

**AN ANALYSIS OF JUDICIAL REVIEW OF ADMINISTRATIVE
ACTIONS UNDER NIGERIAN LAW**

BY

**Albert, Emmanuel GYAS
LLM/LAW/03658/09-10
P15LAPU8140**

**DEPARTMENT OF PUBLIC LAW,
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY,
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SEPTEMBER, 2021

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**A DISSERTATIONSUBMITTED TO THE SCHOOL OF
POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE
AWARD OFMASTER OF LAWS - LLM**

**DEPARTMENT OF PUBLIC LAW,
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY,
ZARIA, NIGERIA**

SEPTEMBER, 2021

DECLARATION

I declare that the work in this dissertation titled “An Analysis of Judicial Review of Administrative Actions under Nigerian Law” has been carried out by me in the department of Public Law Ahmadu Bello University, Zaria, Nigeria. The information derived from the literature has been duly acknowledged in the text and list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other institution.

Albert Emmanuel GYAS
LLM/Law/03658/09-10
P15LAPU8140

Signature

Date

CERTIFICATION

This dissertation titled AN ANALYSIS OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS UNDER NIGERIAN LAW by Gyas Albert Emmanuel meets the regulations governing the award of the Master of Laws – LL.M of Ahmadu Bello University, Zaria, Nigeria and is approved for its contribution to knowledge and literary presentation.

Prof. Yusuf Dankofa
Chairman, Supervisory Committee

Signature

Date

Prof. I.F. Akande
Member, Supervisory Committee

Signature

Date

Dr. S. B. Magashi
Head, Department of Public Law

Signature

Date

Prof. S. Abudullahi
Dean, School of Postgraduate Studies

Signature

Date

DEDICATION

This dissertation is dedicated to the Almighty God for His infinite mercy and guidance in the course of this programme.

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ABBREVIATIONS

AC	Appeal Cases
ALL ER	All England Law Reports
ALL NLR	All Nigerian Law Reports
CA	Court of Appeal
CBN	Central Bank of Nigeria
CH D	Chancery Division
ER	English Reports
FNLR	Federation of Nigeria Law Reports
FSC	Federal Supreme Court
HC	High Court
JAMB	Joint Admission and Matriculation Board
KB	Kings Bench
LLR	Lagos Law Reports
NAFDAC	National Agency of Food and Drug Control
NCLR	Nigeria Constitutional Law Reports
NLR	Nigeria Law Reports
NMLR	Nigeria Monthly Law Reports
NNLR	Northern Nigeria Law Reports
NRNLR	Northern Region of Nigeria Law Reports
NSCC	Nigeria Supreme Court Cases
NWLR	Nigeria Weekly Law Reports
PC	Privy Council
PD	Probate Division
QB	Queens Bench

QBD	Queens Bench Division
SC	Supreme Court
SCNLR	Supreme Court of Nigeria Law Reports
TLR	Times Law Reports
TR	Times Reports
UILR	University of Ife law Reports
WACA	West African Court of Appeal
WAEC	West African Examination Council
WLR	Weekly Law Reports
WNLR	Western Nigeria Law Reports
WRNLR	Western Region of Nigeria Law Reports

ABSTRACT

This dissertation aimed at examining judicial review of administrative actions in Nigeria. Judicial review is the power of a court to examine the acts of the other branches of government, lower courts, public or administrative authorities and uphold them or invalidate them as may be necessary in line with the relevant constitutional provisions which empowered the courts to review acts of administrative bodies or authorities in Nigeria. These methods are through habeas corpus, mandamus, certiorari, prohibition, quo warranto, injunction, declaration, compensation and apology and damages. The research methodology adopted is doctrinal which include statutes, judicial authorities, relevant books, articles in journal publication, conference papers and internet materials. However, the statement of problem of this dissertation is that the problem of this research is that there are issues of misconception in the application of the various methods of judicial review in the Nigerian courts. For example, sometimes lawyers argued that the action of administrative bodies is neither judicial or quasi-judicial but rather political and not within the power of the court for judicial review. Thus, the objective of this dissertation is to identify the adequacy or otherwise of the specific method of judicial review of administrative actions with a view to addressing the challenges that are associated with the remedies that are open to the Nigerian citizens. In line with this, the dissertation found (among others) that in order to review an administrative action, the rules of interpreting statutes defeat the cause of justice in certain instances. Finally this dissertation was concluded by recommending (among others) that courts should not only give a superficial interpretation of statutes they should where necessary break or lift the legislative as well as the statutory veil to know the real intents of the legislature, so as to ensure that administrative authorities function within their powers and according to law.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Administrative actions are the process of organising things within a government or an institution in order to make something happen such as policies, directives and decisions to deal with situations. In this context the words government, administration, administrative bodies, administrative agencies, public authorities will be implied to mean one and the same thing. The administration in managing the affairs of people make policies and take decisions which is likely to infringe on the rights and interests of its citizens. Some of these citizens could be classified as either the employees of the government or government agencies or the general public. “Judicial review is the power of a court to examine the acts of other branches of government, lower court, public or administrative authorities and uphold them or invalidate them as may be necessary”.¹ Judicial review has been defined by Nwabueze² as:

The power of the court, in appropriate proceedings before it, to declare a government measure either contrary to, or in accordance with, the constitution or other governing law with the effect of rendering the measure invalid and void or vindicating its validity and so putting it beyond challenge in the future.

The purpose of judicial review of acts of public or administrative authorities is to ensure that the scope and limits of statutory powers are not exceeded by such authorities.³ It is clear that courts have the duty of reviewing any act that is unconstitutional as Nnaemeka JSC, explained the role of the court in the case of

¹ Malemi E. (2008) Administrative Law (3rd ed.) Prinestone Publishing Co. Lagos p.127

² Nwabueze B. O. (1977) Judicialism in the Commonwealth Africa. C. Hurst and Company, London p.229

³ Malemi E. op.cit p.1

*Abdulkarim vs Incar Nig. Ltd*⁴ thus: in Nigeria, which has a presidential Constitution, judicial review entails' three different processes namely:

- i. The court particularly the Supreme Court, ensuring that every arm of government plays its role in the true spirit of the principle of separation of powers as provided for in the Constitution.
- ii. That every public functionary performs according to law, including the Constitution; and
- iii. For the Supreme Court, that it reviews court decisions including its own, when the need arises in order to ensure that the country does not suffer under the same regime of obsolete or wrong decisions.

It is evident that in Nigeria the courts are vested with the exclusive right to determined controversies between citizens and between citizens and the state. Section 6 of the 1999 Constitution as amended⁵, delegate and vest judicial powers on the judiciary. Subsection (1)⁶ provides for judicial powers vested in courts established for the Federation, while subsection (2)⁷ talks about courts established for a State. Subsection (3)⁸ provides in subsections (5) (a) to (i),⁹ the courts listed there under shall be the only Superior Courts of records in Nigeria while subsection (4)¹⁰ does not preclude the National Assembly or any House of Assembly from creating other courts but such courts will be subordinate to the jurisdiction of a High Court. Another subsection relevant to the power of judicial review is the provision of the subsection (6), which provides as follows:¹¹

- a. Shall extend to all inherent powers and sanctions of a court of law;
- b. Shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and

⁴ (1992) 7 NWLR(Pt. 25) p. 1 at 17-18

⁵ Constitution of the Federal Republic of Nigeria (as amended) Cap. C23LFN 1999, hereinafter to be referred to as the 1999 constitution as amended except otherwise stated

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

to all actions relating thereto, for the determination of any question as to the civil right and obligations of that person.

It would seem that the judicial power vested in the courts in the above two paragraphs does not extend to paragraphs (c) and (d) of the 1999 Constitution (as amended) which has to do with the Fundamental Objectives and Directive Principles of Policy set out in chapter II of this Constitution,¹² and the laws made, on or after 15th January, 1966 as to legality on the ground of lack of legal competence.

