

**SUPREME COURT OF NIGERIA**  
FRIDAY 17TH MAY, 2013. SC. 102/2008  
**CORAM:- M. MOHAMMED, J. A. FABIYI, B. RHODES-  
VIVOUR, M. U. PETER-ODILI, K. B. AKA'AH, JJSC**

1. JUDICIAL SERVICE COMMISSION  
OF CROSS RIVER STATE  
2. ATTORNEY-GENERAL  
OF CROSS RIVERS STATE ..... APPELLANTS  
AND  
DR. (MRS.). ASARI YOUNG ..... RESPONDENT

---

FAIR HEARING - Principle - Fundamentality of - Under Constitution 1999 s. 36 (1) - A person shall be entitled to fair hearing by a court or tribunal - That is constituted in such a manner - As to secure its independence and impartiality (H1)

TRIBUNALS - Fair hearing - Audi alteram partem - Even when acting in administrative capacity - Tribunal is to act in good faith and fairly listen to both sides before deciding (H2)

FAIR HEARING - Principles - Compliance - The principles were not complied with - As appellants had predetermined the fate of respondent - Before conducting investigations and deliberations (H3)

FAIR HEARING - Tribunal - Exercise of power - By not complying with principles of natural justice - In retiring respondent from service - 1st appellant acted in excess of its powers as provided in the State Civil Service Rules (H4)

**FACTS**

Plaintiff/respondent was the Chief registrar of the Cross-River State High Court and was by Order of Court appointed the Receiver of the estate of Chief Effiom Okon Effiom, who died intestate. Several issues arose surrounding the administration of the said estate by respondent which led to several correspondences between respondent and the State Chief Judge. Even the beneficiaries of the estate protested by letters what they alleged to be the unwarranted inter-

ference of the Chief Judge in the administration of the said estate. When it seemed that nothing was coming out of the protest letters, the family members petitioned the Chief Justice of Nigeria. It was in the course of all this that respondent was redeployed from her office as Chief Registrar to that of Director of Planning, Research & Statistics and that led her to petitioning to the Chief Justice of Nigeria alleging unwarranted demotion. Although respondent withdrew the said petition, she was suspended and retired from the Cross-River State Judicial Service Commission without being given an opportunity of being heard.

Respondent then took out an application at the High Court Calabar seeking an order of certiorari to bring before the trial court the proceedings of the Judicial Service Commission resulting in her retirement for the purpose of being quashed. Appellants filed preliminary objection to the hearing of the application on the ground that the suit is statute barred and has not been properly commenced. The objection was however overruled. Appellants filed a counter affidavit to the application for certiorari and argued that the Judicial Service Commission is an administrative body and had acted in a purely administrative capacity in the retirement of respondent and so certiorari could not lie to quash the act of 1st appellant. The court agreed with appellants and struck out respondent's application for incompetence. Dissatisfied, respondent appealed to the Court of Appeal. The court allowed the appeal and set aside the decision of the trial Court and quashed the retirement, directing the continuation of service of respondent as Chief Registrar. Aggrieved, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the Court below was right in holding that the respondent was not given fair hearing before her retirement as Chief Registrar of the High court of Cross-River State.
2. Whether the Court below was right in holding that the 1st appellant exceeded its jurisdiction in retiring the respondent as Chief Registrar of the High Court of Cross-River State.

**HELD** (Unanimously dismissing the appeal per **PETER-**

**ODILI JSC)**

*FAIR HEARING - Principle - Fundamentality of*

**1. The natural law concept or principle of fair hearing which is of course fundamental and bedrock of adjudication or administrative inquiry is as enshrined in Section 36 of the 1999 Constitution of Nigeria, the nation's grundnorm so deep rooted there is no escape from. It Provides as follows:-**

***“36 (1): In the determination of his civil rights and obligations; including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”***(p.2140 D)

*Fair hearing - Audi alteram partem*

**2. The interpretation that has been given to Section 36 (1) of the 1999 Constitution or its successors or even just the matter of fair hearing is that apart from the courts, the other adjudicating bodies like tribunals though not expected to act fully like a court of law is enjoined in their hearing of matters to act in good faith and fairly listen to both sides before deciding. In that regard, such bodies even if administrative must always give the parties before them the opportunity to controvert, correct or contradict any relevant statement prejudicial to their view. The requirement includes that an affected party or parties must be given his right to cross-examine any witness before it.**

**It follows therefore that when an administrative or domestic tribunal is to determine whether an officer is guilty of misconduct or of a breach of the regulations, then a “lis inter partes” arises and so thrown up the necessity for a hearing before deciding and in such a case, the administrative body is acting judicially and the principles of fair hearing binding on judicial bodies would by the same token bind such administrative bodies. (p. 2140 F)**

*FAIR HEARING - Principles - Compliance*

**3. Those requirements or I dare say components of a hearing**

**carried out within the purview of the principles of fair hearing, the appellants did not make an attempt at complying with even if meeting some of the requirements and failing in others. They just did not bother. Their defence that they sent queries to the respondent and her answers were used to reach their conclusions is an insult on the sensibilities of all rational minds as the respondent had her natural rights violated while being presented with a fait accompli already pre-determined before the so called investigations and deliberations.**

**I have no hesitation in the light of what transpired to go along with the findings of the Court below on this issue and resolve it in favour of the Respondent and against the Appellants. (p. 2146 H)**

**FAIR HEARING - Tribunal - Exercise of power**

**4. From all that I have been trying above to communicate, it is clear that the 1st Appellant denying the Respondent her right of fair hearing by failing to comply with the principles of natural justice and by the violation of the laid down statutory procedures for discipline as provided for in the Civil Service Rules of Cross-River State in the attempted discipline of the respondent acted in excess of their power by retiring the respondent as Chief Registrar of the High Court of Cross-Rivers State. (p. 2151 B)**

## **NOTABLE POINT OF INTEREST**

### **FABIYI JSC**

#### ***1. Certiorari – Purpose of***

**The pertinent question at this point is - what really, in law, is certiorari? It is depicted as follows:-**

***“Certiorari is one of the prerogative writs whose main function is to ensure that inferior courts or any body entrusted with performance of judicial or quasi judicial functions keep within the units of the jurisdiction conferred upon them by statute which create them. Therefore, an order of certiorari will lie to remove into the High Court for purpose of being quashed any judgments, orders, convictions or other proceedings of such inferior courts or body, civil or criminal***

*made without or in excess of jurisdiction (T. Akinola Aguda of blessed memory in his book - Practice and Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria 1995 Edition pages 654 - 655). ” (p. 2153 C)*

**REPRESENTATION**

B

Ikoi E. Ikona DCL, MOJ CRS, E. E. Ekpo, SC MOJ CRS, for the Appellants

E. A. Abang with Nochano Emmanuel, C. Akubo, for Respondent

C

**CASES REFERRED TO**

Inakoju v. Adeleke (2007) 29 NSCQR 908

Magaji v. Nigerian Army (2008) 34 NSCQR 108

Orugbo v. Una (2002) 16 NWLR (pt. 792) 175

Ansambe v. Bank of the North Ltd. (2004) All FWLR (pt. 221) 1427 D

Olatunbosun v. N.I.S.E.R. Council (1986) 3 NWLR (pt. 29) 435

District Officer v. Queen (1971) 11 SC 211

Legal Practitioners Disciplinary Tribunal v. Fawehinmi (1985) 2 NWLR (pt. 7) 300

Baba v. N.C.A.T.C. (1991) 5 NWLR (pt. 192) 388 E

Hart v. Military Governor of Rivers State (1971) 11 SC 211

Denloye v. Medical & Dental Practitioners Disciplinary Committee (1968) 1 All NLR 306

State v. Nwaoboshi (2003) 8 MJSC 170

Lawal v. Quadri (2004) 6 NWLR (pt. 868) 1 F

Ugoh v. Benue State L. G. Service Commission (1995) 3 NWLR (pt. 383) 288

Bamgboye v. University of Ilorin (1999) 10 NWLR (pt. 622) 290

Amaka v. Lt. Governor W.N. (1956) 1 FSC 57 G

**STATUTE REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999, ss. 36, 197(i)(c)(2)

H

**LEAD JUDGMENT BY PETER-ODILI JSC**

This is an appeal against the decision of the Court of Appeal, Calabar Division delivered on the 10th of December, 2007, Coram: V.A.O. Omage, N. S. Ngwuta and M. A. Owoade JJCA.

