

PRACTICE & PROCEDURE - Fair hearing - Ingredients - It must include giving to a party or his counsel - Opportunity to present his case - In an atmosphere free from fear and intimidation (H2)

ORDERS OF COURTS - Appeals - Retrial order - Propriety - Where a mistrial happens - Not being such as to render a trial a nullity - And warrant the discharge of respondent - Retrial order is proper (H3)

FACTS

The respondent was arraigned on 14th January, before the miscellaneous offences Tribunal for drug related offences. The charge against the respondent was for conspiracy to import heroin, importation of heroin and possession of heroin contrary to section 10 of the National Drug Law Enforcement Agency (Amendment) Decree No. 15 of 1992. During trial, the prosecution called nine (9) witnesses, but respondent neither testified nor called any witness. Though respondent was initially represented by counsel, his representation did not go beyond the testimony of the first prosecution witness (P.W.1).

The reason was that in the course of his cross-examination of P.W.1, counsel to respondent was somewhat harassed out of the proceedings by the tribunal when it slammed a contempt charge on the counsel without apparent cause, thereby forcing counsel to withdraw his appearance out of fear. Though respondent thereafter prayed

for an adjournment for two weeks to enable him either reconcile with his counsel or get another counsel, the tribunal adjourned for only one week, and ordered respondent to be remanded without access to visitors for the period. Yet when respondent was unable to secure representation by another counsel upon resumption of hearing, the tribunal interpreted that to mean that he no longer wished to be represented by counsel. It went on with hearing. Eventually, respondent was convicted and sentenced accordingly. Aggrieved, he Appealed to Court of Appeal contending that he was not giving a fair hearing during the trial. The Court allowed his appeal and remitted the case to the Federal High Court for trial de novo. Dissatisfied, appellant has brought this appeal against the judgment of Court of Appeal.

ISSUE FOR DETERMINATION

“Having regards to the time limit available to the Miscellaneous Offences Tribunal to conclude its proceedings, whether the learned Justices of the Court of Appeal were right to set aside the decision of the honourable Tribunal and remit the case to the Federal High Court for retrial based on the fact that the respondent’s right to fair hearing as enshrined in Section 36 (b) (c) (sic) 33 (c) of the 1999 (sic) 1979 Constitution was infringed upon by the trial Tribunal.”

HELD (Unanimously dismissing the appeal per **FABIYI JSC**)

Contempt charges - Invocation - Rationale

1. I do not for one moment see what Mr. Etudo did to warrant the invocation of contempt charge.

Perhaps I need to remind the learned trial Judge that invocation of the power to punish for contempt as done by her in this case, in the prevailing circumstance, is an unwarranted exhibition of raw and naked judicial power. I repeat that such is highly deprecated. It should have been avoided in the first instance. After all, the rationale for contempt is the need to vindicate the dignity of the court as an institution and, thereby, protect it from denigration and ensure due administration of justice. It is not to bolster the power, dignity and ego of the Judge as an individual.

(p. 2006 C/F)

Fair hearing - Ingredients

2. Fair hearing must include giving to a party or a legal practitioner of his choice the opportunity to present his case before an impartial court or other Tribunal in an atmosphere free from fear and intimidation. It cannot be over-emphasised that in our adversary system of administration of justice, the freedom of counsel to put across his client's case without fear or favour is a most important ingredient. That element was very much lacking in this case. (p. 2001 B)

Appeals - Retrial order - Propriety

3. The right to fair hearing is at the root of a just and fair administration of criminal justice. An absence of it always amounts to grave injustice in a matter in which the liberty of the citizen is very much in issue for which reason the Constitution has given it due importance in Section 33 (4) of the applicable 1979 Constitution.