Also section 230¹³ establishes the Supreme Court and also provides for its number of justices. Section 232¹⁴ confers on the Supreme Court its original jurisdiction while section 233¹⁵ confers on the Supreme Court its appellate jurisdiction. In the same vein section 237¹⁶ establishes the Court of Appeal while section 239¹⁷ and 240¹⁸ confers on it original and appellate jurisdictions respectively. Section 249¹⁹ establishes the Federal High Court with jurisdiction and powers. There is also the High Court of the Federal Capital Territory, the Shariah Court of Appeal and the Customary Court of Appeal of the Federal Capital Territory²⁰ as well as those of the States.²¹

In essence, all those courts mentioned above being Superior Courts of records²² have the powers as conferred on them by the Constitution to review administrative actions in Nigeria. Administration and administrative processes cuts across and is a part of all the three branches of government²³. In view of this, it is often argued, that

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Sections 251 and 252, 1999 Constitution (as amended)

²² Ibid. Sections 255, 260 and 265

²³ Malemi, E. op.cit p.24

administration is more or less a fourth branch or arm of government in itself²⁴. An administrative authority or agency may be established by statute passed by the legislature, the executive may constitute it by appointing people, into it and it may require judicial process to ably perform its functions.²⁵ In performing its duties, an administrative authority or agency generally combines and exercises all the functions of the three branches of government for instance:²⁶

- i. **Legislative:** it may make rules by virtue of powers delegated to it under statute to make rules or delegated legislation to regulate its area of operation and itself.
- ii. **Executive:** it may carry out purely administrative duties or execute its own rules and delegated legislation.
- iii. **Judicial:** it may perform judicial or quasi-judicial functions including exercise of the powers of investigation, inspection, arrest, interrogation, seizure, subpoena, recovery, sanction and so forth.

Agencies administer their delegated authority in a variety of ways, including promulgating rules and regulations that bind the public, advising regulated parties of an agency's enforcement priorities via guidance documents, bringing enforcement actions against private individuals or corporations for violation of statutes or regulation, and determining whether to grant a benefit or license.²⁷ All over the world, administrative authorities and agencies perform these functions in various degrees from country to country.²⁸ Government or administration regulates various aspect of national and individual lives.²⁹ The functions entrusted to administrative bodies are often great.³⁰ These functions and powers usually derive from the Constitution and other statutes which provide for these functions to be carried out, they include powers to formulate and carry

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid p.24-25

²⁷ <https://ifas-org/sgp/crs/misc/r44699.pfd>

²⁸ Ibid. p.25

²⁹ Ibid. p.9

³⁰ Ibid. P.9-10

out government policies and businesses for instance, at the various tiers of government, ministries, departments, and agencies of government and so forth.³¹

The powers of administration entrusted to the Federal, State, and Local Government Councils, Public agencies, and Public officers include the power to establish, manage or regulate various aspects of our national life such as,³² Education; Agriculture and Water Resources; Justice; Home and Internal Affairs; Foreign Affairs; Defence; Health and Social Services; Science and Technology; Transport; Employment and Productivity; Commerce and Industries; Power; Mines and Steel and Tourism and Culture, Sport and Youth Development, and so forth. In carrying out all those duties listed above the administration exercises a lot of powers and in exercising these powers the power may be express, necessary *intra vires*, and discretionary.

In fact, there is no particular time when an individual will not come in contact with this government agencies. For example, an individual who intends to construct a new house must first seek the consent and approval of the state and local government agencies such as urban planning and development authority, and local government health department, before he can start building³³. According to Gwyer, in his words “an unfettered exercise of power is certainly good for no one, and government departments are no exception to this rule.”³⁴In conclusion, we have noted that courts in Nigeria are vested with power of judicial review under the Constitution.³⁵ That is to say in appropriate cases before it, a court can declare invalid an administrative act for being in conflict with the constitution or statutes.

³¹ Ibid. p. 9

³² *ibid*

³³ Danladi K.M. (2012) *Outline of Administrative Law and Practice in Nigeria* Ahmadu Bello University, Press Limited Zaria p.1

³⁴ “The Power of Public Department to make Rules Having the Force of Law” 5 *Public Administration* p. 404

³⁵ 1999 Constitution as amended.

1.2 Statement of Research Problem

The problem of this research is that there are issues of misconception in the application of the various methods of judicial review in the Nigerian courts. For example, sometimes lawyers argued that the action of administrative bodies is neither judicial or quasi-judicial but rather administrative or political and not within the power of the court for judicial review. Consequently, many cases³⁶ of illustration in this dissertation show endless appeals and by so doing the court is further congested. Based on this issues, the following research questions are formulated:

- i. How effective are the various methods of judicial review of administrative actions in Nigeria?
- ii. To what extent have the various methods of judicial review such as habeas corpus, mandamus, certiorari, prohibition, quo warranto, injunction, declaration, compensation and apology and damages specifically achieve their purposes as to whether each of them has produced its desired result for which it was created.
- iii. What are the factors militating against the effective application of the various methods of judicial review of administrative actions in Nigeria?

1.3 Aim and Objectives of the Study

This dissertation aims at examining the power of judicial review in the protection of the rights of Nigerian citizens so as to create a smooth atmosphere for the running of the government. In this wise therefore, the objective of this dissertation are as follows:

- i. To examine the efficacy or otherwise of the application of the various methods of judicial review of administrative actions in Nigeria.

³⁶*J.S.C Cross River State vs Young (2013) 11 NWLR (Pt.364 p.1 at 34, paras A-B; and Korea National Oil Corporation vs Owel Petroleum Services Nigeria Ltd ORS. (2018) 2 N.W.L.R. (pt.1604)p.394 at pp.437-438*

- ii. It examine the extent to which the various method of judicial review has been able to achieve its purposes.
- iii. To examine the issues affecting an effective application of the various method of judicial review in Nigeria.

1.4 Scope and Limitation of the Research

This research centres on judicial review of administrative actions, essentially on the role of the judiciary as it affects the exercise of the power of judicial review. It covers geographically the whole nation Nigeria and legally all enactments and decided cases on the subject matter. This work is limited in scope to only actions of administrators within the three tiers of government, that is to say the administrative actions of the president, governors and local government chairmen and their delegated powers.

1.5 Justification of the Research

Constitutional Democracy demands that government be saddled with the responsibility of administering and governing its citizenry. Through the Constitution the people clearly provided for the powers of government and also delegate powers to the three arms of government at the various tiers of government.³⁷ The administration is empowered by the Constitution and other statutes to provide social amenities, peace and order among other things, and in order to be able to effectively fulfil this purpose the administration wields a lot of power which might sometimes be used arbitrarily to infringe on the right of its citizens or such powers might be used ultra vires.

Thus, the importance of the Courts in review of administrative actions in Nigeria today cannot be overemphasised particularly under the current democratic setting. On this note, this research is meant to help the citizens to realise that they have remedies to administrative actions against them. As such this dissertation will be of immense use to

³⁷ Craig P. P. (1999) Administrative Law (4th ed.) Sweet and Maxwell Ltd, London. p.7

students, lecturers, lawyers, judges, policy-makers, the three arms of government and the general public. Further, it will provide the basis for other researchers to undertake further studies on the subject.

1.6 Research Methodology

The method adopted in this research is doctrinal, which involve the use of publications available in the libraries such as statutory provisions, relevant to this research, judicial decisions and textbooks written by various authors and journals where necessary were consulted.

1.7 Literature Review

Many authors have written on this subject of judicial review of administrative actions, among them are Barnett, Craig, Malemi, Ese, Danladi and a host of others. Barnett³⁸ examined the court's definition of public body for the purpose of judicial review. Barnett, further classified the grounds for judicial review under three broad headings; which are illegality, irrationality and procedural impropriety, contrary to the way other authors classified their grounds. This research considered the misconception of the application of the various methods of judicial review as well as the effectiveness of the methods of judicial review. Garner and Jones in their book "Garner's administrative law"³⁹ focused on the traditional method of judicial review, which is ultra vires, jurisdiction, procedural error and error on the face of the records, then proceeded to state the means of seeking redress and the remedies, but in dealing with this issues they did not ponder on the misconception of the application of the various methods of judicial review and the effectiveness or otherwise of the methods of judicial review, which is the main thrust of this research.

