Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.52, 2016

Fair Hearing: Sine Qua Non Under Nigerian Criminal Justice Jurisprudence

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Abstract
The right to fair hearing is a right that is as old as mankind. It dates back to the Biblical account of Adam and Eve in the Garden of Eden, where God gave them an opportunity of being heard before passing His judgment upon them.[1] Indisputably, the 1999 Constitution of the Federal Republic of Nigeria and other relevant national statutes have similarly recognised and constitutionalised the basic right of fair hearing. The article examines the attributes of fair hearing and contends that where, in appropriate circumstances, these essential principles are lacking in any criminal trial, such a trial would be nullified or vitiated.
Keywords: Safeguard, Fair Trial, Fundamental Rights, Jurisdiction, Fair Hearing, Criminal Justice

1. INTRODUCTION

It is a cardinal principle in the administration of justice that justice should not only be done but should manifestly and undoubtedly be seen to be done. This is very fundamental in adversarial or accusatorial system or procedure practiced in Nigeria. Hence, prior to and during the trial in a court of law or tribunal, of any person charged with the commission of a crime, the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter called, "The 1999 Constitution"), the Administration of Criminal Justice Act 2015[2] and other relevant statutes have made elaborate provisions to safeguard a fair trial. A trial which does not conform to the tenets of these requirements cannot be said to have passed the litmus test for fair trial.

2. DEFINITION AND ESSENCE OF FAIR HEARING

Section 36(1) of the 1999 Constitution boldly asserts that in the determination of his civil right and duties, including any question or decision by or against any government or authority, a person shall be eligible to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a way as to secure its independence and impartiality. With regard to criminal matters, sub-section 2 of section 36 provides that a person charged with a criminal offence, unless the charge is withdrawn, is entitled to a fair hearing within a reasonable time by a court of law. Fair hearing is therefore, antithetical to partiality and bias.

Although, the 1999 Constitution does not define the term, "fair hearing," yet the courts of law have proffered some judicial definitions to it. For instance, in *Ezechukwu v. Onwuka*,[3] the Court of Appeal pointed out that:

> *Fair hearing is a hearing which is fair to all parties to the suit, whether the plaintiff, defendant, the prosecutor, or the defence. It is a doctrine of substance and the question is not whether injustice has been done because of lack of fair hearing, rather… whether a party entitled to be heard has been given an opportunity of being heard….Fair hearing entails doing during the course of a trial all that will make an impartial observer to believe that the trial has been balanced… to both sides….*

Thus, fair hearing is synonymous with fair trial[4] and implies that every reasonable and fair-minded

[1] *The Holy Bible*, The Book of Genesis, Chapter 3:1-24. See also *R. v. Chancellor, University of Cambridge (Dr. Bentley's Case)* [1723] 1 Str. 557; *Garba v. University of Maiduguri* [1986] 1 NWLR (Pt. 18) 550; *Adigun v. Attorney- General, Oyo State* [1987] 1 NWLR (Pt. 53) 678.

[2] With the enactment of this Act in 2015, the era of dual and distinct criminal procedure law administration in the Southern part and the Northern part of Nigeria, respectively was terminated. Hitherto, the Criminal Procedure Act operated in the Southern States of Nigeria comprising: Abia, Akwa-Ibom, Anambra, Bayelsa, Cross-River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo and Rivers States and also in trials before the Federal High Court; while The Criminal Procedure Code operated in the Northern States of Nigeria comprising: Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateaus, Sokoto, Taraba, Yobe and Zamfara States. With the recent enactment, Nigeria operates unified criminal procedure legislation across the country.

[3] [2005] All FWLR (Pt. 280) 1514 at pp. 1542, 1553. See also *Ogundoyin v. Adeyemi* [2001] FWLR (Pt. 71) 1741 at p.1754.

[4] A trial is a judicial examination and determination of issues between the parties in accordance with the law of the land. A fair trial therefore, implies a trial by an impartial and disinterested court or tribunal in a regular procedure, especially, a criminal trial which the accused person's constitutional and legal rights are respected. See *Black's Law Dictionary,* Eighth Edition, p. 634. See also *Kajubo v. The State* [1988] 3 SCNJ (Pt. 1) 79.

observer who watches the proceedings shall be able to conclude that the court has been fair to all the parties concerned.[1] Commenting on the relationship between fair hearing and fair trial, the Supreme Court in *Mohammed v. Kano Native Authority*[2] noted that although it has been suggested that a fair hearing did not amount to a fair trial, yet that the court was of the firm view that "fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing."[3] The essential attributes and basic criteria of fair hearing include, *inter alia*:

i. that the court or tribunal shall hear both sides not only in the case, but also in all material issues in the case, before reaching a decision which may be prejudicial to any party in the case;
ii. that the court or tribunal shall give equal treatment, opportunity, and consideration to all concerned;
iii. that the proceedings shall be held in public and all concerned shall have access to and be informed of such a place of public hearing;[4] and
iv. that having regard to all the circumstances, in every material decision in the case, justice must not only be done but manifestly and undoubtedly be seen to have been done.[5]

The principle of fair hearing as enshrined in the 1999 Constitution is often illustrated by the "twin pillar of justice"[6] expressed in the Latin maxims: *nemo judex in causa sua*[7]and *audi alterem partem*.[8] In this regard, it submitted that these principles expressed in these Latin maxims are an integral and inseparable part of the fair hearing provision guaranteed by section 36(1) of the 1999 Constitution. The fact being that the rule of fair hearing is not a technical doctrine. It is one of substance as it overrides all contrary provisions in any law of the land, be it substantive or adjectival. A breach of the doctrine of fair hearing in a judicial enquiry renders the action unconstitutional, illegal and liable to be set aside.[9]

3. CAN THE FUNDAMENTAL RIGHT TO FAIR HEARING BE WAIVED?

Before discussing the various safeguards for fair trial preserved under the 1999 Constitution, it is necessary to resolve the issue as to whether the fundamental rights, particularly, the right to fair hearing, guaranteed under our Constitution can be waived.[10]

This constitutional issue came up for determination before the Nigerian Supreme Court in the case of *Ariori v. Elemo*.[11] It was contended at the Supreme Court that the appellant waived his fundamental right to a fair hearing (speedy trial) of his case when he consented to lengthy adjournments in the course of trial by the trial court. Facts emerged from the case that the trial Judge adjourned the case at the close of addresses by learned counsel to the parties for about fifteen months (and which was also three years and seven months after the trial Judge took the first evidence in the case) before judgment was delivered. The delay of over one year prior to judgment caused the trial court to deliver a judgment which was unconnected to the issues canvassed before the court. It was reasoned by the Supreme Court that the adjournment complained of in the case was a matter purely

