UNIVERSITY COLLEGE HOSPITAL BOARD OF MANAGEMENT

V.

MR. ISIAKA AKINBOLA MORAKINYO

COURT OF APPEAL
(IBADAN DIVISION)

CA/I/113/2013

MONICA BOLNA'AN DONGBAN-MENSEM J.C.A. *(Presided)*
MUDASH1RU NAS1RU ON 1 YANGI, J.C.A.
NONYEREM OKORONKWO, J.C.A. *(Read the Leading Judgment)*

TUESDAY, 8TH JULY 2014

ADMINISTRATIVE LAW - Administrative body - Person invited as witness before an administrative body - Status of.

ADMINISTRATIVE LAW- Panel of inquiry - Duty on not to receive evidence behind the back of person being investigated.

ADMINISTRATIVE LAW - University College Hospital - Employee of - Status of - Whether a public officer - Section 318(1). Constitution of the Federal Republic of Nigeria, 1999 (as amended).

ADMINISTRATIVE LAW - University College Hospital Board of Management - Status of - Whether a statutory institution -Whether bound by rides of fair hearing -

Sections 36(I) and 318(1), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

APPEAL - Appeal from decisions of the Notional Industrial Court to the Court of Appeal on question of Fundamental rights -Whether lies as of right - Section 243(2), Constitution of the Federal Republic of Nigeria, 1999 (as amended)

APPEAL - Right of appeal from decisions of the National Industrial Court to the Court of Appeal on question of Fundamental rights - Source of- Section 243(2), Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 9(I) and (2). National Industrial Court Act.

CONSTITUTIONAL LAW - Fair hearing - What constitutes - Attributes of - Constitutional right of - Section 36(1). Constitution of the Federal Republic of Nigeria, 1999 (as amended).

CONSTITUTIONAL LAW - National Industrial Court - Right of appeal from decisions of to the Court of Appeal on question of Fundamental rights - Source of - Section 243(2), Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 9(1) and (2), National Industrial Court Act.

CONSTITUTIONAL LAW - National Industrial Court - Right of appeal from decisions of to the Court of Appeal on question of Fundamental rights - Whether lies as of right - Section 243(2). Constitution of the Federal Republic of Nigeria, 1999 (as amended).

COURT - National Industrial Court - Right of appeal from decisions of to the Court of Appeal on question of fundamental rights - Source of - Section 243(2), Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 9(I) and (2). National Industrial Court Act.

COURT - National Industrial Court - Right of appeal from decisions of to the Court of Appeal on question of Fundamental rights - Whether lies as of right - Section

243(2), Constitution of the Federal Republic of Nigeria. 1999 (as amended).

FAIR HEARING - Accused person or person undo investigation - Need for to be confronted with all accusers at tribunal or before panel of inquiry.

FAIR HEARING - Administrative body - Person invited as witness before an administrative body - Status of.

FAIR HEARING - Fair hearing - What constitutes - Attributes of - Constitutional right of - Section 36(1), Constitution of the Federal Republic of Nigeria. 1999 (as amended).

FAIR HEARING - Justice - Essence and test of.

FAIR HEARING - Panel of inquiry - Duty on not to receive evidence behind the back of person being investigated.

LABOUR LAW - Employee of statutory institution Where wrongfully dismissed - Whether court can reinstate.

LABOUR LAW - Employee of University College Hospital - Status of - Whether a public officer - Section 318(I), Constitution of the Federal Republic of Nigeria. 1999 (as amended).

NATURAL JUSTICE - Principles of natural justice - Decision given in breach of - Effect of.

WORDS AND PHRASES – "Injustice" - What amounts to.

WORDS AND PHRASES - "Justice" - Meaning of - Classification of

WORDS AND PHRASES - "Proceedings being a nullity" - Meaning of

Issues:

1. Was the respondent given or accorded fair hearing in the proceedings before the panel of inquiry of die University College Hospital Board of Management.
2. If the University College Hospital Board of Management was in breach of the fair hearing provisions of the Constitution and the statute and

regulation of the appellant, what is the proper remedy or order to be made in the event of a wrongful dismissal based upon lack of fair hearing.

Facts:

The respondent was a staff of the appellant. He held the position of Deputy Director, procurement. He was alleged to have kept a special store filled with items without the knowledge of the Chief Medical Officer of the University College Hospital.

Consequently, a panel of inquiry was set up to investigate the operation of the special store.

The panel of inquiry met for about eleven times but invited the respondent to appear before it only three times. Furthermore, twenty three witnesses testified before the panel of inquiry but it gave the respondent the opportunity to confront or hear the testimonies of only seventeen of the witnesses. At the conclusion of the sittings, the appellant terminated the employment of the respondent based on the recommendation of the panel of inquiry.

In reaction, the respondent sued the appellant before the National Industrial Court. The parties joined issues and the matter went to trial. At the conclusion of hearing, the National Industrial Court found in favour of the respondent.

Dissatisfied, the appellant appealed to the Court of Appeal.

In determining the appeal, the Court of Appeal considered the provisions of section 36(1) and 243(2), Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provide 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.

243(2) An appeal shall lie from the decision of the National Industrial Court as of right to the

Court of Appeal on questions of fundamental right as contained in Chapter IV of this Constitution us it relates to matters upon which the National Industrial Court has jurisdiction."

Held *(Unanimously dismissing the appeal):*

1. *On Right of appeal from the National Industrial Court to the Court of Appeal on question of fundamental rights –*
By virtue of section 243(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), an appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental right as contained in Chapter IV of the Constitution as it relates to matter upon which the National Industrial Court has jurisdiction. In the instant case, the issues formulated by the parties raised the question of fair hearing and compliance with section 36(1) of the Constitution. Furthermore, the judgment of the National Industrial Court was founded on what the court considered as a breach of section 36(1) of the Constitution. In the circumstance, the appellant could appeal as of right. *(P. 606, paras. E-G*

2. *On Source of right of appeal from National Industrial Court to the Court of Appeal on question of fundamental rights –*
By virtue of section 9(1) and (2) of the National Industrial Court Act, an appeal from the decision of the court is as of right to the Court of Appeal on issues of fair hearing and compliance with the provisions of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as in this case. *(P. 606, paras. G H)*

3. *On Constitutional right to fair hearing –*
By virtue of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), in the determination of a person's

civil rights and obligations, including any question or determination by or against any government or authority, the person shall be entitled to 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.*615*, paras. E-F)*

