

Review Article

The Relevance of Natural Justice in the Decision-Making Processes of Public Bodies and Officials in Ghana

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Abstract: As its name implies, Natural Justice is so fundamental that it is equated to being innate, intuitive or instinctive. It is essentially designed to ensure fairness in the application of law. This paper aims to discuss the relevance of natural justice in the decision-making processes of public bodies and officials, taking the 1992 constitution of Ghana in perspective. The principles are so fundamental and universal that they are implied to apply to every situation of the law unless otherwise explicitly stated in statutes. It has even been said that, the Biblical events at the Garden of Eden; specifically, the act of disobedience by Adam and Eve and their subsequent trial by God marked the beginning and development of these principles. This paper studies the twin principles of Natural Justice against the backdrop of the 1992 Constitution of Ghana. According to the study, "natural justice" is based on the two (2) principles that "no man shall be punished without due process of law" and "no man shall be judge in his own cause (with exception)". People have the right to seek redress in front of a court or other authority if they have been mistreated by the implementation of such acts or decisions. The principles of natural justice essentially guarantee justice and fairness therefore, the importance of the exercise of Natural Justice is clearly indicated. It is recommended that Rule of law should be strictly adhered to without prejudice. Also, due process should be followed without any human or institutional interference. Furthermore, the media must apply professional standards in their work delivery in the support of natural justice.

Keywords: Audi Alteram Partem, Bias, Fair Hearing, Natural Justice, Nemo Judex

1. Introduction

"Natural justice means the principle of justice compromised of the right to a decision made in absence of bias, the right to know the case against ones' self-review related evidence and the right to a fair opportunity to rebut said case" (The Law Insider). The twin Latin maxims Nemo judex in causa sua and the rule of Audi alteram partem, which represent the principle of natural justice, are the cornerstones of the administration of justice. So indispensable are these rules to all tribunals which sit to adjudicate cases affecting individual rights that any form of non-compliance with these rules strikes a discordant note to the tune of justice. According to the natural justice principle, decision-makers must be impartial, act in good faith, and refrain from bias while allowing each party to present their case fully [19].

The principle of natural justice evolved under the common

law system and soon acquired a hallowed pedestal of peremptory essence which binds all courts and tribunals. Non-compliance with these rules of natural justice destroys the jurisdiction of the court or tribunals and nullifies any order or ruling made¹. The drafters of the 1992 Constitution incorporated these fundamental principles underlying the common law system and preserved its application under *article 11 of the 1992 Constitution*. Article 11 of the Constitution on the laws of Ghana includes the common law.

The doctrines of equity, the common law, and the rules of customary law, including those established by the Superior Court of Judicature, are all considered to be part of Ghana's common law.². By this, the principle of natural justice is

1 See observations of Acquah JSC (as he then was) in *Barclays Bank v Ghana Cable* [1998-1999] SCGLR 1 at page 7, relying on *Vasques v Quarshie* [1969] GLR 62.

2 1992 Constitution, art 11 (2).

firmly ensconced in the very fabric of our legal system and binding on all courts under *article 126 of the 1992 Constitution* in administering justice.

Administrative bodies and tribunals are equally bound to comply with the rules of natural justice. Article 23 of the Constitution provides that:

People who are harmed by the exercise of such acts and decisions have the right to seek redress before a court or other tribunal³.

The essence of this provision is not farfetched from the dictum of Ofori Boateng JA in *L'Air Liquide v Anin* as follows:

'The fundamental rule for managerial inquiries is that whenever people are authorized by the constitution to weigh the evidence and draw conclusions that have an impact on people's lives, they are acting in a quasi-judicial capacity [18]. The courts have the authority to declare a procedure invalid as well as the resulting decision, even though the body in question is not a court and has violated the principles of natural justice. Two principles of natural justice are that no man shall be sentenced without due process of law and that no man shall be judge in his own cause⁴. Hence, this paper seeks to discuss the relevance of natural justice in the decision-making processes of public bodies and officials in Ghana.

2. Audi Alteram Partem Rule

Administrative tribunals are usually set up to determine matters which substantially affect or impose a duty on person (s) appearing before it. Their decision may visit irreparable consequences on a subject and may deprive the person of some right, privilege, benefit or entitlement. The constitution guides the exercise of discretionary powers to ensure administrative justice under articles 23 and 296.