What has happened in the instant case is not such an irregularity as to render the trial of the respondent a nullity. It can best be described as a mis-trial. Such emanated from a bad trial. In such a case, the court has power either to order a retrial or to quash the conviction and allow the respondent to be discharged. But, I note it that this case is only vitiated by unfairness. It is not void; nor was it a nullity. So, this is not a case where the respondent should be discharged. (p. 2001 D)

NOTABLE POINT OF INTEREST***OGBUAGU JSC***

Judgments should not be given in anger

In the case of H.R.H. Chief Isamade v. Chief Okei & 4 ors. (1998) 2 NWLR (Pt. 538) 455 @ 468 C.A., Edozie, JCA (as he then was) stated inter alia, as follows:

"No Judge has the right to give a Ruling or judgment in annoyance or anger. That state of mind will certainly be prejudicial to one of the parties, thus hurting the fair hearing principle duly entrenched in the Constitution. A Judge must keep his mind totally free in the judicial process, and this means that he must disabuse his mind of all possible prejudices and antagonism".

I agree. (2006 E)

REPRESENTATION

C. F. Agbu, Esqr., for the Appellant with him, A. S. Oyinloye, Esqr., T. Laiyemo (Miss) and P. C. Achunime, Esqr.

B. C. Igwilo, Esqr., for the Respondent with him, O. Nwanosike, Esqr.

CASES REFERRED TO

Onogoruwa v. The State (1992) 2 NWLR (Pt. 221) 33

Damina v. The State (1995) 8 NWLR (Pt. 415) 513 at 539

Okoduwa & Ors. v. The State (1988) 19 NSCC (Pt. 1) 718

C Major Bello Magaji v. The Nigerian Army (2008) 2-3 SC 32

C Onuoha & ors. v. The State (1989) 2 NWLR (Pt. 101) 23 @ 38

Donatus Ndu v. The State (1990) 7 NWLR (Pt. 164) 550 @ 578

Abodundu v. The Queen (1959) SCNLR 162; 4 FSC 70 at 71-72

Mohammed v. Kano N. A. (1968) 1 All NLR 424 @ 426, 428-429

D Kim v. The State (1992) 4 NWLR (Pt. 233) 17 @ 37; (1992) 4 SCNJ 81

Mallam Adamu v. Mallam Sadi (1997) 5 NWLR (Pt. 504) 205 @ 217 C.A

Grace Akinfe v. The State (1988) 3 NWLR (Pt.85) 729 @ 741; (1988)

E 7 SCNJ. 226

H.R.H. Chief Isamade v. Chief Okei & 4 ors. (1998) 2 NWLR (Pt. 538) 455 @ 468

STATUTES REFERRED TO

F Constitution of the Federal Republic of Nigeria, 1979, s. 33(4)
National Drug Law Enforcement Agency (Amendment) Decree, No. 15 of 1992, s. 10

LEAD JUDGMENT BY FABIYI JSC

G This an appeal against the judgment of the Court of Appeal, Port Harcourt Division (the court below) delivered on the 4th of March, 2003, setting aside the conviction and sentence of the respondent by the Miscellaneous Offences Tribunal (the Tribunal) for drug related
H offences and ordering a retrial. The court below set aside the said conviction and sentence on the ground that the respondent was precluded from having a fair hearing before the Tribunal.

It is apt to depict briefly the facts of the matter leading to this appeal. The respondent herein was arraigned on 14th January, 1994,

before the Tribunal presided over by Oni-Okpaku, J. on a six-count charge of conspiracy to import heroin, importation of heroin and possession of heroin under section 10 (c) (b), 10 (a) and 10 (h) respectively of the National Drug Law Enforcement Agency Amendment Decree No. 15 of 1992.

The prosecution called Nine (9) witnesses while the Accused B did not testify and called no witness. The case for the prosecution, put briefly, was that on an information received by them sometime in December, 1993, two (2) containers suspected to be containing hard drugs were identified and seized while the ship Esmeralda from C Bangkok was being off loaded at the Apapa Wharf. Investigation revealed that the owner of the container was the respondent. He was arrested at the Murtala Mohammed International Airport on his return from Bangkok on the 22nd of December, 1993, and taken to Apapa Wharf where the two (2) containers were shown to him. He D admitted being the consignee of both containers.