4. *On Attributes affair hearing –*
The three important attributes of fair hearing are:
(a) the right to be heard by an unbiased tribunal;
(b) the right to have notice of charges of misconduct; and
(c) the right to be heard in answer to those charges.
(P. 613 para. B)

5. *On What constitutes fair healing –*
Fair hearing means much more than hearing a party testifying before a disciplinary investigation panel. It implies much more than summoning a party before a panel or being given a chance to explain his own side of the story. To constitute fair hearing, whether it is before the regular court or before tribunals and boards of inquiry, the person accused should know what is alleged against him. He should be present when every evidence against him is tendered and he should be given a fair opportunity to correct or contradict such evidence. That can only be done by cross examination. It is imperative in any proceedings set up to determine the fate of a person in his employment especially those with statutory flavour that the person being inquired into or being proceeded against should know the charge or allegation against him. [Garba *v. University of Maiduguri* **(1986) 1 NWLR (Pt. 18) 550 referred to.]** *(Pp.* 612-63*, paras. E-A)*

6. *On What amounts to fair hearing in judicial proceedings –*

Fair hearing implies that each side is entitled to know what case is being made against it and b given an opportunity to reply thereto. It implies same obligations on the court or tribunal itself.
The Judge should not have any personal interest in the case before him. He should be impartial and act without bias. He should not hear evidence or receive representation from one side behind the back of the other. Thus, fair hearing must mean a trial conducted according to all the legal rules formulated to ensure that justice is done to parties to the cause. To constitute a fair hearing whether it be before the regular courts or before tribunals and boards of inquiry, the person accused should know what is alleged against him. He should be present when any evidence against him is tendered and should be given a fair opportunity to correct or contradict such evidence. If tribunals or boards of panels know that (hey cannot do all these, then they should leave the trials to the law courts. Where the rules of natural justice are properly applicable, a violation of the rules will result in the nullification of the proceedings. [Garba *v. University of Maiduguri* **(1986) 1 NWLR (Pt. 18) 550 referred to.]** *(Pp.* 619-*620. paras.E-A)*

7. *On Status of person invited as witness before an administrative body –*
A person invited as a witness before an administrative body cannot be treated as an accused person, and the conversion of such a witness to an accused person is a breach of the fundamental right to fair hearing as the person so invited to testify cannot be assumed to be aw are of the nature of the allegation against him. *[Adedeji v. Police Service Commission* **(1967) SCNR 102;** *Aiyetan v. N1FOR* **(1987) 3 NWLR (Pt. 59) 48;** *U.N.F.H.M.P. v. Nnoli* **(1994) 8 NWLR (Pt. 363) 376;** *Egwu v. University of Port-Harcourt* **(1995) 8 NWLR (Pt. 414) 419 referred to.]** *(P. 613. paras. D-F)*
Per ONIYANGI, J.C.A. at pages 618-619. paras. H-B:

"The situation in the appeal where a witness surreptitiously turned an accused without being informed of any allegation or complaint against him nor issued with any query, was not informed about the sitting of the panel at most of the sittings where seventeen out of the twenty-three invited by the panel testified in the absence of the respondent agitates my mind and poses the question whether justice has been done and whether the principle of fair hearing was applied in the conduct of the enquiry by the panel. My answer certainly is in the negative having regard to the circumstance in the instant appeal."

8. *On Duty of panel of inquiry not to receive evidence behind the back of person being investigated –*
One of the essential elements of fair hearing is that the body investigating the charge against a person must not receive evidence or representation behind the back of the person being investigated. Where it does, the court will not inquire whether such evidence or representation did not work to the prejudice of the person being investigated. It is sufficient that it might. The risk is enough. It is a clear violation of natural justice for a disciplinary committee to permit witnesses to testify against a party without giving him the opportunity to cross examine the witnesses. *[Obot v. C.B.N.* **(1993) 8 NWLR (Pt. 310) 140 referred to.]** *(Pp. 614-615, paras. G-B)*

9. *On Need for a tribunal or panel of inquiry to allow accused person or person under investigation to confront all his accusers –*
A citizen under investigation cannot be said to have received fair hearing if he was selectively invited to confront some, and not all his accusers. It is not the duty of the person under investigation to recall such witnesses who testified in his absence. No witness should be taken in the absence of a suspect. Presence makes a lot of difference. If the witnesses were witnesses of truth, why would a cover be necessary. The two cardinal principle in the provision of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, are independence and impartiality.

Even-handedness is the hallmark of impartiality. A person under investigation has the right to elect to cross examine any of the witnesses who appear before the panel. To deny him of such right of choice is an act of partiality. In the instant case, the proceedings which shielded seventeen (17) out of twenty-three (23) witnesses cannot be said to be impartial or independent. The argument of appellant that respondent elected not to recall the witnesses was a confirmation that the entire procedure was a breach of the fair hearing under the Constitution. Thus, being the product of a flawed procedure, the dismissal of the respondent was of no legal consequence; and he was entitled to be restored to his office. *(P. 618, paras. A-F)*

10. *On Effect of decision given without regards to principles of natural justice –*

A decision given without due regards to the principles of natural justice is void or nullity or defective and cannot be the basis or foundation of any right. Such proceedings cannot be acquiesced in but could be set aside without much ado. It is as if such decision was never made and never achieved any result. However, sometimes, it is expedient to have a proper court declare it void. *(Pp. 615, para. H; 616, paras. B-C)*

11. *On Meaning of "proceeding being a nullity" –*

The fact of a thing or proceeding being a nullity semantically means emptiness and not having legal force. It is void in the sense that, in the eye of the law, it never existed. In the instant case, the proceedings of the panel of inquiry of the appellant in so far as the respondent is concerned, never existed; its recommendations were never made; and the decisions of the appellant founded upon the recommendations of the board of inquiry was built on nothing. That means that the respondent was never removed from his employment in the eyes of the law. *[Shitta-Bey* v. *Federal Civil Service Commission* **(1981) 2 NCLR 372;** *Tolam v. Kwara State Judicial Service Commission* **(2009) All FWLR (Pt. 481) 880 referred to.)** *(Pp.* 616-617, *paras. F-A)*

12. *On Status of University College Hospital Board of Management –*

The University College Hospital Board of Management is a creation of the University College Hospital Act. The Management Board of the University College Hospital is a creation of the University Teaching Hospital (Reconstitution of Boards, etc.) Act, 1985. It is a public institution, a governmental body or agency or authority and is principally the kind of body contemplated to deal with fair hearing under section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999. Thus, the respondent is a staff of an institution established and financed principally by the government of the Federation of Nigeria and so is a public officer or a person employed in the public service of the Federation of Nigeria pursuant to the definition of that term in section 318(1) of the Constitution of the Federal Republic of Nigeria, 1999. (P. *617, paras. B-D)*