Article 23 provides that:

Administrative bodies and officials must act fairly and reasonably and adhere to the legal restrictions placed on them. People who are damaged by the exercise of such acts and decisions have the right to seek redress before a court or other body⁵.

Acting fairly implies compliance with the rules of natural justice and compliance with the law conferring power on the administrative body or official. Natural justice implies a fair hearing and the avoidance of bias or the likelihood of bias in decision making. Acting reasonably implies acting rationally and also taking into consideration the rights of other citizens and the interest of the public.

Article 296 of the 1992 Constitution guides the exercise of optional power. The exercise of discretion must be fair and candid. Failure to do this constitutes a breach. Persons appearing before tribunals must be given sufficient opportunities to be heard and present their case. Administrative tribunals must grant adequate facilities for

such persons to meet the case of their opponent with their own, and not be condemned with judgment given at his back. This is essentially what the first leg of natural justice, 'audi alteram partem' rule or fair hearing postulates.

The constitution under article 19 makes fair hearing a mandatory requirement in criminal proceedings. A person exciting with an illegal offence shall be given a fair hearing within a reasonable time⁶. Also, a person charged with a criminal offence shall be informed immediately of the nature of the offence against him in a language that he understands and in detail, must be given adequate time to prepare his defense, be allowed to defend himself before the court in individual, or by a lawyer, to cross examine witnesses, to examine witnesses called by him and to be entitled to an interpreter⁷.

The rule of fair hearing equally applies in civil proceedings as applied in the following decided cases:

In allowing an appeal against unlawful dismissal, the Supreme Court in *Aboagye v Ghana Commercial Bank* unanimously held that just as in a civil proceeding, proper service of notice on a defendant is a condition precedent to fair trial. If this is neglected to be done, the final decision will be declared a nullity. The audi alteram partem rule, which suggests that the authority exercising disciplinary power ought to afford the plaintiff the opportunity to be heard and he should be informed of the charges as well as the date and place of trial, is one of the rules of a fair trial⁸.

The audi alteram partem rule was also applied in *Awuni v West African Examination Council*⁹. In this case, thirteen participants of an examination conducted throughout Ghana by WAEC had their final results cancelled and further barred from taking exams conducted by WAEC for three years on the grounds of collusion and exam malpractice. These sanctions were issued by the Final Award and Examination Committee of WAEC, without granting the students the opportunity to be heard. The Supreme Court in a unanimous decision set aside the decision of the body as violating the rules of natural justice. The court held per Kpegah JSC at page 489 as follows:

'I personally assert that, the phrase "to act fairly and reasonably" inevitably implies a responsibility to uphold the common law maxim of audi alteram partem, which is a significant part of our jurisprudence and is implicit in our constitution's article 23. I am unable to see how a person could be said to have acted fairly and reasonably if he did not provide notice to or an opportunity for a hearing to a third party who was entitled to such notice or an opportunity for a hearing before making a decision that would negatively affect that third party's rights.'

This rule was earlier applied in the case of *Hearts of Oak v Ghana Football Association*¹⁰. In a match between Hearts of oak and Dumas boys, perceived mishandling of the match by the referee resulted in a riotous conduct by the football fans

3 Ibid, art 23.

4 *L'Air Liquide v Anin* [1991] 1GLR 460.

5 Ibid, art 23.

6 1992 Constitution, art 19 (1).

7 Ibid, art 19 (2).

8 *Aboagye v Ghana Commercial Bank* [2001-2002] SCGLR 797.

9 [2003-2004] SCGLR 471.

10 [1982-83] GLR 111.

which caused considerable damage to the stadium. The executive council of the Ghana Football Association in a press release prohibited Hearts of oak from playing any match at their 'home soil'. In an action to challenge the decision of the executive council, Korsah highlighted the audi alteram partem rule. The learned judge held at page 117-118 that:

*'It is well-established that anyone with the legal authority to decide issues affecting citizens' rights and the responsibility to act impartially should give adequate notice to those who are likely to be impacted by the proceedings or decisions so that they can prepare their own case, appear at the inquiry, and make representations on their own behalf or through representation.'*¹¹

From the authorities above, administrative bodies and public officials who exercise quasi-judicial functions and determine questions which affect persons, corporations, associations appearing before them must give them a reasonable chance to be heard. Where such reasonable facilities are denied, the court shall set aside the resulting judgment affecting such parties.