In his presence the two (2) containers were opened searched. Water coolers, among other items, were found in them. Some whitish substances suspected to be hard drugs were found concealed on the top of the water coolers. During investigation two (2) bills of E lading were found in the Respondents luggage, which pointed to the direction that another consignment was coming from Bangkok. The respondent was taken to Apapa Wharf and in his presence, the additional two (2) containers were opened and searched. Again, sub- F stances suspected to be hard drugs were also found concealed in the water coolers. All the substances seized from him were field-tested, weighed and carefully packed. A portion of same, sent to the Forensic Laboratory for analysis later confirmed the substances to be heroin.

The respondent, as stated earlier on, did not testify and called G no witness. His counsel, Mr. Etudo was harassed out of the proceedings by the Tribunal on 25-1-94. The Tribunal gave the respondent seven (7) days to procure another counsel. The respondent who was ordered to be remanded in prison custody with stringent conditions had no opportunity to arrange for another counsel of his choice. The H trial proceeded and at the end the respondent was found guilty and sentenced to a total of 115 years or life imprisonment with hard labour and sentences to run concurrently.

The respondent felt unhappy with the stance of the Tribunal

and appealed to the court below which on being properly addressed, in its considered judgment handed out on 4th March, 2003, found as follows:-

B *“Looking at the proceedings from the date of the arraignment of the appellant to the date of his conviction and sentence it cannot be said that he had a fair trial in the circumstance. There is merit in this appeal and it is hereby allowed. The decision of the Tribunal is hereby set aside and the case is remitted to the Federal High Court, Lagos, for retrial.”*

C The appellant herein, felt dissatisfied and appealed to this court. Briefs of Argument were filed on behalf of the parties. On the 11th March, 2010, when the appeal was heard, learned counsel on each side of the divide adopted and relied on the brief of argument filed on behalf of his client. The lone issue formulated on page 9 of D the appellant’s brief reads as follows:-

E *“Having regards to the time limit available to the Miscellaneous Offences Tribunal to conclude its proceedings, whether the learned Justices of the Court of Appeal were right to set aside the decision of the honourable Tribunal and remit the case to the Federal High Court for retrial based on the fact that the respondent’s right to fair hearing as enshrined in Section 36 (b) (c) (sic) 33 (c) of the 1999 (sic) 1979 Constitution was infringed upon by the trial Tribunal.”*

F On page eight (8) of the respondent’s brief of argument, the issue for determination is couched as follows:-

“Whether the Court of Appeal was right in setting aside the judgment of the Miscellaneous Offences Tribunal and ordering a retrial on the ground that the respondent did not have a fair trial.”

G Let me first of all state it here and now that the right to fair hearing is a fundamental constitutional right of every citizen. In respect of this case it is guaranteed by Section 33 of the 1979 Constitution which is applicable to this case. Its breach in any trial nullifies same. See: Kim v. The State (1992) 4 NWLR (Pt. 233) 17, Onogoruwa v. The State (1992) 2 NWLR (Pt. 221) 33.

H To determine whether the principle of fair hearing has been breached or denied a party, an appellate court should consider the nature and circumstances surrounding the whole case as manifest in the record of appeal. See: Major Bello Magaji v. The Nigerian Army (2008) 2-3 SC 32, Pam v. INEC (2008) 5-6 SC (Pt. 1) 83.

To determine whether the appellant was given a fair hearing, it is apt to capture what transpired in court on 25-1-94, when Mr. Etudo learned counsel for the respondent was cross-examining P.W.1. At pages 27-28 of the record of appeal, the following appears:-

“Etudo asks - Is NDLEA liason officer responsible for receiving Exhibits or samples of seized hard drugs for other offices and stations for the purpose of scientific analysis the same as the forensic science laboratory. Witness States: National Drug Law Enforcement Agency Liason Officer in the Forensic Science Laboratory are to receive Exhibits from all their formations in this country on behalf of Forensic Science Laboratory, Oshodi although they are not paid by the laboratory or Ministry of Health as they are not our employee directly. Etudo States: We are asking for court’s protection because the witness is trying to abuse the process of court by not answering the question and making it difficult for the cross-examination to continue.”