13. *On Whether court can reinstate employee of statutory institution wrongly dismissed from employment –*

The University College Hospital Board of Management is not like a private person where the principle of reinstatement can hardly apply because it is said in labour law and labour relations that a servant cannot be foisted on an unwilling master. Where the University College Hospital Board of Management is concerned, the master is the rule of law. Public institutions are expected to comply with the law and regulation, and not act according to the whims and caprices of their human elements. That is why employments in such institutions have statutory flavour because they are regulated by statutes. Therein, the rule of law and not the rule of men is the master. In this case, the trial court rightly ordered the reinstatement of the respondent because in the eyes of the law, he was never dismissed from his employment. *(P.* 6/7*, paras. D-F)*

14. *On Essence and test of justice –*

Justice should not only be done, but should manifestly and undoubtedly be seen to be done. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking the Judge is biased. *(P. 619, paras. C-D)*

15. *On Meaning and classification of justice –*
Justice is a concept of what is lawful, fair or equal. It can be classified in two categories:
(a) distributive justice; and
(b) remedial justice. *(P. 619, paras. B-C)*

16. *On What amounts to injustice –*
Injustice arises where equals are treated unequal and when unequal are treated equally. *(P. 619, para. C)*

Nigerian Cases Referred to in the Judgment:

Adedeji v. Police Service Commission (1967) SCNLR 102
Aiyetan v. NIFOR (1987) 3 NWLR (Pt. 59) 48
Egwu v. Uniport (1995) 8 NWLR (Pt. 414) 419
Garba v. Garji (2002) FWLR (Pt. 84) 1
Garba v. University of Maiduguri (1986) 1 NWLR (Pt. 18) 550
Iderima v. Rivers State C.S.C. (2005) 16 NWLR (Pt. 951) 378
J.S.C., Cross River Slate v. Young (2013) 11 NWLR (Pt. 1364) 1
Kalu v. State (201 1) 4 NWLR (Pt. 1238) 429
Kwasu v. Ma'aji (2006) All FWLR (Pt. 295) 767
Maliki v. Micheal Imodu Institute for Labset Studies (2009) All FWLR (Pt. 491) 979
Mil.Ad, Lagos State v. Adeyige (2012) 5 NWLR (Pt. 1293) 291
Obot v. CBN (1993) 8 NWLR (Pt. 310) 140
Oguamihu v. *Clvegboka* (2013) 6 NWLR (Pt. 1351) 588
Ogundoyin v. Adeyemi (2001) 13 NWLR (Pt. 730) 403
Olufeagba v. Abdul Raheem (2009) 18 NWLR (Pt. 1173) 384
Oluwagbenu v. Ajam (2007) All FWLR (Pt. 393) 183
Omomoh v. University of Jos (2006) All FWLR (Pt. 304) 552
Rabiu v. State (2005) 7 NWLR (Pt. 925) 491

Raji v. University of Worm (2007) 15 NWLR (Pt. 1057) 259
Saleh v. Monguno (2003) 1 NWLR (Pt. 801) 221
Shitta-Bey v. F.P.S.C. (1981) 2 NCLR 372
State v. *Onagoruwa* (1992) 2 NWLR (Pt. 221) 33
Tolani v. Kwara State Judicial Service Commission (2009) All FWLR (Pt. 481) 880
U.N.T.H.M.B. v. Nnoli (1994) 8 NWLR (Pt. 363) 376
Yusuf v. U.B.N. (1996) 6 NWLR (Pt. 457) 632

Foreign Cases Referred to in the Judgment:

Ridge v. Baldwin (1963) 2 All ER 66
U.A .C. v. Mcfoy Ltd. (1962) AC 152
Union v. Essex County Council (1963) AC 868

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1999, Ss. 36(1), 243(2) (Third Alteration), 318(1) National Industrial Court Act, 2006, S. 9(1) & (2) University Teaching Hospital (Reconstitution of Boards) Act, Cap. U 15, Laws of the Federation of Nigeria, 1985, S. 9(1)

Rooks Referred to in the Judgment:

Administrative Law by Garner, 5lh Ed. Pp. 144-145
Professor De Smith "Judicial Review of Administrative Actions", 3rd Ed. Pp. 131,209 & 241
Professor Wade on Law Quarterly Review, 1967, p. 526

Appeal:

This was an appeal against the judgment of the National Industrial Court which found in favour the respondent on ground that the termination of his employment did not accord with fair hearing. The Court of Appeal, in a unanimous decision, dismissed the appeal.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Ibadan

Names of Justices that sat on the appeal: Monica Bolna'an Dongban-Mensem, J.C.A. *(Presided);* Mudashiru Nasiru Oniyangi, J.C.A.; Nonyerem Okoronkwo. J.C.A. *(Read the Leading Judgment)*

Appeal N.: CA/1/113/2013

Date of Judgment: Tuesday, 8th July 2014

Names of Counsel: Adebayo Adegbite, Esq. - *for the Appellant*

Yakub Dauda, Esq. - *for the Respondent*

Industrial Court:

Name of the Industrial Court: National Industrial Court, Ibadan

Name of the Judge: Kola-Olalere. J.

Date of Judgment: Tuesday, 12th February 2013

Counsel:

Adebayo Adegbite, Esq. - *for the Appellant*

Yakub Dauda, Esq. - *for the Respondent*

OKORONKWO, J.C.A. (Delivering the Leading Judgment):

In its judgment of February 12, 2013 the National Industrial Court holden at Ibadan, per Hon. Justice F.I. Kola-Olalere declared and held that University College Hospital (Ibadan) did not give the claimant in this case fair hearing as required by section 36(1) of the 1999 Constitution ... and in consequence restored the claimant to his post with the defendant without loss of salary and seniority.

The facts of the case were that the claimant herein respondent - Mis Isiaka Akmbola Morakmyo was a staff of the appellant and occupied the position of Deputy Director Procurement. Before then, respondent had been Deputy Director Stores.

As the Chief Medical Director of the appellant was undertaking a tour of the facilities in the appellant's premises, he (i.e. the C.M.D) came upon a "Special Store" within the Stores department presumably full of items not known to the appellant. Upon inquiry, he (C.M.D.) was told that the respondent alone kept the "Special Store". The C.M.D. consequently requested for

an explanation from the respondent for the existence and operation of the "Special Store".