[1]*Ayorinde v. Fayoyin* [2001] FWLR (Pt. 75) 483 at p.500. In *Grace Akinfe v. The State* [1988] 7 SCNJ (Pt. 2) 226 at pp. 233, 241, the trial Judge descended into the arena of the fight by asking so many probing and searching questions which were not even confined to the facts presented by the parties before the court. The Supreme Court held that the trial Judge had become both a Prosecutor and a Judge at the same time. The image of an even-handed justice was consequently destroyed and real likelihood of bias was established.
[2] [1968] 1 All NLR 424.
[3] *Ibid*, at p.426.
[4]Constitution of the Federal republic of Nigeria, 1999, Section 36(4)
[5]*Kotoye v. Central Bank of Nigeria* [2001] FWLR (Pt. 49) 1667 at p.1600. See also *Adigun v. Attorney-General of Oyo State* [1987] 1 NWLR (Pt. 53) 678; *Sussex Justices, Ex Parte McCarthy* [1924] 1 K. B. 256 at p. 259.
[6]Hon. Justice Nnaemeka-Agu (1988). "Impact of Natural Justice on our Law." 13 *The Advocate*, at p. 21. See also *Ex Parte Olakunri: Olakunri v. Oba Ogunoye* [1985] 1 NWLR (Pt. 4) 652, per Nnamani, J.S.C.
[7]Meaning that a person shall not be a judge in his own cause. See *Gani Fawehinmi v. Legal Practitioners Disciplinary Committee* [1985] 2 NWLR (Pt.7) 300 at 308. See also *Alakija v. Medical and Dental Practitioners Disciplinary Committee* [1959] 4 FSC 38. The principle that the Judge who presides over a matter should not himself be interested in the subject matter of the litigation is intended to ensure that decisions are taken purely on judicial grounds uninfluenced by motives of self-interest.
[8]That is, no man shall be condemned unheard or without having an opportunity of being heard. See *P.R. P. v. Independent National Electoral Commission* [2004] All FWLR (Pt. 209). See also *Akande v. The State* [1988] 7 SCNJ (Pt. 2) 314; *Ogundoyin v. Adeyemi* [2006] All FWLR (Pt. 71) 1741 at p. 1755.
[9]*Oyakhere v. The State* [2006] All FWLR (Pt. 305) 703 at p. 716.
[10]The concept of waiver presupposes that a person who is to enjoy a benefit or who has the choice of two benefits is fully aware of his right to the benefit or benefits, but he either neglects to exercise his right to the benefit, or where he has a choice of two, he decides to take one but not both- *Maidara v. Halilu* [2000] FWLR (Pt. 19) 433 at p. 447; *Fasade v. Babalola* [2003] FWLR (Pt. 161) 1707; *Vyvyan v Vyvyan* 30 Beav 65 at p.74; 54 E. R. 817, per Sir John Romily M.R.; *Halsbury Laws of England*, 3rdEdn. Vol. 14 Para. 1175.
[11][2001] 36 WRN 94; [1983] All NLR 1.

or entirely in the control of the trial court and consequently, there was no question of waiver by the appellant in the circumstances. In his contribution on the judgment in the instant case, Obaseki, J.S.C., was of the opinion that:

> *The fundamental rights entrenched in our 1963 and 1979 Constitutions (now 1999 Constitution) are in my opinion, out of reach of the operation of the law of waiver….The right to life, right to personal liberty, right to freedom of expression, thought, conscience and religion, right to lawful and peaceful assembly and association which are vital to the human existence and democracy in this nation cannot be waived.* (Words in bracket supplied).[1]

Deducible from the opinion of the Supreme Court is the fact that the right to a fair and speedy trial is much more than a personal right which enures primarily for the benefit of a party to a suit in a court. Accordingly, the court ought not to hold that such a party has waived his right where such a waiver results in a miscarriage of justice or in the trial that does not conform to well-settled principles of justice.

4. POSITION IN TWO SELECTED JURISDICTIONS

In the United States of America's case of *United States v Gill*,[2] the defendant was arrested on a charge of violating the provisions of a statute. He was arraigned, pleaded guilty and was bound over to await the action of the Grand Jury. Being unable to make a bond, the defendant was confined in the County jail. He subsequently filed a motion praying the court to authorise the filing of information charging him with the violation of such act and allowing him to enter a plea of guilty in the circumstances. The motion further disclosed that he had been fully advised of his legal rights. The issue before the court was whether the defendant could waive his right allowed under the law which was to the effect, *inter alia*, that no person shall be held to answer for a capital or otherwise infamous crime except on a presentation or indictment of a Grand Jury, and consents to be charged by information for an offence exceeding the grade of misdemeanor? The court held that the provisions against self-incrimination as well as a provision for a speedy and public trial were personal rights which may be waived.[3]

But in the case of *State v. Lester*,[4] sometime in April 1930, the prosecuting Attorney filed information charging the respondent with the commission of an offence. On the same day, a warrant was issued for his arrest. The cause was eventually brought on for hearing before the court in July 1930. At that time, the respondent raised an objection to dismiss the information contending that he was not brought to trial within 60 days after the filing of the information as required by law. The trial court granted the motion. On an appeal by the State, it was contended by the State's learned counsel that the 60 days period stipulated by statute began to run only from the moment the defendant is taken into custody, or has been in some other way subjected to the order of the court. In rejecting the argument, the court took the view that where delay in the course of trial is caused by the court, a litigant cannot be held to have waived his right to fair and speedy trial. However, where it is shown that the defendant hides himself for purposes of evading arrest or frustrates every attempt for him to be brought before the court to face his charges, he would be deemed to have waived his right to a speedy trial.[5]

Briefly, in all these cases in the United States of America, it can safely be inferred that in that country, one can waive his constitutional right to fair and speedy trial as the right is seen as a personal right. The only caveat is that such waiver must not constitute any limitation upon the power of the State or against the right of the public. In other words, although a litigant can compromise his own right, he cannot compromise a public right.