The Court below upheld the appeal of the Respondent and quashed the Respondent's retirement from the services of the Appellant herein and directed the continuation of the Respondent's employment as Chief Registrar of the High Court of Justice of Cross River State.

B The Appellant being dissatisfied with the said decision of the Court below appealed to this court vide Notice of Appeal filed on 28th February, 2008.

FACTS BRIEFLY STATED:

C The Respondent was the Chief registrar of the Cross-River State High Court and was by Order of Court appointed the Receiver of the estate of Chief Effiom Okon Effiom, who died intestate which was the subject of litigation pending before the High Court of Cross-River State.

D On the 14th of May, 2001, the Respondent was redeployed from the office of Chief Registrar to the Department of Planning Research and Statistics as the Head, which posting the Respondent rejected even though she still maintained the same salary grade level 17 which she held as the Chief Registrar.

E The Respondent refused to resume to her new office and wrote a petition to the Chief Justice of Nigeria accusing the Chief Judge of abuse of office, fraud etc.

F On the assumption of office of an acting Chief Registrar, it was discovered that certain unauthorised payments were made from the proceeds of the estate of the intestate aforesaid, when the respondent was Chief Registrar.

G Several issues arose surrounding the administration of the said estate by the respondent which led to several correspondences between the Respondent and the Chief Judge of Cross-River State. The beneficiaries of the estate protested by letters what they alleged to be the unwarranted interference of the Chief Judge in the administration of the said estate. When it seemed that nothing was coming out of the protest letters, the family members petitioned the Chief Justice of Nigeria.

H The Chief Judge accused the Respondent of losing the original file and documents of the estate and mismanaging the funds of the estate. According to the Respondent, a tracing of the movement of the original file of the estate showed that the respondent was never

in custody of the file.

While the issues aforesaid were going on, the Chief Judge directed that all actions instituted in the courts by the respondent as the administrator of the estate be stayed forthwith even though the Respondent claimed she never instituted any such action.

It was in the course of all this that the Respondent was re-assigned from her office as Chief registrar to that of Director of Planning, Research and Statistics and that led her to petitioning to the Chief Justice of Nigeria alleging unwarranted demotion.

Though she withdrew the said petition, she was suspended and retired from the Cross-River State Judicial Service Commission without any trial.

The Respondent then took out an application at the High Court Calabar seeking an order of certiorari to bring before the trial court the proceedings of the Judicial Service Commission resulting in her retirement for the purpose of being quashed. The appellants filed a preliminary objection at the trial court on the challenge of jurisdiction on grounds that the suit was statute barred and not properly commenced. The objection was overruled.

The appellants filed a counter affidavit to the application for certiorari and argued that the judicial service Commission is an administrative body and acted in a purely administrative capacity in the retirement of the respondent and so certiorari could not lie to quash the act of the 1st appellant. The trial court agreed with the Appellant and struck out the application for incompetence.

Aggrieved with the decision of the trial court, the respondent appealed to the Court of Appeal which on the 10th December 2007 upheld the appeal and set aside the decision of the trial Court and quashed the retirement, directing the continuation of service of the Respondent as Chief Registrar.

The Appellant felt dissatisfied and has appealed to the Supreme Court.

On the 19th February, 2013 when the appeal was heard, learned counsel for the Appellants adopted their Brief filed on 19/8/08 and deemed filed on 12/5/09. The Brief of Argument was settled by Ikoi E. Ikona Esq. and in it were distilled two issues for determination which are:-

1. Whether the Court below was right in holding that the re-

spondent was not given fair hearing before her retirement as Chief Registrar of the High court of Cross-River State.

2. Whether the Court below was right in holding that the 1st appellant exceeded its jurisdiction in retiring the respondent as Chief Registrar of the High Court of Cross-River State.

B Learned counsel for the Respondents adopted the Brief of argument for the Respondents and it was settled by S. I. Ameh SAN and filed on 26/6/09. The learned counsel also adopted the two issues as formulated by the Appellants. I find the crafted issues adequate for the purpose of the determination of this appeal and I shall  
C make use of them.

#### ISSUE NO.1:

This issue deals with whether the Court below was right in holding that the respondent was denied fair hearing prior to her retirement as Chief Registrar. Tackling the question, learned counsel for the Appellant submitted that the Court of Appeal erred in law in holding that the respondent was not given a fair hearing before the retirement. He stated that fair hearing is a very important concept and any breach of it renders any proceeding null and void. That the  
E requirement of fair hearing under the constitution is designed for both parties in the litigation in the interest of fair play and justice. He cited *Inakoju v. Adeleke* (2007) 29 NSCQR 908 at 1114; *Magaji v. Nigerian Army* (2008) 34 NSCQR 108 at 144; *Orugbo v. Una* (2002) 16 NWLR (Pt.792) 175 at 212.  
F

Learned counsel further stated that the 1st appellant, Judicial Service Commission of Cross-River State is a statutory body established by Section 197 (i) (c) of the Constitution of the Federal Republic of Nigeria, 1999 and has powers created by Section 197 (2) and contained in Item 6 (c) in Part II to the Third Schedule to the  
G same Constitution.

He stated on that the respondent was a public servant bound by the Public Service Rules as applicable to all staff of the commission and the letter of retirement which respondent seeks to be quashed  
H derived from the Commission's power under Section 197 (2) of the Constitution and rule NO.04108 (vii) of the public Services Rules.

That an examination of the respondent's affidavit dated 17/2/03 in support of the motion ex-parte for certiorari averred that she was queried and responded to the query. That it was from her re-



sponse of the query that the 1st appellant effected the retirement and her right to fair hearing was complied with.

Learned counsel for the Appellant said in the circumstances of the use of the correspondences between the 1st Appellant and the Respondent in the retirement exercise that it cannot be said there was either a secret trial without her or any extraneous prejudicial evidence utilized to come to the retirement. He relied on *Ansambe v. Bank of the North Ltd.* (2004) All FWLR (Pt.221) 1427; *Prof. Olatunbosun v. N.I.S.E.R. Council* (1986) 3 NWLR (Pt.29) 435 at 454 - 455.

Responding, learned counsel contended for the Respondent that the general rule on the right to fair hearing is as stated in Section 36 of the 1999 Constitution. That where a body whether judicial, quasi judicial, administrative or executive acts judicially in the determination of the civil rights and obligations of a person, or to find him guilty or liable of a fault, he must be given a hearing before the issue can be properly decided. He referred to *District Officer v. Queen* (1971) 11 S.C. 211, *Legal Practitioners Disciplinary Tribunal v. Chief Gani Fawehinmi* (1985) 2 NWLR (Pt.7) 300 at 347; *Baba v. N.C.A.T.C.* (1991) 5 NWLR (Pt.192) 388 at 414.

Learned counsel for the Respondent referred to the different letters or correspondences including the details or contents thereof. He stated that Exhibit 8 raised allegations of forgery and fraud against the Respondent and there was need for the respondent to be heard on those allegations. Also that Exhibit 7 written by the 1st Appellant said they came to their decision to suspend Respondent after exhaustive investigation and further deliberating by the Commission and in none of those deliberations was respondent present or asked to be present. He relied on *C.I.C. of Armed Forces v. Public Service Commission, Mid-West & Anor.* (1974) NSCC Vol.9 P509.