Consequent upon an "SMS" to the Chairman of the board of the appellant in relation to the "special store", a panel of inquiry was appointed to investigate the operation of the "Special Store".

The panel of inquiry met and considered the matter in accordance with its terms of reference but importantly, of the eleven times the panel met, the respondent was invited only three times and of the twenty six people that testified before the panel, the respondent was present only when six of the twenty six testified. As it is, on numerous sittings of the panel of inquiry, the respondent was not present and was neither heard nor cross examined if needed, the witnesses who testified and said anything adverse to the respondent's interest.

At the conclusion of its sittings, the panel of inquiry made recommendations to the board of the appellant recommending options of disciplinary measures against the respondent. The appellant acting upon such recommendation by letter dated September 16,2011 "terminated" the employment of the respondent.

The respondent then sued challenging the purported dismissal of his employment and seeking a restoration to his position on the grounds of lack of fair hearing on the part of the appellant and its panel of inquiry.

The lower court heard evidence from the parties and found as a fact that the respondent was denied fair hearing by the panel of inquiry of the appellant and that such denial of fair hearing was a breach of section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and in consequence restored the respondent to his employment of the appellant.

Dissatisfied with the judgment of National Industrial Court, the appellant has appealed against the judgment (decision) upon the following grounds of appeal contained in its notice thus:

Grounds of Appeal

The learned trial Judge erred in law in ordering the reinstatement of the claimant by the defendant to the claimant's former position without loss of salary and seniority for the failure of the defendant to accord the claimant

fair hearing in accordance with section (36) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and thereby came to a wrong decision.

Particulars of Errors of Law:

There was ample evidence that the claimant was invited by the Panel of Enquiry set up by the defendant to investigate the allegation of "special store" discovered by the defendant to have been set up by the claimant without constituent approval of the defendant. The claimant did appear before the panel of enquiry set up by the defendant where the claimant admitted the existence of the "special store" in his department. The claimant, apart from appearing before the panel of enquiry set up by the defendant, did cross- examine some of the witnesses thereat.

The claimant knew that some witnesses testified before the panel of enquiry before his attendance but he never asked the panel of enquiry to recall such witnesses who had testified before his attendance for cross-examination.

The fact that the issue of fair hearing is a universal concept does not mean that a person who elected to waive such a right after being given the opportunity to exercise such a right and matters incidental thereto can be forced to do so.

The panel of enquiry was set up by the defendant to unravel the mystery behind the "special store" discovered at the department of the claimant and the claimant and other persons from his department were invited and testified before the panel.

The learned trial Judge erred in law in holding that the defendant has failed to terminate the appointment of the claimant and in accordance with the provision of the *University leaching Hospitals (Reconstitution of Boards, etc.) Act, University College Hospital, Ibadan, Conditions of Service and*

in accordance with the principles of law enunciated in the case of Iderima v. *Rivers Stale Civil Service Commission* (2005) 16 NWLR (Pt. 951) 378 at 392-393 and thereby came to a wrong decision.

Particulars of Errors of Law

The case of *Iderima v. Rivers State Civil Service Commission {supra)* dealt with the procedure for dismissal of a civil servant and not with termination of appointment as in the instant case. The claimant's evidence, both in chief and under cross-examination, was that his services with the defendant D was wrongfully and/or unlawfully terminated and not that he was dismissed from the services of the defendant.

No evidence was adduced by the claimant to justify the application of the principles of law enunciated E in the case of *Iderima v. Rivers State Civil Service Commission (supra)* to give credence to the application of same as was done by the learned trial Judge in the instant case.

The judgment of the lower court is against the weight p of evidence.

From the grounds of appeal, the appellant raised the following issues for determination:

1. "Whether the learned trial Judge made a correct evaluation of the evidence led by the parties before coming to conclusion that the claimant was not given fair hearing in accordance with section 36(1) of the Nigerian Constitution."
2. "Whether in view of the credible and uncontroversial evidence led by the defendant that it had not substantially complied with the provisions of University Teaching Hospital (Reconstitution of Boards, etc.) Act, University College Hospital Ibadan condition of service."

On issue No. 1, the appellant referred to section 36(1) of the 1999 Constitution and to the cases of *Garba v. Garji* (2002) FWLR (Pt. 84) 1 at 3; *Saleh v. Monguno* (2002) FWLR (Pt. 87) 671 at 674; (2003) 1 NWLR (Pt. 801) 221 and particularly referring to *Ogundoxin v.Adeyemt* (2001) FWLR (Pt. 71) 1741 at 1744; (2001) 13 NWLR (Pt. 730) 403 at 422 paras. A-B where the following restatement was given.

> "The rule of fair hearing is not a technical doctrine. It is one of substance. The question is not whether injustice had been done because of lack of hearing. It is whether a party entitled to be heard before deciding had in fact been given an opportunity of a hearing."

Appellant's counsel is of the view that "a person who is aware of the allegation or case against him either before a court or tribunal established by law cannot be heard to complain that he was denied fair hearing if he fails to avail himself of the opportunity to put up his case" and thereon submit that respondent did not prove he was denied fair hearing and that the finding of the court that respondent was not in attendance was not supported by evidence. Counsel submit that the respondent had adequate notice of the allegations and that the respondent made adequate representation before the panel for which he (appellant's counsel) relied on *Mil .Ad Lagos Stare v. Adeyige* (2012) 2 SCM 183; (2012) 5 NWLR (Pt. 1293) 291; *Nwankwo Oguanuhu v. Chiegboka* (2013)3 SCM 186; (2013) 6 NWLR (Pt. 1351) 588. Contending further that respondent admitted the existence of the special store which was the complaint of the appellant against the respondent.

On issue No. 2, appellant's counsel thinks that the provision of the University Teaching Hospital (Reconstitution of Boards, etc.) Act, Cap. U15,LFN and regulation No. 62 of the University College Hospital Ibadan condition of service "are mere guides" to ensure that removal and discipline are regulated. Counsel attacks the trial court's finding that "termination of respondent was defective when the trial court did not relate finding to the provisions of section 9(1) of the University Teaching Hospitals Act and University of Ibadan condition of service regulation No. 62 citing *Raji v. University of Ilorin & 4 Ors* (2007) 15 NWLR (Pt. 1057)^259 (Pt. 345) at 325. Counsel argues that all that the appellant needed to do was to ensure that allegation was disclosed to the respondent and that respondent was given fair hearing. Learned counsel urges on the basis of his argument that the appeal be allowed.