But in the Indian case of *Basheshar Nath v. The Commissioner of Income Tax*,[6] the Indian Supreme Court had an opportunity to pronounce on the issue of waiver of fundamental right. Bhagwati, J. declared that "it is not open to a citizen to waive his fundamental rights." Similarly, in *Behram Khurshid v. Bombay State*,[7] the appellant knocked down three persons with his car. The police arrested him and took him to the police station from where he was taken to the hospital to be examined by a doctor for alleged consumption of alcohol. After medical examination the doctor found that he was not under the influence of alcohol though he had taken some alcohol in one form or the other. He was subsequently charged to court which resulted in his acquittal. Commenting on the waiver of right by the defendant, Mahajan, C.J., held that:

> *These fundamental rights have not been put in the Constitution merely for individual benefits, though ultimately they come into operation considering individual rights. They have been put there as a matter of public policy and the*

[1] *Ibid* at p. 130.
[2] 55 F. 2d 399 (1931). See also *State v. McTague* [1927] 173 Min. 153; *The State v Test* (1922) 65 Mont. 134,
[3] See also *Daniels v. United States* 17 F.2d 339; *Worthington v. United States* 1 F.2d 154.
[4] [1931] 161 Wash. 227 at p. 296. See also *Zehrlaut v. State* [1951] 230 Ind. 175
[5] *State v. Joseph Larkin* 256 Minn. 314(1959).
[6] [1959] 46 A.I.R 149; 1959 SCR Supl. (1) 528.
[7] [1955] AIR 123, (1955) 57 BOMLR 575.

doctrine of waiver can have no application to provisions of law which have been enacted as a matter of constitutional policy.[1]

The similarities of the decisions in the Indian and Nigerian courts are not surprising. Like in the Indian cases, when viewed from the nascence of our Constitution, the comparative educational backwardness, the political, cultural and socio-economic backgrounds of the majority of our citizens in whose favour the various fundamental rights have been enshrined into the Constitution, the Nigerian courts have no other obligation than to safeguard the fundamental rights of the subjects.[2]

5. SOME ATTRIBUTES OF FAIR HEARING IN CRIMINAL PROCEEDINGS

Having examined the question of waiver of the fundamental right to fair hearing, we shall now proceed to examine the rights guaranteed under the Nigerian 1999 Constitution to safeguard fair trials.

5.1. Right to Publicity of a Criminal Trial

Under section 36(4) of the 1999 Constitution, whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn be entitled to a fair hearing in public.[3] In other words, the room or place in which any trial is to be conducted shall be an open court to which the public may have access as far as it can conveniently contain them.[4]

The expression, "the public," however, precludes infants (other than an infant in arms) and children. They are not permitted in court during trials except such an infant or child is the person charged with the alleged criminal offence or is required as a witness. Where an infant or child is the person charged he could only remain in court for as long as his presence is necessary.[5]

The proviso[6] to sub-section (4) of section 36 of the 1999 Constitution further classifies certain instances when the public may not be permitted during a criminal trial. These situations include:

i. in the interest of defence, public safety, public order and public morality;[7]
ii. for the welfare of persons who have not attained the age of eighteen years;[8]
iii. to protect the private lives of the parties to the proceedings;[9]
iv. upon the satisfaction of the court by a Minister of Government of the Federation or a Commissioner of a State that it would not be in the public interest for any matter to be publicly disclosed, the court

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[1] *Ibid*, para. 73.

[2] *Ariori v Elemo, op. cit* at pp. 123-125; *Basheshar Nath v. The Commissioner of Income Tax*, *op. cit*.

[3] However, right of the public to have access to hearing may be curtailed in some offences like cases of rape, defilement, incest, unnatural or indecent assault, terrorism, offences relating to economic and financial crimes, trafficking in persons related offences, when the court is taking evidence of a child or young person in relation to offence against or contrary to decency or morality. See Administration of Criminal Justice Act 2015, sections 259, 232, 260 and 262.

[4]See also Administration of Criminal Justice Act 2015, section 494, which defines the term, "open court," to mean "a room or place in which a court sits to hear and determine a matter within its jurisdiction and to which room or place the public may have access so far as the room or space can conveniently contain them."

[5] See Administration of Criminal Justice Act 2015, section 262. In addition, the law requires that where a child is alleged to have committed a crime, the provisions of the Child's Rights Act 2003 shall apply. See Administration of Criminal Justice Act, *ibid*, section 452(1). A similar provision was recognised under the repealed Criminal Procedure Act Cap. C41, *Laws of the Federation of Nigeria* 2004*,* section 206. See Administration of Criminal Justice Act *Ibid*, section 493, which repealed the Criminal Procedure Act, Criminal Procedure (Northern States) Act Cap C42, *Laws of the Federation of Nigeria* 2004 and the Administration of Justice Commission Act, Cap. A3, *Laws of the Federation of Nigeria* 2004.

[6]A proviso is a limitation, condition, or stipulation upon whose compliance a legal or formal document's validity or application may depend. In drafting, a proviso may begin with the words "provided that" and supplies a condition, exception or addition – see *Black's Law Dictionary,* 8th Edition, p. 1262. It is submitted that a section of a statute which contains a *proviso* must not be construed in such a way as to render the proviso unnecessary. But as a general rule, a *proviso* is of necessity limited in its operation to the section of the statute which it qualifies – *Otube v. University of Jos* (2002) FWLR (Pt. 109) 1717 at p. 1734*; Nigerian Deposit Insurance Corporation v. Federal Mortgage Bank of Nigeria* (1997) 2 NWLR (Pt. 490) 735 at pp. 755-756*; Nigerian Postal Services v. Adepoju* [2003] FWLR (Pt. 147) 1060 at p.1074

[7]Constitution of the Federal Republic of Nigeria, 1999, section 36(4)(a); Administration of Criminal Justice Act 2015, section 260.

[8] Constitution of the Federal Republic of Nigeria, 1999, *Ibid*. The welfare of children was first statutorily recognised in 1943, through the Children and Young Persons Ordinance No. 41 of 1943 (as amended by No. 44 of 1945 and No. 27 of 1947. This subsequently became Chapter 31 of the Laws of Nigeria in 1948 and was correspondingly retained as Chapter 32 of the Laws of the Federation of Nigeria and Lagos of 1958. Following the adoption of a State structure in Nigeria in 1967, many States enacted their own Children and Young Persons Laws (CYPL). This law was omitted in the Federal Law revision exercise of 1990 (see Vol. 1, Laws of the Federation of Nigeria, 1990, p XXXIV). Hence, the legislation has now become State law. See for instance Children and Young Persons Laws, Cap. C10, Laws of Lagos State 2004; Children and Young Persons Laws, Cap. C28, Laws of Ondo State 2006.