³⁸Bernett .H. (2002) Constitutional & Administrative Law (4th ed.) Cavendish Publishing, Limited, London

³⁹Garner J. F and Jones B.L. (1985): Garner's Administrative Law (6th ed.) Butterworth and Co. Publishing Ltd p.104

Craig⁴⁰ in his book *Administrative Law* admitted that his work is not an exhaustive historical analysis of judicial review, but rather a sketch of some of the main themes in their development, which this research expound on the history of judicial review even as it includes Nigeria. The writers Bradley and Ewing in their book *constitutional and administrative law*⁴¹ mentioned the misconception of the application of the various methods of judicial review but did not give the topic a thorough exposition while this research gave a detailed discussion on the misconception of the application as well as the effectiveness of the various methods of judicial review.

The book by SupperStone and Goudie⁴² has been one of the few text that attempted to give the history of judicial review of administrative actions, but their history did not cover Africa or Nigeria, which aspect this research has accomplished. Leyland, Woods and Harden,⁴³ also gave a brief history of judicial review, which this research included the Nigerian history of judicial review of administrative actions which their work did capture.

Oluyede;⁴⁴ gave a little background into the introduction of administrative law in Nigeria and also examined the power of the courts in respect of their independence and their powers to adjudicate between persons and government. He focused on distinguishing judicial review from an appeal, while the research considered the misconception of the application of the various methods of judicial review and the effectiveness of the methods of judicial review.

⁴⁰Craig P. P. op.cit p.7

⁴¹ Wade & Bradley (2007); *Constitutional and Administrative Law*, In: (ed. By A. W. Bradley & Keith Ewing) (14th ed.) Pearson Education Limited, UK.

⁴² Supper Stone M. and Goudie. J. (1992) *Judicial Review* Butterworth & Co. (publishers) Ltd.

⁴³ Leyland P. , Woods T. and Harden J. (1994) *Textbook on Administrative Law*, Black Stone, Press Limited.

⁴⁴ Oluyede P. A. (1998); *Nigeria Administrative Law*, University Press Plc, Ibadan.

Olong ⁴⁵ also gave a brief history but did not draw the history to the Nigeria perspective, while this research drew the history of judicial review of administrative actions from the medieval times down to the Nigerian experience.

Okany⁴⁶ discussed judicial review of administrative actions but did not focus on the role of the judiciary as well as its attitude in its powers of judicial review while this research focused on the misconception of the application of the various methods of judicial review as well as the effectiveness of the methods of judicial review.

Malemi,⁴⁷ discussed judicial review of administrative actions elucidatively with much citations of decided cases, which are find relevant to this dissertation. However, the author did not discuss other issues such as the effectiveness of the methods of judicial review which forms the aspect of this dissertation.

Danladi⁴⁸ defined judicial review of administrative actions in Nigeria, and discussed their remedies extensively but did not focus on the misconception of the application of the various methods of judicial review as well as the effectiveness of the methods of judicial review.

Eka⁴⁹ discussed judiciary review of administrative actions extensively making reference to Britain and the United States of America and then Nigeria. Where possible he tries to give a brief history of some of the remedies, but did not discuss misconception of the application of the various methods of judicial review as well as the effectiveness of the methods of judicial review.

⁴⁵Olong A. M. (2007) Administrative Law in Nigeria (3rd ed.) Malthouse Press Ltd.

⁴⁶ Okany M. C. (2007); Administrative, Law in Nigeria (2nd ed.) African First Publishers Limited.

⁴⁷ Malemi E. op.cit.

⁴⁸ Danladi, K.M.op.cit.

⁴⁹ Eka B.U. (2001) Judicial Control of Administrative Process in Nigeria, Obafemi Awolowo University Press Ltd.

Ogundere in his book did not define judiciary review but rather referred to the uniform (civil procedure) rules which deals with the practical way of application for judicial while the misconception of the various methods as well as the effectiveness of the methods of judicial review is the focus in this research.

Ogbuabor, considered the effectiveness of judicial review in controlling the activities of the government, he argued that the current jurisprudence restricts the concept and recommend the need for the extension of the powers of judicial review, while this research focus on the role and attitude of the judiciary in judicial review, as well as the misconception of the application of the various methods of judicial review as well as the effectiveness of the methods.

Aguda in his articles considered the powers of the judiciary in Nigeria and suggested the need for its independence but did not focus on the role and attitude of the judiciary as it affects its powers of judicial review of administrative actions in Nigeria, while this research considered the misconception of the application of the various methods of judicial review as well as the effectiveness of the methods of judicial review.

Some of the authors addressed the issue of judicial review from the grounds and remedies of judicial review but did not consider the role of the judiciary and their attitudes under judicial review, as well as the misconception of the application of the various methods of judicial review as well as the effectiveness of the methods. So also some of the authors did not include a chequered or comprehensive history of how judicial review of administrative actions evolved except for the few information here and there which this research accomplishes.

1.8 Organisational Layout

The power of judicial review of administrative actions in Nigeria is extensively discussed. The research is divided into five chapters. The first chapter, which is the introductory

part, dwells on the objective this research sets to achieve, the significance of this study to this country and the scope of the study and the method employed in the study.

Chapter two looks at the concept and basis of judicial review and also the Constitutional provisions in Nigeria which confers powers of judicial review on courts. Chapter three, deals with the judicial review of administrative actions on the grounds of substantive *ultra vires*, procedural *ultra vires*, violation of rules of natural justice, abuse of discretion and error of law apparent on the face of the record.

Chapter four examines the various methods used by courts in the exercise of its powers to review administrative actions, like declaration, injunction, and the writ of *mandamus*, prohibition, certiorari and habeas corpus. Chapter five is the concluding chapter, which gives a summary of the contents of the preceding chapters and also make some recommendations.

CHAPTER TWO

CONCEPTUAL FRAMEWORK AND THE DEVELOPMENT OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

2.1 Introduction

In order to make for clarity and easy reading, the terms used in this research are defined, words such as judicial review and judicial powers of court. Other issues focused in this chapter are the basis for judicial review. In the exercise of its review powers of administrative acts, the court is not concerned with the merits of the acts; it is concerned solely with the question of legality i.e. substantial or procedural. In reviewing legality, the court applies the doctrine of ultra vires by which, where a particular administrative agency acts in excess of powers given to it by the law or acts without power at all, the court will not hesitate to review such action.¹

The chapter also looked at the court's power under the Constitution to review administrative actions, particularly Sections 1 and 6,² the effect of those sections are that every act of any governmental department or authority must conform to the provisions of the Constitution. Any act which is inconsistent with the Constitution is void to the extent of its inconsistency. This is the most important basis of courts in Nigeria to review administrative actions.

2.2 Conceptual Framework

Generally, judicial review is the exercised of the power of the court to check whether the organs of the government operate in accordance with provision of the Constitution. Particularly here judicial review deals with they exercised of the powers of the court to check whether the activities of administrative organs are carried out in accordance with

¹Kabir M.D. (2012) Outline of Administrative Law and Practice in Nigeria Ahmadu Bello University, Press Limited Zaria, p. 115.

² Constitution Federal Republic of Nigeria (CFRN) 1999 (as amended)

the provision of the Constitution. According to the Blacks' Law Dictionary,³ judicial review is defined as:

The power of courts to review decisions of another department or level of government, form of appeal from an administrative body to the court for review of either the finding of facts or of law, or both may also refer to appellate court review or decisions of trial courts or of an intermediate appellate court.

According to the definition by Black's Dictionary⁴ that judicial review is the power to review decisions of another department of government. The question is, are we to say that the nomenclature "department of government" covers the legislative arm of the government? This research sees the meaning of "department of government" to mean one of several divisions of a government. If it is taken to mean one of the different departments then it will not capture the legislative arm, but we know that the power if judicial review also covers legislative acts as provided for in section 1(3) and 4(8) of the 1999 Constitution call suffice for this purpose as we are discussing judicial review of administrative actions. Judicial review has been defined by Nwabuze⁵ as:

The power of the court in appropriate proceedings before it to declare a governmental measure, either contrary to, or in accordance with, the Constitution or other governing law with the effect to rendering the measure invalid and void or vindicating its validity and so putting it beyond challenge in the future.