In the respondent's brief, the respondent raised a preliminary objection to the competence of the appeal contending that an appeal of this kind from the National Industrial Court shall be by leave of the Court of Appeal and that as no such leave was first sought and obtained

from the Court of Appeal, the appeal is incompetent and that this court thereby lacked the jurisdiction to entertain in the appeal. Counsel relied on section 243(3) of the Constitution and *Omomoh v. University of Jos* (2006) All FWLR (Pt. 304) 552 at 565 and *Kwasu v. Ma'aji* (2006) All FWLR (Pt. 295) 767 at 773-74.

The appellant filed a reply brief and promptly responded to preliminary objection. Appellant contends that the preliminary objection is misconceived and that the right of appeal in the circumstance of this case is governed by section 243(2) of the 1999 Constitution (as amended) and by section 9(1) & (2) of the National ^ p Industrial Court Act 2006.

The effect of the section referred to above is that appeal is as of right from the National Industrial Court to the Court of Appeal on question of Fundamental Right as contained in Chapter 4 of the Constitution as it relates to the jurisdiction of the National Industrial Court.

> 243(2) "An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental right as contained in Chapter IV of this Constitution as it relates to matters upon p which the National Industrial Court has jurisdiction."

It seems to me that section 243(2) and section 9(1) and (2) of the N.I.C. Act, 2006 settles the issue raised in the objection.

It is obvious that all the issues raised by the parties in this case raise the question of fair hearing and compliance with section 36(1) Q of the Constitution of the Federal Republic of Nigeria. Even the judgment of the National Industrial Court was founded on what that court considered as a breach of section 36(1) of Chapter 4 of the Constitution. So clearly, without any measure of doubt, the appeal comes within the purview of section 243(2) of the Constitution and section 9(1) & (2) of the National Industrial Court Act, expressly confirming a right of appeal in the circumstance *as of right.*

The objection raised in the respondent's brief is without merit and discountenanced.

As if respondent's counsel expected this outcome in his preliminary objection, he (respondent's counsel)

proceeded to argue the essential merits of the appeal raising the following two questions for determination viz:

1. Whether the trial court was not right to have held that the respondent was not given fair hearing by the panel set up by the appellant, the panel whose report was relied on in the purported termination of the appointment of the respondent by the appellant?
2. Whether the respondent was not entitled to reinstatement in view of the fact that the appellant has failed to follow the proper procedure as laid down by the provisions of the University Teaching Hospital (Reconstitution of Boards, etc) Act and University College Hospital, Ibadan condition of service in the purported termination of the respondent's appointment with the appellant when the respondent's employment with the appellant is one that enjoys statutory flavour.

In addressing issue No. 1 on fair hearing, learned respondent's counsel relied on section 36(1) of the Constitution of the country providing that -

> 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.

and submit therefrom that "observance of the principle of fair hearing is so sacrosanct that a breach of it in a proceeding will render such a proceeding a nullity irrespective of its outcome and no matter how well (it appears) the proceedings were conducted, counsel relies on the cases of *Oluwagbemi v. Ajani* (2007) AH FWLR (Pt. 393) 183 at 198; *Yusufv. V.B.N.* (1996) 6 NWLR (Pt. 457) 632 at 646; *Maliki v. Micheal Imodu Institute for Lahset Studies* (2009) All FWLR (Pt. 491) 979 at 1019. The steps to be taken in any such proceedings to ensure fair hearing are as enumerated by Nweze. JCA in *Maliki v. Michael Imodu Institute (supra)* to include:

"a. To be present all through the proceedings, to hear all the evidence against him or her,

b. To cross-examine or otherwise confront or contradict till the witnesses that testily against him,

c. To have read before him, all documents tendered in evidence at the hearing,

d. To have disclosed to him the nature of all relevant material evidence, including documentary evidence, prejudicial to him except in recognized exceptions,

e. To know the case he has to meet at the hearing and have adequate opportunity to prepare for his defence,

f. To give evidence by himself, call witness if he likes, and make oral submission either personally or through counsel of his choice." *Nwanegbo v. Oluwole* (2001) 37 WRN 101; *Dawodu v.N.P.C.* (2000) WRN 116; *Durrode v. State* (2001) FWLR (Pt. 36) 950, (2001) 7 WRN 50 reported as *Durwode v. State* (2000) 15 NWLR (Pt. 691) 467. See also the Supreme Court decision in a recent case of J.S.C., *Cross River State v. Young* (2014) All FWLR (Pt. 714) 40 at 59 paras. E-H; (2013) 11 NWLR (Pt. 1364) 1.

Counsel points out, it is not the outcome of the proceedings that must be considered but the procedure adopted at arriving at such outcome. If the procedure breaches the principle, the entire proceedings will be a nullity citing *Rabin v. State* (2005) 7 NWLR (Pt. 925) 491 at 515; *State v. Onagoruwa* (1992) 2 NWLR (Pt. 221) 33 at 56; *Kali, v. State* (2011) 4 NWLR (Pt. 1238) 429 at 457.

Concerning the practice adopted by the panel of inquiry of the appellant, it is perhaps appropriate to reproduce the submission p of learned counsel for the respondent founded on the evidence in the lower court and as reproduced in the record of proceedings. At paragraph 8.13, at page 12 and 8.14 at page 13 of the respondent's brief, counsel posits thus:

> The said report on pages 164-165 of the record also shows that the panel sat on Friday 24th of June 2011 and that the *Chief Medical Director of the appellant, Professor Temitope O. Alonge gave evidence in the absence of the respondent. The same thing occurred on Tuesday 28th of June, 2011 when Mr. S.F. Ajayi testified also in the absence of*

> *the respondent. We refer your Lordships to pages J65 - J66 of the record. One Mrs. P.O. Otesanva, Messrs M.A. Adelunji, O.R Owolabi, S.K. Adesina and A.S. Ajayi gave evidence on the* 28th *of June, 2011 all in the absence of the respondent. We refer your Lordships to pages 167-168 of the record. Mrs. Y. Anjorin, Messrs CC Anosike and A .A. Adejumo all testified on the 30th of June, 20]] in the absence of the respondent.* We refer your Lordships to pages 172-174 of the record, where Messrs P. Dahunsi, Seun Alabi, M.F. Owolabi, M. Alamu and S.K. Shinyanbola all gave evidence on the 5th of July, 2011 in the absence of the respondent. Their testimonies could be found on pages 174-177 of the record. Both Messrs O.S. Agboola and Fashola were also before the panel to give evidence on the 6th July, 2011 also in the absence of the respondent. This could also be found on pages 177-178 of the record.
>
> Submit that, from the report of the panel, it is clear as crystal that only six out of twenty three witnesses called testified in the presence of the respondent and that the respondent attended the sittings of the panel on the 29th of June, 2011, 7th of July and 14th of July 2011 a total of three times out of the eleven times for which the panel sat.