[9]Constitution of the Federal Republic of Nigeria, 1999, *Ibid*, section 36(4)(a).

may hear such evidence in camera;[1]

v. during the trials of juveniles;[2] and

vi. when an enactment expressly requires that a trial shall be held in camera.[3]

In all these circumstances when proceedings are being heard in camera, except the court expressly stated otherwise, *bona fide* representatives of mass media, court officials and legal practitioners appearing in the case are permitted in the court room. The court is statutorily enjoined to state in its record the reason or reasons for making such an order.[4]

5.2. Right to Presumption of Innocence

Every person who is charged with a criminal offence, no matter how heinous, shall be presumed to be innocent until he is proved guilty.[5] This presumption does not however, invalidate any law which may require the defendant to established particular facts.[6] The burden of establishing the guilt of a defendant rest throughout on the prosecution. It is only upon proof beyond reasonable doubt that the burden is shifted on to the defendant.[7] It is submitted that the proof beyond reasonable doubt does not however, mean proof beyond a shadow of doubt. What is required of the prosecution is to lead strong and cogent evidence against the defendant.[8]

5.3. Right of Information of Offence Committed

This is another safeguard to fair trial preserved under the 1999 Constitution.[9] Every person charged with a criminal offence is entitled to be informed promptly in the language that he understands and in detail of the nature of the offence alleged against him.[10] However, a person who has been promptly informed of the nature and details of a grave offence may nonetheless, be convicted of a lesser offence although he was not charged with it.[11] This is because the particulars constituting the lesser offence are carried out of the particulars of the grave offence charged. The essence of promptly informing an accused person of the nature of the alleged offence is to enable him know what he has done and is likely going to face so as to prepare for it. Our adversarial criminal legal system frowns at springing surprises at the opposite side.

5.4. Right to Adequate Time and Facilities to Prepare for his Case

This right is guaranteed under section 36(6)(b) of the 1999 Constitution. Adequate facility necessitates granting counsel access to the defendant on remand, to enable counsel to interview the defendant and prepare the case for the defence.[12] Where a legal practitioner is denied access to his client in custody, he may apply to the court for an adjournment and the release of his client to enable him prepare for the defence. Alternatively, he may apply to the High Court in the State for the enforcement of the right.

The requirement for adequate time and facilities to prepare for the defence is also required of other tribunals beside the regular courts. Thus, in a case where the Students Disciplinary Committee gave a student less than twenty-four hours to prepare his defence, the court held that the Committee had breached the basic rule to fair hearing.[13]

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[1] *Ibid*, section 36(4)(b).
[2] Children and Young Persons Law, Cap 10, Laws of Lagos State, *op. cit*, section 6(5).
[3] During the military regime several military Decrees required trial of offenders in camera. See for example, The Recovery of Public Property (Special Military Tribunal) Decree of 1984, section 13(1).
[4] See Administration of Criminal Justice Act 2015, section 261. A similar provision was stipulated in the repealed Criminal Procedure Act, section 205.
[5] Constitution of the Federal Republic of Nigeria, 1999, section 36(5). See also *Okoro v. The State* (1988) 12 SCNJ 191, *Okpogadie v. Commissioner of Police* (2004) FWLR (Pt. 192) 86 at p.95, *Olawoye v. Commissioner of Police* (2006) All FWLR (Pt. 309) 1483 at pp. 1494, 1495. Similarly, there is a rebuttable presumption of innocence in the case of a child between the ages of seven and twelve years accused of an offence. See the Criminal Code Law, Cap 37 *Laws of Ondo State* 2006, section 30.
[6] Evidence Act No. 18 of 2011, section 139 (3)(c) states that the burden of proof of insanity as well as intoxication is placed on the defendant to establish. Also by section 139(1) of the same Act where a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from or qualification to, the operation of the law creating the offence with which he is charged is upon such person. See also *Nigerian Air Force v. James* (2003) FWLR (Pt. 143) 257 at p. 282.
[7] Evidence Act No. 18 of 2011, section 135; *Adeyeye v. State* (1968) NMLR 48; *Njovens v. State* (1973) 1 NMLR 331.
[8] *Ezeja v. State* (2006) All FWLR (Pt. 309) 1535 at p.1569; *Agbo v. State* (2006) All FWLR (Pt. 309) 1380 at p.1417.
[9] Constitution of the Federal Republic of Nigeria, 1999; section 36(6)(a).
[10] *Francis Durwode v. The State* (2000) 12 SCNJ 1 at 9. See also Administration of Criminal Justice Act 2015, sections 6(1).
[11] See generally Administration of Criminal Justice Act 2015, sections 223-237. See also *Maja v. The State* [1980] 1 NCR 212 at 220-221; *Ezeja v. State* [2006] All FWLR (Pt. 309) 1535at 1565, 1568.
[12] Administration of Criminal Justice Act 2015, section 267 (2).
[13] *University of Ilorin v. Akinrogunde* [2006] All FWLR (Pt. 302) 176 at pp.199-200.

Similarly, in G*opka v. Inspector General of Police*[1] where the accused was brought to court under a bench warrant to stand trial for offences of stealing and fraudulent accounting, he applied for an adjournment to enable him retain the services of a counsel to defend him. A short adjournment was granted to him until later in the afternoon. At the resumed hearing, counsel was not in court. He was subsequently convicted. On appeal, there was evidence before the court that any available counsel would have had to travel to court from the nearest town, a distance of about 23 miles to the court, hence, the short adjournment was inadequate. In allowing the appeal, the appellate court also pointed out that the accused ought to have been granted a longer adjournment to enable him engage the services of a legal practitioner.

However, it is worthy of note that the issue of an adjournment is a matter within the discretionary powers of the court, which the court must exercise judiciously and judicially.[2] It is incumbent on the applicant to satisfy the court that the adjournment is necessary.[3] Every application for an adjournment would be considered on its own merits and within the circumstances of a particular case. The court cannot therefore, be bound by a previous decision to exercise its direction in a particular way.[4]

5.5. Right to Counsel

It is a cardinal principle in the administration of criminal justice that a party to a suit ought to have a legal practitioner to defend his interest in any case or matter.[5] This right is constitutionally fortified by provision of section 36(6)(c) of the 1999 Constitution which boldly declares that an accused person shall be entitled to defend himself in person or by a legal practitioner of his own choice.[6] Similarly, under the Administration of Criminal Justice Act 2015 both the complainant and the defendant are entitled to be represented in court by counsel of their own choices.[7] Where the defendant chooses to defend himself in person, the law still requires the court to inform the defendant of his statutory and constitutional right to be defended by learned counsel and the consequences of his election not to be defended by such a legally trained person.[8] A defendant who takes the risk of defending himself in person would be deemed to have waived his right and cannot be heard to contend that he was denied fair trial.[9] Nonetheless, a defendant charged with a capital offence or an offence punishable with life imprisonment shall not be allowed to represent and defend himself in person, as the court is empowered to assign him a counsel.[10]

The constitutionality of a right to counsel was tested in the case of *Uzodinma v. Commissioner of Police*[11] where an accused person was charged before an Area Court for the offence of theft. No learned counsel was allowed to defend him because the then section 309 of the Criminal Procedure Code denied learned counsel any right of audience before an Area Court. On appeal against the conviction, the appellate court held that the said section 309 of the Criminal Procedure Code was in conflict with section 33(6)(c) of the 1979 Constitution[12] and accordingly was null and void. Likewise, the vital need of a mandatory legal representation for capital offences have been judicially tested and pronounced upon by the court in *Josiah v. The State*.[13] In that case, an

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[1] [1961] 1 All NLR 423.