3. Nemo Judex in Causa Sua

The prohibition against bias is the second tenet of the natural justice rule, also known as nemo judex in causa sua. This rule prevents any individual, court, or tribunal from making a decision on a case that is essentially their own. Actual and likelihood of bias are two implications of this principle as developed by the courts that are related but distinct.

Bias may present itself in different forms namely;

- 1) Pecuniary interest,
- 2) Previous involvement,
- 3) Friendship and animosity, or
- 4) Expression of an opinion on a legal issue.

A judge or member of a tribunal or administrative body is in fact sitting as an adjudicator in his own cause if they are an affiliate to the dispute or have a financial or proprietary interest in its resolution. As in the case of Dimes v. Proprietors of Grand Junction Canal, the mere existence of a party's financial interest is sufficient to render him ineligible.

Also, per the dictum of Lord Hewart in *R v Sussex Justices, Ex parte McCarthy*¹²,

'As has been stated in numerous instances, there is no doubt that it is crucial for justice to be served and clearly shown to be served. This is not only important, it is crucial.'

When therefore a public officer is faced with a charge of financial interest and same is proved, that automatically warrants his or her disqualification or incapacity to sit and decide the matter.

The second situation in which the principle is used is when a judge, administrative tribunal, or official does not have a

*financial stake in the outcome of the case, but his actions or behavior in some other way may raise doubts about his objectivity. According to the ruling in the case Republic v. Constitutional Committee Chairman; Ex Parte Braimah II, for this suspicion to be grounds for disqualification, it must be true and substantial rather than fanciful or trivial.*¹³ In this case, the applicant, a chief, invoked the supervisory powers of the court to set aside certain orders made by the administrative committee on grounds that the committee is actuated by bias as a result of their close relationship with the respondent.

At page 1053 of the report, Annan J opined that:

*'To succeed in this application, the applicant must establish the existence of a real likelihood of bias or interest on the part of then chairman and it is clear that a mere suspicion of bias is not sufficient... Thus, since the applicant does not seek to establish that the respondent has a pecuniary or proprietary interest in the matter in dispute, he cannot succeed without satisfying the court that the respondent's interest in the proceeding is so real and substantial and of a nature as to give rise to a real likelihood of bias'*¹⁴.

The cases of *Sallah v Attorney General*¹⁵ and *Bilson v Akpaloo*¹⁶ also spell out in clarity and in great detail the law on judicial bias.

4. Exception to the Nemo Judex Rule

The rule that an individual shall not be a judge in his own cause is subject to exceptions in some limited instances where there is no substitute. Where an adjudicator cannot be replaced, natural justice would give way to necessity. For instance, substitution may not be possible where a statute empowers an official to perform an official act without a substitute. In such a case, there would be no way of escaping the statutory responsibility even if he has a personal interest in the matter to be decided. Example is the empaneling of the bench by the Chief Justice in the cases of *Tsatsu Tsikata v Chief Justice and Attorney General* and *Akuffo Addo and Others v Quarshie Idun and Others*¹⁷ where the court held that there was no substitute to perform the functions of the Chief Justice.

5. Relevance of Natural Justice

I would therefore attempt to analyze the relevance of natural justice based on the reasoning of the courts in several facets of the society, this would include its relevance in sports, immigration, election and education, same is considered in seriatim.

¹³ [1968] GLR 1050.

¹⁴ Republic v Constitutional Committee chairman; Ex Parte Braimah II [1968] GLR 1050.

¹⁵ [1970] 2 G&G 487.

¹⁶ [1981] GLR 15.

¹⁷ [1968] GLR 667-688.

²¹ Supra note 5, page 1.

²² Accra Hearts of Oak Sporting Club v Ghana Football Association [1982-83] GLR 111-120.

²³ Republic v High Court (Commercial Division) Accra, Ex Parte: EC (Interested party; Mr Paa Kwesi Ndoum) (J5/7/2017) [2016] GHASC 20 (07 November 2016).

²⁴ Awuni v. WAEC [2003-04] SCGLR 471.