The summary of the arguments of the two sides in this contest having been stated above, what I see central or pivotal in this dispute is the important concept of fair hearing. While Appellant sees no breach to that natural principle of fair hearing before the decision by appellants to have the respondent re-assigned to another position and later retired from service and so the actions Appellants took, well covered by law. The respondent's vehement protest is that she was denied her right to be heard. This posture of the respondent rejected

by the trial High Court was agreed upon by the court of Appeal. Excerpts from that decision of the Court below shall be quoted verbatim hereunder, viz:-

*“The issues to be determined in the appeal are:-*

*(i) whether as submitted by the appellant the matter for determination of her service with the State Government of Cross-River State;*

*(ii) whether the Cross-River State Judicial Service Commission is a statutory body bound to observe the tenets of the rule of natural justice even if it function.*

*(iii) whether in the determination of the allegation made against the Chief Registrar, the 1st respondent was not performing a judicial function.*

*(iv) whether the rule of fair hearing being a rule of natural justice is not a condition necessary to be fulfilled in a matter which terminates the appointment of the appellant.*

*...In the performance of their functions, the 1st respondent exercised a function in excess of administration. This is so because the reason though not specifically stated, for the initial reposting or demotion of the appellant was because the Commission had adjudged the appellant to be implicated in the allegation of fraud in the estate of late Effiom, the refusal of the Chief Registrar to accept a demotion and subsequent retirement of the appellant from the service without due process is only a subterfuge for the real reason that the 1st respondent had found the appellant guilty in a charge not preferred against her but which unstated charge she was found “guilty” and “sentenced” to compulsory retirement particularly when Exhibit 7 on page 17 shows that witnesses were called to testify when the appellant was not present. In convening such hearing, the 1st respondent exercised a judicial function and it was bound to observe the rule of natural justice. In this appeal the facts show that the 1st respondent failed to observe the rules. As a statutory body, the 1st respondent is by law compelled to observe the rule of fair hearing. Its failure to do so renders incompetent any decision emanating from its decision.*

*My Lords, the next issue for consideration is whether the writ of certiorari is (a) morally appropriate in the event to quash the letter of retirement of the appellant when there exist a writ of summons, A*

writ of summons is of course available for recovery of damages and or reinstatement of a claimant who is aggrieved by the decision or action of his appointment. On the other hand, a writ of certiorari is a common law remedy appropriate where the jurisdiction of an inferior court is impugned. It is particularly desirable when there has been a failure by a statutory body to comply with the provisions of the statute for example where there has been failure by the statutory body in a criminal charge to ask the person accused whether he is guilty of the charge or not before conviction. See *R. V. STAFFORD Justice ex-parte Stafford Corporation* (1940) KB 53; See (II) *AGWU EGBO v. KOGOWA* (2000) FWLR (Pt 19) at 511. As in the instant case where an administrative body acts judicially by deciding on the rights and obligations of the person affected, it falls within the pre-view of certiorari. For when it is said that the 1st respondent was exercising an administrative function, and it proceeds to touch on the constitutional right of the affected party in such a manner that the 1st respondent usurps the function of a court of law to determine the innocence or guilt of the appellant being a statutory body, the 1st respondent cannot do as it pleases regardless of the rightness or wrongness of its cause. The decision of the Supreme Court which clearly illustrates the law is *C/C of Armed Forces Public Service Commission of Mid-West State & Anor.* (1974) NJSC Vol. 9 at P.509, where Coker, JSC, wrote “that the denial to the Respondent of the right of audience on a decision to remove him from the Public service of the State was a contravention of the principles of natural justice and the scope of certiorari was wide enough to cover the proceedings embodied in the offensive letter to where it is established before the High court that a statutory body with limited power has abused that power, and that such abuse continues to affect prejudicially the rights of a citizen, certiorari will issue of the instance of that citizen”. See also *S. O. ADEDEJI v. POLICE SERVICE COMMISSION* (1967) ANLR P.72; *STEEL BELL NIG. LTD v. GOVERNMENT OF CROSS-RIVER STATE* (1996) 3 NWLR 438 at 588; *ONUZULIKE v. COUNCIL FOR SPECIAL DUTIES, ANAMBRA STATE* (1992) 3 NWLR (Pt.232) at 791.

In the light of the above authorities, it is right in my judgment to seek to quash the offensive letter by a writ of certiorari, and the trial court was in error to refuse to do so, I do so now. The letter of retirement from the service of Cross-River State by the Cross-River

*State Judicial Service commission is hereby quashed.*

*It is void. The order of the Court below is set aside and the respondent is restrained from harassing the appellant whose tenure of service remain continuous and undisturbed or interrupted by the time it took to determine the issue in a Court of law.”*

B The complaint of the Appellants is that the findings and decision of the Court below were not borne out of the Record as the Cross-River State Judicial service Commission was empowered under the 1999 Constitution and precisely Section 197 (2), item 6 (c) in Part II to the Third Schedule to the constitution to carry out the acts complained of. That the respondent was heard through her replies to each of the queries sent to her. That no oral evidence was necessary nor any called for either for the respondent or any witness since the reliance of the appellants was on the documentary evidence D proffered.

***The natural law concept or principle of fair hearing which is of course fundamental and bedrock of adjudication or administrative inquiry is as enshrined in Section 36 of the 1999 Constitution of Nigeria, the nation’s grundnorm so deep rooted there is no escape from. It Provides as follows:-***

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

***The interpretation that has been given to Section 36 (1) of the 1999 Constitution or its successors or even just the matter of fair hearing is that apart from the courts, the other adjudicating bodies like tribunals though not expected to act fully like a court of law is enjoined in their hearing of matters to act in good faith and fairly listen to both sides before deciding. In that regard, such bodies even if administrative must always give the parties before them the opportunity to controvert, correct or contradict any relevant statement prejudicial to their view. The requirement includes that an affected party or parties must be given his right to cross-examine any witness before it.***

***It follows therefore that when an administrative or domestic tribunal is to determine whether an officer is guilty of misconduct or of a breach of the regulations, then a “lis inter partes” arises and so thrown up the necessity for a hearing before deciding and in such a case, the administrative body is acting judicially and the principles of fair hearing binding on judicial bodies would by the same token bind such administrative bodies.*** I place reliance on District Officer v. Queen (1961) SCNLR 83; Hart v. Military Governor of Rivers State (1971) 11 S.C. 211; Legal Practitioner Disciplinary Tribunal v. Chief Gani Fawehinmi (1985) 2 NWLR (Pt.7) 300 at 347; Baba v. N.C.A.T.C. (1991) 5 NWLR (Pt.192) 388 at 414.

Having stated the guiding legal principles applying even to the Appellants, I would want to capture some of the correspondences between the parties before the offending actions of demotion, suspension from duty and finally retirement from service were visited on the respondent and these are some of the queries emanating from the Appellants and the replies by the Respondent.

Exhibit 1 is the letter of suspension of the Respondent dated 6th January, 2004 and it states:-

*“I am directed to refer to our letters No.JSC/5/8/VOL.11/22 of 14th November, 2001 and JSC/PC/31/VOL.1/185 of 14th January, 2002 on the Handing over” of your former office and to inform you that your representation dated 19th November, 2001 and 15th January, 2002 left much to be desired...”*

*2. After exhaustive deliberation, the State Judicial service Commission has approved your suspension from office in the public interest in accordance with Civil service Rule No.04119...”*

Exhibit 1 is at pages 8 - 9 of the printed Records of Proceedings.

Exhibit 5 is dated the 15th of May, 2001, and titled, RE: APPOINTMENT AS A DIRECTOR, RESEARCH, PLANNING AND STATISTICS.