[2] *Francis v. Osunkwo* [2000] FWLR (Pt. 14) 2469 at 2488-2489, pp. 2482-2483*; George v. George* [2000] FWLR (Pt. 23) 1180 at 1187.

[3] *Shemfe v. Commissioner of Police* (1962) NNLR 87, where counsel for the accused sent a telegram to the court seeking an adjournment of his matter. No reason was advanced by learned counsel to necessitate the adjournment and his failure to appear in the court. The court refused the adjournment and the accused was subsequently convicted. On appeal against the conviction, the appellate court held that the accused person was not denied fair hearing and that failure of the appellant to be represented by counsel was not the fault of the court but that of his learned counsel.

[4] *Sossa v. Fokpo* [2000] FWLR (Pt. 22) 1111 at 1127.

[5] *Comptroller, Nigeria Prison Services, Ikoyi v. Dr. Femi Adekanye and 25 others* [2003] 33 WRN 65 at 75.

[6] It is submitted that this constitutional right to retain the service of a counsel of his choice only apply to a person charged with a criminal offence and does not apply to a civil case. Hence, in an appropriate case, the court has power to interfere with a litigant's right to counsel in a civil matters-*Ikpana v. Regd, Trustees, Presbyterian Church of Nigeria & 5 others*[2006] ALL FWLR (Pt. 310)1703 at1720;*Williams v. Nwosu* (2001) 3 NWLR (Pt. 700) 376. Moreover, in *Awolowo v. Minister of Internal Affairs* 1962] LLR 177, the constitutional phrase, "legal practitioner of his own choice," was interpreted to mean a legal practitioner without any legal disability of any kind. See also *Registered Trustees of ECWA v. Ijesha* [1999] 13 NWLR (Pt. 635) 368 to the effect that the Senior Advocates of Nigeria (Privileges and Functions) Rules, which prohibits the right of appearance of a Senior Advocate of Nigeria [SAN] in an inferior Court is not in conflict with Section 36(6)(c) of the 1999 Constitution.

[7] Section 267(1).

[8] Administration of Criminal Justice Act 2015, section 267 (3).

[9] *Ibid*, section 267(4).

[10] *Ibid*, see generally section 349 which makes elaborate provisions for non-appearance and non-representation of legal practitioner.

[11] [1982] 1 NCR 27.

[12] This section is *in pari materia* with the provision of 36(6)(c) of the 1999 Constitution.

[13] [1985] 1 NWLR (Pt. 1) 125. In *Okotogbo v. State* (2004) All FWLR (Pt. 222) 1652 at pp. 1659-1660, the accused person

accused person was charged with the offence of armed robbery and murder. Although he was not represented by counsel, the trial court went ahead and convicted him. On a further appeal to the Supreme Court, the apex court held that failure of the appellant to be represented by counsel amounted to a denial of fair hearing.

Again, in *Udo Akpan Udofia v. The State*,[1] the accused person committed a heinous and unnatural crime of matricide, which in every culture is shocking and revolting. The counsel assigned to defend the appellant handled the case carelessly. He was absent in court nine times during the trial, consequent upon which the trial judge assigned another counsel to the case. The appellant was subsequently convicted. On further appeal to the Supreme Court, the apex court not only reiterated the enormous professional duty required of a counsel representing a person charged with a capital offence but also concluded that the appellant did not have a fair trial. Consequently, the appeal was allowed and a re-trial ordered.[2]

To possibly prevent the unfortunate situation that took place in *Udo Akpan Udofia's* case, the Administration of Criminal Justice Act 2015 now mandates that where a legal practitioner who conducts the defence for a defendant fails to appear in court on two consecutive sessions of the court, the court must ask the defendant if he intended to retain the services of another counsel.[3] In the event that the defendant expresses the desire to engage another legal practitioner, the court would grant him a reasonable time but not more than 30 days to enable him employ the services of another legal practitioner.[4] Where a defendant is unable to retain the services of another lawyer after the expiration of this period, the court may direct that a legal practitioner be arranged by way of legal aid to appear for the defendant.[5] A legal practitioner engaged either by the prosecution or defence in a criminal matter who may wish to disengage from the case for any "special reason" requires the leave of the court. The notification of the court, by way of an application, must be made at least three days prior to the date fixed for the hearing of the case and service effected on the court and the relevant parties to the case.[6]

5.6. Right to Examination of Witnesses

This right is preserved under section 36(6)(d) of the 1999 Constitution. The right of examination of witnesses can be done by the defendant in person or by his legal practitioner. The right affords a defendant an opportunity to cross-examine the witnesses of the prosecution as well as procure witnesses to testify on his behalf. In *Tolu v. Bauchi Native Authority*,[7] the trial court did not allow the accused person to cross-examine the prosecution witnesses. When the case subsequently reached the Supreme Court on an appeal, it was held that the trial court's action amounted to an infraction of the accused person's right to cross-examine the witnesses.

Similarly, in the case of *Idirisu v. The State*,[8] an accused person applied for an adjournment to enable him call a medical doctor who had prepared a medical report already received in evidence, as a witness, the application was refused. When the case got to the Supreme Court on an appeal, it was held that the application for adjournment ought to have been granted. Also, in the case of *University of Ilorin v. Akinroungbe,*[9] the right to examine the witnesses called in proof of a person's guilt or liability guaranteed under the Nigerian Constitution

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was charged with a capital offence and the charged was read over to him on the first day although he was not represented by counsel. Subsequently, the court assigned a counsel to him and the charge was re-read and the trial conducted in the presence of his counsel. On appeal, the appellate court observed that the requisite law was complied with and that the appellant was given a fair trial

[1] [1988] 7 SCNJ (Pt. 1) 118, the Supreme Court in the instant case also condemned the appointment of lawyers undergoing the National Youth Service Corps Programme (who are fresh graduates from the Nigerian Law School and lacks requisite experience to conduct serious cases like capital offences) to defend a man standing trial for the offence of murder – *ibid*, at p. 122. In the English case of *R. v. Mary Kingston* (1984) 31 CR. APP. R. 183, the English Court of Appeal held that the failure of counsel briefed for the defence to attend court thus leaving the appellant, Mary Kingston, to be tried as an unrepresented person is tantamount to depriving the appellant of the right which she had to be defended by counsel. Her conviction was consequently quashed on that ground alone.

