

**SUPREME COURT OF NIGERIA**  
FRIDAY 20TH DECEMBER, 2013. SC. 360/2007  
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-  
COOMASSIE, S. GALADIMA, N. S. NGWUTA,  
K. M. O. KEKERE-EKUN, JJSC**

1. HARUNA GYANG  
2. JOACHIN IWUOHA ..... APPELLANTS  
V.

1. COMMISSIONER OF POLICE,  
LAGOS STATE  
2. INSPECTOR-GENERAL  
OF POLICE  
3. NIGERIA POLICE FORCE ..... RESPONDENTS  
4. MINISTRY OF POLICE AFFAIRS  
5. ATTORNEY-GENERAL  
OF THE FEDERATION  
6. PROVOST MARSHAL  
FORCE HEADQUARTERS  
(ANNEX) LAGOS

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FAIR HEARING - Audi alteram partem - Application - Administrative bodies acting judicially in the imposition of decision - That is likely to affect civil rights and obligations - Are bound to observe principles of fair hearing (H1)

APPEALS - Fair hearing - Administrative body - Dealing with a matter - Based on printed or oral evidence or communications only - Is not in itself a breach of principles of fair hearing (H2)

**FACTS**

Plaintiffs/appellants were charged with and tried in orderly room proceedings for offence of corrupt practices. They were discharged and acquitted. Thereafter a review panel was conducted by the Police Provost Marshal. The panel sat and set aside the decision of the orderly room proceedings and in its place found appellants guilty. Consequently, appellants were dismissed from the Nigeria Police Force. In reaction, appellants before the Federal High Court Lagos com-

menced this action by motion ex-parte for leave to apply for an order of certiorari, seeking inter alia a declaration that the review panel breached their right to fair hearing, order quashing the decision of the review panel and order reinstating appellants to their ranks in the Police Force.

In its judgment, the court found inter alia that no new evidence was adduced in the review proceeding and that the Provost Marshal merely reviewed the proceedings of the orderly room trial. The court therefore found that there was no breach to appellants' right to fair hearing. The application was rejected. Dissatisfied, appellants appealed to the Court of Appeal, Lagos Division. The court found that all that the reviewer did was to evaluate the evidence that had been accepted before the orderly room trial, that there was nothing to show that the review required any oral testimony and that there was nothing on record to suggest that appellants made any attempt to be heard and that their request was denied. The appeal was thus dismissed. Consequently, appellants lodged appeal to Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(1) whether the Court of Appeal was right, in view of the provisions of Section 36 of the 1999 Constitution and the Rules of Natural Justice, when it held, in effect, that, since the Commissioner of Police only “Reviewed” the proceedings of the Orderly Room Trial before reaching a decision, the Commissioner of police was not bound to hear from the Appellants before he took the decision which adversely affected the Appellants.*

*(2) Whether, from the Records, there existed concurrent findings of facts which the Court of Appeal needed to review and which it declined to do.*

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

*FAIR HEARING - Audi alteram partem - Application*

**1. It has long been settled in a line of cases decided by this court that administrative bodies or tribunals, acting judicially in the determination or imposition of a decision that is likely to affect the civil rights and obligations of a person, are bound**

**and enjoined to strictly observe the principles of fair hearing. This principle often expressed by the Latin Maxim “Audi Alteram Partem” meaning “hear the other side,” has been for long enshrined in our jurisprudence.** (p. 4263 D)

*Fair hearing - Administrative body*

**2. With due respect to the Learned Counsel for the Appellants, who has made lengthy submissions on this point, but my humble understanding of the in-depth study of the cases so much relied upon, hinges on the simple fact that an administrative body, acting in that capacity, has the option to decide whether to deal with the matter before it, by oral hearing or merely on written evidence, and argument provided. Dealing with an appeal on written or printed evidence or communications only, is not, in itself a breach of the principle of fair hearing.** (p. 4265 D)

## NOTABLE POINT OF INTEREST

### **GALADIMA JSC**

#### ***1. “Review” – Definition***

Needless going into the semantics of the word “Review.” It’s simplest definition is found in the Oxford Advanced Learner’s Dictionary 8th Edition. It is defined as follows: *“an examination of something, with the intention of changing it, if necessary.”* (p. 4264 C)