Looking at Nabueze's⁶ definition that it is "the power of court in appropriate proceedings before it" according to this work the choice of word "government" is ambiguous which may mean the act of the executive, but may not mean that of the legislative, which still makes the definition limited to the executive and not all encompassing. Another writer state that, "judicial review is the means by which

³ Campbell H.B. (1997) Blacks' Law Dictionary (6th ed.) west Publishing Company p. 849

⁴ *ibid*

⁵ Nwabueze B.O. (1982) The Presidential Constitution of Nigeria, Sweet and Maxwell Ltd, London. p.229

⁶ *ibid*

administrative authorities whether Ministers of the Crown, Government Departments, Local Authorities or others with law making and administrative powers are confined by the courts within the powers granted to them by the parliament⁷

Barnett⁸ in his definition said that “it is the means by which administrative authorities ...” and he went ahead to list the administrative authorities. The question is will we say that his use of the phrase “others with law making powers” includes the legislative? This work does not think so, rather Barnett was carrying administrative authorities with law making powers, as he is coming from a background where supremacy of the parliament prevails rather than the supremacy of the constitution as it is in Nigeria. According to Malemi, Judicial review is the power of a court to examine the acts of the other branches of government, lower courts, public or administrative authorities and uphold or invalidate them as may be necessary⁹. According to another author who defined it as thus:¹⁰

Judicial review of administrative actions is the power exercised by the Superior Court of record to determine whether any action done by administrative agencies, tribunals or inferior courts is in accordance with law or not. If it is in accordance with the law, the action is allowed to subsist and if it is not, it is declared invalid and of no effect.

Danladi in his definition went straight to define not just what “judicial review” is generally, he actually defined what judicial review of administrative action is, though if we will understand what the term judicial review means broadly this definition will not suffice but for the purpose of this work it does suffice. Aderemi J.C.A. defined judicial review in the case of *Amadi vs Achoas*:¹¹

⁷ Bennett H. op.cit p.889

⁸ Ibid

⁹ Malemi E. op.cit p. 290

¹⁰ Danladi, K.M.op.cit. p. 6.

¹¹ (2005) 12 NWLR (Pt. 939)p. 402

Judicial review or judicial control, primarily and practically means review and it is founded on a fundamental principle inherent throughout the legal system, that powers can be validly exercised only within their true limits. Indeed, it is a fundamental mechanism for keeping public authorities, within due bounds and for that of some other body as happens only on appeal; the court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not.

Talking from Aderemi's definition in *Amadi vs Acho*¹² it means review is a mechanism for keeping public authorities within due bounds, then he proceeded to describe the end result of judicial review distinguishing it from an ordinary appeal. Still this definition does not capture the broader definition including the legislature.

Yet in another case of *A.G. Fed. vs Abule*,¹³ Onnoghen J.C.A. defined judicial review as:

The term "judicial review" means a court's power to review the actions of other branches or level of government, especially the courts power to invalidate legislative and executive actions as being unconstitutional. It also means a court review of lower courts or an administrative body's factual or legal findings.

Also, according to Onneghen's definition in *A.G. Fed. vs Abule*, it means that the courts power to review actions of the other branches which includes both the legislative, executive and even lower courts, but judicial review is not only limited to the constitution though the ground norm but also cover other subsidiary legislations or statutes.

Also in *Gyang vs C.O.P. Lagos State*.¹⁴ Suleiman Galadima J.S.C defined judicial review as, "review means an examination of something with the intention of changing it, if necessary. It means Judicial re-examination of the case in certain specified and prescribed circumstances. Judicial review is a court review of a lower court or an administrative body's factual or legal findings".

¹²Ibid

¹³ (2005) 11 NWLR (Pt. 936) p. 369 at 387

¹⁴ (2014) 3 N.W.L.R (pt. 1395) p.547 at p.559

The analyses of all these definitions above are: According to Blacks' Law Dictionary,¹⁵ it is power to review decisions of another department of government; the question is, are we to say that the nomenclature "department of government" covers the legislative arm of the government? This work does not think so as the meaning of "department of government" means one of several divisions of a government. Since it is one of the different department then it does not capture the legislative arm, but we very much know that the power of judicial review also covers legislative acts as provided for in section 1(3) and 4(8) of the 1999 Constitution (as amended). But, it suffice for this purpose since we are discussing judicial review of Administration. Looking at Nwabueze's¹⁶ definition it is "the power of court in appropriate proceedings before it" according to this writer the choice of word "government" also means the act of the executive arm and may mean not legislative which still makes the definition limited and not encompassing. Barnett H.¹⁷ said... "it is the means by which administrative authorities..." And he went ahead to list the administrative authorities. The question is will we say his use of the phrase "other's with law making powers" includes the legislative? This writer does not think so; rather Barnett was saying administrative authorities with law making powers, as he is coming from a background where supremacy of the parliament prevails rather than the supremacy of the Constitution as it is in Nigeria. That definition serves our purpose of a proper definition of the word judicial review of administrative actions. Danladi¹⁸, went straight to define not just what "judicial review" is generally, he actually defined what judicial review of administrative actions is though, if we must understand the term broadly i.e. judicial review, this definition will not suffice, but for the purpose of this work it does suffice.

¹⁵ Campbell H.B. op. cit.

¹⁶ Nwabueze B.O. op. cit

¹⁷ Barnett H. op. cit

¹⁸ Danladi K.M. op. cit

Taking from Aderemi's definition in *Amada vs Acho*¹⁹ it means review is a mechanism for keeping public authorities within due bounds, then he proceeded to described the end result of judicial review distinguishing it from an ordinary appeal, still this definition capture this same power of judicial review over the legislation. Also according to Onnoghen's definition in *A.G. Fed. vs Abule*²⁰ it means the "courts power" to review actions of the other branches which covers both the legislative, executive and even lower courts, but judicial review is not only limited to the Constitution though the grundnorm but also cover other subsidiary legislations or statutes on. In the whole this attempts at definitions leaves us in jeopardy as to what the term "review" and "power of courts" or "courts power" are; the first term will be discussed under this heading while the other will be discussed subsequently. To understand the term better, this work shall look at what the words "judicial and review" means. The term judicial is defined as:²¹

Belonging to the office of a judge; as judicial authority relating to or connected with the administration of justice as a judicial officer. Having the character of judgment or formal legal procedure; as a judicial act. Proceedings from a court of justice; as a judicial writ, a judicial determination. Involving the exercise of judgment or discretion, as distinguished from ministerial.

This definition is portraying the different shades the word "judicial" can take. While review is defined as, "to re-examine judicially or administratively. A reconsideration; second view or examination; revision, consideration for purposes of correction used especially for the examination of a decision of a lower court or an administrative body by an appellate court or appellate administrative body".²²

The definitions above tells shows that the word review means to re-examine but qualified it "judicially or administratively" from judicial and then finally gave instances

¹⁹ ibid

²⁰ ibid

²¹ Campbell H.B. op.cit p.846

²² Ibid. p.1320

of judicial review. When the words “judicial authority” is joined with the phrase “consideration for purposes of correction” from the definition of “review”. It means judicial authority to consider for purposes of correction, an administrative act. From the definitions above, it therefore shows that there is no universally accepted definition of the word judicial review and particularly judicial review of administrative actions. And virtually all the writers defined judicial review generally without tying it to administrative actions except Danladi the definitions are therefore being offered according to each definer’s personal understanding and perception of the subject matter.²³

In the understanding of the research work, judicial review of administrative actions is the power of the superior courts of record to call into question and resolve same as to the constitutionality or legality of an action of any administrative or executive arm of government and their agencies. This definition is only limited to the subject matter of discuss in this thesis. Even with the above definition of terms it still leaves us with the question of what the words “judicial power or authority” or “courts power” mean. That will be the next point of discussion.