[2] See also *Bello v. The State* [1981) 2 NCLR 677 at 678-679, *Saka v. The State* [1981] 11-12 SC 65. And in *Michael UdoUdo v. The State,* Appeal No. SC/124/1987 (unreported) decided on 24th June, 1988, the counsel defending the accused charged with murder was conspicuously absent when two important witnesses testified. His cross-examinations on the days he was present were feeble and half-hearted. When ultimately called upon to deliver his final address, all he said was, "I leave the matter to the Court." The Supreme Court strongly castigated the counsel's manner of laxity and lack of seriousness in defending a man standing trial for murder. To the mind of the apex court, that was tantamount to "a mockery of a defence."

[3] Administration of Criminal Justice Act 2015, section 349(2).

[4] *Ibid*, section 349(3).

[5] *Ibid*, section 349(4).

[6] *Ibid*, section 349(7) and (7).

[7][1965] NMLR 343. See also *Ayorinde v. Fayoyin* (2001) FWLR (Pt. 75) 483 at 499, where it was held that natural justice requires that a party to a cause must be given opportunity to put forward his case fully and freely and to apply to the court to hear any material witness and consider relevant documentary evidence with a view to reaching a fair and just decision in the matter.

[8] [1967] 1 All NLR 32.

[9] [2006] All FWLR (Pt. 302) 176 at 199-200, see Also *Adekunle v. University of Port Harcourt* [1991] 3 NWLR (Pt. 181) 534.

was held to have extended to a Students' Disciplinary Committee of a University which is bound to observe this basic requirement of fair trial before reaching its decision expelling the respondent. The expulsion order of the University was consequently nullified as it was done in brazen disregard to the student's right to fair hearing.

5.7. Right to the Assistance of an Interpreter

Where the accused does not understand the language of the court,[1] an interpreter must be provided for the accused without any expense.[2] The interpreter must interpret correctly to the accused person anything said in the language he does not understand.[3] Simultaneously, there should be adequate interpretation to the court regarding anything said by the defendant. The value and importance of interpretation of proceedings to a defendant cannot be overestimated. Indeed, interpretation is the only means of ensuring proper understanding by and participation of a defendant in the trial proceedings where the proceedings are being conducted in the language he does not understand and enabling justice to be done in the case. It is for these reasons that ample provisions are made both in the 1999 Constitution and other laws with respect to interpretation of evidence. If on the other hand, the defendant person understands the language used in the course of criminal proceedings, it will sound odd for him to complain that he had been denied the right to an interpreter.[4]

It is the duty of the defendant or his counsel to inform the court that the defendant does not understand the language in which the trial or evidence is being conducted. In the case of *The State v Gwanto*,[5] the respondents were represented by counsel before the trial court and there was nothing on the records to show that the respondents or their counsel on their behalf requested for an interpreter and that the request was rejected. Equally, there was no indication that there was an objection at lack of interpretation or any proper interpretation in the High Court. Following an appeal to the Supreme Court, the apex court pointed out that the importance of legal representation lies in the fact that if an accused person is represented by counsel, such counsel ought to demand his client's right to interpretation or object to any irregularity such as lack of interpretation. The court consequently held that if neither the counsel nor the accused objects, the right is lost for all time and certainly cannot be invoked in a Court of Appeal.[6]

It is pertinent to note that once the court has recorded the interpreter as being affirmed on the first day of the trial, it is not absolutely necessary for him to show on record that the interpreter was present on every subsequent day. The presumption of regularity would apply.[7] This is often expressed under the common law maxim, *Omnia rite esse acta praesumuntur*.[8] In essence therefore, what is required of an accused person to establish the denial of a right to an interpreter is proof by credible evidence of the denial and not by mere suspicion arising from failure to keep a full record of proceedings by the trial court.

5.8. Entitlement to a copy of the Judgment

By the provision of section 36(7) of the 1999 Constitution, the trial court or tribunal is enjoined to keep record of the proceedings of a person tried in any criminal offence. A concomitant right is afforded a defendant to obtain directly or through any person authorised by him in that behalf a copy of the judgment within seven days of the conclusion of the case. The time limit for providing parties with duly authenticated copies of judgment is further stressed in section 294 (1) of the 1999 Constitution. For the avoidance of doubt, the section provides *inter alia*

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[1] The official language of the court is English language – *Lawson v. Afani Continental Co. Nig. Ltd* (2002) FWLR (Pt. 109) 1736 at 1756.

[2] Constitution of the Federal Republic of Nigeria, 1999 Section 36(6)(e). See also Administration of Criminal Justice Act 2015, section 17 (3). See also *Jibrin v. Commissioner of Police* (2006) ALL FWLR (Pt. 305) 764 at 780.

[3] *Zaria Native Authority v. Bakari* (1964) NNLR 25 at 29. In *Ajayi v. Zaria Native Authority [1964] NNLR 61,* there was evidence that the accused did not understand Hausa language although the proceedings were conducted in Hausa language. The interpreters were incompetent. The conviction of the appellant was set aside on grounds that he was not accorded fair trial.

[4] *Francis Durwode v. The State* [2000] 12 SCNJ 1; [2000] 15 NWLR (Pt. 467) 482 at 484.

[5] [2000] FWLR (Pt. 30) 2583.

[6] *Ibid* at pp. 2598-2599; *Zarabe v. State* [2003] FWLR (Pt. 187) 759 at pp. 782-783; *The Queen v. Eguabor* [1962] 1 All NLR 289.

[7] Evidence Act 2011, section 168(1). See also *Akpan v. The State* [2002] FWLR (Pt. 110) 1845 at p. 1853, where it was held by the Nigerian Supreme Court that although it is a good practice for trial courts to record that "the charge was read and fully explained to the accused to the satisfaction of the court," failure to do so will not render the trial a nullity. See also *Anyanwu* v. *The State* [2002] FWLR (Pt. 117) 1020 at pp. 1030-1031, where the apex court likewise held that failure to record the presence of interpreter on subsequent days of trial does not vitiate trial. From decided authorities therefore, mere omission to indicate on subsequent days that there was interpretation for the defendant in appropriate cases would not nullify the trial, though an outright violation of the constitutional requirement from inception of the trial, after the court had been notified that the defendant does not understand the official language of the court, would amount to a denial of fair hearing.

