NATIONAL OPEN UNIVERSITY OF NIGERIA

MPA 844

Public Administrative Law

Module 4

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Unit 1 Administrative Tribunals and Tribunals of Inquiry

1.0 Introduction

In simple terms, adjudication refers to the process of determining who is right in a dispute. In the Federal Republic of Nigeria, power is vested in the courts. Section 6 of the 1999 Constitution makes it abundantly clear that judicial powers are vested in the courts. Section 6(B) states that the courts judicial powers

"…shall extend to all matters between persons, or between government or uthority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."

In addition, section 36 of the 1999 Constitution ascribes some authority to tribunals and other administrative machinery set up for the purpose of adjudication. The section inter alia states:

"…a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

The constitution therefore recognised tribunals and other nonjudicial bodies set up for the purpose of adjudication if their independence and impartiality can be guaranteed.

In administrative adjudication, the courts entertain parties involved in disputes and make decisions in cases where it is proven that legal rights and duties of parties are involved. *Blachly v Oatman (1954)* describes courts and administrative tribunals as:

"…authorities outside the ordinary court system which interpret and apply the laws when acts of public administration are attacked in formal suits or by other established methods" (Eneanya p. 529).

While it is true that the process of adjudication belongs squarely to courts of law as section 6 of the 1999 Constitution notes, administrative bodies like tribunals may perform the same duties as the court if it is certain that their impartiality in adjudication will be guaranteed as noted in section 36 of the 1999 Constitution. All that is desired in the process of adjudication is to determine the issues in dispute between parties and applying the law to the facts of the issues. The citizen does not mind whether the issues are determined in the court or at the tribunals. All that he is interested in, is that his rights, if they are violated, should be protected; recognised and appropriate remedies given to him.

2.0 Objectives

At the end of this unit, you should be able to:

- explain the need for administrative adjudication
- identify the various classes of adjudicating bodies
- state the definition of an administrative tribunal
- explain tribunals of inquiry

- examine arguments for administrative adjudication
- discuss the criticisms of the administrative adjudication.

3.0 Main Content

3.1 Need for Administrative Adjudication

Ordinarily, the courts in Nigeria have responsibility for adjudicating in disputes between government and government agencies, government and citizens and citizens and citizens. However, as a result of the backlog of cases in courts and the need to decongest them, the courts, in the interest of speedy resolution of disputes, appointed people of integrity to serve on tribunals as provided for in section 36 of the constitution. Groups that now perform judicial functions are called tribunals, panels, commissions, boards of inquiry etc. These bodies, when properly constituted, adjudicate on matters referred to them and they perform such functions as may be assigned.

Governments all over the world are known to set up extra judicial bodies to perform the job of administrative adjudication. These administrative bodies are not courts and they do not belong to the hierarchy of regular courts. When the need arises, the administrative bodies are empowered, under specific legislation that charge them with investigating, hearing and decision in matters that are in dispute which according to Malemi (2008),

"…includes matters arising from:

- public administration
- controversies which require specialised knowledge or experience for instance, assessment of compensation for land acquired by government for public purposes.
- disputes which are thought unsuitable for the regular courts to adjudicate" (p. 182).

Government takes interest in administrative adjudication because it desires to satisfy members of the public that proper investigation is done to issues of national concern or issues that affect the public directly by special bodies charged with speedy resolution of such disputes outside the traditional confines of the court which legal processes take long to execute.

3.2 Classes of Adjudicating Bodies

As has been noted, governments all over the world have cause to make use of administrative adjudicating bodies from time to time in the interest of speedy disposal of disputes. Classes of administrative agencies that have been set up to deal with disputes of national importance include administrative tribunals, administrative courts, public complaints commission, rent tribunals, election tribunals, miscellaneous offences tribunals, recovery of public property tribunals, armed robbery and firearms tribunals, national industrial court and industrial arbitration panel, to name a few.

For the purpose of administrative law, tribunals can be classified as follows:

- Tribunals with criminal jurisdiction. These tribunals deal with issues concerning miscellaneous offences including armed robbery etc.
- Tribunals with civil jurisdiction which deal with issues like rent tribunals, land tribunals, industrial disputes etc.

- Election tribunals which deal with election petitions including qualifications and other improprieties concerning elections.

3.3 Definition of an Administrative Tribunal

A tribunal is an administrative body which has the force of law and which is set up to investigate and adjudicate in disputes referred to it. In the process it may make claims where necessary while recommending solutions to solving the problems. In adjudication, members of an administrative body make judicial decisions by applying the law to the facts of the dispute. Its operation is less formal than the court system. The difference between the court system and the administrative tribunal or a quasi-judicial organ is that in the judicial system, there is a nag for details following rules of evidence where no discretion is allowed. In the tribunal system, members are allowed some form of discretion as long as it will not compromise the fairness and impartiality that is required of the process.

From the foregoing, a tribunal may strictly be described as an administrative body set up with definite terms of reference which possesses the attribute of a court of law in its bid to consider evidence in order to settle the disputes referred to it. It applies legal rules laid down by statute to the facts in issues presented to it for adjudication.

3.4 Tribunals of Inquiry

Egwummuo (2000) defines inquiries as follows:

"Inquiries are investigations into matters concerning government policy and administration or allegations of impropriety or negligence in public life, with a view to finding out facts in relation thereto, for the purpose of determining the appropriate policy that would be adopted by the appropriate authority" (p. 283).

In specific terms, it is generally believed that there is no main difference between an administrative tribunal and tribunals of inquiry. They are both constituted by government whose power to do so is derived from the Tribunals and Inquiries Act of 1960 and the relevant laws of the different states. An apparent difference if any is in their functions. For example, an administrative tribunal which operates like the court system applies the relevant law to the facts in dispute and makes a determination as a court would do without reference to either the authority that set it up or any other extraneous body. In the case of *Alakija v. Medical Disciplinary Committee (1959)4 F.S.C.38*, the administrative tribunal made a decision as if it is a court of law without reference or recommendations to any head of state, governor, minister or commissioner.

However, in a typical tribunal of inquiry, the tribunal entertains evidence and examines the facts but makes the final recommendations to another party which may be either the head of state/president, governor or minister as the case may be. The president, etc will then act on all the findings and recommendations or set some aside as he deems fit. An example is the Udoji Commission of 1973 in which government accepted many of the recommendations and set aside some.

3.5 Arguments for Administrative Adjudication

As has been noted, administrative adjudication refers to a process where government sets up an administrative organ which functions as a court in solving disputes through admission

of evidence and application of rules to facts. The arguments advanced for this quasi-judicial organ are as follows.

Tribunals are cheaper and cost effective

Administrative adjudication process is cheaper and cost effective both from the point of view of the litigants and government or administrative party that set up the tribunal. The main argument is that an administrative tribunal comprises ad-hoc members who are constituted when the need arises and disbands when the process is over. This is unlike the court process which is tortuous and involves a never-ending process of legal dialectics which often end up in adjournments.

Speed in hearing matters

An administrative tribunal works with speed and accuracy in entertaining disputes. |Issues are expeditiously disposed of. There are no long adjournments and some tribunals like the election tribunals have a fixed period of sitting and a fixed period for disposing of election cases.

Administrative tribunals

In administrative tribunals, matters are heard by appropriate experts while a magistrate or judge or lawyer heads a tribunal of inquiry and other members are respected and knowledgeable people in the issues under reference, they are so constituted for ease of hearing the matter.

Informality of procedure

An adjudicating administrative process is informal. Members sit without regards to the paraphernalia or robbing, wigs and gowns etc.