In this Exhibit, the Respondent wrote thus:-

*“Thank you for your letter dated 14th May, 2001 appointing me to the position of the head of Department of Planning, Research and Statistics with effect from today, 14th May, 2001. I humbly reject the said “appointment” please as it amounts to a demotion for no*

*justifiable reason. The Head of Department of Statistics and Planning is a Director under the Chief Registrar. Your query sent to me of the same date has been replied and submitted. Removing me without a hearing amounts to lack of fair hearing and unconstitutional. ”*

B It is Exhibit 3 that gave rise to Exhibit 5 and Exhibit 3 discloses reason for the demotion of the Respondent from office of the Chief Registrar to that of Head of Department of Planning and Research. Exhibit 3 is dated 14th of May, 2001 and headed “APPOINTMENT” is stated thus:

C *“Following the ongoing reorganization of the Judicial Service of the State and for effective and efficient utilization of human and other resources, the Cross-River State Judicial service Commission has approved your redeployment and appointment as Head of the Department of Planning, Research and Statistics with effect from 14th*  
D *May, 2001.*

*2. The Commission heartily congratulate you in this well deserved appointment and wishes you more years of service to the judicial service of the State. ”*

E Exhibits 3 and 5 are on pages 12 and 13 respectively of the printed Records.

Exhibit 7 is dated the 14th day of June, 2002 and titled “RE: SUSPENSION FROM OFFICE”, it reads:

F *“I am directed to refer to our letter No.JSC/PC.31. VOL.1/198 of 6th February, 2002 in which you were suspended from office and to inform you that after exhaustive investigation and further deliberation, the commission has directed that you should handover forthwith the original file of the estates of Late Chief Effiom Okon Effiom. You are also required to render an account of the Estate up to the*  
G *time you ceased to be the Chief Registrar of the Cross-River State Judiciary”*

Exhibit 7 is at page 17 of the printed Records of proceedings.

Exhibit 8 titled “suspension from office: “Reconsideration” dated 8th October, 2002 reads as follows:-

H *“I am directed to inform you that the commission could not consider your case because the original of some of the documents required were submitted late, while the meeting was in progress. Secondly, no inventory of the estate as at July, 1999 and now was submitted. The UBA PLC Statement of accounts omitted the period Janu-*

ary 2000 to February, 2001. The Certified True Copy of document you forwarded as “PR/4/99 Estate of Chief E. O. Effiom, Alias Effiom America” is your own creation and not the original file of the Estate.”

Exhibit 8 can be found on page 18 of the printed Record of proceedings.

Exhibit 9 is the reply of the Respondent to the query issued to her. It is dated the 6th and titled, YOUR QUERY REF: JSC/PC/3/VOL.1/365 of 31st October, 2002 received 5th November, 2002. It stated inter alia:

*“I never instituted any Court action in my personal name. The cases were instituted by the Lawyer for the plaintiff and the receiver. If they put my personal name, it is their fault and not mine. The sins of Counsel cannot be levied on the Client please.*

*(b) I never refused to hand over the affairs of the Estate. I handed over the affairs of the Estate on the 25th of May, 2001.*

*(e) The original file of late Chief Effiom Okon Effiom has always been with the probate department”*

In Exhibit 7 attached to the Respondent’s Affidavit in her application at the trial Court dated 14th June, 2002 with Reference No. JSC/PC/31/VOL.1/225 and titled: Re: suspension from office The 1st Appellant wrote:

*“I am directed to refer to our letter No.JSC/PC/31/VOL.1/198 of 6th February, 2002 in which you were suspended from office and to inform you that after exhaustive investigation and further deliberating, the commission has directed that you should hand over forth with the original file of the estate of Late Chief Effiom okon Effiom. You are also required to render an account of the Estate up to the time you ceased to be the Chief Registrar of the Cross-River State Judiciary. Please, not that early compliance with these directions will facilitate a reconsideration of your suspension by the commission.”*

Exhibit 8 accuses the Respondent of forgery. It states inter alia:

*“...the certified true copy of document you forwarded as: PR/4/99 Estate of Chief E. O. Effiom, alias Effiom America” is your own creation and not the original file of the Estate. You are, please, required to forward these and other documents necessary for the resolution of this case to reach the commission on or before 18th October, 2002.”*

From the contents of the exhibits above quoted and the tenor

embedded and oozing out of them clearly there were material conflicts between what was pushed to the respondent for her answers and clarification and the non acceptance of those answers by the Appellants. The question that naturally ensue is ‘how were the Appellants able to resolve those conflicts in the absence of oral testimonies from the witnesses as Appellants contend’ Also, arising is upon what were the exhaustive investigations and deliberations which Appellants referred to in Exhibit 7. Furthermore, it is germane to point out that the circumstances prevailing showed a need for cross-examination of the various witnesses whose statements were utilized in making the findings, Appellants made and based on which their decisions were reached at any given point. There is the further need to emphasise that the concept of fair hearing is not one that allows a staggered process within which a party may be given fair hearing on certain days, while evidence is taken behind his back on other days and back to being put in the picture subsequently, a situation reminiscent of a patch work. There are numerous judicial authorities emanating from no less a court than this apex one which I shall cite since I have adopted the decisions therein in this issue of fair hearing as mine. See *Denloye v. Medical & Dental Practitioners Disciplinary Committee* (1968) 1 All NLR 306 wherein the respondent enquired into the conduct of the Appellant with a view to unraveling if he was liable of professional misconduct.

The Supreme Court held that withholding of part of the evidence from the appellant was a denial of fair hearing. The case of *C.I.C. of Armed Forces of Nigeria v. Public Service Commission Midwest & Anor.* (1974) NSCC Vol.9, page 509 captures vividly the matter we are grappling with here. Indeed, it is on all fours with the case in hand and I shall restate it hereunder for clarity.

In fact, it is on all fours with the case in hand. In that case, the Public Service Commission and the Attorney-General both of the Mid-Western State of Nigeria appealed against an Order of the High Court of the Mid-Western State pursuant to which certiorari was issued to quash the proceedings of the public service commission contained in a letter addressed by that body to respondent asking him to accept a transfer from his post in the Ministry of Justice or consider himself to have been summarily removed from the public service of the State.



The Respondent applied for an Order of Certiorari to quash the said letter. He established at the hearing that the Public Service Commission had no powers to force a transfer on him as he had not asked for it, and that in any case the decision to remove him from the service was taken by the Public Service Commission without offering him an opportunity of being heard in his defence of any charge in that respect as required by the relevant civil service regulations. B

The High Court, Benin City, made the Orders sought by the respondent and the Appellants appealed to the Supreme Court. Two issues were canvassed in the Supreme Court and they are:- C

*“1. Whether certiorari will be issued at the instance of a citizen where it is established before the High Court that a statutory body or inferior Court with limited powers has abused that power and that such abuse does not continue to affect prejudicially the rights of that citizen.”* D

*2. Whether the High Court must grant an order of certiorari where it is manifest on the face of the records of a statutory body or inferior tribunal that an accused had not been given a fair hearing.”*

COKER, JSC, in the lead judgment held that the denial to the Respondent of the right of audience on a decision to remove him from the Public Service of the State was a contravention of the principles of natural justice and that the scope of certiorari was wide enough to cover the proceedings embodied in the offensive letter even if that is the only evidence of the transgression of the statutory body. F

The Supreme Court went on to state the principles of law at page 531 as follows:-

*“We think it necessary to state the current position of the law to be that where it is established before the High court that a statutory body or may be an inferior court with limited powers has abused that power and that such abuse does continue to affect prejudicially the rights of a citizen, certiorari will issue at the instance of that citizen. Such abuse may take the form of non-compliance with rules of procedure prescribed for that body; it may be exemplified in the denial of the rights to be heard in ones defence. It may consist of irregularities which are tantamount to a denial or breach of the rules of natural justice, indeed it may take the form of an assumption of jurisdiction to perform an action authorized by law or a refusal of jurisdiction* H

*where it should be exercised’ The list is not exhaustive but those are the cases in which certiorari has always been used to quash arrest warrants, witness summons or even official medical certificates which were irregularly issued.”*