### **REPRESENTATION**

Festus Keyamo, Esq. with B. I. Dakum, Esq., for the Appellants  
Chiesonu I. Okpoko, Esq., for the Respondents

### **CASES REFERRED TO**

A-G Lagos State v. Dosunmu (1989) 3 NWLR (pt. 111) 552  
Nwoboshi v. Mil Governor Delta State (2003) 3 NWLR (pt. 831) 305  
R. v. Electricity Joint Commission (1968) NMLR 102  
Adeyemi v. A-G Federation (1984) 1 SCNLR 525  
Adigun v. A-G Oyo State (1987) 1 NWLR (pt. 53) 682  
Oyeyemi v. Commissioner for L.G. (1992) 2 NWLR (pt. 226) 661  
Akibu v. Oduntan (2000) 13 NWLR (pt. 685) 446  
State v. Ajie (2000) 11 NWLR (pt. 678) 434

Akande v. Nigerian Army (2001) 8 NWLR (pt. 714) 1

Ibodo v. Enarofia (1990) 5-7 SC 42

Chikwendu v. Mbamali (1990) 3-4 SC 3

Okafor v. Idoso (1984) 1 SCNLR 481

Hart v. Military Governor Rivers State (1976) 11 SC (Reprint) 109

B Falomo v. Lagos State Public Service Commission (1977) ALL NLR 102

### **STATUTE REFERRED TO**

C Constitution of the Federal Republic of Nigeria 1999, s. 36

### **BOOKS REFERRED TO**

Oxford Advanced Learner's Dictionary 8th Ed.

Black's Law Dictionary, 9th Ed. 924

D

### **LEAD JUDGMENT BY GALADIMA JSC**

This is an appeal against the judgment of the Court of Appeal, Lagos Division delivered on the 8th of April, 2013, affirming the ruling of the trial Federal High Court, delivered on 22nd May, 2001.

E On the 8th of November, 2000 the Appellants at the Federal High Court sitting in Lagos commenced an action by way of motion ex-parte for leave to apply for an order of certiorari seeking the following reliefs:

F *"(a) A DECLARATION that the proceedings tagged "CP's Review" signed by one J.A. Alade, Force Provost Marshal, by which the Applicants were dismissed from the Nigeria Police Force, is unconstitutional, illegal, null and void, in that it breaches the Applicant's right to fair hearing as enshrined in Section 36 of the 1999 Constitution of the Federal Republic of Nigeria.*

G *(b) AN ORDER of certiorari removing the proceedings tagged "CP's Review" signed by one J. A. Alade, Force Provost Marshal. By which the Applicants were dismissed from the Nigeria Police Force, into this Honourable Court, for the purpose of quashing the said*

H *proceedings.*

*(c) AN ORDER quashing the proceedings tagged "CP's Review" signed by one J. A. Alade, Force Provost Marshal, by which the Applicants were dismissed from the Nigeria Police Force.*

*(d) AN ORDER reinstating the Applicants to their ranks with all*

*their full rights and entitlements as if they had not been dismissed.*

*The grounds upon which the reliefs were sought are”*

*“(a) That the Applicants and three other purported defaulters were earlier discharged and acquitted of a one-count charge of corrupt practice brought against them on the 2/04/99 in an orderly room at Mopol 2, Keffi Street, Lagos State.*

*(b). That the review panel headed by one J. A. Alade the Acting Commissioner of Police Provost Marshal, Force Headquarters (FHO Annex that reviewed the earlier proceedings and dismissed the Applicants from the Nigeria Police Force did not give the Applicants a right to represent themselves and be heard thereby denying the applicants their constitutional right to fair hearing*

*(c) That the Applicants are entitled to be returned to their original positions before their rights were denied them.”*

Accompanying the application, is a Verifying Affidavit of 9 paragraphs sworn to by one of the Counsel in the chambers of the Applicants’ Solicitors. Three Exhibits were attached viz:

(a) Exhibit “A” - The proceedings and judgment of the Orderly Room Trial.

(b) Exhibit ‘B’ - The proceedings of the Review.

(c) Exhibit C - Letter of Appeal by the Applicants to the Appeal Department of the Inspector-General of Police.