3.6 Criticisms of Administrative Adjudication

While an administrative adjudication process is simple and cost effective, the process is often criticised for the following reasons:

Inadequacy of legal knowledge

Although some members of an administrative adjudication process have legal minds, other members lack legal training and scientific fact-finding techniques. This drawback beclouds the assumption that an administrative tribunal possesses the quality of fairness.

Assumed loyalty to government

Where the court system does not display loyalty to any person or organ, there is fear that administrative tribunals may nurse some loyalty to the authority that set them up. In other words, they may seek the mind of government or minister or state governor that set up the specific tribunal with a view to 'dancing' towards the intention of government. It is common knowledge that in a judicial process, the courts have their allegiance only to the constitution of the Federal Republic of Nigeria and the specific laws that relate to the issues in dispute.

For example, in *FCSC v. Laoye*, the Supreme Court stated its displeasure at the frequent use of tribunals instead of courts of law for trial of persons. In the case, the now famous statement of Oputa, J.S.C. is replicated here in order to drive home this point:

"…the jurisdiction of the ordinary courts to try any allegation of crime is a radical and fundamental tenet of the rule of law and the cornerstone of democracy. If the executive

branch is allowed to operate through tribunals and executive investigation panels, that surely will be a very dangerous development. This court cannot be party to such dangerous innovation. It is only when one is on the receiving end that he can fully appreciate" (1989)2 NWLR pt. 106 p. 265.

Inadequate opportunity for self-defence

The right to fair hearing which is enshrined in Section 36 of the 1999 Constitution involves the opportunity to present self-defence and arguments in a litigation process. It is believed that in some cases that the process of administrative adjudication lacks enough opportunity for self-defence. Self-defence is sacrificed as some believe, in the altar of speed and expeditious disposal of disputes by administrative tribunals.

Secrecy of sittings

Some administrative tribunals sometimes sit in camera, to the exclusion of journalists and other citizens who may want to watch the tribunal's proceedings. It is assumed that the secret nature of some tribunals is a smoke screen for short-cutting the due process of law as regards a right to counsel of one's choice or fair hearing or application of rules of natural justice.

From the foregoing, it is evident that the process of administrative adjudication has its merits and demerits. It would appear, however, that the merits far outweigh the demerits.

4.0 Conclusion

The process of administrative adjudication is known to the constitution. When section 6 and section 36 of the 1999 Constitution are read together, it would be clear that the constitution recognises administrative adjudication. Adjudicatory process as seen in administrative tribunals is decongesting the court in hearing and disposing of disputes. However, there are arguments and criticisms for administrative adjudication. It would appear that the benefits of adjudication processes far outweigh its draw-backs.

5.0 Summary

The process of administrative adjudication is known to law. Section 36 of the 1999 Constitution affirms that tribunals may be used in addition to regular court procedures in the hearing and disposal of disputes. Administrative adjudication has its merits and demerits. While one of the merits includes cost effectiveness and speedy disposal of disputes among others, one of the draw-backs is that not all functionaries in the process have adequate legal knowledge to apply the law to the facts in the issue.

6.0 Self-Assessment Exercise

1. Define the concept of administrative adjudication.
2. Freely comment on three arguments for administrative adjudication and three points of criticism of administrative adjudication.

7.0 References/Further Reading

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The 1999 Constitution of the Federal Republic of Nigeria.

Unit 2 Membership of Tribunals & Independence of Tribunals

1.0 Introduction

As observed in unit 1, there are circumstances where judicial authority is given to a body of citizens of good standing to perform judicial functions in a committee known as a tribunal. There is evidence to suggest that the origin of tribunals can be traced to the year 1660, when, in the United Kingdom, judicial powers were given to men of the customs and excise to perform specific functions in commerce department. Powers were also given in 1799 to land tax commissioners. Upon independence in 1960, the aspects of the English legal system became received laws in Nigeria and the idea of using tribunals to solve specific disputes and issues was inherited by the government of Nigeria. That is why a year later in 1961, government promulgated the commission and tribunals of enquiry act. In 1961, authority was given to the prime minister, the then chief executive in the parliamentary system, to appoint commissioners whenever he needed to set up tribunals for any purpose. It has also been noted that section 3(1) of the constitution recognises the idea of giving judicial powers to a tribunal. Tribunals therefore have come to stay in Nigerian politics and the commissioner of such tribunals share judicial powers with Nigerian courts.

2.0 Objectives

At the end of this unit, you should be able to:

- state the origin of tribunals
- classify the different groups of tribunals
- discuss membership of tribunals
- explain independence of tribunals
- compare tribunals and enquiry.

3.0 Main Content

3.1 Origin of Tribunals

It would be appropriate to define the concept of a tribunal before tracing its origin. Malemi (2008) defines a tribunal as:

"…a special court usually established by government outside the hierarchy of the regular court system to hear and determine matters of a particular kind" (p. 179).

As observed by Egwummuo (2000),

"…as an aspect of administrative law, its origin is traceable to the British origin of our legal system and the focus is on commission of customs and excise, who were given judicial powers by English statutes dating back to 1660" (p. 268).

As is well known, the English legal system became part of Nigerian law upon independence in 1960. The concept of tribunal was thus inherited in Nigeria in 1961, a year after independence; government promulgated the commission and tribunals of enquiry act which gave authority to the prime minister to appoint commissioners to tribunals whenever the need arises. The act empowered commissioners so elected to enquire into any matter within or affecting the general welfare of Nigeria or into any matter within federal competence anywhere within the federation. The 1961 act was replaced by section 22 of the tribunals of enquiry act 1966.

3.2 Classification of Tribunals

Tribunals are classified based on the group of issues they deal with specifically as follows:

Tribunals with criminal jurisdiction

These are tribunals that deal specifically with trial of criminal offences in different zones of the federation. A good example would be the counterfeit currency tribunal set up following the counterfeit of currency decree 1984. Another example would be the code of conduct tribunal and the armed robbery and firearms tribunal.

Tribunals with civil jurisdiction

These are tribunals that deal with civil offences e.g. rent tribunals, land tribunals, industrial relations tribunals etc.

Election tribunals

These are tribunals that are charged with the responsibility of enquiry into election issues including disputes about results and eligibility issues among others.

While it has been observed that there is a proliferation of tribunals, most of which exercise judicial functions, it is obvious that the congestion in courts and the snail speed with which the courts exercise their judicial powers may have necessitated the need for tribunals in order that justice would be seen to have been done to litigants without delay.

3.3 Membership of Tribunals

Membership of tribunals varies from one to the other depending on the substantial issues that the tribunal has to deal with. It is so because authorities that set up tribunals always desire that those who have been appointed commissioners should have broad based education some of which must be related to the nature of the dispute that they have to deal with. For example, a tribunal that deals with miscellaneous offences of criminal nature must have commissioners with legal mind on the tribunal.

Be this as it may, from Nigeria's contemporary experience, tribunals, which exercise judicial powers, have always been chaired by retired or serving judges and about three other members of good moral background. It would be emphasised that irrespective of the number of what constitutes a tribunal (and the number is already determined by the authority that set it up) a consideration is always given– that the commissioners must be people of proven integrity. A tribunal is guided by objectivity and the principle of fair hearing and they are reminded to be independent of the authority that set them up.

Membership of a tribunal is carefully selected to reflect the men who are in good moral standing in the society and who have no criminal background. Although there is no fixed number of persons to be appointed into a tribunal, the extent of the issues in dispute usually determines the membership. One thing that is certain is that the chairman of a tribunal is usually a serving or retired judge and two or three more members, one of whom has a legal

mind while the other has a broad based knowledge of issues in dispute. In addition, a lawyer or legal practitioner, either from service or the private sector is usually appointed as a lawyer to the tribunal. The duty of the lawyer is to ensure that parties are well represented and that the rules of fair hearing and evidence are adopted by the tribunal in their proceedings.