The Court held in page 531 inter alia:-

B *“Where the transgression of the statutory body or tribunal is a denial of the right to be heard, as indeed, the learned trial judge found and held in the present case, the courts have always certiorari. In KANDA v. GOVERNMENT OF THE REPUBLIC OF MALAYA (1962) AC 337, THE PCE stated the principle of the right to be*  
C *heard as follows.*

*“If the right is with anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been*  
D *made affecting him, and then he must be given a fair opportunity to correct or contradict them.”*

I shall further cite the case of Baba v. N.C.A.T.C. (1991) 5 NWLR (Pt.192) 388 per Nnaemeka - Agu JSC at pages 423 - 423 wherein he identified the attributes of fair hearing in matters such as  
E the case in hand and dealt with for an institution such as the 1st Appellant being an administrative body carrying out a judicial or quasi-judicial function. He stated as follows:-

*“In a judicial or quasi - judicial body, a hearing in order to be fair must include the right of the person to be affected.*  
F

*i) to be present all through the proceedings and hear all the evidence against him;*

*ii) to cross-examine or otherwise contradict all the witnesses that testify against him;*

G *iii) to have read before him all the documents tendered in evidence at the hearing;*

*iv) to have disclosed to him the nature of all relevant material evidence including documentary and real evidence;*

*v) to know the case he has to meet at the hearing and have*  
H *adequate opportunity to prepare for his defence; and*

*vi) to give evidence by himself, call witnesses if he likes and make oral submissions either personally or through counsel of his own choice.”* See PH.M.B. v. Edosa (2001) 5 NWLR (pt.707) 612.

**Those requirements or I dare say components of a hear-**

***ing carried out within the purview of the principles of fair hearing, the appellants did not make an attempt at complying with even if meeting some of the requirements and failing in others. They just did not bother. Their defence that they sent queries to the respondent and her answers were used to reach their conclusions is an insult on the sensibilities of all rational minds as the respondent had her natural rights violated while being presented with a fait accompli already pre-determined before the so called investigations and deliberations.***

***I have no hesitation in the light of what transpired to go along with the findings of the Court below on this issue and resolve it in favour of the Respondent and against the Appellants.***

ISSUE No.2:

This issue raises the question whether the Court below was right in holding that the 1st Appellant exceeded its jurisdiction in retiring the Respondent as Chief Registrar of the High Court of Cross-River State. In answer to the question, learned counsel for the Appellant said from the provisions of section 197 (1) (c) of the Constitution it is clear that the functions of the 1st Appellant including control over the Chief Registrar of the High Court are purely administrative actions to which the writ of certiorari cannot issue. He cited *State v. Nwaoboshi* (2003) 8 MJSC 170 at 179.

He stated on that certiorari is a discretionary order issued by a court of competent jurisdiction to quash the decision of an inferior court or body where it is established that the inferior court acted in excess of its jurisdiction or there is a breach of natural justice or on the face of the record a distinct error of law. He referred to *Lawal v. Quadri* (2004) 6 NWLR (Pt.868) 1 at 12; *Ugoh v. Benue State Local Government Service Commission* (1995) 3 NWLR (pt.383) 288 at 319 - 320.

That there is nothing in the procedure leading to the respondent's retirement showing that the 1st appellant exceeded its disciplinary powers. He said respondent was queried and she replied to the queries and no oral evidence was called behind the respondent which aided in her retirement. Learned counsel urged the Court to hold that the Court below acted in error and so their decision should be set aside.

Learned counsel for the Respondent submitted that Public Civil Servants are expected to enjoy tenure of office to their retiring age and can only be validly removed from service if the procedures prescribed by law are followed. That in the case at hand the respondent's employment is one with a statutory flavour and any action taken against that employment in breach of the enabling statutes governing the employment will be null and void and certiorari will lie to quash same. He relied on *Iderima v. R.S.S.S.C.* (2005) 16 NWLR (Pt.951) 378; *Bamgboye v. University of Ilorin* (1999) 10 NWLR (Pt.622) 290.

For the Respondent was canvassed that when 1st Appellant suspended the respondent and later retired her did so in contravention of rule 04108 of Chapter 4 of the Civil service Rules of Cross-Rivers State. He referred to *Head, Fed. Military Government v. Military Government, Mid-Western State & Anor.* (supra) in which Elias CJN cited *Ridge v. B. Baldwin* (1964) A.C. 40 at 74 -79.

Learned counsel for respondent said 1st appellant in breaching the respondent's right to fair hearing by not adhering to the principles of natural justice and by violating the laid down procedure for discipline as enshrined in the Cross-River State Civil Service Rules in the course of the purported discipline of the respondent, exceeded its jurisdiction by retiring the respondent as the Chief registrar. That it is settled law that one of the conditions for issuance of an Order of Certiorari is that the act or decision sought to be quashed must be judicial or quasi-judicial. He relied on *Amaka v. Lt. Governor W.N.* (1956) 1 FSC 57; *R. v. District Officer, Ex-parte Aten* (1961) 1 All NLR 51.

Learned counsel concluded by saying that since 1st Appellant is a statutory body and the Character of its power subjects her to observe the principles of natural justice by acting quasi judicially in determining the rights of the employees. That in the situation as presented, the 1st Appellant acted ultra vires its powers in retiring the Respondent and the court should declare the action of the Appellants null and void.

This issue herein brings up the matter of the status of the employment of the respondent. The parties are not disputing that it is one with statutory flavour since the 1st appellant in suspending the respondent stated that it was doing so sequel to Rule 04119 of the

Cross State Civil Service Rule. That the retirement of the respondent was founded on Rule 04108 (viii) and Section 197 (1) (c) of part 2 in the 3rd Schedule to the 1999 Constitution of the Federal Republic of Nigeria.

I shall quote the relevant Rules of the Civil Service of Cross River State binding on the parties, viz:-

***"RULE 14108 PROVIDES:***

*An officer in this service may be dismissed by the Cross River State Civil Service Commission only in accordance with the following rules unless the method of dismissal is otherwise provided for in these Civil Service Rules:*

*(i) The officer shall be notified in writing of the grounds of which it is proposed to dismiss him, and he shall be called upon to state also in writing before a specified day (which day must allow reasonable interval for the purpose) any grounds upon which he relied to exculpate himself.*

*(ii) The matter shall be investigated by the Civil Service Commission with the aid of the Head of the Officers Ministry/Extra Ministerial Department, and such other officer or officers as the Commission may appoint.*

*(iii) If any witnesses are called to give evidence, the officer shall be entitled to be present and to cross-examine the said witnesses.*

*(iv) No documentary evidence shall be used against the officer unless he has previously been furnished with a copy thereof or given access thereto.*

*(v) If the officer fails to furnish any representation within the given time, the commission may take such action as it deems appropriate against him.*

*(vi) If the officer submits his representation which in the opinion of the commission are not satisfactory enough to exculpate him from being dismissed from the service the commission shall take such action accordingly.*

*(vii) If upon considering the representations of the officer, the commission is of the opinion that the officer does not deserve to be dismissed from the service, but deserves some other punishment as it considers appropriate.*

*(viii) If upon considering the representation of the officer the commission is of the opinion that the officer does not deserve to be*

*dismissed but facts of the case disclosed grounds for requiring him to retire in accordance with Rule 04114, it shall so direct accordingly.*

**RULE 04104 PROVIDES THUS:**

- (i) *Willful act or omission or general misconduct to the prejudice of discipline and proper distraction of the government e.g. corruption, dishonesty, drunkenness, false claims against government, foul language, insubordination, negligence, falsification or suppression of records, failure to keep records and failure to report known cases of misconduct, etc.*
- (ii) *Conviction for criminal offence other than a minor traffic or sanitary offence or the like; cases of doubt should be referred to the commission for guidance.*
- (iii) *Financial embarrassment.*
- (iv) *Absence from duty without leave.*
- (v) *Engaging in partisan political activities.*
- (vi) *Engaging in trade or business without authority.*
- (vii) *Disobedience of lawful order; such as a refusal to proceed on transfer or to posting, etc.*
- (viii) *Disclosure of official secret information.*
- (ix) *Action prejudicial to the security of the State.”*