Tribunal: The record here shows the deliberate attempt of defence counsel to delay these proceedings and to frustrate this trial. This is most unbecoming and unethical behaviour from a legal practitioner who is an officer of court. For this contempt shown to this proceedings counsel is to be remanded forthwith till tomorrow when he will show cause why he should not be punished for the said contempt.”

It was the passionate plea of the Director of Public Prosecution and other lawyers present in the court as well as the apology tendered by Mr. Etudo that made the trial Judge temper justice with mercy. The trial Judge then pronounced as follows:-

Tribunal: “In view of the apologies and the plea from the D.P.P and all other counsel present, on behalf of the misbehaving Defence Counsel Etudo, for the Tribunal’s leniency he is hereby severely (sic) warned never to repeat this bad behaviour in court and his undertaking would be held against him if there is ever any repetition. He is discharged from the contempt charge.”

At that stage, Mr. Etudo, at page 28 of the record of appeal then stated as follows:-

“We are seeking for the leave of the Tribunal to withdraw our appearance because we are no longer organised. We are tensed up.”

The Tribunal acceded to the request of Mr. Etudo to withdraw from the case. The respondent then applied for an adjournment to enable

him procure the service of another counsel. He was granted seven (7) days adjournment and to be further remanded in prison custody. He could not secure the services of any counsel and the hearing proceeded with the respondent pleading to be allowed to have a counsel to represent him; all to no avail.

B From the above scenario, it is clear to me that it was the Tribunal that deliberately harassed and hounded out Mr. Etudo, learned counsel for the respondent. It would be unreasonable for Mr. Etudo to continue in the unfortunate situation in which he found himself. After all, his reputation and career were on the line.

C The respondent having secured the services of Mr. Etudo as counsel, placed his confidence in this officer of the court. Nothing should inhibit him from carrying out his duty to protect the client's interest. ***I do not for one moment see what Mr. Etudo did to warrant the invocation of contempt charge.*** Interference with his independent examination of a witness and his asking for court's protection is diametrically averse to civilized notion of fair trial. A fortiori if the counsel, as herein, is threatened with punishment in form of conviction for doing his lawful duty. What the trial Judge did in this case, to say the least, is unconscionable of her function of holding an even keel or balance. See: Okoduwa & Ors. v. The State (1988) 19 NSCC (Pt. 1) 718. The bludgeoning of counsel by the Tribunal had its desired effect. The conduct of the Tribunal was not only unfair; it was exceedingly high handed and therefore deprecated.

F ***Perhaps I need to remind the learned trial Judge that invocation of the power to punish for contempt as done by her in this case, in the prevailing circumstance, is an unwarranted exhibition of raw and naked judicial power. I repeat that such is highly deprecated. It should have been avoided in the first instance. After all, the rationale for contempt is the need to vindicate the dignity of the court as an institution and, thereby, protect it from denigration and ensure due administration of justice. It is not to bolster the power, dignity and ego of the Judge as an individual.*** See: Shipworth's case (1873) LR 9 DB 230 p. 232. Worse, by such an unwarranted exhibition of naked judicial power which put counsel and his client in fear of the Tribunal, an important trammel of fair hearing had been eroded.

It is not part of the duty of a Judge to operate in terrorem. Let

me quietly say it that a Judge should be serene, temperate and cautious to well-behaved counsel and witnesses who come before him.

Fair hearing incorporates a trial done in accordance with the rules of natural justice which in the broad sense, is that which is done in circumstances which are fair, just, equitable and impartial. This aspect of natural justice should not only be done but should manifestly and undoubtedly be seen to be done. ***Fair hearing must include giving to a party or a legal practitioner of his choice the opportunity to present his case before an impartial court or other Tribunal in an atmosphere free from fear and intimidation. It cannot be over-emphasised that in our adversary system of administration of justice, the freedom of counsel to put across his client's case without fear or favour is a most important ingredient. That element was very much lacking in this case.***

It cannot be said that the respondent had a fair trial. ***The right to fair hearing is at the root of a just and fair administration of criminal justice. An absence of it always amounts to grave injustice in a matter in which the liberty of the citizen is very much in issue for which reason the Constitution has given it due importance in Section 33 (4) of the applicable 1979 Constitution.***