Usually, a secretary from the civil service is appointed to the tribunal. While other members of the tribunal are paid sitting fees, the chairman as a serving judge is not paid additional fees. The secretary from service explains administrative matters to the tribunal. The secretary, as an administrative guide to the panel, is not entitled to vote in the process of decision-making.

3.4 Independence of Tribunals

Following the principle of separation of powers, no branch of government wants to directly interfere with the duties and functions of the other. The executive branch is distinct from the judicial branch and the judicial branch is different from the legislative branch. Functionaries of the three branches of government are therefore strictly speaking, independent of each other. Ordinarily, tribunals, which share judicial functions with the courts under the judicial branch, would be independent from the executive branch.

According to Oluyede (1988),

"…tribunals make their decisions independently and are supposed to be free from political influence" (p. 223).

In certain circumstances, the authority that set up a tribunal determines the officers to whom the appeal lies. For example, when an enabling statute provides that an appeal lies in a minister or commissioner, any case constituting an appeal in the dispute enquired into by that tribunal lies in the minister or commissioner as required by the enabling statute. This procedure is however different from any attempt by politicians who may try to buy the conscience of tribunal members by chasing them around with bags of money. The Chief Justice of Nigeria, Chief Fatai Williams is reported to have claimed that politicians in Nigeria made several attempts during the election petition trials of September to October 1983 to influence the judiciary with money. Although the veracity of this claim has not been fully established, it was made by the number one judicial officer in Nigeria at the time.

In conclusion, it would be noted that tribunals in their procedures must follow constitutional provisions. They must be fair, objective and legal. They must hear the other side following the principle of audi ateram partam.

3.5 Comparison of Tribunals and Enquiry

- The main difference between tribunals and enquiry is in the fact that tribunals share in the judicial power of Nigerian courts. They entertain petitions and disputes and make decisions including awards or remedies to aggrieved parties independent or without reference to the authorities that set them up e.g. the election tribunal which makes decisions is able to reverse election results on grounds of impropriety, falsification or irregularities committed in the elections. A case in point would be the 2008 reversal of Professor Osunbor, Governor of Edo State under the platform of the People's Democratic Party. Although Professor Osunbor had been sworn in and actually acted as Governor of Edo State for over six months, a special election tribunal holding in

Benin reversed the election result in favour of Comrade Adams Oshiomhole, who the election tribunal said, was the valid winner of the 2007 election to the office of Governor of Edo State. Comrade Oshiomhole then became Governor of Edo State on the platform of the Action Congress of Nigeria.

- An enquiry is selected in the same way as a tribunal but most enquiries perform fact-finding functions after which they report back to the authority that set them up or to government or any other authority as the case may be. They are basically information seekers and submit same to the prescribed authority for purposes of decision-making. Their functions often cover administrative policies, land matters, chieftaincy title matters, financial impropriety, education, banking etc.

- Tribunals are more permanent in nature than enquiries. While tribunals are set up by enabling statutes giving them force of law, enquiries are set up by government or relevant authority with definite terms of reference. In most cases, they send their report to the official designated to make decision on the matter.

- Decisions of tribunals are in most cases final. Enquiries do not make decisions that stand alone. Their decisions are intended to be recommendations which another authority has liberty to implement or not.

- A common attribute of tribunal is that their decisions often affect rights and obligations of persons/citizens.

- The two bodies are expected to be guided in their deliberations by the principles of law including rules of natural justice, fair hearing and fundamental human rights as enshrined in section 33 to 43 of the 1999 Constitution.

- While the procedures in some tribunals are formal and legalistic as regular courts, the procedures in enquiries are usually less formal. In some deliberations, legal representative may be required at tribunals but at enquiries, persons may appear in the company of their legal practitioners who may advise on legal issues if the need arises. See the case of *Ekpo v Calabar Local Government Council (1993)3 NWLR pt. 281* p. 324. In this case, the plaintiff appellant was the chairman of Calabar Local Government Council. 18 councilors signed notice of misconduct against him. They passed a resolution that the chairman had a case of misconduct to answer and the allegation must be investigated. The chairman went to court and sought leave of the court to prevail on the councilors. The court of appeal dismissed the chairman's application and held that the appellant had not established any condition that should warrant the court in interfering with the steps taken by the councilors. The court cited the provisions of the local government basic constitution and transition provisions decree of 1969 where section 11 provides among other things, that it was the councilors' responsibility to decide what amounts to gross misconduct.

4.0 Conclusion

In this unit, you have learnt what could constitute the membership of tribunals and independence of tribunals. It was observed that membership of tribunals comprises men of proven integrity, some of whom should have legal backgrounds in order to dispense justice fairly, objectively and independently. While the chairmen of most tribunals are serving or retired judges, the secretaries are serving administrative officers from the civil service who serve to advise the tribunals on administrative issues. Tribunals are largely independent of the authority that set them up. They make decisions without further reference to the authority that set them up. A good example would be that of election tribunals which make far-reaching decisions based on the facts before them including nullification of election results.

5.0 Summary

The history of tribunals can be taken back to the legal system of the United Kingdom which was imported into Nigeria as received law upon our independence in 1960. The purpose of using the method of tribunals in Nigerian legal system is to decongest matters in the courts and to speedily hear disputes and cases in less costly ways. Tribunals serve as alternative judicial bodies and are more legalistic and formal in their approach to solving disputes than bodies of enquiries. Tribunal decisions are not subject to further review while decisions of enquiries are subject to further review by the officers to who appeals lie.

6.0 Self-Assessment Exercise

Are there differences between tribunals and enquiries? If there are differences, state them.

7.0 References/Further Reading

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Unit 3 Rights of Appeal Under Tribunals

1.0 Introduction

An appeal arises where a decision in a case or dispute adjudicated upon by the court or tribunal does not go well with any of the litigants in the dispute. The party that appeals to a higher authority is referred to as the plaintiff appellant. He requests the higher authority to set aside the decision of a lower court which in most cases is not in his favour. If the higher court believes that his appeal has merit, it would be upheld. If however the appeal does not have merit, it would be thrown out and the decision of the lower court would be sustained. Evidence abounds in legal proceedings in Nigeria where the appeal courts and appeal bodies have overturned decisions of lower courts. Evidence also exists where appeal courts or bodies have upheld decisions of lower bodies. It is pertinent to observe that appeal courts follow the principle of fair hearing, equity and natural justice in consideration of appeals.

In the case of Nigerian courts, appeal is from the high court to the federal appeal court and from the federal appeal court to the Supreme Court. But in the case of tribunals, appeal is to a higher body stipulated in the statute that gave authority to the tribunal to sit. Any tribunal that processes appeal where the statute does not advise one has acted above its powers or ultra vires.

2.0 Objectives

At the end of this unit, you should be able to:

- recognise the right of appeal under tribunals
- identify problems of tribunal and contempt of decisions.

3.0 Main Content

3.1 Right of Appeal under Tribunals

In simple terms, an appeal is a request or wish expressed to a court by an appellant who wishes a decision to be changed. In a normal court system, it is usual for a litigant who is not pleased with the decision of a lower court to appeal to a higher court for a re-examination of the litigation process with a view to changing the decision of the lower court. It is pertinent to observe that in the case of tribunals, there is no right of appeal except it is explicitly stated by statute.