It could appear therefore that the respondent was only present on the very few occasions it pleased the panel of inquiry of the appellant to invite him. This, the respondent's counsel argues does not accord with natural justice because as Mary Peter Odili, JSC pointed out in *JSC, Cross River State v. Young* (2014) All FWLR (Pt.714)40 at 59, (2013) 11 NWLR (Pt. 1364) 1.

> "there is further need to emphasize 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 to being put in the picture subsequently a situation reminiscent of a patch work"

Concerning the appellant's submission that respondent failed to avail himself of the opportunity to make his case before the panel, respondent's counsel at paragraph 8.21 at page 14 of respondent's brief responded thus:

"this issue deals with the question of whether the employment of the respondent enjoys statutory flavour and that the trial court was right to order his reinstatement having found that the purported termination of his employment with the appellant was null, void and of no effect whatsoever.

Counsel for the respondent urges this court to uphold the findings of the lower court that the panel of inquiry of the appellant whose finding led to the "'termination" of the employment of the respondent failed to accord the respondent fair hearing.

On issue No. 2 i.e. on whether the employment of the respondent enjoys statutory flavour to justify his reinstatement, respondent's counsel submit that breach of the statute and regulations governing employment regulated by statutes would necessarily lead to a reversal of the situation such that the officer affected if wrongly dismissed would be reinstated to his position citing *Olufeagba v. Abdul Raheem* (2010) All FWLR (Pt. 512) 1033 at 1096: (2009) 18 NWLR (Pt. 1173) 384.

Further, respondent's counsel refers to regulation 62 of the Conditions of Service of the University College Hospital Ibadan which stipulates thus:

"62(a) An officer holding a senior post whether on pensionable or contract terms, may be dismissed by the Board of Management in accordance with the following rules, or in the alternative, in accordance with the rules set out in regulation 63

(i) The officer shall, by direction of the house Governor be notified in writing of the grounds on which it is proposed to dismiss him and he shall be called upon to state, in writing before a day to be specified any grounds upon which he relies to exculpate himself,

(ii) If officer does not furnish such statement within the time fixed or if he fails to exculpate himself to its satisfaction the board shall appoint a committee to inquire into the matter. The members of the committee ' shall be selected with due regard to standing of the officer concerned, and to the nature and quality of the complaints which are the subject of the inquiry.

The head of the officers department shall not be a member of the committee.

(iii) The officer shall be informed that on a specified day the question of his dismissal will be brought before the committee and that he will be allowed to and, ii the committee shall determine, required to appear the committee and defend himself.

(iv) If witnesses are examined by the committee, the officer shall be given an opportunity of being present and putting questions to the witnesses on his behalf; and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.

(v) If during the course of the enquiry further grounds of dismissal are disclosed and the board of management thinks it fit to proceed against the officer upon such grounds, the officer shall by the direction of the Board be furnished with written statement thereof and the same steps shall be taken as are above prescribed in respect of the original grounds.

(vi) The committee having enquired into the matter shall make a report to the Board who If it considers that further inquiry is desirable, may refer any matter back to the committee for further inquiry of report accordingly save in exceptional circumstances."

Respondent's counsel rely on case of *Iderima vs. Rivers State Civil Service Commission* (2005) 16 NWLR (Pt. 951) 378 at 395; *J.S.C. Cross Rivers State v. Young (supra): U.N.T.H.M.B. v. Nnoli* (1994) 8 NWLR (Pt. 363) 376 at 407.

Concluding, the respondent highlighted the following points as reasons why the lower court is justified in its decision appealed against:

1. The lower court was right to have held that the respondent was not given fair hearing by the panel of inquiry set up to investigate the allegation leveled against the respondent by the appellant.
2. The letter of termination of the respondent was based solely on the report of the panel of inquiry that failed woefully to observe the basic rudiments of the rule of fair hearing in the

treatment of the grave allegation made against the respondent.

3. The employment of the respondent with the appellant enjoys statutory flavour.
4. The appellant failed woefully to comply with the provision of Regulation 62(a) of the appellant's Condition of Service and the University Teaching Hospital (Reconstitution of Boards, etc.) Act. Cap. ULFN (2004) (as amended) in its purported procedure leading to the termination of the respondent's appointment.
5. Strict compliance and substantial compliance with the rules is what is required.
6. The respondent was rightly reinstated by the lower court.

In considering the appeal, I think it is apposite to rationalize the issues raised by the appellant and the respondent. Both parties raise the issue of fair hearing and reinstatement. As it is then, the issues for determination in this appeal resolve around the following two questions.

1. Was the respondent given or accorded fair hearing in the proceedings before Panel of Inquiry of the appellant?
2. If the appellant was in breach of the fair hearing provisions of the Constitution and the statute and regulation of the appellant, what is the proper remedy or order to be made in the event of a wrongful dismissal consequent upon a lack of fair hearing?

I will resolve this appeal on the basis of these two questions. Firstly, on whether there was fair hearing the Supreme Court Per Oputa, JSC in *Garba v. University of Maidugun* (1986) 1 NWLR (Pt. 18) 550 at 619. Stated:

> "... fair hearing implies much more than hearing the appellant's testifying before the Disciplinary Investigation Panel; it implies much more than summoning the appellant before the panel; it implies much more than other staff or students testifying before the panel behind the back of the appellants; it implies much more that the appellants being "given a chance to explain their own side of the story." To constitute fair hearing, whether it is before the regular court or before tribunals and Boards of Inquiry, the person accused should know what is alleged against him; he should be

present when every evidence against him is tendered; and he should be given a fair opportunity to correct or contradict such evidence. How else is this done if it be not by cross examination?

It is therefore imperative in any proceedings set up to determine the fate of a person in his employment especially those with a statutory flavour that the person being inquired into or being proceeded against should know the charge or allegation against him." In *Ridge v. Baldwin* (1963) 2 All ER 66 at three important attributes of fair hearing were given as:

1. The right to be heard by an unbiased tribunal
2. The right to have notice of charges of misconduct
3. The right to be heard in answer to those charges.