2.3 The Nature of Judicial Power

The nature of judicial power is the power given to the judiciary to determine disputes between the component parts of the Federation, to determine dispute between the states inters or between citizens themselves. Secondly, it refers to the totality of powers which a court exercises when it assumes jurisdiction to hear, determine and enforce its decision in a dispute to it by the parties thereto.²⁴ The former chief of justice of Australia, Griffith attempted to answer the question, what is “judicial power” in the case of *Huddart Parker & CO. vs Moorhead*:²⁵ In that case Griffith C.J. said:

²³Danladi, K.M.op.cit.p.2

²⁴ Nnaemeka A., (1993) Judicial Powers, Nigeria Essay in Jurisprudence (ed.) Elias & Jegede M.I.M.S. Publishers p.24.

²⁵ CLR330 at 357

I am of the opinion that the words “judicial power” as used in section 71 of the Constitution means power to which every Sovereign authority must of necessity have to decide controversies between itself and its subjects whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to action.

According to Blacks’ Law Dictionary:²⁶

Judicial power is the authority exercise by the department of government which is charged with declaration of what the law is and its construction. The authority vested in courts and judges as distinguished from the executive and legislative power. Courts have general powers to decide and pronounce a judgment and carry it out into effect between persons and parties who bring a case before it for decisions, and also such specific powers as contempt power, power to control admission and disbarment of attorney, power to adopt rules of courts.

Judicial power has been defined to mean; “the power of the court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision”.²⁷ The Court in Nigeria also defined judicial power in the case of *Sha’aban vs Sambo*²⁸ as; “judicial power, is defined as the power of court to hear and determine the subject matter in controversy between parties to a suit.” Also in the case of *Leaders & Co. Ltd vs Kusamotu*,²⁹ judicial power was defined per Muhammed JCA as, the power vested on courts by the Constitution of Nigeria comprising all the inherent powers and sanctions of courts. The courts are accordingly empowered to regulate their proceedings, punish for contempt and protect their dignity.

One thing that cuts across virtually all the definitions is that “judicial power” is the right to hear and determine controversy and also pronounce judgment between parties. It also has other features such as powers to punish for contempt and the power to carry a

²⁶ Cambell H.B. (op.cit p.849

²⁷ Nwabueze B.O. op.cit p.1

²⁸ (2010) 19 NWLR (pt. 1226)p.353 at 362

²⁹ (2004) 4 NWLR (pt. 864)p.519 at 540

judgment into effect. The main basis of judicial power is its ability to be able to compel obedience and observance of its decision or ruling without which judicial reviews will be of no consequence as the executive whose actions are called to question equally wield powers conferred on them by the Constitution and other statutes. In the case of Senator *Abraham Adesanya vs President of Nigeria and Ovie Whiskey*,³⁰ the Supreme Court per Idighe JSC (as he then was) described judicial power as thus:

Judicial power, as is well known is a very wide expression, far apart from its meaning as the power which every sovereign must of necessity possess to enable it settle and decide controversies between its subjects and itself... it is also co-extensive with the power of the state to make law; in other words, judicial power is co-extensive with the power of the state to make laws and execute them as well.

The essential characteristics of judicial power was spelt out by Lord Delvin in *United Engineering Union vs. Davanayagan*,³¹ it was pointed out that:

- i. There must be a list as to a right past or present and not with rights in the future.
- ii. The power exercised must be derived from the sovereign and not conferred by the parties themselves and must be bound by the existing law of the land.
- iii. The rules of natural justice must be observed i.e. the parties must be given opportunity of presenting their case, the judge must not be a party to the dispute, the parties must have prior notice of the issues litigated.
- iv. The parties must be bound by the decision arrived at after arguments on the law or ascertainment of the facts in dispute.

³⁰(1981) All NLR 1

³¹(1967) 2ALL ER 368 P. 380-383

The exercise of judicial power must be invoked by a person interested. It cannot be invoked by a court *suo muto*. The purpose of judicial power is to administer justice in individual cases between litigants.³²

2.4 The Basis for Judicial Review

Administrative authorities or agencies are generally invested with wide discretionary powers in the discharge of their public functions. Such discretion is not subject to the powers of review and supervision of the courts of record in Nigeria. In the exercise of its review power of administrative acts the court is not concerned with the merits of the acts, it is concerned solely with the question of legality i.e. substantive or procedural.

In reviewing legality the court applies the doctrine of ultra vires by which, where a particular administrative agency acts in excess of powers given to it by the law or act without power at all, the Court will not hesitate to review such action.³³ The purpose of judicial review is to checkmate excesses and arbitrary use of power by the administrative organs of the government and also to provide remedies for maladministration and other administrative wrongs.

In Nigeria, unlike in Britain, where the doctrine of Parliamentary Supremacy prevails, not only must an administrative act be within the enabling Act, it must also be in accordance with the Constitution. All Nigerian superior courts of record have Constitutional powers to review not only administrative acts of the officials but also their executive orders. It may be said that Common Law Doctrine of ultra vires has found expression in section (1) of the Constitution of Nigeria³⁴ the effect of that section is that every act of any of the governmental department' or authority must conform to the provisions of the Constitution. Any act of such department or authority which is inconsistent with the Constitution is void to the extent of its inconsistency. This is the

³²*Ogoja vs. Adamawa N.A* (1959) NRNLR 151

³³Danladi, K.M.op.cit. p.115

³⁴Ibid p.17-34

most important basis of courts in Nigeria to review administrative actions. Thus, the courts in Nigeria have Constitutional, Statutory and Common Law basis to review administrative acts.³⁵

The 1999 Constitution as Amended has conferred on the judiciary the power of judicial review that is the power to review both the executive and legislative actions in relation to the Constitution. It seems the deposition of the judicial review power in the Nigerian judiciary by the Constitution is a logical concomitant of Federalism, as in Nigeria powers and functions are divided between the Federal, State and Local Government respectively as it is obtained in other federations.

It is trite that the doctrine of judicial review is based on the fundamental principle that powers can only be validly exercised within their limits. In Nigeria, judicial review is based on the premise that the Constitution is a supreme law subject to amendment only by an extra ordinary legislative process provided for in the Constitution itself.³⁶ Being thus, superior to Statute, Equity and Common Law, all governmental powers are therefore limited by terms provided for in the Constitution.

The judges are therefore expected to enforce the provisions of the Constitution as the supreme law to nullify any administrative act or order in conflict with it. It is in this sense, that the judges play a very vital role in the safe-guard of the liberty of the individual as well as the protection of his property under the Constitution. These important functions are best carried out by the judiciary, who are neutral as they are more insulated than the other arms of the government, Nwabueze³⁷ rightly observed that:

Insulated from the clash of interest and the pressure for expected accommodation, the courts are well placed to distil principles out of society's fundamental press-up positions, establishing them as active principles of the Constitutional system according to which

³⁵Section 6 and 4(8) 1999 Constitution (as amended)

³⁶Ibid Section (9),

³⁷ Nwabueze op.cit p.366

propriety (i.e. constitutionality) of actions of the legislature and executive are to be judged.

The essence of this quotation is that the judiciary are expected to uphold this noble calling they have been called to interpret the law so that certainty and uniformity is established in the country. Superior courts have jurisdiction to control proceedings of tribunals by way of judicial review. When tribunals are wrong, the High Court has power to put them right so as to do justice to the complainant.

2.5 The Power of Judicial Review under the Constitution

There are some sections contained in the Constitution where from the deductible conclusion one may draw from them is the vesting of power of judicial review in our courts. Section 1 (1) and (3) of the Constitution provides:³⁸

1. This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
2. If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void.

The intendment of the framers of the Constitution is to make the Constitution the supreme law of the land, as that intention is very obvious from the above section. The courts from that section are impliedly empowered to declare any law which is inconsistent with the provisions of the Constitution void. It follows therefore, that the courts being the forum for interpretation of the law are the ones entrusted with the power of enforcing Constitutional limits. It may be observed that right from the onset that the framers of the Constitution envisage that it is the rule of law that will prevail in the governance of the polity Nigeria. The 1999 Constitution (as amended) based on the

³⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) op.cit

separation of powers expressly vested the judiciary with judicial power. Section 6 provides:³⁹

- 1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.
- 2) The judicial powers of a state shall be vested in the courts to which this section relates, being courts established subject as provided by Constitution, for a state.