What has happened in the instant case is not such an irregularity as to render the trial of the respondent a nullity. It can best be described as a mis-trial. Such emanated from a bad trial. In such a case, the court has power either to order a retrial or to quash the conviction and allow the respondent to be discharged. But, I note it that this case is only vitiated by unfairness. It is not void; nor was it a nullity as it was the case in Onu Okafor v. The State (1976) 5 SC 13. ***So, this is not a case where the respondent should be discharged.***

In considering an order of retrial, the principles governing same have been established by the Federal Supreme Court in the case of Abodundu v. The Queen (1959) SCNLR 162; 4 FSC 70 at 71-72. The governing principles are as follows:-

1. That there has been an error in law including the observance of the law of evidence or an irregularity in procedure of such character that on the one hand, the trial was not rendered a nullity

and on the other hand, the court is unable to, say that there has been no miscarriage of justice.

2. That leaving aside the error or irregularity, the evidence taken as a whole discloses a substantial case against the appellant.

3. That there are no special circumstances as would render it
B oppressive to put the appellant on trial the second time.

4. That the offence or offences of which the appellant was convicted or the consequences to the appellant or any other person of the conviction or acquittal of the appellant are not merely trivial.

5. That to refuse an order of retrial would occasion a greater
C miscarriage of justice than to grant it.

All the above factors which must co-exist before an order of retrial can be made have been re-stated in *Abu Ankwa v. The State* (1969) 1 All NLR 133; *Yahaya v. The State* (2002) 3 NWLR (Pt.754),
D 289; *Damina v. The State* (1995) 8 NWLR (Pt. 415) 513 at 539 - 540; *Okafor v. The State* Supra.

It is clear to me that with the above factors in view an order for a retrial is clearly warranted in the prevailing circumstance. The court below was on a firm ground when it set aside the decision of the
E tribunal and remitted the case to the Federal High Court, Lagos for retrial. I hereby affirm same.

In conclusion, the appeal is devoid of merit and it is hereby dismissed. The order of retrial made by the court below is hereby
F affirmed.

TOBI JSC

I have read in draft the lead judgment of my learned brother,
G Fabiyi, JSC and I agree that the appeal should be dismissed for lack of merit. I so dismiss the appeal and affirm the order of retrial made by the court below.

H OGBUAGU JSC

I have had the privilege of reading before now, the Lead Judgment of my learned brother, Fabiyi, JSC, just delivered. I agree with his reasoning and conclusion. However, by way of emphasis, I will make my own brief Contribution.

In spite of the facts of the main and crucial case leading to the instant appeal, the contention in the appeal of the Respondent to the Court of Appeal, Port-Harcourt Division (hereinafter called “the court below”), was that he did not receive a fair hearing at the Tribunal. I note that at pages 222 - 223 of the Records, the court below - per Akpiroroh, JCA stated inter alia, as follows: B

“I think this is a proper case where the appellant could have been given adequate opportunity to arrange for a counsel to defend him having regard to severity (sic) of the punishment of the offences with which he was charged. This is more so when the appellant was remanded in custody and had no access to visitors in the face of the restrictive orders made by the tribunal. As I said above, the ruling of the tribunal that in the present circumstances it is therefore deemed that failure of the accused to produce another counsel is a desire to be unrepresented by counsel completely denied him a right of fair hearing. Looking at the proceedings from the date of the arraignment of the appellant to the date of his conviction and sentence, it cannot be said that he had a fair trial”. C D

[the underling mine] E

I agree. The above is borne out from the Records. As noted by the court below at page 220 of the Records after reproducing what transpired or “drama” (to use the words of some journalists in some of the newspaper reports about some proceedings in a court) on 29th January, 1994, it stated as follows: F

“The mere fact that Mr. Etudo asked for Court's protection in the course of his cross-examination of P. W. 1 is not sufficient to remand him and to show cause why he should not be punished for contempt of Court. On the face of the relevant records of the proceedings which I reproduced above, I fail to see any unbecoming and unethical behaviour on the part of counsel, let alone any conduct that would by any standard be said to be contempt of the tribunal”. G