[8] Meaning, all things are presumed to have been done in due form. See Bryan A. Garner, *Black Laws Dictionary*, 8th. Ed., p. 1743. See also Jimoh *Adekoya Odubeko v. Victor Fowler* [1993] 7 NWLR (Pt. 308) 637 at p. 655, [1993] 8 SCNJ 185.

that

> *Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof.*

It is submitted that the above provisions are directory and not mandatory. Failure to comply with the provisions is a mere irregularity since such failure could never lead to a miscarriage of justice.[1] The Supreme Court in the case of *Ifezue v. Mbadugba*[2] while considering a similar provision under section 258(1) of the 1979 Constitution held that non-compliance with the second limb (that is, supply of duly authenticated copies of the decision within seven days of delivery thereof)) was a mere irregularity and it would not invalidate the judgment delivered. However, it is worth noting that availability of the authenticated copy of the judgment would not only assist the defendant or his counsel to know the judgment for or against him but would also go a long way to determine what his grounds of appeal should be should he elect to exercise his constitutional right of appeal

5.9. Right to no Trial on Retroactive Legislation

The 1999 Constitution frowns against retroactive penal legislation[3] Accordingly, the Constitution boldly provides that no person shall be held guilty of a criminal offence on an account of any act or omission that did not at the time it took place constitute such an offence and no penalty should be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.[4] The provision against retrospective and retroactive criminal legislation invalidates such Decrees as the Foreign Exchange Anti-Sabotage Decree of 1970 enacted under the military regime.[5]

5.10. Right Against Double Jeopardy

A defendant may plead *autrefois acquit*[6]or *autrefois convict*[7] to a charge read out against him.[8] These pleas are provided for in section36 (9) of the 1999 Constitution. According to the constitutional provision, no person who proves that he has been tried by any court of competent jurisdiction or tribunal for any criminal offence and had either been convicted or acquitted shall again be tried for that offence or for a similar offence having the same elements as the previous offence shall be made to undergo a second trial.[9]

The underling idea in the doctrine of rule against "double jeopardy" is that the State with all is resources, power, and arsenal at its disposal should not be permitted to make repeated attempt to try and convict an individual for an alleged offence a second time thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continue state of anxiety and insecurity as well as enhancing the possibility that even though innocent, he may be found guilty.[10] However for the plea of *autrefois acquit* or *autrefois convict* to succeed, the court must be satisfied by the defendant of the following pre-conditions:

I. that the defendant has previously been tried on a criminal charge. In other words, the charge for which the defendant was tried must have been an act or omission constituted under a written law as an offence, otherwise the plea cannot be sustained.[11] However, a preliminary inquiry, in this regard, does not

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[1] The 1999 Constitution, section 294(5), principally declares that a court's decision or judgment delivered after the stated period would not be nullified purely on that ground except the appellate court is satisfied that the aggrieved party had suffered a miscarriage of justice thereby. The onus is on the party complaining to satisfy the court of the miscarriage of justice suffered.

[2] (1984) 1 SCNLR 427; *Akubuike v. Okeke* (1983) 4 SC (Pt. 1) 214; *Adekeye v. Akin-Olugbade* (1987) 6 SC 268.

[3] *Federal Republic of Nigeria v. Ifegwu* (2003) FWLR (Pt. 167) 703 SC. In *Miscellaneous offences Tribunal v. Okoroafor* (2001) FWLR (Pt. 81) 1730 at 1756, the Supreme Court pointed out that no statute shall be construed so as to have a retrospective operation unless such a construction appears very clearly in terms of the Act or arises by necessary and distinct implication. See also, *Adesanoye v. Adewole* (2000) FWLR (Pt. 14) 2387; *The Governor of Akwa Ibom State v. Umah* (2002) FWLR (Pt. 110) 1793.

[4] Constitution of the Federal Republic of Nigeria, 1999, section 36(8).

[5] *Sele v. State* (1993) 1 NWLR (Pt. 269) 276 SC; Akande, J. O, *Introduction to the Constitution of the Federal Republic of Nigeria 1999*, MIJ Professional Publishers Limited, 2000, p.84.

[6] The plea in bar of arraignment that the defendant has been acquitted of the offence- see *Black's Law Dictionary*,8th ed. *op. cit*., p. 145.

[7] A plea in bar of arraignment that the defendant has been convicted of the offence- see Black's law Dictionary, *ibid*.

[8] Administration of Criminal Justice Act 2015, section 277.

[9] *Ibid*, sections 238 and 226.

[10] *State v. Duke and 2 others* (2003) FWLR (Pt. 171) 1654 at pp. 1685-1686; *Green v. United States* (1957) 355 US 184 at 187-188. See also the Fifth Amendment to the United States of America's Constitution; Nwabueze B., *The Constitution of Nigeria*, (1982), p. 445.

[11] *R. v. Jinadu* (1948) 12 WACA 368, where the accused was charged before the police Orderly Room Trial. Subsequently, he was charged to court on the same facts. His plea of *autrefois convict* was rejected because the Police Orderly Room Trial was

constitute a trial of an offence and accordingly a plea of *autrefois acquit* cannot be allowed;[1]

II. the former trial must have been conducted before a court of competent jurisdiction. If the court that decided the case lacked the requisite jurisdiction, the verdict of the court cannot be pleaded in a subsequent charge for the same offence or for an offence for which the defendant could have been convicted at the first trial;[2]

III. the trial must end with either an acquittal or a conviction. Thus, where the trial ends with a mere discharge, this requirement has not been fulfilled. However, where a defendant has been discharged on the merit,[3] acquitted or convicted, the plea can be invoked in any subsequent trial on the same ingredients; and

IV. the criminal charge for which the defendant was tried should be the same as the new charge brought against him. In the alternative, the new charge should be one in respect of which the defendant could have been convicted at the former trial, howbeit not charge with it.[4]

It need be concluded that the rule against double jeopardy does not preclude an appellate court (or a "superior court") from ordering a re-trial of the defendant notwithstanding that he had been convicted or acquitted previously. This is in line with the wordings of the 1999 Constitution that the defendant cannot be re-tried again for "that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior Court." (Words in bracket supplied)[5]

5.11. Right to Enjoyment of Pardon

The 1999 Constitution further provides that under no circumstances shall a person who has been granted pardon[6] for a criminal offence be tried for that offence again.[7] In the case of *Falae v. Obasanjo*,[8] the court pointed out that the effect of a pardon is to make the offender a new man (*novus homo*), to acquit him of all corporal penalties and forfeitures annexed to the offence. The court went on further to point out that under the Nigerian law, a "pardon" and "full pardon" has no distinction. A pardon, as defined by the court, is an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and privileges forfeited on account of the offence.