¹¹ Hearts of Oak v Ghana Football Association [1982-83] GLR 111 at page 117-118 per Korsah J.

¹² [1923] AER 233 at page 234.

5.1. Immigration

In the case of *AG v Ryan* it was held, inter alia, that: “A decision that violates the fundamentals of natural justice is outside the purview of the decision-making authority, according to established legal precedent. In this case, the plaintiff (now defendant) was refused registration as a citizen of the Bahamas by the minister concerned, without being given a fair hearing. The trial court held in his favour that in the light of Articles 5 (2), (3) and (4) of the Bahamas Constitution. The Attorney General appealed. The court held that, the minister's act was a nullity in that Ryan was entitled to fair hearing. This decision, we see from the case, was one which clipped the rights of the applicant, Ryan. Secondly the dictum bears out in the fact that, the said decision was taken by the minister (an authority) who acted based on a law, the Bahamas Nationality Act, 1973.

Specifically, per sections 7 and 8 of the above law, allowed the minister to use his discretion to determine whether or not a person was qualified to be registered. Thus, he had powers to determine on matters affecting the rights of an individual. Flowing from this the decision offended the rules of natural justice that is, *audi alteram partem*. The facts bear testimony that the decision to reject Ryan's application was taken without informing him of his wrong not to even contemplate giving him an opportunity to respond to the said wrongs based on which his application was rejected by the minister.

The court, on this issue, relied on *Ridge v Baldwin* to conclude that, the minister was bound, when taking such a decision to observe the rules of natural justice. This implies that, the minister was duty-bound to state the reasons for the rejection of the application and allow Ryan an opportunity to respond to or rectify those wrongs. Failing to adhere to grant Ryan a fair hearing as a result of the Minister's reliance on the last paragraph of s. 7 (e) of the Nationality Act, in the opinion of the court, was inconsistent with articles 5 (2) and (3) of the Constitution of Bahamas and thus, was *ultra vires* since it was outside the jurisdiction of the decision-making authority. Most importantly, the minister's reliance on other reasons aside the grounds as stated in s. 7 (a-e) makes his act fall outside his jurisdiction.

The court further added that, grounds for disqualification must be stated in the Act such that, an applicant, beforehand, would know whether or not he was disqualified. In the absence of this, it is absurd to leave the determination of the rights of a person to be registered as a citizen in the hands of the executive (the minister). This case therefore establishes how key the rules of natural justice are and plays an important role in immigration issues. The Police are supposed to maintain law and order. In many countries police are given support to ensure that they succeed. Some police officers in Ghana are doing a good job. It is disappointing how other police officers in Ghana have handled certain laws like the Motor Taxi Law [8]. Training is a type of learning intervention that can improve workplace performance and facilitate the introduction of new job responsibilities by improving workers' knowledge, skills and behaviours [16].

Nasir, M., Dahalan, W., and Adibah, W. S. [15] indicated that training is usually preparation for an occupation or for specific skills. It is job-oriented than personal. Our institutions must work above reproach to maintain law and order. Training given to our institutions must yield the relevant results [14]. We still have a lot to do as a country in terms of Natural Justice.

5.2. Sports

In *Accra Hearts of Oak Sporting Club v Ghana Football Association*, the plaintiff football club in a match with Dumas resulted in acts of vandalism and hooliganism leading to the destruction of assets at the Accra Sports Stadium. In the absence of evidence to the effect that the destruction was caused by supporters of the plaintiff club, the defendant, single-handedly, in a press release barred the plaintiff club from playing its 'home' matches in Accra Sports Stadium until further notice and that its venue will be decided from time to time. The action was brought on the basis of an absence of hearing before taking the decision.

A decision "to ban Hearts from playing any home match at Accra Sports Stadium until further notice" was taken by a decision-making body, which said decision offended the rules of natural justice (specifically *audi alteram partem*) when the defendant admitted that it did not hear the plaintiff before the decision to ban them was taken. Korsah J, on this note said, “...all judgements, which permit condemnation before behind the back of a man, when repugnant to this rule of natural justice cannot be enforced in Ghana”.