[the underlining mine] H

I also agree. It continued up to page 221 inter alia, as follows:

“..... After counsel had escaped contempt of court, he applied to withdraw his appearance for the appellant which was

granted. At page 29 of the records, the appellant pleaded with the tribunal to give him 14 days to reconcile with Mr. Etudo to continue with his defence or contact his relations at Onitsha to arrange for another counsel, but the tribunal granted him one week. When the tribunal resumed sitting on 31/1/94 the appellant said at page 31 line B (sic) 15-18 of the records:

“Up till now I have not yet got a lawyer. I am asking that the prison authority be made to allow me receive visitors. I have been moved to another cell but I have not yet got any visitor”.

C Instead of granting an adjournment to enable the appellant secure the services of another counsel to defend him, the tribunal ruled at page 32 lines 19 -24 of the records as follows:

“failure to get the services of a new lawyer is therefore distinct and separate from inability to receive visitors. The failure to receive a D new lawyer in the instance (sic) should not in my view be allowed hold back these proceedings”.

At page 32 lines 31-33 the tribunal finally ruled as follows:

“In the present circumstances it is therefore deemed the failure of the accused to produce another counsel is a desire to be unrepresented by counsel, consequently this trial will now continue”. E

The court below, then posed the question, thus;

“..... Could it be said that the appellant was given fair trial in this case?”

F It then stated inter alia, as follows:

“It is my humble view that having regard to the ruling of the tribunal to the effect that the failure by the appellant to produce another counsel is a desire to be unrepresented by counsel and consequently the trial will now continue. By the said ruling, the tribunal had denied him the right of fair hearing as enshrined in Section 33 (6) (c) of the 1979 Constitution. The records show clearly that right from the very moment Mr. Etudo withdrew his appearance to the time sentences were passed on the appellant, he kept on insisting his desire to be represented by counsel. The desire of the tribunal to G dispose (sic) of the case expeditiously as possible is understandable, this of course should not be done at the expense of not giving the appellant adequate opportunity of defending himself. See DIXON GOKPA v. INSPECTOR GENERAL, OF POLICE (1961) ALL N.L.R. 423 at 425..... ”.

[the underlining mine]

I am unable to fault the above as again, the Records speak eloquently in support of it. The right to fair hearing, is a fundamental constitutional right of every citizen of this country and it is firmly guaranteed by Section 33 of the 1979 Constitution [now Section 36 (1) (6) of the 1999 Constitution). See the case of Mohammed v. Kano B N. A. (1968) 1 All NLR 424 @ 426, 428-429 - per Ademola, CJN. In the case of Kim v. The State (1992) 4 NWLR (Pt. 233) 17 @ 37; (1992) 4 SCNJ. 81, this Court stated inter alia, as follows:

“Fair hearing under Section 33 of the 1979 Constitution is C an entrenched fundamental right and it encompasses not only compliance with the rules of natural justice and alteram partem and nemo judex in sua causa but entails compliance with all the provisions of Section 33 of the Constitution. It also entails doings in the course of trial, whether civil or criminal trial all the things which will make an D impartial observer leave the court room to believe that the trial has been balanced and fair on both sides to the trial”.

As to the effect of its breach, it continued inter alia, as follows:

“It is the law that once it is duly established that the right of E fair hearing as entrenched under Section 33 of the Constitution has been breached in a judicial proceeding, its breach vitiates the entire proceedings. Therefore when the appellate court finds that the right of fair hearing is breached, it shall have no alternative but to allow F the appeal. See Udo v. State (1988) 3 NWLR (Pt. 82) 316; Gokpa v. I.G.P (1961) 1 All NLR 423; Josiah v. State (1985) 1 NWLR (Pt. 1) 125”.

[the underlining mine]

See also the case of Attorney-General of Rivers State v. Ude G & ors. (2006) 17 NWLR (Pt. 1008) 436 @ 456; (2006) 7 SCNJ. 613.