In this case, it was not shown that the respondent was specifically informed of the charges against him neither was it shown that the Panel of Inquiry of the appellant was specifically set up to inquire into a particular misconduct by the respondent. On the contrary, the terms of reference of the Panel show that it was set up to inquire into the "special store" and as the respondent says "he (respondent) was not invited to the panel as an accused neither was he confronted with any wrong doing". In *Egwu v. University of Poa-Harcouri* (1995) 8 NWLR (Pt. 414) at 419 at p. 448, it was there stated that:

> "A witness before an administrative body cannot be treated as an accused person, conversion of treatment of a witness to an accused person is a breach of the fundamental right to fair hearing, the invitation to testify cannot be assumed that he was aware of the nature of the allegation against him."

See further: in *Adedeji v. Police Service Commission* (1968) NMLR 102; *Aiyetan v. NIFOR* (1987) 3 NWLR (Pt. 59) 48; *U.N. T.H.M.B. v. Nnoli* (1994) 8 NWLR (Pt. 363) 376.

From being a person invited to testify in the proceedings before the appellant's panel, the respondent without being made aware of any allegation became the subject of the inquiry without knowing.

The learned trial Judge relied also on the evidence of the claimant's RW1 thus:

a. Under cross examination, RW1 testified that the inaugural meeting of the Panel Enquiry was on June 24/2011 and the claimant was not invited. The Chief Medical Director Prof. Alonge T. O.

> was invited and he gave evidence on that day. He continued that the Panel met on eleven occasions. Six people testified on June 28, 2011 and the claimant was not invited. Again three people testified on June 30, 2011 and the claimant was not invited. Five people testified on July 2011 in the claimant absence. Two people testified on July 6, 2011 in the absence of the claimant. In short seventeen out of twenty-three people invited by the Panel testified in the absence of the claimant. Mr. Olagundoye, Mr. Adebayo and Mr. Ogunsola were in the same department procurement with the claimant. So also is Mrs. Y. Anjonrin, Mrs. Anjonrin testified that all staff in the procurement department knew about 'special store'.

This was the evidence of the appellant vide RW/Head of General administration of the UCH - appellant. The Chairman of the UCH Board Dr. Sunny Kuku was said to have received an "SMS" about the special store" by the respondent. Yet, Dr. Sunny Kuku testified before the panel in the absence of the respondent.

Regarding the scenario, the learned trial Judge found as a fact and declared:

> "It is glaring from the findings of this court that Regulation 62(a)(i), (hi) (iv) of the UCH Regulation of the condition of service was not complied with by the defendant as the claimant was not given any query, he was not informed of all the days the panel sat on his matter so he was not present at most of the sittings of the panel during which seventeen witnesses testified in his absence. Hence he had no opportunity to put questions to them in compliance with Regulation 62 (a)(i) & (iii)."

As it is, the trial Judge found it proved that much of the proceedings of the panel of inquiry of the appellant were behind the back of the respondent. Commenting on such practice, it was once observed by the Supreme Court in *Obot v. CBN* (1993) 8 NWLR (Pt. 310) 140 at 161 that:

> "One of the essential elements of fair hearing is that the body investigating the charge against a person must not receive evidence or representation behind the back of the person being investigated.

> Where it does, the court will not inquire whether such evidence or representation did not work to the prejudice of the person being investigated. It is sufficient that it might. The risk is enough. It is a clear violation of natural justice in this case for the Disciplinary Committee to permit witnesses to testify against the appellant without giving him the opportunity to cross-examine them."

In this case, the breach was even more pronounced that as the trial Judge found, the Chairman of the Board of Management who was said to have received an "sms" about the 'special store' gave evidence about the "sms" behind the back of the respondent as well as numerous other witnesses. In all the anomaly, no regard was paid as the trial Judge found, to the provision of section 9(1) of University Teaching Hospitals (Reconstitution of Boards etc.) Act Chapter U15, LFN dealing with "Removal and Discipline of Clinical Administrative and Technical staff and Regulation 62(a) (i), (ii), (iii), (iv), (v) & (vi) of the University College Hospital Ibadan - Conditions of Service which also enact procedure to be followed in matters of discipline and fair hearing.

Besides, the appellant is a foremost Public Institution bound to observe and ensure the observance of the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 36(1) of the Constitution posits thus:

> "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 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."

In my view, I agree with the learned trial Judge in his findings that the appellant was in breach of the principles of natural justice in their dealings with the respondent. I also agree that the respondent was denied fair hearing by the panel of inquiry set up by the appellant.

What then is the effect of a failure to observe natural justice - the *audi alteram parterm* rule? It has been suggested in some quarters that the decision is voidable only i.e., it will stand until it has been challenged in a competent court but if the decision is void, it is a nullity *ab initio* just like an order made without jurisdiction - see Prof de Smith - Judicial Review of Administrative Actions 3rd edition 131, 209 and

241. Administrative Paw by Garner 5th edition 144-145. However, the House of Lords in *Ridge v. Baldwin* (1963) 2 All E.R. 66 at 81; (1964) AC 40 at 80 put the matter very poignantly when Lord Reid declared the law thus:

> "time and again in these cases, I have cited, it has been stated that a decision given without regards to the principles of natural justice is void."

As if the meaning of 'void' is not known well Prof Wade in a treatise in Law Quarterly Review described such a decision as a nullity - see (1967) LQR 526.

If such a decision is a nullity, it is void and cannot be the basis or foundation of any right. Such proceedings cannot be acquiesced in but could be set aside without much ado. *U.A.C. v. Mcfoy Ltd.* (1962) A.C. 152 at 164; *Union v. Essex County Council* (1963) A.C. 868.

In other words, it is as if it was never made and never achieved any result but sometimes it is expedient to have a proper court declare it void *UA.C.* v. *Mcfoy Ltd. {supra)* Per Lord Denning.

In this case, the learned trial Judge of the National Industrial Court held that "the termination of the appointment of the claimant is defective" - I am sure that by defective the learned trial Judge meant "void" and "nullity".

Therefore, giving the foregoing, I hold in answer to issue No. 1 that the respondent was not accorded fair hearing by the Panel of Inquiry set up by the appellant.

On the second issue which arises from the first, the issue would now resolve on whether a void act or a proceeding considered a nullity can be at any effect.