In holding that the defendant acted outside of its jurisdiction, it held that although GFA had the authority to set up a committee under s. 9 (2) of the Sports Decree, 1976 (SMCD, 54) to transfer teams to other venues if it is satisfied that its supporters are rowdy, the committee is bound by the rules of natural justice to give a fair hearing to the plaintiffs. On this basis, defendant's act was thus outside of its jurisdiction and making same a subject of judicial review by injunction defendants act. This case also establishes the important role the rules of natural justice play in football, even though the regulations of football are different, same is still subject to the principles of natural justice, which means that the principle is inevitable.

5.3. Election

In the *Republic v High Court (Commercial Division) Accra, ex parte: EC (Interested party; Mr Paa Kwesi Nduom)* a decision was taken by the Electoral Commission to omit the interested party's name from the presidential lists for the 2016 presidential and parliamentary elections without an opportunity of being heard nor one to amend the said anomaly. His Lordship, Justice Eric Kyei indicated that there was a breach of natural justice and same was affirmed by the Supreme Court subsequently. A decision was taken to omit the name of the interested party from the list of presidential candidates by the EC who had the authority vested in it by law. However, such decision made was outside its jurisdiction or

powers since it had no authority to take a decision adversely affecting the rights of a person. More importantly, it offended the principle of *audi alteram partem* rule of natural justice. The decision, being *ultra vires*, was subject to judicial review leading to it being quashed by the High Court and was subsequently affirmed by the Supreme Court [5]. Fair hearing therefore plays an important role in election processes since issues involving disqualification affects adversely the rights guaranteed under the Constitution. Today's world of business has called for complex strategies not just to improve the product of the organization to the client, but also to ensure that there is proper ethical conduct among the employees for better service delivery for organizational performance [19].

Information and Communication Technology (ICT) has become important tool in today's knowledge-based society [6]. As a result, governments and commercial establishments are increasingly relying on Internet-worked information systems to carry out services that are critical to the administrative and business successes. Technology has in many ways changed the way human beings interact with their environment to the extent that it is impossible at the moment to imagine a world without the benefits of technology and digital innovations [15]. The National Information Technology Agency is a Ghanaian public institution established by Act 771 in 2008, as the ICT policy implementing arm of the Ministry of Communications. Its mandate is to regulate and monitor the activities of companies in the electronic industry of ensuring quality information delivery and standard of efficiency [15]. Technology also has a role to play in these contemporary times because the use of the internet and computers have extended. Several organizations have adopted the electronic delivery system in their daily operations to meet customer service. In today's world, Information and Communication Technology (ICT) is rapidly growing, and its influence on socio-economic happenings cannot be understated. It has pervaded almost every element of life, including business, education, civic activities, governance, and society [2]. In terms of natural justice in elections, technology play a lot of key roles [9]. It is a known fact in this technological era that every institution should have the ability to explore the Technological environment [12] and this applies to all our institutions including the courts. On the other hand, the media is very important in terms of natural justice. The media with reference to newspapers, radio, television and the International News Network (Internet) play a very important role [11]. The media, as vanguard for political, economic and social development represent a working organism. Although many examples of the media's negative contribution to the escalation of violent conflicts exist, fair and accurate journalism and media circumspect is vital for the development of every nation and attainment of peace [13]. In the case where the media carry out its role with professionalism, truth, fairness, and justice then the society would not suffer but rather benefit [17]. Institutions one way or the other relies on the media for service delivery as well as justice delivery.

5.4. Education

In *Awuni v. WAEC*, the appellants were informed by WAEC through the headmaster of the school that all of their results had been canceled due to examination irregularities while they were still awaiting their WASSCE results [3]. It violated the principles of natural justice because none of them had been accused of cheating on an exam, tried for it, or given the chance to defend themselves, *audi alteram partem* rule. This was held to be outside the jurisdiction of the Council since they did not give the plaintiffs an opportunity to be heard. As a result of the decision being made a subject of judicial review, WAEC was ordered to publish the results of the plaintiffs and same held null and void.

6. Discussion

In this paper, it has been deduced that natural justice falls on two (2) principles, that is, no man shall be sentenced without due process of law and that no man shall be judge in his own cause (with exception)'. People who have been wronged by the execution of such acts or decisions have the right to seek redress before a court or other body. Administrative bodies and administrative personnel must operate fairly and reasonably, and they must adhere to the standards imposed on them by law. Acting fairly simply implies that compliance with the rules of natural justice and compliance with the law conferring power on the administrative body or official. '*Nemo Judex in Causa Sua*' should be applied strictly if we intend to practice natural justice and all forms of biases in different ways must be avoided.