Oluyede (1988) states:

> "…although there are numerous ways of appeals from various tribunals in this country, the general principle still applies to each and every one of them. It should also be noted that an appeal may lie from a tribunal to a minister or commissioner, from a tribunal to a court of law, from minister or commissioner to a court of law, from a tribunal to the head of state or governor by way of confirmation or no appeal may lie at all. An appeal may be on the question of fact, law or both, or on question of law only." (229)

In some cases an appeal may lie from the tribunal to the court if it is established that there is a fundamental breach in the tribunal's process of decision-making or if the process employed by the tribunal is contrary to the principles of natural justice. In that case, the appeal from tribunal to the court only holds if the enabling statute of the tribunal allows for appeal. This is what happened in *Denloye v. Medical and Dental Practitioners Disciplinary Tribunal (1968)* suit no. SC 91/1968 of November 22, 1968.

As already stated, the provisions of the enabling statute that sets up a tribunal states the authority of persons to whom appeal may lie as per the decisions of the tribunal. In most cases, the enabling statute will state that, appeal lies to a designated minister of the Federal Republic of Nigeria or with a commissioner with respect to state government as the case may be. An appeal may lie from one tribunal to a higher tribunal which may not be a court case in the real sense. A good example will be seen in administrative adjudication process where appeal lies from the decision of the industrial arbitration panel to the national industrial court.

A right of appeal is a second tier process in the quest for justice. An appellant is motivated to seek a reconsideration of his matter by a superior body in the hope that he will find justice because of his displeasure at the way his matter was handled by a lower authority. However, the judicial process entertains appeals through the court system because the constitution states that it is a fundamental human right for a litigant to be given a fair hearing. Again, it is traditionally believed that tortuous as the process of adjudication may be, it is better to set one offender free than convicting an innocent man who may not have been given a fair trial. Fair trial is therefore the cornerstone of any legal system.

3.2 Problems of Tribunal: Contempt of Decisions

Tribunals have become part of the process of dispensing justice in this country. It is fair to observe that most governments of Nigeria from independence to date have made good use of tribunals indicating that they have trust in the tribunal process of dispensing justice. There is no doubt that tribunals have assisted in clearing congestion of cases at the conventional courts of law. The speed at which tribunals decide matters and the cost effective nature of their claims have been assets to the use of tribunals. As Wade (1977) noted, on the issue of frequent use of tribunals

"…it was based on attitude and positive hostility to the courts of law". (p. 753)

In support of the above statement by Wade, it can be added that delay in concluding cases in this country has been a major draw-back in legal proceedings and that explains why successive military regimes in Nigeria have had cause to use tribunals in dispensation of justice. As is well known, military regimes suspend the constitution and operate through decrees in the interest of peace and stability.

Although successive governments in Nigeria are eager to see results and improvements in the judicial process, which prompted them to employ the use of tribunals in the dispensation of justice, tribunals are not meant to replace regular courts which are recognised and listed in the constitution. It is expected that with great advancement in modern technology, the process of deciding cases in the regular courts would speed up. If the bench is equipped with state-of-the-art voice recording equipment and laptops for quick referrals, delays in the court system would be virtually eliminated.

One problem that tribunals appear to have is that of contempt of some of their decisions. In the regular court system, if court orders are disobeyed, there are appropriate sanctions for contempt but tribunals do not have appropriate sanctions for contempt of their orders. Section 26 of the trade dispute act 1976 empowers tribunals to deal severely with contempt of their orders by referring such contempt to a high court or to summarily deal with such cases. The tribunals have been slow in summarily dealing with cases of contempt because they are aware that, strictly speaking, they are not courts instead they make use of referral of cases of contempt to other superior courts for prosecution. This problem has led members of the public to believe that the tribunals lack the power of strong enforcement of their orders. An exemplary case which drives home this position is in the celebrated case of *Union Bank of Nigeria Ltd v. National Union of Banks, Insurance and Financial Institution Employees*.

On May 10, 1983, the National Industrial Court, which is a tribunal, issued an order requiring striking workers to go back to work and they treated the order with contempt by refusing to obey. The Union Bank of Nigeria Limited brought an application requiring the striking workers to explain why they should not be punished under section 26 of the trade dispute act 1976. The national industrial court did not summarily deal with the contempt case. The striking workers or their leaders were not imprisoned or sanctioned. They returned to work later. The general tradition is that tribunal, after giving its verdict, does not reconsider or re-open the case. In some cases however, aggrieved parties in decided matters at tribunals have pleaded with tribunals to re-open their cases. Tribunals have been cautious in this area because they are mindful of the fact that even the high court has power in extreme circumstances to quash decisions of tribunals.

Another problem of tribunals is the excessive personal immunity enjoyed by parties and witnesses who appear before them, unlike regular courts where the immunity of parties and witnesses are limited.

From their functions, tribunals can be said to be part of the judicial system in Nigeria. They speedily deal with matters brought before them and they have, to a large extent, disposed of matters in accordance with the principle of fairness, equity and natural justice. They need to be strengthened by enabling them to provide tough sanctions for contempt of their orders.

4.0 Conclusion

Government faith in tribunals is for tribunals to serve as administrative judicial organs. The belief that they are for speedy disposition of cases and as machineries to enquire into social problems appears very strong. In a normal court system, the right of appeal is a freedom which dissatisfied litigants have. It is a process whereby a party that is dissatisfied with the decision of a lower court makes an appeal to a superior court usually a high court or the court of appeal, to re-examine the decision of the lower court with a view to changing it in their favour.

Evidence abounded that in cases where superior legal arguments were made, buttressed by evidence which the lower courts might have ignored, superior courts have reversed decisions of lower courts. In the specific case of tribunals, appeal does not lie with them

except the enabling statute that set up the tribunal specifically states the right of appeal. However, tribunals have had to refer cases requiring appeal to the high court for hearing.

5.0 Summary

There are many forms of tribunals set up by statute and by government to investigate disputes, hear cases and make decisions or to inquire into social problems. Tribunals have proven themselves to be fast, adept in investigation and they are the hope of litigants who seek speedy decision on their cases or disputes. However, tribunals are not regular courts. Their decisions and orders, though respected, have in some cases been treated with contempt and disobedience. In the case of people that have recourse to tribunals for adjudication, they have had justice dispensed fairly and objectively with respect to their fundamental human rights. In all cases, tribunals have been guided by the need to apply the principles of natural justice, equity and fair hearing.

6.0 Self-Assessment Exercise

Discuss two ways in which application of modern technology would be a great resource to tribunals in the dispensation of justice.

7.0 References/Further Reading

Oluyede, P. A. (1988). *Nigerian Administrative Law.* (5th ed.). Ibadan: University Press, PLC.

The 1999 Constitution of the Federal Republic of Nigeria

Wade, H. W. R. (1982). *Administrative Law.* (5th ed.). Oxford: Clarendon Press.

Unit 4 Fundamental Rights under The 1999 Constitution

1.0 Introduction

In this unit, you are going to focus on fundamental human rights under the 1999 Constitution. These rights are documented in chapter 4, section 33 to 44 of the 1999 Constitution. These rights include right to life, right to dignity of the human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria and right to freedom from compulsory acquisition of own property without due process.

2.0 Objectives

At the end of this unit, you should be able to:

- define fundamental human right
- explain right to life, human dignity and also personal liberty dignity
- discuss the right to fair hearing, private and family life
- analyse the right to freedom of thought, conscience and religion
- discuss the right to peaceful assembly, association and freedom of movement
- explain the right to freedom from discrimination, acquire and own immovable property anywhere in Nigeria
- explain the right to freedom from compulsory acquisition of own property without due process.