The fact of a thing or proceeding being a nullity semantically means *emptiness, not having legal force.* It is void in the sense that it, *in the eye of the law never existed.*

In this case, it means the proceedings of the Panel of Inquiry of the appellant in so far as the respondent is concerned, *never existed, its recommendations were never made and decisions of the appellan t founded upon the recommendations of the Board of Inquiry was built on nothing and so also collapses into emptiness.*

If the recommendations and the decisions founded thereon are nullities, it means the appellant was never removed from his employment and that he (appellant) remained (in the eyes of the law) in his employment as though nothing ever

happened. See *Shitta-Bey* v. *Federal Public Service Commission* (1981) 1 SC 40; (1981) 2 NCLR 372; *Tolani v. Kwara State Judicial Service Commission* (2009) All FWLR (Pt. 481) 880 at 922.

The respondent is a staff of an institution established and financed principally by the Government of the Federation and so is a Public Officer or a person employed in the Public Service of the Federation pursuant to the definition of that term in section 318(1) of the 1999 Constitution.

For the avoidance of doubt, the appellant is a creation of University College Hospital Act dating back to 16"‘ October, 1952 - see Cap UI5 LFN. The Management Board of the appellant is a creation of University Teaching Hospital - (Reconstitution of Boards," etc.) Act of 1985 - Cap. U15, L.F.N. So the appellant is a Public Institution, a governmental body or agency or authority and is principally the kind of body contemplated by the 1999 Constitution in its section 36(1) dealing with fair hearing.

The appellant is not like a private person where the principle of reinstatement can hardly apply because it is said in Labour Law and labour relations that you cannot foist a servant upon an unwilling master. Here the master is the "rule of law".

It is different with Public Institutions. They are expected to comply with the law and regulation and not act according to the whims and caprices of their human elements. This is why employments of the kind specified are said to be of a statutory flavour because the Statutes regulate such employment. The rule of law and not the rule of men is the new master.

The learned trial Judge of the National Industrial Court was therefore right to have ordered the reinstatement of the respondent who in the eyes of the law was never removed. Accordingly, this issue is resolved also in favour of the respondent.

In the final analysis, the appeal lacks merit and is dismissed. The judgment of the National Industrial Court is hereby affirmed.

DONGBAN-MENSEM, J.C.A.: The facts which led to this appeal are fetching. The issues raised in this appeal turn on the right to fair hearing and of the consequence of a wrongful termination of an employment which enjoys statutory flavour.

The facts are well reproduced in the lead judgment and 1 need not reproduce them here. 1 agree entirely with the lead judgment prepared by my learned brother, Nonyerem Okoronkwo, JCA.

A citizen under investigation cannot be said to have received fair hearing if he was selectively invited to confront some, and not all his accusers. The argument of the appellant that the respondent elected not to recall such witnesses who testified in his absence is balderdash. Indeed, that statement is a confirmation that the entire procedure was a breach of the provision of section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Why should any witness be taken in the absence of the "suspect"? Presence makes a lot of difference. If the witnesses were witnesses of truth, why was a "cover" necessary? The two cardinal principle in the provision of section 36(1) are independence and impartiality. A proceeding which shielded seventeen (17) out of twenty-three (23) witnesses can hardly be said to be impartial if at all independent. (See pages 187-188 & 345-346 of the record transmitted on the 9th April, 2013).

Even-handedness is the hallmark of impartiality. The respondent had the right to elect which of the witnesses who appear before the panel to cross- examine and which not to. Having been denied that right of choice, the proceedings cannot be said to be impartial.

Being the product of a flawed procedure, the dismissal of the respondent is of no legal consequence. The implication, as well adumbrated in the lead judgment, is that the respondent is entitled to be restored to his office.

I too hereby affirm the decision of the National Industrial Court *coram* Justice F. I. Kola-Olalere, J. of the Ibadan Division.

ONIYANGI, J.C.A.: This appeal is from a judgment of the National Industrial Court Ibadan delivered by Hon. Justice F.I. Kola-Olalere delivered on the 12th February 2013. The court declared that the University College Hospital (Ibadan) did not give the claimant (respondent) in this appeal fair hearing as required by section 36(1) of the 1999 Constitution. The court ordered that the claimant be restored to his post without loss of salary and seniority.

The situation in this appeal where a witness surreptitiously turned an accused without being informed of any allegation or complaint against him nor issued with any query, was not informed about the sitting of the panel at most of the sittings where seventeen out of the twenty-three invited by the panel testified in the absence of the respondent agitates my mind and poses the question whether justice has been done and whether the principle of fair hearing was applied in the conduct of the enquiry by the panel. My answer certainly is in the negative having regard to the circumstance in the instant appeal.

Aristotle defined justice as a concept of what is lawful, fair or equal. He classified justice into two, distributive and remedial justice. He defined distributive justice as:

> "Injustice arises when equals are treated unequal and also when unequal are treated equally"

To him, just action is a means between acting unjustly and being unjustly treated. The common saying is that justice should not only be done, but should manifestly and undoubtedly be seen to be done. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking, the judge was biased.

Through the record of appeal it is my stand that there was no fair hearing. One may ask what is fair hearing or what does fair hearing imply. To me it implies that both sides be given an opportunity to present their respective cases. It implies that each side is entitled to know what case is being made against it and be given an opportunity to reply there to. It also implies some obligations on the tribunal itself. The judge should not have any personal interest in the case before him. He should be impartial and act without bias. He should not hear evidence or receive representation from one side behind the back of the other. Therefore fair hearing must mean a trial conducted according to all the legal rules formulated to ensure that justice is done to parties to the cause. To constitute a fair hearing whether it be before the regular courts or before tribunals and board of inquiry, the person accused should know what is alleged against him, he should be present when any evidence against him is tendered and should be given a fair opportunity to correct or contradict such evidence. Oputa, JSC of blessed memory said in the case of *Mr. Yesufu Amuda Garba & Ors. v. The University of Maidurgi* (1986) 2 SC 128 at 271; (1986) 1 NWLR (Pt. 18) 550 thus:

> "... if these tribunals or boards of panels know that they cannot do all these, then they should leave these trials to the law courts."

Where the foregoing rules of natural justice are properly applicable, a violation of the rules will result in the nullification of the proceeding as adjudged by my learned brother, Nonyerem Okoronkwo, JCA in the lead judgment. I am in complete agreement. I also dismiss the appeal for lacking in merit and affirm the judgment of the court below. It is my earnest hope that the appellant shall reinstate the respondent and obey all consequential order.

Appeal dismissed.