In compliance with the Rules of this court parties filed and exchanged briefs of argument. At the hearing of this appeal on 30/9/2013, the Learned Counsel for the Appellants, Festus Keyamo Esq. adopted the Appellants’ brief filed on 18/4/2008. The Respondent’s brief dated 1/12/2008 and filed on 10/12/2008 would appear deemed filed on that date. It was adopted by the Chiesona I. Okpoko, Esq. of the Department of Civil Litigation and Public Law of the Federal Ministry of Justice.

The Appellants’ two issues formulated for determination read thus.

*“(1) whether the Court of Appeal was right, in view of the provisions of Section 36 of the 1999 Constitution and the Rules of Natural Justice, when it held, in effect, that, since the Commissioner of Police only “Reviewed” the proceedings of the Orderly Room Trial before reaching a decision, the Commissioner of police was not bound to hear from the Appellants before he took the decision which ad-*

*versely affected the Appellants. (Grounds 1 and 2)*

*(2) Whether, from the Records, there existed concurrent findings of facts which the Court of Appeal needed to review and which it declined to do. (Ground 3)”*

The Respondent on the other hand formulated one issue for determination. It reads -

*“Whether the Court below was right in dismissing the Appellants’ Appeal.”*

The contention of the Appellants is that it was a denial of fair hearing of the allegation against them without being called upon to make representation, and that, this Court can interfere with the decisions of the two lower Courts because the question involved is not one of fact but of law. It is urged on this Court to set aside the decision of the Court of Appeal which dismissed the Appellants’ appeal.

Learned Counsel for the Respondent has submitted that the procedure adopted by the Appellant to challenge the Police Provost Marshal Review Report and Recommendation in Court was wrong as the action was not initiated by due process of law. That the Police Provost Marshal in conducting his review did not take any evidence or witness at all. All he did was to go through the proceedings of the investigation and recommendations of the Delegated Officer who conducted same. It is argued that the Investigation Report and Recommendation of the Delegated Officer, who actually conducted the proceedings at the Orderly Room Trial, was only referred to the Police Provost Marshal for review. It is contended that the action of the Police Provost Marshal, in his review report was administrative and not judicial or quasi judicial. Learned Counsel further contended that a prerogative writ procedure adopted by the Appellants is inappropriate to challenge the said report of the Police provost Marshal. Reliance was placed on the cases of ATTORNEY-GENERAL LAGOS STATE v. DOSUNMU (1989) 3 NWLR (pt.111) 552 at 567; NWOBOSHI v. MILITARY GOVERNOR DELTA STATE (2003) 3 NWLR (PT.831) 305 AT PP.317-318 AND R. v. DISTRICT OFFICER FOR KUTIA PEOPLE Ex parte Eti Atem (1966) All NLR 51 at 56.

On the issue of whether or not the Police Provost Marshal by his review and recommendation, breached Section 36 of the 1999 Constitution, Learned Counsel contended that the Appellants having commenced their action through a wrong procedure, and the

trial court for that reason not having jurisdiction to entertain same, a fortiori, this court, as Appellate Court lacks jurisdiction to adjudicate upon; more so that the courts below did not make any finding of fact whether the Appellant's right of fair hearing was breached by the Review Report and the Recommendation, which was sought to be quashed.

My observation, in this matter, is that the first issue and the sole issue formulated by the Appellants and the Respondent, respectively, revolves round the applicability of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria. In other words whether the court below was right in view of the provisions of Section 36 of the 1999 Constitution and the Rules of Natural Justice, when it held that since the Commissioner of Police only "reviewed" the proceedings of the Orderly Room Trial before reading a decision, the said Commissioner of police was not bound to hear from the Appellants before he took the decision with imposition of a more severe punishment resulting in dismissal of the Appellants.