3.0 Main Content

3.1 What is Fundamental Human Right?

Fundamental human rights are basic rights that come to effect with the nature of man as a rational human being and the rights are in alignment with the principles of natural law. In Nigeria, these rights are enshrined in chapter 4, sections 33 to 44 of the 1999 Constitution of the Federal Republic of Nigeria and they include right to life, right to dignity of the human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria and right to freedom from compulsory acquisition of own property without due process.

Most countries of the world have enshrined human right provisions in their constitution. A onetime Chief Justice of Japan is reported to have said, while describing fundamental human right that:

"…fundamental human rights were not created by the state but are external and universal institutions common to all mankind and antedating to the state and founded upon natural laws" (1972) 16 J.A.L. No. 2, p. 131).

The above submission explains that fundamental human rights are not ascribed to human beings at the pleasure of the state or constitution. They are what human beings are entitled to by the fact that they are human beings who are rational and who are endowed with body, soul and mind. Every government, all over the world, respects these rights and international organisations have enacted orders and prohibitions for violation of these rights.

3.2 Right to Life

Section 33(1) of the 1999 Constitution states that:

"…every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria."

The court however makes a difference with taking a human being's life as a result of either punishment for a crime that has been committed or as a reprisal for the offence of murder. Section 33(2) however explains that a person shall not be regarded as having been deprived of his life in contravention of this section. In other words, if a person is condemned for the offence of armed robbery in Nigeria and he is sentenced to death by firing squad, if he is executed, such a person cannot be regarded as having been deprived of his life in contravention of section 33 of the 1999 Constitution.

3.3 Right to Dignity of the Human Person

This right is embedded in section 34(1) of the 1999 Constitution which states that:

"…every individual is entitled to respect for the dignity of his person, and accordingly:

- no person shall be subjected to torture or to inhuman or degrading treatment.
- no person shall be held in slavery or servitude
- no person shall be required to perform forced or compulsory labour."

From the foregoing, it is evident that the constitution prohibits corporal punishment. It is degrading to the human person. Any institution, school or state government that permits corporal punishment by way of using horse whip and other gadgets, contravenes this section of the constitution and their actions are therefore ultra vires i.e. acting above authorised powers.

In a recent decision in *Alhaja Abibatu Mogaji and others v. Board of Customs and Excise and another (1982)3 NCLR 552* p. 562 where market women brought an action against men of the customs and excise for horse whipping and tear gassing market women whose shops they raided with the suspicion that they were selling prohibited goods, the court held that the action by the customs officials and their aids violated the fundamental human rights of the market women as enshrined in the constitution. The actions of the men of customs and excise aided by policemen were seen to be barbaric and ultra vires.

3.4 Right to Personal Liberty

Section 35(1) of the 1999 Constitution documents the right to personal liberty. The section explicitly states that:

"…every person shall be entitled to his personal liberty and no personal shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law."

This right is frequently abused by law enforcement agents who detain suspects and imprison them without warrant and without due process. In *Obeka v. Commissioner of Police (1981) 2 NCLR 420*, the accused in this case was held in custody on an allegation of theft. When he applied for bail, the police opposed it, but the court, which is a defender of the constitution and human rights, stated that the action of the police was in violation of this section of the constitution. The court therefore granted the accused bail unconditionally.

3.5 Right to Fair Hearing

Right to fair hearing is the mother of all rights because it is the core of justice. In simple terms, fair hearing is the act of listening to the person or persons and giving them equal opportunities to state their positions on an issue before adjudicating. In *Akoh v. Abuh (1988) NWLR pt. 85,* p. 696. SC., the Supreme Court explained that "to hear" in the process of justice means to hear and determine the cause of the matter. In other words, the matter here relates to the process of hearing a suit from its commencement to the end including the delivery of final judgment. This suggests that if hearing is to listen from the commencement of a matter to the end including delivery of judgment, fair trial is mandatory. In other words, both sides in a matter or suit must be given ample opportunity to state their case, usually in Nigeria through counsels.

The courts have always sympathised with victims, in established cases of violation of the right of fair hearing. The maxim "nemo judex in casua suam, and audi ateram partem", *"(*no one can be a judge in his own case, and listen to the other side)" has remained persuasive arguments for plaintiff applicants in fair hearing proceedings.

The right to fair hearing cannot be ousted by law because the Nigerian constitution is superior to any law. There is no contradiction that the Nigerian constitution is supreme. Fair hearing is the cornerstone of any judgment process. In *LPDC V. Fawehinmi (1985) 2 NWLR pt. 7*, p. 300 at 370 SC, the legal practitioners disciplinary committee was to examine the alleged misconduct of Mr. Ganiyu Fawehinmi, a legal practitioner, at that time over his publication in a *West African* Magazine of 23rd March 1985 and requested him to show cause why disciplinary measure should not be taken against him for the publication which was regarded as a professional misconduct. The case was brought to the LPDC by the Attorney-general of the Federation. Ganiyu Fawehinmi went to court to file an application for an order of prohibition under the fundamental human right alleging that his fundamental human right to fair hearing under the Nigerian constitution was likely to be contravened by the Lpdc because the Attorney-general of the federation, who filed the case with the legal practitioners disciplinary committee was also a member of the disciplinary committee. Ganiyu Fawehinmi reasonably showed them that the right to fair hearing would be violated because the Attorney-general, who is the accuser, will also be a member of the disciplinary committee that will judge.

Again as the maxim will say- nemo judex in casua suam i.e. no one can be a judge in his own case was advocated. The plaintiff respondent's complaint was serious enough to persuade the high court to grant the respondent's application and made an order of prohibition to stop the committee from trying Ganiyu Fawehinmi. The disciplinary committee appealed to the Supreme Court and the Supreme Court held that the legal practitioner's disciplinary committee's appeal failed and upheld the judgment of the high court in favour of the plaintiff respondent. Justice Karibi-Whyte, Justice of the Supreme Court states that

> "…in the circumstances of this country, fair hearing is an entrenched provision of the constitution which cannot be displaced by legislation however unambiguously worded' (p. 300) .

It is obvious therefore, that the rules of natural justice, as reflected in the principles of fair hearing, apply to both judicial and administrative adjudication in all cases.

3.6 Right to Private and Family Life

Section 37 of the 1999 Constitution states that:

> "…the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."

This right is often abused by authorities and some government officials with modern advancement in technology. There are situations where the homes of citizens have been bugged which showed clear violations of this section of the constitution. The privacy of citizens, as referring to their homes, correspondence, telephone conversation and telegraphic communication should be off limit to prying eyes as far as this section is concerned.

In Nigeria, many cases of violation of this right are not reported. However, in the United States of America, evidence abounds of violation of right to private and family life. For example, in *Olmstead v. U.S.*, a home was raided by the police even though their owners were not at home. The court regarded this as a violation of a right to private and family life. In this case, the Supreme Court held that the evidence obtained by wire-tapping of a family telephone in a criminal prosecution can be admissible as proof of violation of the right to private and family life.

3.7 Right to Freedom of Thought, Conscience and Religion

This right is guaranteed by section 38 of the 1999 Constitution which states that:

> "…every person shall be entitled to freedom of thought, conscience and religion including freedom to change his religion or belief and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."