I cannot help but go back to the case of C.I.C of ARMED FORCES v. PUBLIC SERVICE COMMISSION (supra) COKER JSC said, in page 531:-

- “...Where it is established... that a statutory body (or may be an inferior court with limited powers has abused that power and that such abuse does not and continues to affect prejudicially the rights of a citizen, certiorari wilt issue at the instance of that citizen such abuse may take the form of non-compliance with rules of procedure prescribed for that body. It may be exemplified in the denial of the right to be heard in one’s defence... the list is yet exhaustive but those are the cases in which certiorari has always been issued by the courts of King’s Bench.”*

- The learned Chief Justice of Nigeria, Elias CJN nailed the point directly when he said in the same case of Head Federal Military Government v. Military Governor, Mid-West State & Anor. (supra) thus:-

*“A case analogous to RIDGE v. BALDWIN is Adedeji v. Police Service Commission SC.518/1956 (unreported) in which the Supreme Court held that an Order of Certiorari lay to quash the deci-*

*sion of the Defendant Commission on the ground of non-compliance with the provisions of General Order 04107 dealing with the removal or dismissal of officers from the public service. The Police service Commission was clearly a quasi-judicial body which is as such amenable to the Order of Certiorari."*

***From all that I have been trying above to communicate, it is clear that the 1st Appellant denying the Respondent her right of fair hearing by failing to comply with the principles of natural justice and by the violation of the laid down statutory procedures for discipline as provided for in the Civil Service Rules of Cross-River State in the attempted discipline of the respondent acted in excess of their power by retiring the respondent as Chief Registrar of the High Court of Cross-Rivers State.***

The Court of Appeal per Oimage, J.C.A. fully considered the materials before them and was right to have made the findings, conclusions and decisions they made in setting aside the decision and orders of the trial High Court.

This appeal lacks merit and I have no difficulty in dismissing it and it stays dismissed. I affirm the judgment and Order of Certiorari as made by the Court of Appeal which should be effected. I make no order as to costs.

---

### MOHAMMED JSC

I have been permitted by my learned brother Peter-Odili, J.S.C. before today to read in draft the judgment just delivered in this appeal. The issues formulated in the Appellant's brief of argument which issues were adopted by the learned Counsel to the Respondent in the Respondent's brief of argument are:

*"1. Whether the Court of Appeal was right in holding that the Respondent was not given fair hearing before her retirement as Chief Registrar of the High Court of Cross-River State.*

*2. Whether the Court of Appeal was right in holding that the 1st Appellant exceeded its jurisdiction in retiring the Respondent as Chief Registrar of the High Court of Cross-River State."*

On the evidence on record, most of which is documentary, there is no doubt at all that the Respondent was certainly not given a

fair hearing in the proceedings of the 1st Appellant that resulted in her retirement. The result of such behavior of denial of fair hearing is obvious as was the case in the decision of this Court in C.I.C. of Armed Forces of Nigeria v. Public Service Commission Mid-West & Anor. (1974) N.S.C.C. Vol. 9 page 509, which is virtually on all fours with the present case. Furthermore, the 1st Appellant being an agency of the State Government created by the Constitution of the Federal Republic of Nigeria 1999 and charged with quasi judicial functions, the Respondent was on the right course in seeking redress in Court through the Prerogative Writ of Certiorari to quash the decision of the 1st Appellant.

For the above reasons and more comprehensive reasons contained in the lead, I agree that this appeal lacks merit. It is hereby dismissed by me with no order on costs.

D \_\_\_\_\_

### ***FABIYI JSC***

I have had a preview of the judgment just delivered by my learned brother - Peter-Odili, J.S.C. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and deserves to be dismissed.

The appeal is against the decision of the Court of Appeal, Calabar Division (the court below) delivered on 10th December, 2007. Therein, the appeal of the respondent was allowed and sequel to the writ of certiorari filed at the trial court, her retirement from the services of the appellants herein was quashed. As well, the court below directed the continuation of the respondent's employment as the chief Registrar of the High court of Justice of Cross River State of Nigeria.

The appellants felt unhappy with the decision of the court below and appealed to this court vide their Notice of Appeal, accompanied by two grounds of appeal, filed on 28th February, 2008.

The facts which are relevant to this appeal have been graphically captured in the lead judgment. I need not to repeat same. In this court, briefs of argument were filed and exchanged by the parties and duly adopted and relied upon by learned counsel on both sides of the divide on 19th February, 2013 when the appeal was heard.



On behalf of the appellants, two (2) issues were formulated for due determination of the appeal. They read as follows:-

1. Whether the court below was right in holding that the respondent was not given fair hearing before her retirement as Chief Registrar of the High Court of Cross-River State.

2. Whether the court below was right in holding that the 1st appellant exceeded its jurisdiction in retiring the respondent as Chief Registrar of the High Court of Cross-River State.

In the respondent's brief of argument settled by S. I. Ameh, SAN, the above reproduced issues, as couched on behalf of the appellants, were adopted.

The pertinent question at this point is - what really, in law, is certiorari? It is depicted as follows:-

*"Certiorari is one of the prerogative writs whose main function is to ensure that inferior courts or any body entrusted with performance of judicial or quasi judicial functions keep within the units of the jurisdiction conferred upon them by statute which create them. Therefore, an order of certiorari will lie to remove into the High Court for purpose of being quashed any judgments, orders, convictions or other proceedings of such inferior courts or body, civil or criminal made without or in excess of jurisdiction (T. Akinola Aguda of blessed memory in his book - Practice and Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria 1995 Edition pages 654 - 655)."*

The appellants' position in this case is that certiorari will not come into play as the retirement of the respondent was an administrative act. On the other hand, the respondent maintained that the 1st appellant is bound to act quasi-judicially in the determination of employment rights of her employees including the respondent and certiorari will lie to quash the retirement of the respondent in breach of the duty to act quasi-judicially. The important thing is the nature of the duty it carried out in retiring the respondent and not the character of the 1st appellant. See: *Queen v. Minister of Education Ex-Parte Augustus Adeyeri* (1964) WNLR 27 at 30.

It should be stressed that the power to suspend a person from his employment or to retire a person from service prematurely, as in this matter herein, is a quasi-judicial act as it involves investigation and a determination whether the officer is guilty of an offence or not

and as such, amenable to certiorari. See *Odemuyiwa v. Nigerian Railway Corporation* (1973) 3 UILR (Pt.1) 94 at 102; *Fatomo v. Lagos State Public Service Commission* (1977) 5 S.C. 51 at 76.

It is basic that where a body, whether judicial, quasi-judicial, Administrative or Executive in inception, acts judicially in the sense that it is to determine the civil rights and obligations of a person, or to find him guilty or liable of a fault, he must be given a hearing before the issue can be properly decided. This is as enjoined by the provision of section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 - the grundnorm.

Even then, adjudicating bodies like tribunals, though not expected to act fully like a court of law, are enjoined in their hearing of matters to act in good faith and fairly listen to both sides before deciding. When an administrative body is acting quasi-judicially, the principles of fair hearing binding on judicial bodies are automatically binding on such bodies. They cannot act arbitrarily or capriciously. See: *District Officer v. Queen* (1961) SCNLR 83; *Hart v. Military Governor of Rivers-State* (1971) 11 S.C. 211; *Legal Practitioners Disciplinary Tribunal v. Chief Gani Fawehinmi* (1985) 2 NWLR (Pt.7) 300 at 347; *Baba v. N.C.A.T.C* (1991) 5 NWLR (Pt.192) 388 at 414.