***It has long been settled in a line of cases decided by this court that administrative bodies or tribunals, acting judicially in the determination or imposition of a decision that is likely to affect the civil rights and obligations of a person, are bound and enjoined to strictly observe the principles of fair hearing.*** See R. v. ELECTRICITY JOINT COMMISSION (1968) NMLR 102; ADEYEMI v. ATTORNEY-GENERAL FEDERATION (1984) 1 SCNLR p.525; ADIGUN v. ATTORNEY-GENERAL OYO STATE & 18 ORS (1987) 1 NWLR (Pt.53) 682; OYEYEMI V. COM. FOR LOCAL GOVERNMENT (1992) 2 NWLR (pt.226) 661 at 67 AKIBU v. ODUNTAN (2000) 13 NWLR (pt.685) p.446; STATE v. AJIE (2000) 11 NWLR (pt.678) 434 and AKANDE v. NIGERIAN ARMY (2001) 8 NWLR (pt.714) P1. ***This principle often expressed by the Latin Maxim "Audi Alteram Partem" meaning "hear the other side," has been for long enshrined in our jurisprudence.***

These decisions deal with this general principle of natural justice. My careful study of each case makes it distinguishable from one another. For example, the case of ADIGUN v. ATTORNEY-GENERAL OYO STATE (Supra) is distinguishable and with due respect inapplicable in the consideration of this appeal. The complaint in that case is that before the "AGIRI COMMISSION" one party testified before the

commission, whilst, the other party was not at all invited to testify to put their case before the Commission. This was a clear breach of the principle of fair hearing.

I have observed that from the affidavit evidence and the supporting statement; the Appellants are not complaining against the B Orderly Room Trial. Their grouse against the CP's Review is that they were not given an opportunity to be heard and that heavier punishment than that of the Orderly Room Trial was meted out to them. Thus the issue to be determined here is whether the conduct of the CP's Review of the findings and decision of the Orderly Room Trial C deprived the Applicants their fundamental right to fair hearing as guaranteed under Section 36 of the 1999 Constitution.

Needless going into the semantics of the word "Review." It's simplest definition is found in the Oxford Advanced Learner's Dictionary 8th Edition. It is defined as follows: *"an examination of something, with the intention of changing it, if necessary."* D

The purport of the CP's Review is intended to re-examine administratively the decision of the Orderly Room Trial. On the relevance of the Exhibits 'B,' the Review proceedings conducted by E one Mr. J. A. Alade CP, the Provost Marshal (FHQ), the Learned Trial Judge observed on page 78 of the Records of proceedings, as follows:

- (1). No new evidence was adduced.
- F (2). No witnesses testified either for the prosecution or for the defence.
- (3). In fact there was no trial:
- (4). The Reviewer merely reviewed the proceedings of the Orderly Room Trial.

G In the same vein the reasoning of the court below was that the C.P did not go outside the totality of the evidence as reflected in the printed materials. On page 106, relying on the English authority of LORD v. MC MAHON (1987) AC 625, the court had this to say:

H *"Oral hearing was at the Orderly Room Trial, the Appellants never complained about that. It was the Review by the CP which is akin to an appeal that they are attempting to discredit, by contending that principles of fair hearing were not observed. I have had a careful study of the printed materials which constitute the CP's Review they did not go outside the totality of the evidence led at the Orderly*

Room Trial. In reaching the conclusion the CP's Review body had reasoned thus;

*"Having painstakingly gone through the trial proceedings, I am convinced that the charge against the entire 1st to 5th defaulters has been convincingly forward (sic). This being strictly as to the squeezed N1,070.00 and N985.00 respectively by the 2nd and 5th defaulters."*

It is the contention of the Appellants, as argued by their Counsel, that it would have been fair and just for the Appellants to have been given the benefit of the "printed materials" that were forwarded to CP for review, before a decision was taken, so as to be able to challenge same, if they so wished. Curious enough, the Learned Counsel has equally placed reliance on the English decisions in LORD case (supra) and that of R v. LOCAL GOVERNMENT BOARD Ex parte ARLIDGE (1994) 1 KB 160 and R v. IMMIGRATION APPEAL TRIBUNAL Ex parte Jones (Ross) 1988 1 WLR. 477. ***With due respect to the Learned Counsel for the Appellants, who has made lengthy submissions on this point, but my humble understanding of the in-depth study of the cases so much relied upon, hinges on the simple fact that an administrative body, acting in that capacity, has the option to decide whether to deal with the matter before it, by oral hearing or merely on written evidence, and argument provided. Dealing with an appeal on written or printed evidence or communications only, is not, in itself a breach of the principle of fair hearing.*** See R. v. LOCAL GOVERNMENT BOARD EX PARTE ARLIDGE (Supra) and STUART v. HAUGHLEY PAROCHIAL CHURCH COUNCIL (1936) CHD. 32.