The section above vests judicial powers of the federation in the courts namely, the Supreme Court, the Courts of Appeal and the Federal High Courts and to create such other courts and vest them with judicial powers in matters with respect to which the National Assembly has powers to make laws. Similarly, the judicial powers of a state are vested in the High Court of a state, the Sharia Court of Appeal of a state, the Customary Court of Appeal of a state and that of the Federal Capital Territory inclusive. The states are also empowered to create courts and vest them with judicial powers and their jurisdiction at first instance or on appeal can be only matters with respect to which a House of Assembly has power to make laws. These courts mentioned above are the only superior courts of record in Nigeria and they have all the powers of superior courts of records.

The difference between the judicial powers of the federation and those of a state is that, the judicial powers of the federation are exercised over Federal Legislative matters in the exclusive and concurrent list, while judicial powers of the state apply to matters within the legislative competence of the states.⁴⁰ Another subsection relevant to the power of judicial review is subsection (6) of section 6⁴¹ which reads as follows:

- 1) Shall extend, notwithstanding anything to the contrary in this constitution to an inherent powers and sanctions of a court of law.

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

- 2) Shall extend, to all matters between persons or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any questions as to the civil rights and obligations of that person.

The above provisions specify the scope and content of the judicial powers vested by the Constitution in the courts. While the same judicial power does not extend to the question as to whether any act or omission by any law of any judicial decision is in conformity with Fundamental Objectives and Directives Principles of State Policy set out in Chapter II of this Constitution and also does not extend to any action or proceedings relating to any existing issues or questions as to the competence of any authority or person to make any such law.⁴²

These areas listed above are exceptions to the judicial review powers of the Nigerian courts. Section 4(8)⁴³ is another Constitutional provision conferring power of judicial review on Nigerian Courts. S. 232⁴⁴ confer upon the Supreme Court, original jurisdiction in dispute between the federation and state or between states if the dispute involves questions whether of law or fact on which a legal right depends.

While, S 233⁴⁵ confers on the Supreme Court the exclusive jurisdiction to hear and determine appeals from the Court of Appeal. By virtue of S.235⁴⁶ the Supreme Court is the final court to which an appeal shall lie in Nigeria, which makes it the apex court in the country. Another Constitutional provision conferring power of judicial review is S.239⁴⁷ which confers original jurisdiction on the Court of Appeal to hear and determine election petition as to, whether any person has been validly elected to the office of the

⁴² Ibid. Section 6 (6) (c)

⁴³ Ibid

⁴⁴ Ibid. Subsection 1

⁴⁵ Ibid. Subsection 1-6

⁴⁶ Ibid

⁴⁷ Ibid

President, Vice President, or whether the term of office of the President, Vice- President has ceased or whether their offices have become vacant.

The appellate jurisdiction of the Court of Appeal is provided for in S.240⁴⁸. which confers on the court the exclusive jurisdiction to hear and determine appeals from the Federal High Court, the High Court of the Federal Capital Territory, Abuja, the Sharia Court of Appeal the customary court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a state, the Customary Court of Appeal of a state and from decisions of a court marital or other tribunal, some of these tribunals are listed in section 246⁴⁹.

The Federal High Court is conferred with numerous jurisdictions on matters as contained in S.251⁵⁰ in addition for the purpose of exercising its jurisdiction the Federal High Court shall have all the powers of a High Court. The jurisdiction of the High Court of the Federal Territory Abuja and that of the states are similar⁵¹ except subsection (3) contained in the jurisdiction of the states' High Court Jurisdiction, which says; "Subject to the provisions of S. 251 and other provisions of this Constitution to hear and determine, whether the term of office of a Governor or Deputy Governor has ceased or become vacant." So also the jurisdiction conferred on the Shariah Court of Appeal of the Federal Capital Territory, Abuja, the Shariah Court of Appeal of the states, the Customary Court of Appeal of the Federal Capital Territory, Abuja and the Customary Court of Appeal of the States all have similar jurisdiction conferred on them by the Constitution.⁵²

⁴⁸Ibid

⁴⁹Ibid

⁵⁰ Ibid

⁵¹ Ibid. Section 257 (1) (2) section 272 (1) (2)

⁵² Ibid. Section 262,267,277 and 282

The general principle of law is Ubi Jus Ibi Remedium, meaning “where there is a right, there is a remedy”, or “where there is a wrong, there is a remedy”.⁵³ Section 46 of the 1999 Constitution as amended among other things provides:

(i) Any person, who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

(ii) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under Chapter IV.

(iii) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purpose of this section.

The net effect of these sections, referred to above undoubtedly confer on the Superior Courts of record mentioned above the power to review the constitutionality or legality of administrative actions. These provisions vested on the judiciary (superior courts of record) the power and duty to examine whether the Constitution or any statutes has been complied with and that it is not contravened by the executive arm of the government or any other authority or individual.

2.6 The Role and Attitude of the Judiciary

The role of the judiciary here will mean the role of the courts, as it has been earlier discussed. The judicial powers are contained in section 6 of the constitution as amended. Such powers extend (notwithstanding anything to the contrary in the constitution) to all inherent powers and sanctions of a court of law.⁵⁴ The judiciary as the hope of the common man, is saddled with the responsibility of holding the scale between the states,

⁵³ Malemi E. (2012) Administrative Law (4th ed.) Princeton Publishing Co. Lagos p.291

⁵⁴ Aguda, T.A. (1983) The Judiciary in Nigeria: In the Judiciary in the Government of Nigeria, New Horn Press Ltd, Ibadan. p.17

the executive and the citizen, particularly as it affects the courts role in judicial review of administrative actions.

The importance of the courts in review of administrative actions in Nigeria today cannot be overemphasized particularly in a democratic country like Nigeria. This is critical once there is an abuse of such administrative powers. The role of the court/judiciary under a democratic settings is to see that the rule of law is maintained, as that will be the expectation of the citizens to its judiciary like it is in Nigeria. As a result of that role, the judiciary has been described in different terms such as the “watch dog” the “umpire” the “arbiter” and the “scale holder”.The actual work the courts do most under judicial review is interpretation of statutes and enabling laws establishing the bodies or authorities regulatory bodies/administrative bodies.⁵⁵

It therefore, means the work of the judiciary is to interpret or construct the meaning and the function the administrative body is expected to perform considering it enabling law, which work calls for diligence. What should be attitude of the judiciary but for the interpretation of the provisions of the constitution which outreach fundamental rights? For in my view, the attitude of a judge to the role that he believes himself called upon to perform will depend to some extent upon his personal commitment to either the positive view or the natural law view⁵⁶. Here the author was expressing his view as to what the attitude of a judge, the court or the judiciary should be when it comes to interpretations most especially where it affects the fundamental rights of citizens which the constitution protects, the two approaches or attitudes that the judge can employ are either the positive review or the natural law view.

The positive law view is defined as the positive law typically consists of enacted laws- the codes, statutes and regulations that are applied and enforced in the

⁵⁵ Barnett, H. op.cit p.839

⁵⁶ Aguda op.cit pp. 42-43

courts.⁵⁷ Body of man-made laws consisting of codes, regulations, and statutes enacted or imposed within a political entity such as a state or nation.⁵⁸ While the Natural law is defined as; “a philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative or judicial action: Moral law embodied in principles of right and wrong.⁵⁹ It is a system of right or justice held to be common to all humans and derived from nature rather than from the rules of society, or positive law.⁶⁰ This definitions shows the types of approaches or attitudes the courts use in arriving at their decisions, one is to see that justice is done while the other is to see the strict application of the codes.

By and large the attitude of most judges in the common law countries including Nigeria is one of a tendency towards positivism.⁶¹ It therefore means that the attitude of Nigerian judges is towards positive law view of law, which does not see to the actual enforcement of justice but rather to the strict application of the codes.