This right is very relevant to the affairs of Nigerian citizens where religion is a sensitive phenomenon. There are several religions in Nigeria but the very predominant are Christianity and Islam. The citizens are often pitched against themselves on issues of religion and if only the provision of this section is emphasised before them, peace would reign and members of the various religions would co-exist in harmony. It is a fundamental human right for a citizen to express his or herself freely. To be free to live in community with others and to worship his maker the way he wants. It has been observed that the freedom guaranteed by this section of the constitution is sometimes abused by preachers

and leaders of thought. In Oluyede (1988) Justice T.A. Aguda made the following comments regarding this section as follows:

"…in so far as freedom of religion is concerned, many Nigerians have developed grave doubts if this freedom is not being carried so far as to amount to abuse in some cases. Many so-called Christian Churches have been established mainly as profitable trades, and in some cases as a means of perpetuating incredible fraud on credulous followers. On the other hand, the extremism of some Muslims in the name of freedom of religion has led to bloodshed in recent years. The President of the country was of course quite right in proscribing these extremist sets recently since they denied to others the same freedom they are claiming for themselves" (p. 473).

3.8 Right to Freedom of Expression and the Press

Section 39 of the 1999 Constitution documents the right to freedom of expression and the press as follows:

> "…every person shall be entitled to freedom of expression including freedom to hold opinions and to reason and import ideas and infor-mation without interference."

Journalists, newspaper publishers, writers and leaders of thought have always taken solace in this section implying that they have a right to practice as journalists, to express their ideas and to hold opinions freely. Journalists are free to express their ideas so far as such expression does not impinge on the right of others. Section 39(2) of the 1999 Constitution guarantees the right of persons to own, establish and operate any medium for the dissemination of information, ideas and opinions.

Journalists have also taken refuge in the section for criticising the activities of government because they claim that it is unconstitutional to muzzle them when they freely express themselves in form of criticism of government activities. A case in point here is *Olushola Oyegbemi and others v. A.G. of the Federation (1982) 3 NCLR* p. 895. In this case, Olushola Oyegbemi and Others refused to disclose the source of the news item they published because they claimed they had freedom of expression. The police arrested them and charged them with the offence of conspiracy to commit felony. The court held that non-disclosure of the source of a news item is not contempt of court. The court further held that in a criminal proceeding, an accused person may not need to wait for a determination of his case before applying to a high court to enforce his fundamental human right of freedom of expression. The court noted further that while journalists may exercise their right to freedom of expression and to withhold information, the right to withhold information is not absolute.

3.9 Right to Peaceful Assembly and Association

Section 40 of the 1999 Constitution guarantees the right to peaceful assembly and association as follows:

> "…every person shall be entitled to assemble freely and associate with other persons and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interest" (p. LL40).

This section guarantees the right of Nigerian citizens to belong to any political party, trade union or any association where their rights and interests would be protected. It is worthy to note that many Nigerian citizens have always resorted to force to enforce this right which they believe is often violated especially in military regimes.

3.10 Right to Freedom of Movement

Section 41 of the 1999 Constitution guarantees the right to freedom of movement. It states:

> "…every citizen of Nigeria is entitled to move freely through- out Nigeria and to reside in any part. Therefore, no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit wherefrom" (p. LL41).

This section is clear on the fact that restricting a citizen's movement is illegal except in proven justified cases. A leading case where this right was violated and the court decried such action is the case of *Shugaba Abdulrahman Darman the Federal Minister of Internal Affairs and Others (1981)1 NCLR* p 25. Alhaji Shugaba, who was a majority leader, in the Borno State House of Assembly was deported by the minister of internal affairs to Niger Republic on the grounds that he is not a Nigerian, whereas Shugaba had acquired his Nigerian citizenship by birth. His fundamental right to freedom of movement and right to peaceful assembly and association as a member of an opposing party to the majority party in Borno State were violated. The court held that Alhaji Shugaba's right to free movement cannot be restricted unless by law. The court ordered that his Nigerian passport, which had been seized, should be released to him and he should be restored to his former position before his deportation. In *Adewale V. Lateef Jakande and Others (1981)1 NCLR* p. 262, the court held that a circular of the Lagos state government purporting to abolish private schools infringed the right to freedom of movement of school children.

From the foregoing, it is discernible that the courts are protectors of fundamental human rights as enshrined in the constitution and they are always impatient with government officials who violate fundamental human rights of Nigerian citizens.

3.11 Right to Freedom from Discrimination

Section 42(1) of the 1999 Constitution states that:

> "…a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not:

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions."

This section prohibits discrimination of any kind to any citizen. Discrimination includes grounds of disability, religion, state of origin and tribe etc. In the famous case of *Adewale and Others V. Lateef Jakande* already cited, the court also held that the right of every citizen in Nigeria to freedom from discrimination on grounds of ethnic or communal belonging, sex,

religion or political opinion is guaranteed under this section. The purported abolition of private schools was discriminatory and unconstitutional.

3.12 Right to Acquire and own Immovable Property anywhere in Nigeria

Section 43 of the 1999 Constitution states that:

> "…every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria" (p. LL42).

This means that a Nigerian citizen from the south-west can acquire immovable property in north-central or north-east region of Nigeria. Irrespective of the state of origin, the court confers on every Nigerian citizen the right to live anywhere in the federation and acquire immovable property such as houses, estate etc without fear of victimisation because he is not from the state where the immovable property is situated.

3.13 Right to Freedom from Compulsory Acquisition of own Property without due Process

Section 43 of the 1999 Constitution should be taken with section 44 for completeness. Section 44 declares that it is unconstitutional to forcibly or compulsorily acquire a citizen's immovable property without following due process of law. Specifically, the section states that:

> "…no immovable property or any interest in immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law…"

Nigeria is one indivisible country and citizens are free by the provisions of the constitution to live in any part of the country and establish immovable property. However, in certain circumstances, government may seize immovable property belonging to a citizen where it is proven that such immovable property was acquired fraudulently or with public funds. Examples abound where immovable properties belonging to citizens have been seized by government. For example Dr. Samuel Ogbemudia's Palm Royal Motel in Benin City, Edo state was seized by government because it was allegedly built with public funds. Also, some immovable properties belonging to E.K. Clark, who was then commissioner for education in Bendel state, were seized by government because they were fraudulently acquired.

4.0 Conclusion

The Nigerian Constitution, as the mother of all laws in Nigeria, guarantees fundamental human rights to every citizen in chapter 4, section 33 through 43 of the 1999 Constitution. These rights are said to be fundamental because they belong to the nature of man as rational beings. Justice Kutigi stated in *Badejo v. Federal Ministry of Education (1996)8 NWLR pt. 464* p. 15 at 41 SC)

> "…that fundamental human right is certainly a right which stands above the ordinary laws of the land, However, no fundamental right should stand above the country, state or the people."

5.0 Summary

The 1999 Constitution of the Federal Republic of Nigeria guarantees fundamental human rights. These rights are expressed in section 33 through 43 and they include right to life, right to dignity of the human person, etc. The courts are the protectors of fundamental human rights. As interpreters of the law, court judges protect the rights of citizens that are violated. All citizens, irrespective of the state in which they live, qualify for fundamental human rights. Every successive government in Nigeria has attempted to uphold human rights which are said to be universal, equal and inalienable rights of human beings. Democracy cannot thrive in any country if there is flagrant violation of the citizens' fundamental human rights. The law courts, as protectors of human rights, have been strict in awarding costs to citizens whose rights were violated.

6.0 Self-Assessment Exercise

In one of his judgments, Kayode Eso, Justice of the Supreme Court, is reported to have stated that:

> "…there is no justification for the existence of the judiciary except in its existence for the defense of the citizen to put his view across with all potency for him to vent his feelings, and his success in the public, for him to feel and breathe the air of freedom around him."

Explain the view that courts of law in Nigeria are the protectors of human rights.

7.0 References/Further Reading

Aguda T.A. (1983). *The Judiciary in the Government of Nigeria. Ibadan:* New Horn Press.

Malemi, E. (1999). *Administrative Law* (3rd ed.). Lagos: Princeton Publishing Co.