However, the onus is on the person who leads pardon to establish it by the production of the instrument of pardon.[9] The issue of prerogative of mercy or "State pardon" should be exercised cautiously as was clearly illustrated in the case of *Anthony Isibor v. The State*,[10] where the Supreme Court strongly castigated the attitude of granting amnesty to the appellant by the then Head of State and Commander-in-Chief of the Armed Forces, General Abdul-Salam Abubakar, when the appellant's appeal against his conviction was still pending before the Supreme Court.[11]

5.12. Right To Remain Silent

During trial, a defendant shall not be compelled to give evidence.[12] This constitutional right tally with other

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not a criminal charge but a breach of Regulation.

[1] *Police v. Johnson* (1955) LLR 55.

[2] *Umeze v. The State* (1973) 6 SC 221.

[3] It is submitted that a charge of a defendant based on a no case submission under section 302 of the Administration of Criminal Justice Act 2015 by counsel or *suo motu* invoked by the court is a discharge on merit-see *Inspector General of Police v. Marke* (1957) NRNLR 97. In *State v. Duke*, *supra*, the respondents were arraigned at the High Court for the offences of conspiracy to steal, stealing and attempt to steal. At the close of the prosecution's case, the defence counsel made a "no case submission" which was upheld. On appeal by the prosecution, a re-trial order was refused because there was no special circumstances as would render it oppressive to put the respondents on trial a second time. See also section 357 of the Administration of Criminal Justice Act 2015.

[4] *R. v. Noku* 6 WACA 203; *R. v. Edu* 14 WACA 163, compare with *Uguru v. The State* (2002) 4 SC (Pt. 2) 13.

[5] Constitution of the Federal Republic of Nigeria, section 36(9). See also Administration of Criminal Justice Act 2015, sections 238(2).

[6] Section 175 and 212 of the 1999 Constitution empowers the President and the Governor of a State respectively to grant pardon to certain individuals.

[7] *Ibid*, section 36(10)

[8] (1999) 4 NWLR (Pt. 599) 476 at 495; *The Guardian*, Friday April 16, 1999, pp. 7-8.

[9] *Okongwu v. The State* (1986) 5 NWLR (Pt. 44) 721 at p.740.

[10] (2002) 2 SC (Pt. 2) 110 at 126-127; [2002] FWLR (Pt. 98) 843 at p. 861.

[11] Although the Supreme Court had affirmed the conviction of the appellant, yet the conviction was unfortunately rendered nugatory by reason of executive fiat granting amnesty to the convict. The court expressed its frustration in the circumstances thus: "It is clear that the appellant…has been made a free man by the fiat of the Head of State and Commander-in-Chief of the Armed Forces….However, having regard to the verdict of this court in this appeal, it does now appear that the appellant cannot be punished as provided by law in respect of the offence for which he stands convicted," per. Ejiwunmi, J.S.C. (as he then was).

[12] Section 36(11) of the 1999 Constitution. Even during arrest of a suspect, the police officer, arrester or a the police officer in

relevant enactments which provide that though a defendant is a competent witness, yet he is not a compellable witness and he may elect not to say anything in his defence.[1] This nevertheless, does not stop a trial Judge from drawing any unfavourable inference against the defendant having regard to the evidence adduced in the case by the prosecution.[2]

5.13. The Offence and the Penalty Must be Known to Law

Another vital ingredient of a fair trial under section 36 of the 1999 Constitution is that a person shall only be convicted of a crime which is defined and the penalty thereof is prescribed in a written law. The penalty must in addition be prescribed in written law; otherwise, an accused cannot be liable for the offence.[3] In *Aoko v. Fagbemi*,[4] the accused person was tried and convicted of the crime of adultery. Aggrieved by his conviction, he appealed to a higher court. The appeal was upheld and the lower court's decision reversed as adultery was not an offence or penalised under the Criminal Code legislation in the southern Nigeria

6. CONCLUDING REMARKS

From the foregoing discussion, we have seen that in every criminal trial, the 1999 Constitution and other relevant statutes provide that both the defendant and the complainant shall be accorded a fair hearing. Where the basic attributes of a fair trial or safeguards constitutionally guaranteed for a fair hearing are breached in any criminal trial, the decision reached thereat would be nullified on an appeal no matter how properly conducted the proceedings were. This is because fair hearing entrenched in the 1999 Constitution is so fundamental in the judicial process or the administration of criminal justice[5] that they, in most cases, cannot be waived even by the beneficiary of such right.[6]

Correspondingly, some of these rights have legal qualifications attached to them. For example, a right to a counsel of one's own choice envisages the engagement of a legal practitioner who does not suffer any legal disability.[7] A right to an interpreter must be bought to the notice of the court timeously. A right to pardon must be raised and proved by the defendant himself. Furthermore, we have seen that the rule against "double jeopardy" guaranteed under section 36(9) of the 1999 Constitution is a safeguard against the concept of a re-trial for criminal offences of the same ingredients subject to the fulfillment of certain preconditions.

Finally, where the tenets of fair trial have been followed or a defendant deliberately and inexcusably neglects to avail himself of the opportunity of fair hearing accorded him, he cannot be heard to complain that he was denied fair hearing (fair trial). Fair hearing or fair trial therefore, is a doctrine of substance and the question is not whether injustice has been done because of lack of fair hearing, rather the question is whether a party entitled to be accorded the right has been given the opportunity to enjoy and/or exercise the right.[8]

charge of a police station is statutorily mandated to inform the suspect of his right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice- Administration of Criminal Justice Act 2015, section 6(2) (a).

[1] Evidence Act 2011, section 180(a).

[2] *Nasiru v.The State* (1999) 1 SCNJ 83 at pp.99, 100; *Sugh v. The State* (1988) 5 SCNJ 58; *Garba v. The State* (1997) 3 SCNJ 68 at 76.

[3] *Iyela v. Nigeria Army* (2005) ALL FWLR (Pt. 280) 1561 at p. 1569; *Attorney-General of the Federation v. Isong* (1986) 1 QLRN 75.

[4] [1962] All NLR 400.

[5] *C.G.C (Nig.) Ltd v. Divine Bible Church* (2005) ALL FWLR (Pt. 290) 1443 at p.1459.

[6] *Ariori v. The State* (2001) 36 WRN 94 SC, (1983) ALL NLR 1; *LPDC v. Fawehinmi* (1985) 2 NWLR (Pt. 7) 300 at 370 SC.

[7] *Udofia vs. The State* [1988] 7 SCNJ (Pt. 1) 118 at p.123.

[8] *Ezechukwu v Onwuka* [2005] All FWLR (pt. 280) 1514 at 1542, 1546.