It is not disputed that the CP Review panel has merely evaluated the oral evidence which has been accepted before the Orderly Room Trial.

In paragraph 4.15 of their Brief, Learned Counsel has submitted that the Court below has confused the case of the Appellants to mean that they were denied an oral hearing. Reference was made to page 107 of the Records. It is submitted that the Appellants are complaining about the denial of fair hearing, simpliciter, not "oral hearing."

It is observed that the court below noted on page 102 of the Records that the Appellants formulated two issues from the sole

ground of Appeal contained in their Notice of Appeal. Realizing this mistake, their Learned Counsel sought and obtained the leave of that court to withdraw their issue 1 and arguments canvassed therefrom. Hence the court below only considered and determined the appeal on the second issue which essentially complained of denial of fair hearing.

In this court Appellant's Notice of appeal contained 3 grounds of Appeal from which two issues were raised. The first is that it was a denial of fair hearing for the CP to take an adverse decision against the Appellants without calling on them to make representation before him. This issue is distilled from Grounds 1 and 2 of the Notice of Appeal. The Second issue is distilled from Ground 3 of the Notice of Appeal. Essentially this is on the decision of the court below not to interfere with the concurrent findings of facts which it thus declined to review.

From the foregoing it is crystal clear that the Appellants have consistently complained about denial of fair hearing simpliciter. Suffice it to say that the hearing at the Orderly Room Trial was "Oral." I agree with the finding of the court that at the hearing, the Appellants never complained that they were denied of fair hearing. The court below therefore, after careful study of the printed materials, which constituted the Cp's Review, concluded that he did not go outside the totality of evidence led at the Trial. I have earlier reproduced the Cp's conclusion above.

The arguments and discourse of the Learned Counsel of the Appellants have only won him plaudits, but they are plausible, even in the face of his authorities and those of the Respondent's Counsel. In the circumstance, issue 1 is resolved in favour of the Respondent.

On the second issue, the court below found that the CP's Review Panel has "evaluated" the Oral evidence which the Orderly Room Trial had used and carefully evaluated by the CP's Review. The Learned Counsel for the Appellants has submitted that what was before the Court of Appeal (the court below) was not an appeal on facts but on point of law, to wit, that the CP, as a Reviewing authority ought to have heard from the Appellants before overturning the decision of the Orderly Room Trial.

The complaint of the Appellants (by their Ground one of the Notice of Appeal) was against the "Review" of findings and decisions

of the Orderly Room Trial. Clearly the decision of the Orderly Room Trial and CP's Review were based on facts placed before them. The Court of Appeal sat as an Appellate Court and held that it was not going to disturb or interfere with those finding of facts. Needless for me to dwell further on this point, strenuously canvassed by the Learned Counsel for the Appellants, having resolved the first crucial issue against them. B

I must however, before I conclude, observe that the Respondent's brief did not help much in the resolution of this appeal. The sole issue was clearly intended to overreach or "*ambush*" the Appellants. The real issues canvassed by the Appellants were not properly addressed in the Respondent's brief. However, in my view, from the foregoing, all the same, this appeal is devoid of merit and consequently, it is hereby dismissed. The decision of the court below is affirmed. C D

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### **ONNOGHEN JSC**

I have had the benefit of reading in draft the lead judgment of my learned brother GALADIMA, JSC just delivered. E

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

It is clear from the record that the review of the proceedings and recommendations of the Orderly Room Trial of the appellants which resulted in the setting aside of the recommendations and substitution thereto of an order dismissing appellants did not involve the taking of any evidence by the review body/panel, as the said review exercise was carried out based on the evidence ready on record. There is no dispute that appellants were heard during the Orderly Room Trial, as the record confirms. What the review panel did was simply to review the evidence on record by the parties before coming to the conclusion that the proper decision is that of dismissal having regards to the facts of the case as revealed by the evidence on record. F G H

In the circumstance, I hold the view that the panel acted administratively and in the circumstance the right of fair hearing of appellants under Section 36 of the Constitution of the Federation Republic of Nigeria, 1999 as amended, was not breached. Appellants

were heard in full during the trial and the review panel had no need to hear fresh or further evidence nor was any such evidence called in the absence of appellants.