Oluyede, P.A. (1988). *Nigerian Administrative Law.* (5th ed.). Ibadan: University Press, PLC.

The 1999 Constitution of the Federal Republic of Nigeria.

Unit 5 Public Officers Protection

1.0 Introduction

In any country, citizens work in the public and private sectors of the economy respectively. While the businesses of the private sector organisations are many and varied, public sector organisations deal largely with the affairs of government in the process of providing services to the state or nation. It is generally referred to as government business which must be conducted in the interest of the citizenry and the economy. The personnel involved in government service are called civil servants and it is the executive branch of government that has the administrative responsibility to employ, deploy and sanction erring civil servants.

2.0 Objectives

At the end of this unit, you should be able to:

- define who a public officer is
- list public officers for the purpose of code of conduct
- state public officers protection and also discuss the liability of a public officer
- talk on code of conduct bureau and code of conduct tribunal.

3.0 Main Content

3.1 Definition of a Public Officer

The *Oxford Advanced Learners Dictionary* defines the word 'public' as "connected with ordinary people in society in general" (p.942)

As defined in section 19 of the 5th schedule to the 1999 Constitution part I code of conduct for public officers, a public officer means:

> "…a person holding any of the offices specified in part 2 of this schedule and 'public office' shall not include the chairmanship or membership of ad hoc tribunals, commissions or committees."

According to Malemi (2008):

> "…a public officer is a civil servant irrespective of his position or rank. Thus a public officer is any person who is directly employed in government, public service, civil service or any public agency" (p. 440).

A public officer would therefore be a worker of any rank who deals with issues and questions as specified in his schedule of duties about government businesses that relate to social, economic, political or legal business activities that affect citizens within the 36-state structure of the Federal Republic of Nigeria.

The 5th schedule of the 1999 Constitution specifies the code of conduct for public officers some of which are:

> "…a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities."

The same schedule prohibits public officers from maintaining accounts in foreign banks, among others.

3.2 List of Public Officers for the Purpose of the Code of Conduct

The 5th schedule of the 1999 Constitution part 2 lists the titles of public officers for the purpose of the code of conduct. These are as follows:

1. The president of the federation
2. The vice-president of the federation
3. The president and deputy president of the senate, speaker and deputy speaker of the house of representatives, speakers and deputy speakers of house of assembly of states, and all members and staff of legislative houses.
4. Governors and deputy governors of states
5. Chief Justice of Nigeria, justices of the supreme court, president and justices of the court of appeal, all other judicial officers and all staff of court of law.
6. Attorney-general of the federation and Attorney-general of each state
7. Ministers of the government of the federation and commissioners of the governments of the states
8. Chief of defence staff, chief of army staff, chief of naval staff, chief of air staff and all members of the armed forces of the federation.
9. Inspector-general of police, deputy inspector-general of police and all members of the Nigeria police force and other government security agencies established by law.
10. Secretary to the government of the federation, head of the civil service, permanent secretaries, directors-general and all other persons in the civil service of the federation or of the state
11. Ambassadors, high commissioners and other officers of Nigerian missions abroad.
12. Chairmen, members and staff of the code of conduct bureau and code of conduct tribunal
13. Chairman and members and staff of local government councils
14. Chairman and members of the boards or other governing bodies and staff of statutory corporations and of companies which the federal or state governments has controlling interest.

15. All staff of universities, colleges and institutions owned and financed by the federal and state governments or local government councils.

16. Chairman, members and staff of permanent commissions or councils appointed on full time basis.

3.3 Public Officers Protection – When is a Public Officer Protected?

The primary duty of a public officer is to render support service to the executive branch of government that is charged with the administration of government business irrespective of rank or position. In his capacity, a public officer may be involved in contract action, law enforcement, contract negotiation or public administration. The question is: when is a public officer protected? In other words, does the employer take responsibility for the action of his agent? In this case, government will be the principal to the public officer who is an agent working for the principal that is the government. It is generally believed in common law that the state can do no wrong. However, government officials may be liable in the course of their ordinary duties to commit tort, false imprisonment, illegal detention etc. When under protection, can government exonerate or be responsible for the tort of his agents or public officers?

According to Malemi (2008),

> "…in order that a party may be protected by the public officers protection act or law, it has to be established that the party against whom the action is or was brought was:
>
> - a public officer or a public body; and
> - that the act or wrong was done by the public officer or public authority in the course of duty in the execution of law or public duty" (p. 438).

In practice, the general rule of law is that public officers are protected and not responsible or are not personally liable for contracts or other tort actions which arise in the performance of their duties if they acted on behalf of government. This general rule applies to all categories of public officers including the president, state governors, ministers, commissioners and other public officers.

This blanket protection for public officers does not include the tort actions committed by public officers when they are negligent, fraudulent or when they compromise their position in which case appropriate disciplinary measures are taken against them by relevant authorities which may include suspension, termination of appointment, and dismissal from service and/or retirement depending on the severity of the infringement.

In the case where a public officer acts in his capacity as an agent to the state, government is liable to execute the terms of that act and thereafter take appropriate disciplinary measures against the officer who has acted on behalf of government. Government acts may be that of compensation to the party involved in the contract arrangement, revocation, rescheduling or other necessary actions provided that the other party, which contracted with the public officer is not seriously disadvantaged.

A leading case on protection of a public officer is that of *Alfotrin Ltd v. A.G. Federation and another (1996)9 NWLR pt. 475* p. 634 SC. In this case, a public officer, acting on behalf of government, entered into a contract for bagged cement to be imported from Barcelona, Spain by the plaintiff appellant. The ship carrying the bagged cement arrived on time at the Lagos port but could not discharge its contents because of port congestion. The ports authority ordered the ship to proceed to Takoradi Port in Ghana. In the process, the ship incurred demurrage for 292 days. The plaintiff brought an action against government to pay the demurrage for the period when the ship was in Ghana. The Supreme Court allowed the appeal under the grounds that the appellant was entitled to recover damages from government because the public officer, who entered into the contract,acted in his capacity as an agent to the government.

In *G.O.C. and others v. Fakoyode (1994)2 NWLR pt. 329* p. 744 C.A. the plaintiff respondent brought an action against the general officer commanding 42nd mechanised engineers, chief of army staff, attorney-general of the federation and others for damages for the illegal destruction of a building and the boys quarters attached to it by the defendants respondents, their servants, subordinates or agents. The court held that government was responsible for the action of its agents. The agents were protected and government bore the liability on behalf of its agents. Specifically, Justice Salami of the court of appeal said:

> "…the attorney-general can be sued in his official and nominal or representative capacity for the tort committed by government or any government department" (p.760).

From the foregoing, it is established that when acting in his capacity as a public officer which means that the public officer is an agent, acting for his principal, which is the government or the authority of the public agency, that the civil servant is working for, government, as the principal in the agency transaction, is liable for the action of contract or contract entered into by the public officer.

3.4 Liability of a Public Officer

The public officer's protection act chapter 160, laws of the federation of Nigeria and Lagos 1958 provides support for public officers who commit infringement or tort in the course of their official duties. The general rule, as cited previously, is that, public officers from the rank of president and governors and other public officers, are granted immunity from legal actions in their personal capacity when the action in question or tort was carried out or committed in the course of their official functions. Section 308(1) of the 1999 Constitution places restriction on legal proceedings against public officers. It states that:

> "…notwithstanding anything to the contrary in this constitution, but subject to subsection (2) of this section are the following:

- No civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;
- A person to whom this section applies shall not be arrested or imprisoned during that period either on pursuance of the process of any court or otherwise, and
- No process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued;

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office."