Natural Justice has therefore been relevant and is still relevant and all facets of society in our institutions not limited to sports, immigration, election and education,

The principles of natural justice essentially guarantee justice and fairness. In the interest of justice, the courts place obligations on decision-making bodies to defend the fundamental human rights of those who are impacted by their decisions. Due to these regulations, decision-makers must be impartial, act in good faith, and give each party the chance to present their case fully.

Should administrative bodies go out of its jurisdiction in taking decisions that affects the rights of a person, such a decision will be held as a nullity. The courts thus require that, all decisions by administrative bodies against individuals must be taken on the basis of having duly giving the other party to be heard [18]. In the same way, when a sitting trial court asseverated that, he would show Ken Agyapong where power lies, the Supreme Court alluded to the fact that, the trial judge was prejudicial to the issue and would not fairly consider the issues on its merits and that was made to recuse himself from the pending case [10]. This highlights how important natural justice is in the administration of justice.

A decision made in violation of the AAP rule may be subject to review under *certiorari*, prohibition, *mandamus*, injunction, and declaration where a breach of natural justice has occurred. Republic v court of appeal, Ex Parte Ghana

charted institute of bankers [2011] 39 GMJ.

Republic v inspector-general of police; Ex parte [19] 1 GLR 127, Charles Crabbe J on the grounds of natural justice, an order of prohibition would go to I. G. P. prohibiting him and those through whom he had been acting from continuing with the proposed proceedings. Republic v. Ghana museum board; ex parte [1] GLR377, Mensa Boison j – plaintiff/applicant dismissed after burglary. Making sure that decisions are fair and reasonable is crucial to natural justice. This refers to the general question of whether the decision-making process was fair and proper. Particularly in light of article 23. A person's claim to the right to adequate notice of the date, time, and location of the trial, as well as the right to detailed notification of the case, may be satisfied under the principles of natural justice. This aids in the preparation of the individual's defense and case. Fundamentally, it takes away arbitrariness and capriciousness and afford individual and opportunities to be heard and be fairly treated. For growth to be sustained in the long run, it should be inclusive and broad based across all sectors and sections of the economy [7]. Same applies to natural justice. Its inclusive nature is very important in a working democracy. The United Nations system, including United Nations Office on Drug and Crimes (UNODC), opposes the use of the death penalty in all circumstances [4]. This is a way of ensuring natural justice in line with the fundamental human rights of the person as enshrined in the 1992 Constitution of Ghana.

In a nut shell, in Ghana natural justice applies regardless of the type of act. Natural justice is important in the decision-making process of public. Natural justice promotes fairness by ensuring that cases that proceed to a conclusion where bias is established are quashed, that is, certiorari. It is also important because of the bias rule, *nemo iudex in causa sua*; it ensures that adjudication is not made when there is a reasonable suspicion of bias; administrative natural justice rules are incorporated into the 1992 constitution through a combination of constitutional provision and juridical decisions, and natural justice is recognized internationally. Indeed, the significance of natural justice in the decision-making process for public bodies and officials cannot be overemphasized. If the state's instruments were not required to carry out their duties in a fair and just manner, the idea of the rule of law would lose its relevance.

7. Recommendations for Implementation and Practice

Based on the discussion above in relation to natural justice, the author recommends the following:

- 1) Rule of law should be strictly adhered to without prejudice.
- 2) Due process should be followed without any human or institutional interference.
- 3) Our institutions must act fairly and reasonably.
- 4) Proper standards must be followed in compliance with what the law says.

- 5) It is also recommended that the three main requirements of natural justice of adequate notice, fair hearing and no bias must be strictly followed and applied.
- 6) Political interference must be eschewed in the implementation of natural justice.
- 7) Conflict of interest must be frowned upon by the implementers of law.
- 8) Decision-making bodies must defend the constitution at all cost.
- 9) The media must apply professional standards in their work delivery in the support of natural justice.
- 10) Judicial review must be encouraged and enforced rightly at all cost.

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