It is however unfortunate that appellants did not challenge the action of the respondents on the merit but went to court for an order of certiorari by way of judicial review of the review panel's decision, on the ground of breach of appellants' right to fair hearing.

In any event, I find no merit whatsoever in the appeal which is accordingly dismissed by me.

I abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal dismissed.

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### **MUNTAKA-COOMASSIE JSC**

This is an appeal against the decision of the Court of Appeal Lagos Division hereinafter referred to as the court below.

The two appellants herein, Haruna Gyang and Joachin Iwuoha, instituted an action by way of motion "ex parte" for leave to apply for an Order of certiorari seeking for the following reliefs:- my learned brother Galadima JSC has already re-produced the four (4) declarations, it may not be necessary for me in this judgment to again reproduced same.

Parties in this appeal filed and exchanged briefs of argument in line with the provisions of the Supreme Court Rules. At the hearing of the appeal also parties adopted their respective briefs of argument.

I am privileged to have read in advance the illuminating lead judgment of my noble lord, Galadima JSC, and I completely agreed that the appeal lacks merit and same deserved to be dismissed in fact I dismissed same. Can you imagine how difficult it may be to force a horse to drink from the river one can only do his or her best to take the horse to the riverside. The trial court and indeed the court below did not prevent the appellants from addressing the court below. There is therefore no evidence of the denial of the appellants of their right to fair hearing. The court below was perfectly right in confirming the decisions of the orderly room trial and that of the review.

It is my view that the order of certiorari is inappropriate to quash the decision of the two lower courts as their decision are cor-

rect in law and never perverse. I confirm that the trial court cannot properly decline jurisdiction which it inherently had. There is no breach of fair hearing which is against section 36 of the 1999 Constitution of the Federal Republic of Nigeria as amended. In the eyes of the law it would be difficult for this court to disturb the two decisions of the two lower courts. That being the case, the two issues formulated by the two appellants failed and were therefore resolved against the appellants. I entirely agree with my learned lord Galadima JSC that the appeal is devoid of any merit and same is dismissed by me. It goes without saying that the judgment of the court below is hereby affirmed.

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### **NGWUTA JSC**

Pursuant to Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) are the appellants entitled to be heard and so to be given the opportunity of being heard in a review of the proceedings during which they were acquitted and discharged on a count of corrupt practices brought against them in orderly room trial.

Section 36 (4) of the Constitution (supra) provides:

*“S.36 (4): Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing...”*

Appellants were charged with and tried in orderly room proceedings for offence of corrupt practices and were discharged. The issue of breach of fair hearing was raised against a review of the proceedings in which they were discharged.

The word “*review*” means a judicial re-examination of the case in certain specified and prescribed circumstances. See *Parduman Singh v. State of Punjab AIR 1958 Pun 63, 68*.

The noun “*review*” means “an examination of something, with the intention of changing it if necessary.” See *Oxford Advanced Learner’s Dictionary, International Students Edition, page 1253*.

The proceedings at which the appellants complain they were denied fair hearing is a judicial review which is a Court’s review of a lower Court or an administrative body’s factual or legal findings. See *Black’s Law Dictionary, 9th Ed., p.924*.

The Review Panel did not try the appellant. It simply examined the proceedings and judgment of the orderly room trial. Appellants were not “charged with a criminal offence” before the Review Panel within the meaning and intendment of S.36 (4) of the Constitution (supra). They were therefore not entitled to be heard or to be given  
B opportunity to be heard, their guilty vel non having been already determined in the orderly room trial.

As the learned trial Judge found at page 78 of the record of proceedings, no new evidence was adduced before the review panel  
C and no witnesses testified for either side. There was no trial.

The Court below affirmed the findings of fact of the trial Court and since the appellants have not demonstrated perversity of the concurrent findings of the two Courts below, this Court will not disturb the said findings. See *Ibodo v. Enarofia* (1990) 5-7 SC 42;  
D *Chikwendu v. Mbamali* (1990) 3-4 SC 3; *Okafor v. Idoso* (1984) 1 SCNLR 481.