Section 308(3) indicates that section 308(1) applies to a person holding the office of the president or vice-president, governor or deputy governor. This refers to the 'period of office' that is a reference to the period during which the person holding such office is required to perform the functions of his office. In other words, when an incumbent president or any public officer of any rank acts in his official capacity, he cannot be sued because he is performing the functions of his office. Such public officers can be sued in their official capacity but not in their private capacity.

A difference must be made between suing a public officer like the president in his official capacity and the actions e.g. of the national assembly in impeaching the president in his official capacity. A president may be impeached and removed from office for illegal actions committed in his official capacity which grossly violate the constitution. Section 143 of the 1999 Constitution provides for the impeachment of the president by the national assembly. Similarly, section 188 of the 1999 Constitution provides for the impeachment of the state governor or his deputy by the state house of assembly for illegal or wrongful acts which violate the constitution of the Federal Republic of Nigeria.

The immunity granted public officers as discussed above does not include immunity from election petitions. A distinction between civil proceedings and election petitions against a serving public officer like the president, governors etc was made in section 272(1) and section 285 of the 1999 Constitution respectively. While the president or governor, as the case may be, cannot be sued in his private capacity for actions committed in the course of executing his functions, he may be sued in his personal capacity in an election petition. Examples abound of serving governors whose elections were nullified after they had been sworn into office for over six months period by election tribunals that rule against them in cases where injustice is manifested and election fraud prevailed. For example, Prof. Osunbor, Governor of Edo State, had his election nullified by an election tribunal almost one year after he had been sworn into office as governor of Edo State of Nigeria. Comrade Adams Oshiomhole, of the Action Congress Party, was declared by the election tribunal to have been validly elected as de jure Governor of Edo State. He took over from Prof. Osunbor. The same process of election nullification by the election tribunal took place in Anambra and Ekiti states respectively.

3.5 Code of Conduct Bureau

Public officers act as agents of government in the management of government business in the interest of citizens. In the achievement of the sacred duty of managing government business, government desires that its agents are men of integrity who separate personal interest from administrative justice. Government also desires high moral standards from its agents. It therefore requires its agents to conform to the 5th schedule, part 1 of the 1999 Constitution which provides a code of conduct for public officers. Section 1 of the code of conduct for public officers deals with the conflict of personal interest with official duty and section 3 prohibits public officers from maintaining or operating a bank account in any country outside Nigeria. Sections 8 and 9 prohibits bribe for public officers or gifts or

benefits that will obstruct the course of justice. Section 9 warns public officers not to abuse their office. Section 11(1) desires every public officer to declare his assets upon accepting government job and at the end of his tenure. The code of conduct for public officers is monitored by the code of conduct tribunal.

3.6 Code of Conduct Tribunal

Section 15(1) of the code of conduct for public officers provides for a code of conduct tribunal:

> "…there shall be established a tribunal to be known as code of conduct tribunal which shall consist of a chairman and two other persons."

Section 18(1) specifies the powers of the code of conduct tribunal as follows:

- where the code of conduct tribunal finds a public officer guilty of contravention of any of the provisions of this code, it shall impose upon that officer any of the punishments specified under sub-paragraph (2) of this paragraph and such other punishment as may be prescribed by the national assembly.
- the punishment which the code of conduct tribunal may impose shall include any of the followings:
  1. vacation of office or seat in any legislative house, as the case may be,
  2. disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and
  3. seizure and forfeiture to the state of any property that is acquired in abuse or corruption of office.
- The sanctions mentioned in sub-paragraph (2) hereof shall be without prejudice to the penalties that may be imposed by any law where the conduct is also a criminal offence."

The 5th schedule of the 1999 Constitution empowers the code of conduct tribunal to impose sanctions on a public officer, who in their opinion, contravenes the code of conduct for public office. These sanctions include vacation of office, disqualification from membership of the legislative house, seizure or forfeiture to the state of any property acquired in abuse or corruption of office. However, following the principle of natural justice, where the other side must be heard, section 18(4) gives the right of appeal to any public officer that has been found guilty by the code of conduct tribunal, to the court of appeal. Specifically section 18(4) states:

> "where the code of conduct tribunal gives a decision as to whether or not a person is guilty of a contravention of any of the provisions of this code, an appeal shall lie as of right from such decision or from any punishment imposed on such person to the court of appeal at the instance of any party to the proceedings."

It is reassuring that government, in recognition of the fact that its agents may commit wrongs in the course of their functions, has decided to set out a code of behaviour to guide them so that injustice will not be perpetrated by public officers. The code of conduct tribunal serves as a check on abuse of power, excessive use of power and selfish use of power by public functionaries. Citizens are reassured that if the code of conduct tribunal

does its jobs effectively, their rights under the 1999 Constitution would be protected and their entitlements to efficient and effective public service would be guaranteed.

4.0 Conclusion

In conclusion, you have learnt that the 5th schedule to the 1999 Constitution part 1, defines a public officer as any person holding any of the offices specified in part 2 of the 5th schedule. These offices include office of the president of the federation, vice-president, etc as contained in part 2 sections 1 to 16 under the 5th schedule to the 1999 Constitution. Public officers act as agents of government in executing government functions of economic, social and legal duties to Nigerian citizens. Public officers have their rights and privileges in the execution of their duties. In the course of their official functions, public officers may not be held liable in their capacity as agents. Government however, as principal to its agents, vicariously is responsible for the tort of its agents except when those torts are committed under negligent or fraudulent purposes. The constitution in the 5th schedule provides for a code of conduct tribunal which is empowered to investigate and make decisions on the conduct of public officers.

Where the code of conduct tribunal finds an officer guilty of an alleged misconduct, the constitution empowers the tribunal to take disciplinary measures against convicted public officers. This may include the sanctions mentioned in section 18 of the 5th schedule. The constitution may include vacation of office or seat in a legislative house, disqualification from membership of a legislative house, seizure or forfeiture to the state of any property acquired in abuse or corruption of office. The constitution provides that officers, who are found guilty, have a right of appeal to the court of appeal.

5.0 Summary

You should remember that the Constitution of the Federal Republic of Nigeria as the mother of all laws in the federation recognised that public officers are agents of government who hold office as specified in the 5th schedule part 2 of the constitution for the purpose of the code of conduct. Public officers assist government in executing its functions in the interest of public good. These functions include economic, social, political and legal functions for the good order of society. In the execution of their functions, public officers may not be sued in their personal capacity. In their official capacity, public officers may be sued and if it is proven that they perform their duties in good faith on behalf of government which in this case acts as principle, government may vicariously be held responsible for the tort of its agents where the wrongs are not committed under negligent or fraudulent intentions.

However, in the interest of justice and fair play, the constitution provides a code of conduct for public officers and it empowers the code of conduct tribunal to try public officers who breach the code of conduct. Sanctions, which include vacation of office or vacation of seat in the case of legislators and/or seizure or forfeiture to the state of any property illegally acquired through corruption or abuse of office may be imposed. Convicted public officers have a right to appeal to the court of appeal after the tribunal has made its judgment on their conduct.

6.0 Self-Assessment Exercise

List titles of public officers for the purpose of the code of conduct as enshrined in the 5th schedule to the 1999 Constitution.

7.0 References/Further Reading

Iluyomade, B.O. & Eka, B.U. (1992). *Cases and Materials on Administrative Law in Nigeria.* (2nd ed.). Ile Ife: Obafemi Awolowo University Press

Malemi, E. (1999). *Administrative Law* (3rd ed.). Lagos: Princeton Publishing Co.

Public Officers Protection Act, Laws of the Federation of Nigeria and Lagos, 1958.

The 1999 Constitution of the Federal Republic of Nigeria.