I rest this appeal on the above. In effect, it is now firmly settled that the rule of audi alteram partem postulates that the Court or other tribunal, must hear both sides at every material stage of the proceedings before handing down a decision at that stage. It is a rule of fairness and a court or tribunal, cannot be fair unless it considers H both sides of the case as presented by both sides. See also the cases of Mallam Adamu v. Mallam Sadi (1997) 5 NWLR (Pt. 504) 205 @

217 C.A. and Donatus Ndu v. The State (1990) 7 NWLR (Pt. 164) 550 @ 578; (1990) 12 SCNJ. 50- per Nnaemeka-Agu, JSC. It can therefore, not be over-emphasized and this is also settled that the very essence of fair hearing under Section 33 of the 1979 Constitution, is a hearing which is fair to both parties to the suit be they plaintiffs or defendants or prosecution and defence. The section, does not contemplate a standard of Justice which is biased in favour of one party and to the prejudice of the other.

I am in no doubt that His Lordship - Oni-Okpaku, J. (presiding at the Tribunal) was with respect, very high handed. As was held in the case of U.A. Amadi v. Thomas Aplin & Co. (1972) 4 S.C. 228 @ 237, this Court – per Udo Udoma, JSC stated inter alia, as follows:

“Furthermore, the high handed manner in which the learned trial judge dealt with the application by dismissing it summarily without hearing the plaintiff at all is in our view, a denial to the plaintiff of his right to be heard a direct infringement of the fundamental maxim audi alteram partem which in effect, is a denial of a fair trial”. See also the case of *Grace Offor v. The State* (1992) 12 NWLR (Pt. 632) 608 C.A. – per Onalaja. JCA.

In the case of H.R.H. Chief Isamade v. Chief Okei & 4 ors. (1998) 2 NWLR (Pt. 538) 455 @ 468 C.A., Edozie, JCA (as he then was) stated inter alia, as follows:

“No Judge has the right to give a Ruling or judgment in annoyance or anger. That state of mind will certainly be prejudicial to one of the parties, thus hurting the fair hearing principle duly entrenched in the Constitution. A Judge must keep his mind totally free in the judicial process, and this means that he must disabuse his mind of all possible prejudices and antagonism”.

I agree. See also the Contribution or concurring Judgments of Niki Tobi, JCA (as he then was) and that of Ubaezonu, JCA. I am aware that in the case of Deduwa & ors. v. Okorodudu & ors. (1976) 9 10 S.C. 329, it was the immodestness in exchange of words with counsel, that impelled this Court, to set aside a High Court Judgment. In the case of Okoduwa & ors. v. The State (1988) 2 NWLR (Pt. 76) 333, 354-355; (1988) Vol. 19 NSCC 718; (1988) 4 SCNJ. 110, it was the immoderate exchange of words and threat to counsel among other things, that led this Court, to set aside the conviction

and sentence of the accused. See also the cases of Onuoha & ors. v. The State (1989) 2 NWLR (Pt. 101) 23 @ 38; (1989) 2 SCNJ. 225 and Grace Akinfe v. The State (1988) 3 NWLR (Pt.85) 729 @ 741; (1988) 7 SCNJ. 226. Patience and gravity of hearing, is said to be an essential part of justice.

When this appeal came up for hearing on 11th March, 2010, after the learned counsel for the parties, had adopted their respective Brief of Argument, I was minded to write on the Bench Ruling or Judgment, dismissing the appeal as devoid of any merit. I was of the firm view, that if the Appellant had obeyed the order of the court below on the ground of denial of fair hearing, the case if it had been heard de novo in order to allow the Respondent to be represented by Counsel of his own choice, he should have since known his fate. The order of the court below, was since 4th March, 2003. It is now seven (7) to eight (8) years and the Respondent has served at least, seven years in prison custody, but he is yet to know his fate either a reduction in the term of imprisonment of 115 years or even a pardon by the appropriate authority. But His Lordship the Presiding justice (PJ) decided to have written a considered Judgment.

It is from the foregoing and the fuller lead Judgment of my learned brother, Fabiyi, JSC, that I too, find no merit in this appeal that appears oppressive. I too, dismiss the same and also affirm the said judgment together with the said order of the court below.

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