Based on the fuller reasons in the lead judgment of my learned brother, Galadima, JSC, which I had the opportunity of reading in draft, I agree that the appeal is devoid of merit. I also dismiss the  
E appeal and affirm the decision of the Court below which affirmed the decision of the trial Court. Appeal dismissed.

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### ***KEKERE-EKUN JSC***

F My learned brother, Galadima, JSC had before now obliged me with a draft copy of the judgment just delivered. I agree that the appeal lacks merit and should be dismissed.

The facts giving rise to this appeal are fairly straightforward  
G and have been well set out in the lead judgment. The main issue in contention in this appeal is whether the appellants’ right to fair hearing as enshrined in Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (the 1999 Constitution) was breached when pursuant to the review proceeding conducted by the Police Provost  
H Marshal the decision of the orderly room trial, which acquitted and discharged them was set aside and in its place a finding of culpability made which led to their dismissal from the Police Force, without giving them an opportunity of being heard. It is their contention they were neither called upon to defend themselves nor were they con-

fronted with any witnesses at the review proceedings. It was also argued on their behalf that the provisions of Section 36 of the 1999 Constitution apply to all situations in which a person may be found guilty or liable and that in reviewing the decision of the orderly room trial the Commissioner of Police was acting judicially and was therefore bound to observe the principles of natural justice. B

The salient findings of the trial court, which were upheld by the lower court, are as follows:

1. No new evidence was adduced in the review proceeding.
2. No witness testified either for the prosecution or for the defence. C
3. There was no trial.
4. The Provost Marshal merely reviewed the proceedings of the orderly room trial.

The lower court found that all that the reviewer did was to D evaluate the evidence that had been accepted before the orderly room trial; that there was nothing to show that the review required any oral testimony; there was nothing on record to suggest that the appellants made any attempt to be heard and that their request was denied. E

In the case of: Hart V. Military Governor Rivers State (1976) 11 SC (Reprint) 109, (1976) LPELR - 1355 SC, Fatayi-Williams, JSC had this to say on what is expected of an administrative body in circumstances such as the instant case:

*"In matters of this nature, the earlier view of the law is that an F administrative body, in ascertaining facts, may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of, and are not conducted in accordance with, the practice and procedure of a court of law. It is enough if it is exercising judicial G functions in the sense that it has to decide, on the materials before it, between an allegation and a defence... The modern concept, which however commends itself to us is that the duty placed on such a body is to act fairly in all such cases.... As Lord Parker, Lord Chief Justice of England has aptly put it in Re H.K. (an Infant) (1967) 2 QB H 617 at p.630... "that is not, as I see it a question of acting or being required to act judicially, but of being required to act fairly." (Emphasis mine) See also: Dr. A.O. Falomo V. Lagos State Public Service Commission (1977) ALL NLR 102: (1977) 5 SC 32. In the instant*

case, the appellants were fully represented and afforded a proper hearing at the orderly room trial. They have no quarrel with the proceedings thereat. As rightly observed by the lower court, the Provost Marshal did no more than review the record of the proceedings of the orderly room trial. He did not go outside those proceedings or  
 B make use of any additional evidence to arrive at his conclusion. His findings were based solely on the admitted and proved facts before the orderly room trial. Also as observed by the lower court, there is  
 C nothing in the record to suggest that the appellants sought audience during the review proceeding, which was denied. The principle of fair hearing as enshrined in Section 36 (1) of the 1999 Constitution does not necessarily mean an oral hearing. What is required is that every party to the dispute is given an opportunity to state his case. Each party must know the case being made against him and given an  
 D opportunity to react thereto. See: *Duke V. Government of Cross River State* (2013) LPELR SC. 292/2008; *Hart V. Military Governor of Rivers State* (supra). In the circumstances of this case the need for oral hearing did not arise. The orderly room trial, which provided the material upon which the Police Provost Marshal carried out his re-  
 E view, was well conducted with the appellants given ample opportunity to present their case and challenge the evidence led against them through their legal representatives. The appellants have therefore not shown any breach of their fundamental rights. They have not ad-  
 F vanced any reason to warrant interference with the concurrent findings of the two lower courts.

For these and the more detailed reasons contained in the lead judgment, I also dismiss this appeal and affirm the decision of the lower court.

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