The appellants argued that the case revolves on documentary correspondences between the Commission and the respondent. Exhibit 8 accused the respondent of forgery by faking the file in respect of the Estate of Chief E. O. Effiom. The respondent was also accused of mismanaging funds. She was not granted a right of audience and opportunity to confront those who accused her of allegations which have elements of criminality. In the case of *C In C of Armed Forces v. Public Service Commission Mid-West & Anor. Ex-Parte M. O. Kubeinje* (1974) NSCC, (Vol.9) 509 at 531 which is in pari-materia with this appeal, this court maintained that the denial to the respondent of the right of audience on a decision to remove him from the public service of the State was a contravention of the principles of natural justice and that the scope of certiorari was wide enough to cover the proceedings embodied in the offensive letter even if that is the only evidence of the transgression of the statutory body. The court per G.B.A. Coker, JSC (of blessed memory) pungently pronounced, *inter alia*, as follows:-

*“Where the transgression of the statutory body or tribunal is a*

*denial of the right to be heard, as indeed, the learned trial judge found and held in the present case, the courts have always unhesitatingly granted certiorari. In Kanda v. Government of the Republic of Malaya (1962) AC. 337, the PCE stated the principle of the right to be heard as follows:-*

*“If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him, and then he must be given a fair opportunity to correct or contradict them.”*

Apart from the fact that the 1st appellant denied the respondent her right to fair hearing by failing to comply with the principles of natural justice, it frontally failed to adhere to the laid down statutory procedure for discipline as provided by Rule 14108 of the Rules of the Civil Service of Cross-River State. There was no Panel set up by the 1st appellant to enable the respondent cross-examine her accusers and try to exculpate herself before she was arbitrarily axed by the appellants. Such was not right; to put it mildly.

For the above reasons and the detailed ones carefully adumbrated in the lead judgment, I too feel that the appeal is completely devoid of merit. It is hereby dismissed. I endorse all other consequential orders made in the lead judgment; that relating to costs inclusive.

---

### **RHODES-VIVOUR JSC**

I read in draft the judgment prepared by my learned brother, Peter-Odili, JSC.

I agree with the reasons and conclusions that the Court of Appeal was correct to allow the appeal and direct that the respondent continues to serve as the Chief Registrar of the High Court of Cross-River State. A detailed reproduction of the facts would not be necessary, as this has been well laid out by my learned brother Peter-Odili, J.S.C.

The respondent was retried by the Judicial Service Commission of Cross-River State. She filed an action in a Cross River State High Court seeking an order of certiorari, i.e. to have the proceed-

ings of the State Judicial Service Commission quashed. Refusing to accede to the respondent's prayer the trial High Court held that the State Judicial Service Commission, acted in an administrative capacity when it ordered the retirement of the respondent from the office of Chief Registrar of the State High Court and so certiorari was not available to quash the said order.

The Court of Appeal reasoned differently. It upset the decision of the High Court, quashed the retirement of the respondent, and directed that the respondent continues in service as the Chief Registrar of the State High Court. The judgment of the Court of Appeal simply means that on the facts, certiorari ought to have been granted to quash the proceedings of the Cross River State judicial Service Commission proceedings which ordered the retirement of the respondent.

Certiorari is one of the prerogative writs, the other mandamus used by the courts to restrain the abuse or misuse of power, or to correct errors of law, wrong exercise of discretion by tribunals, public authorities, and Government Officials. Once a public authority acts judicially or administratively its conduct is subject to control by the courts by means of certiorari, or mandamus. See *Padfield v. Minister of Agriculture Fisheries & Food* 1968 AC p.997, *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 2 A.C. p.147.

Superior courts have jurisdiction to control proceedings of tribunals, etc by way of judicial review. When they are wrong the High Court has power to put them right so as to do justice to the complainant.

*Audi alteram partem* means "hear the other side." It denotes basic fairness and it is a canon of natural justice. It is the duty of anyone in control of proceedings to allow both parties to be heard and should listen to the point of view of each. Even God saw Adam eat the forbidden fruit which he warned him never to eat but the Lord still gave Adam a fair hearing when the Lord asked "Did you eat the fruit I told you not to eat"? See Genesis 3:11. It was after Adam was unable to give a satisfactory answer that punishment followed. That was the beginning of fair hearing. See *Akande v. State* 1988 3 NWLR pt.85 p.681, *F.C.S.C. v. Laoye* 1989 2 NWLR pt.106 p.652.

The Cross-River State Judicial Service Commission is a public authority with power to act administratively or/and quasi judicially. It

acted quasi judicially when it ordered that the respondent should be retired from service. An examination of the proceedings reveals that the respondent was retired on unproved allegations of serious crimes without affording her the right to defend herself. The proceedings were conducted in clear violation of her right of fair hearing guaranteed to all persons by section 36(1) of the Constitution. The High Court was wrong to dismiss the application for certiorari, to quash the offensive proceedings of the Cross-River State Judicial Service Commission which was contrary to section 36(1) of the Constitution. The respondent was denied a fair hearing and that is wrong. B C

In my view certiorari lies to quash the said proceedings. The Court of Appeal was correct.

For this and the comprehensive reasoning in the leading judgment the appeal is dismissed.

D

---

### **AKA'AH'S JSC**

This is an appeal against the decision of the Court of Appeal, Calabar Division in Appeal No.CA/C/165/2005 delivered on 10/12/2007 which allowed the appeal and set aside the judgment of the Cross - River State High Court, Calabar. E

The respondent/plaintiff had applied for an order of Certiorari to quash her retirement but the High Court in its ruling delivered on 24/8/2005 refused to do so on the ground that the Judicial Service Commission of Cross - River State acted administratively in retiring her from service. The trial court then struck out the action as incompetent but this decision was reversed by the Court of Appeal. This appeal is from that decision given on 10/12/2007. F

The background facts leading to this case now on appeal are G briefly stated as follows:

On 6/2/2002, the respondent who was then Chief Registrar of the High Court of Cross - River State received a letter of suspension from duty. In the same letter of suspension she was posted as Head of Department of Planning, Research and Statistics and she was made answerable to the Chief Registrar. H

She refused to resume at her new office and petitioned the Chief Justice of Nigeria alleging unwarranted demotion. Even though she later withdrew the petition, she was suspended and subsequently

retired by the Cross - River State Judicial Service Commission without a trial. Following this development the respondent instituted an action by originating summons seeking the following reliefs after obtaining leave of the Court:

B “(a) *ORDER OF CERTIORARI QUASHING* a letter of retirement dated 13th November, 2002 with reference No.JSC/PC/31/VOL.1/381 as the same was actuated by a real likelihood of bias against the Applicant.

C (b) *INJUNCTION* restraining the Respondents from further harassment, suspension, or however threatening the security of service of the Applicant in respect of actions properly executed in accordance with the rule/custom of his office without a fair hearing.

(c) A declaration that the Applicant is entitled to her remuneration as Chief Registrar until she is legitimately relieved of her D post.

(d) *ALTERNATIVELY*, the sum of N50 million for premature retirement premised on bias”

After hearing the application the learned trial judge refused to quash the retirement of the applicant holding that the action carried E out by the 1st respondent in retiring the applicant was not a judicial act but an administrative duty. Dissatisfied with the ruling, the applicant appealed to the Court of Appeal, Calabar which allowed the appeal and set aside the order of the trial court. The letter of retirement was quashed and the action of the respondents was declared F null and void. The respondents were restrained from harassing the appellant whose tenure of service remained continuous and undisturbed or interrupted. The respondents felt aggrieved and appealed to this Court. Their Notice of Appeal was dated 28th February, 2008 G and it contained two grounds from which two issues were distilled namely:-

1. Whether the court below was right in holding that the respondent was not given fair hearing before her retirement as Chief Registrar of the High Court of Cross River State.