2.7 Historical Development of Judicial Review of Administrative Actions.

The (Supervisory) jurisdiction has a respectable history dating back to medieval time.⁶² The Court of King’s Bench at Westminster was concerned, in the name of the Sovereign, to ensure that inferior bodies observed the law, fulfilled public duties, and did not act beyond the scope of their powers⁶³. This jurisdiction of the King’s Bench became vested in the High Court as a result of the Nineteenth Century court reforms, and is now exercised by single Judges, of the Divisional Court of the Queen’s, Bench division.⁶⁴

⁵⁷ Garner, B.A. (2009) Black’s law Dictionary (11th ed.) West Publishing co. p.1281

⁵⁸ <https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.businessdictionary.com/definition/positive-law>. Accessed on 21st August, 2019 at 4:59

⁵⁹ Ibid. p.1127

⁶⁰ <https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.britannica.com/topic/natural-law>
Accessed on 21st August, 2019 at 4:57pm

⁶¹ Aguda T.A. op.cit p.43

⁶² Garner J. F and Jones B.L. op.cit p.104

⁶³ Ibid. p. 104 - 105

⁶⁴ Ibid

The jurisdiction is ‘inherent’ in the sense that it does not owe its origin to statute⁶⁵. It is a general power to review the legality of the exercise (or non exercise) of any statutory function.⁶⁶ Since the days of the Greek Philosophers there has been recourse to the notion of law as a primary means of subjecting governmental power to control. Aristotle argued that government by laws was superior to government by men.⁶⁷

The legal basis of the state was developed further by Roman lawyers. In the middle ages, the theory was held that there was a universal law which ruled the world.⁶⁸ Gierke wrote: ‘medieval doctrine, while it was truly medieval, never surrendered the thought that the law is by its origin of equal rank with the state and does not depend on the state for its existence’.⁶⁹ Bracton, writing in the 13th century maintained that rulers were subject to law: ‘The King shall not be subject to men, but to God and the law; since law makes the king’.⁷⁰ The Bill of Rights in 1689 affirmed that the monarchy was subject to the law. Not only was the Crown thereby forced to govern through Parliament, but also the right of individuals to be free of unlawful interference in their private affairs was established.⁷¹

The writer of a modern textbook on administrative law observe that, ‘the origins of judicial review are complex, and are interwoven with the intricacies of the prerogative writs’⁷²...the history of Judicial Review can indeed be traced through an examination of

⁶⁵ Ibid

⁶⁶ ibid

⁶⁷ d’ Entreives, p. 71. In: Wade & Bradley (2007) Constitutional and Administrative Law (14th ed.) Pearson Education Limited p.59

⁶⁸ Wade & Bradley (2007) Constitutional and Administrative Law, In: (ed. By Bradley A.W. & Keith E.) (14th ed.) Pearson Education Limited p.95

⁶⁹ d’ Entreives, p.83 In: Wade & Bradley (2007) Constitutional and Administrative Law (4th ed.) Pearson Education Limited p.95; Maitland, Constitutional History, pp100-4; McIlwain, constitutionalism ancient and modern, ch 4.

⁷⁰ d’ Entreives, p 86 In: Maitland, Constitutional History, pp 100 – 104 McIlwain, Constitutionalism Ancient and Modern, Ch 4.

⁷¹ Supperton, M and Goudie J. (1992); Judicial Review, Butterworth & Co.(publishers) Ltd p.1. In: Wade & Bradley Constitutional and Administrative Law (14th ed.) Pearson Education Limited (2007) p.95

⁷² Ibid p.1. In: Craig.p.p Administrative Law(2nd ed.) London,(1989) p.5

the development of legal remedies.⁷³ It will become apparent from the account that follows that the development and application of these remedies in an ever-growing variety of public law contexts was the product of many centuries of uncoordinated judicial activity, most of it directed at problems that have little parallel with those that come before the Queen's Bench Divisional court today.⁷⁴

Moreover, it took place without benefit of foresight about how the modern state would eventually look.⁷⁵ The core of judicial review in the guise we know it today, comprised the ancient writs of *Certiorari*, *Prohibition* and *Mandamus*.⁷⁶

Professor De Smith has explained how these writs, alongside others, now more or less defunct, was originally associated exclusively with the king but was later issued selectively to the king's subjects. The *writ of certiorari*, 'essentially a royal demand for information', was developed by the court of King's Bench, mainly on the basis of its being increasingly recognised as an invaluable device for regulating the activities of Justices of the Peace, whose statutory powers were greatly extended in the years following the Restoration. Its origin lies in the thirteenth century. More than four hundred years later, we find Chief Justice Holt declaring in *Groenvelt vs. Burwell*⁷⁷... "where any court is erected by statute, a certiorari lies to it". The ancient writ of prohibition, forbidding the commencement or continuance of proceedings in absence or excess of jurisdiction or contrary to law, was used originally to limit the jurisdiction of the ecclesiastical courts⁷⁸

Mandamus, issued to compel performance of public duty, began to assume its modern form in the sixteenth century, though its status was established by James Bagg's

⁷³ Ibid

⁷⁴ Ibid. p.4

⁷⁵ Ibid

⁷⁶ De Smith, S.A. (1951) 'The prerogative writs', 11 CLR 40-56 In: Supperstone.M. and Goudie.J. (1992) *Judicial Review*, Butterworth & co. (publishers) Ltd. p.5

⁷⁷ (1700) 1 Ld Raym 454, 12 mod 386.

⁷⁸ Supperstone.M. and Goudie,J. op.cit p. 5

case⁷⁹ in 1651. Herein the court of King's Bench ordered the reinstatement of a deposed chief burgess of Plymouth to his 'freehold' of office...⁸⁰ The basis of the decision was that Bagg had been removed from office without notice or hearing and the case is an early landmark in the evolutionary development of the *audi alterem partem* rule one of the two principles of natural justice (the other being the rule against bias – *nemo iudex in Causa Sua*).⁸¹

The principle of natural justice or, in the phrase commonly used nowadays, the duty to act fairly⁸² have evolved via landmark cases like *Cooper vs Wandsworth Board of work*⁸³ in the nineteenth century and *Ridge vs Balwin*⁸⁴ in the twentieth into important weapons in the memory of Judicial review today.⁸⁵ And it was Lord Mansfield, in the middle of the eighteenth century, who first designated these writs collectively as 'prerogative writs', because of their intimate connection with the rights of the crown, by which de Smith notes, 'each writ had developed piecemeal its own characteristics'.⁸⁶

As already noted, certiorari acquired a particularly important role in enabling the High Court to exercise supervision over Justices of the Peace. Throughout the eighteenth century, and for the early decades of the nineteenth century, the Justices were responsible not only for summary judicial functions but also for the entire business of local government in the Counties. In their use of the prerogative writs to supervise and correct these inferior courts the Judges of the High Court made little distinction between the judicial and administrative functions of the Justices: 'it is clear that many of the acts and

⁷⁹ (1651) 11 co. Rep 93b.

⁸⁰ Supperstone.M. and Goudie.J. op.cit p. 5

⁸¹ Ibid. p.6

⁸² William Wade, (1988) Administrative Law, (6th ed.) Oxford, pp.522-6

⁸³ (1863) 14 CBNS 180

⁸⁴ Supra

⁸⁵ Supperstone.M. and Goudie,J. op.cit p. 5

⁸⁶ De Smith, loc cit, n 16 ante at p56

proceedings of the Justices of the Peace were not judicial’ yet all of them were subject to review on certiorari and *mandamus*.⁸⁷

But from the 1830s a new system of Local Government emerged and with it a new role for the prerogative writs: A line of important cases such as *Cooper vs Wandsworth Board of work*⁸⁸ in which the Court of Common pleas supplied ‘the justice of the Common Law [to the] omission of the legislature’ and held that a local authority intending to carry out a demolition order should have given notice to the property owner and an opportunity for him to be heard, marked the dawn of the modern era of judicial review.⁸⁹

In recent years local authorities, created by statute and subject to a strict ultra vires rule, have featured prominently in the report of judicial review proceedings sometimes as respondents to the aggrieved citizen-applicant, sometimes in litigious dispute with another local authority... or with central government.⁹⁰ Before, leaving the subject of public law remedies we must note the development alongside the prerogative writs, of another remedy, the declaratory judgment, commonly reinforced by the coercive relief of an injunction, destined in due course to find common shelter under the umbrella of the application for judicial review. Yet as Lawson has pointed out, ‘the declaratory judgment, unaccompanied by coercive relief, is in England not more than a hundred years old though it had long been a regular remedy in Scotland under the name of “declarator”⁹¹