H 2. Whether the court below was right in holding that the 1st appellant exceeded its jurisdiction in retiring the respondent as Chief Registrar of the High Court of Cross River State.

My learned brother Peter - Odili J.S.C. has dealt with the two issues at great length. I agree with the conclusion that the appeal has

no merit and should be dismissed. I will however restrict my comments to the first issue for emphasis.

Section 36(1) of the 1999 Constitution (as amended) enshrines the principle of fair hearing and it provides as follows:-

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

One of the statutory bodies established under Section 197 of the Constitution for the States charged with the responsibility to appoint, dismiss and exercise disciplinary control over the Chief Registrar and other subordinate officers of the State Judiciary is the State Judicial Service Commission (See: Third Schedule Part II Paragraph 6(c) of 1999 Constitution). In the discharge of that responsibility, the 1st appellant first suspended the respondent from the post of Chief Registrar before she was finally retired from service. The letter of suspension with ref. JSC/PC/31/VOL.1/225 dated 14th June, 2002 reads:-

*“Chief (Mrs.) Asari E. Effanga - Young*

*High Court of Justice*

*Judiciary Headquarters*

*Calabar*

*U.F.S. The Acting Chief Registrar,*

*Judiciary Headquarters*

*High Court of Justice*

*Calabar*

*RE: SUSPENSION FROM OFFICE*

*I am directed to refer to our letter No.JSC/PC/31/VOL.1/198 of 6th of February, 2002 in which you were suspended from office and to inform you that after exhaustive investigation and further deliberation, the commission has directed that you should handover forthwith the original file of the estate of Late Chief Efiom Okon Efiom. You are also required to render an account of the Estate up to the time you ceased to be the Chief Registrar of the Cross River State Judiciary.*

*2. Please, note that early compliance with these directives will*

*facilitate a reconsideration of your suspension by the commission.*

*Signed: EKPENYONG E. OKON*

*(SECRETARY)*

*For: CHAIRMAN*

*JUDICIAL SERVICE COMMISSSION"*

- B Following representation for consideration of her suspension by the respondent, the 1st appellant wrote another letter with ref No.JSC/PC/31/VOL.1/353 dated 8th October, 2002 addressed to the respondent thus:

C *"Chief (Mrs.) Asari E - Young*

*BZ/17 GRA*

*Federal Housing*

*Ikot Ansa*

*Calabar*

D *SUSPENSION FROM OFFICE - RECONSIDERATION*

*I am directed to inform you that the Commission could not consider your case because the original of some of the documents required were submitted late, while the meeting was in progress. Secondly, no inventory of the estate as at July 1999 up to now was submitted. The UBA PLC Statement of accounts omitted the period January 2000 to February 2001. The certified true copy of document you forwarded as "PR/4/99 Estate of Chief E. O. Efiom, alias Efiom America" is your own creation and not the original file of the Estate.*

- F *2. You are please, required to forward these and other documents necessary for the resolution of this case to reach the Commission on or before 18th of October, 2002.*

*3. We count on your co-operation*

G *Signed: EKPENYOUNG E. OKON*

*(SECRETARY)*

*JUDICIAL SERVICE COMMISSION"*

Then followed the query which was issued to the respondent which is dated 31st October, 2002 and it goes as follows:-

H *"Ref; JSC/PC/31/VOL.1/365*

*31st October, 2002*

*Chief (Mrs.) Asari E. Young*

*B2/17 CRA Federal Housing*

*Ikot Ansa*



Calabar.  
U.F.S. The Chief Registrar,  
Judiciary Headquarters,  
Calabar.  
Madam,

**QUERY**

B

Having gone through your representations since your reassignment from the office of the Chief Registrar of the Cross River State Judiciary and your subsequent suspension from office, the Commission has directed that you should throw more light on the following:- C

(a) why an inventory of the Estate of Late Efiom Okon Efiom that was to be received and preserved as per the Court Order of 21st July, 1999 has not been submitted;

(b) who authorised you to spend funds of the Estate as shown D by the statement of account (Receipt & Payments) submitted by you. It has also been observed that most of the payments were to the plaintiffs in suit C/222/99;

(c) the various court actions you instituted over the estate in your personal name; E

(d) why you refused to hand - over the affairs of the estate when you ceased to be the Chief Registrar of the Cross River State Judiciary; and

(e) the whereabouts of the file of the estate - see the representation shown as Annexure 'A' and 'B' F

2. You are required to explain to the satisfaction of the Commission within 48 hours on receipt of this query why disciplinary action should not be taken against you.

3. Please acknowledge the receipt of this Query on the attached slip. G

Signed: EKPEYONG E. OKON  
(SECRETARY)

For: CHAIRMAN

JUDICIAL SERVICE COMMISSION"

H

Before the query was issued, the respondent had petitioned the Chief Justice of Nigeria about the usurpation of her powers. This petition was later withdrawn. On 13th November, 2002 the respondent received a letter of retirement from service. It is reproduced as

follows:-

*“JUDICIAL SERVICE COMMISSION*

*P.M.B. 1101*

*Calabar*

*13th November, 2002*

B *Ref.JSC/PC/31/VOL.1/381*

*Chief (Mrs.) Asari E. Young,*

*(Head, Dept of Planning, Research of Statistics)*

*U.F.S. The Chief Registrar Judiciary Headquarters High Court of Justice, Calabar*

C *Madam.*

*RETIREMENT FROM SERVICE*

*After the consideration of your representations of 6th November, 2002 which was a reply to our letter No.JSC/PC/31/VOL.1/365 of 31st October, 2002, I am directed to inform you that they were very unsatisfactory and do not avail you. Consequently, by the powers vested on it by the Civil Service Rule No.01108 (vii) and section 197(2) of the 1999 Constitution of the Federal Republic of Nigeria, the Cross River State Judicial Service Commission has directed that you be retired from service. You are, by this letter, retired with effect from 11th November, 2002.*

*2. The Commission wishes you success in your future endeavours.*

F *3. Copies of this letter are being sent to the Head of Service, the Permanent Secretary, Department of Establishment & Service Matters, the Accountant - General and the Auditor - General for information and gazette publication.*

*Signed: EKPENYONG E. OKON*

G *(SECRETARY)*

*For: CHAIRMAN*

*JUDICIAL SERVICE COMMISSION”*

H *Having invoked the powers granted by Section 197(2) of the Constitution, to retire the respondent, the action of the Judicial Service Commission of Cross - River State could not be said to have been done administratively. And considering the fact that the respondent directly accused the Chief Judge who doubled as the Chairman of the Judicial Service Commission, the same Chief Judge could not be Part of the same body that sat to consider allegations against her.*

This is so notwithstanding the fact that the respondent later withdrew the petition against the Chief Judge.

Furthermore there were allegations that the respondent tampered with the file relating to the Estate of Chief E. O. Efiom and did not render account of the estate from January, 2000 to February, 2001. This is a criminal imputation that ought to have been resolved through legal process. See: *Garba v. University of Maiduguri* (1986) 1 NWLR (Part 18) 550. The employment of the respondent had statutory flavour and her case could not be treated like that of *Baba v. N.C.A.T.C.* (1991) 5 NWLR (Part 192) 388 whose appointment was yet to be confirmed. Fair hearing would be seen not to have been done where the chairman of the Judicial Service Commission has personal scores to settle with the complainant and still goes ahead to consider representations made by the complainant protesting his innocence of allegations leveled against him as happened in this case. The independence of the Commission must be seen not to have been compromised if an independent body determines the guilt of the accused before the ultimate decision is taken to relieve the complainant of her appointment. The lower court was therefore right in setting aside the decision of the trial court and nullifying the letter retiring the respondent from service.

For this and the more detailed reasons contained in the leading judgment, I too find no merit in the appeal and it is hereby dismissed. I make no order as to costs.

B

C

D

E

F

G

H