The modern procedures relating to judicial review of administrative action have evolved through the gradual adaptation to changing social and constitutional circumstances of the ancient writs of certiorari, prohibition, and *mandamus*, allied with the more recent

⁸⁷ Supperstone.M. and Goudie,J. op.cit p 6-7

⁸⁸ Supra, In: Supperstone.M. and Goudie,J. op.cit p 6-7

⁸⁹ Ibid p. 7

⁹⁰ Ibid

⁹¹ Ibid

use, in public law contexts of other remedies, notably declaratory orders and injunctions.⁹²

2.7.1 Emergence of the Concept of Administration

We are after all, talking about judicial review of administrative action and public administration, and public bureaucracies are phenomena peculiar to modern developed societies. It is possible to trace some of the organisational forms and practices of modern administrative practice back to the ancient polities of Egypt and Greece; the concept of civil service is sometimes said to have originated in china during the Tang dynasty of the seventh to the tenth centuries A.D.⁹³

In Britain, with its long and almost unbroken timescale of Constitutional development, the theory, practice and institutions of public administration are, relatively speaking, of very recent origin. The modern United Kingdom civil service began to emerge after the Northcote Trevelyan Report of 1854, but it has been pointed out that until 1870, statesmen and leading administrators were reluctant to talk of the ‘civil service’, they used instead such terms as the ‘public offices’ or the ‘public establishment’.⁹⁴ Local Government, in even an embryonic version of the form in which we see it today, dates back only to the first half of the nineteenth century⁹⁵

The word, bureaucracy deployed pejoratively in the 1920s by Lord Hewart in the New Despotism, was barely a recognisable item of English vocabulary in Dicey’s day⁹⁶. The expression, civil servant, was only just gaining general currency. There were no public department of (for instance) the Environment, Health, Energy, Transport, Employment and Social Services. Multi-purpose elected local authorities ... for the modern development of Judicial review-were just beginning to emerge, albeit with only a

⁹² Lawson, F.H. (1972), Remedies of England Law Harmondsworth, p.266

⁹³ Supperstone M. and Gordi, J. (1992) Judicial Review, Butterworth & co. (publishers) Ltd p.2

⁹⁴ Supperstone, M. and Goudy, J. op.cit p.2

⁹⁵ Ibid

⁹⁶ Oluyede, P.A. (1995) Nigerian Administrative Law, University Press, Plc, Ibadan p.2

fraction of the range of responsibilities heaped on local government in the first three-quarters of the twentieth century.⁹⁷

Justices of Peace emerged in medieval times as the executive agents of the monarch throughout the country. They were given statutory power to maintain law and order by the Justices of Peace Act 1361.⁹⁸ But in addition to this better known criminal Jurisdiction they acquired many administrative and governmental responsibilities.⁹⁹ In the allocation of these powers, it is noticeable that, even at this early period, there was a significant overlap of judicial and administrative functions. The Justices effectively acted as court as well as administrators.¹⁰⁰

Administrative law in this context was part of the English legal system imported into this country by means of local legislation in 1863¹⁰¹. The most important of such pieces of local legislation ... is the Supreme Court Ordinance 1914 which in effect introduced into Nigeria the rules of the English Common Law, the Doctrine of Equity and Statutes of General Application which were in force in England on the 1st day of January 1900.¹⁰² Of course, this will include the crown prerogative and, more particularly for the purpose of this book, the principles of constitutional and administrative law. It is therefore, no surprise that Nigeria formulated its Constitution before independence on the English pattern with the resultant side effect which produced administrative law principles similar to those of Britain¹⁰³

Nigeria has moved from colonial status to independence under a parliamentary system of Government and further on to a Republican status and later a Presidential system of Government but, the principle of administrative law have remained essentially

⁹⁷ Ibid.

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Malemi E. op.cit p.118

¹⁰³ Bennett .H. op.citp.889

unchanged. This is not to say that the procedure by which some remedies are obtained have not changed nor have the methods by which administrative authorities are controlled remained the same over the years¹⁰⁴

In conclusion, this chapter attempted to clarify the terms used in this research as well as examine the constitutional basis of the courts powers to review administrative actions as well as the role of the judiciary. In the same vein the courts that are to exercise such powers were identified to the courts of superior record, and the history of judicial review tracing it from medieval times.

¹⁰⁴ Garner J.F. Jones B. L. op.cit p. 104

CHAPTER THREE

JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS UNDER NIGERIA LAW

3.1 Introduction

Judicial review of administrative action is one of the essential component of administrative law. The conditions or the essentials that the court will consider when granting a remedy to an aggrieved person or the circumstances in which decisions of administrative authorities can be challenged will be discussed. The courts watchful eyes are directed “to preventing abuses of jurisdiction, to correcting grave errors of law apparent on the record and to seeing that the principles of natural justices are observed”.¹ In this chapter, the ground of judicial review is considered such as ultravires, rules of national justice and error on the face of the record. To see how and when the court can intervene to review administrative actions.

3.2 Grounds of Judicial Review of Administrative Actions

The grounds for judicial review are the conditions or the essentials that the court will consider in granting a remedy to an aggrieved party or citizen or the circumstances in which decisions of administrative authorities can be challenged. It is suggested that a decision or act of an administrative authority may be challenged if:²

- i. It exceeds the statutory powers conferred on the body making it.
“substantive Ultra Vires”
- ii. There has been a disregard of some procedural requirement,
- iii. “Procedural Ultra Vires”
- iv. There has been a violation of the rules of natural justice
- v. The decision-making body has abused its discretionary power
- vi. There is an error of law on the face of the records

¹*R vs Deputy Governor, E.N.* (1960)4 E.N.L.R. 103 at 106 per Betuel J.; In:Eka B.U. (2001)Judicial Control of Administrative Process in Nigeria, Obafemi Awolowo University Press Ltd. Ile-Ife p. 66.

² Garner J.F. Jones B. L. (1985) *Garner's Administrative Law* (4th ed.) Butterworth and Co. Publishing Ltd. p.125

3.2.1. Substantive *Ultra Vires*

It is a general principle of law that if an act of an administrative authority is in excess of the powers conferred by the enabling law or if the power is used improperly such an act will be declared by the courts as null and void.³ Substantive *Ultra Vires* is an exercise of power beyond that conferred by the Constitution or statute. If the power exercised or act done is beyond the power or authority conferred by statute, whatever the name of the statute there is *Ultra Vires*, for the doer has acted outside or beyond the power conferred on him by law.⁴ Again, administrative act may be declared as substantive *ultra vires* because it is done by a wrong person, even if the action were allowed by the enabling statutes, this may perhaps occur in the case of delegation and sub-delegation of powers.⁵

In *Allingham vs Minister of Agriculture and Fisheries*,⁶ the minister had by regulations lawfully delegated to a country's war Agricultural committee his power to give directions concerning the use for Agricultural purposes land specified in the notice of direction. The committee decided that eight acres of sugar beet should be grown by the occupier of certain land, but left it to its executive officer to select the acres to which the direction should apply. The officer consulted a local sub-Committee appointed to make recommendations to the Committee; acting on its advice, he served a notice on the occupier specifying the acres. The notice was held to be invalid as the Committee had left to the officer the duty of deciding something they had to decide for themselves. Taking from the case above it will be seen that non compliance with the powers conferred on an administrative authority, will render any action done outside that power to be subject to review and same will be held to be null and void and of no effect. Here it can be seen that

³ Iluyomade, B.O. & Eka, B.U (1992) Cases and Materials on Administrative Law in Nigeria (2nded.) University of Ife Press Ile-Ife p.83

⁴ Malemi E. (2012) Administrative Law (4thed.) Princeton Publishing Co. Lagos. p.347

⁵ Kabir M.D. (2012) Outline of Administrative Law and Practice in Nigeria Ahmadu Bello University, Press Limited Zaria p. 126

⁶ (1947) IAL E.R. 780

it was the natural law attitude that was applied. Therefore, the common question is whether an administrative authority in the exercise of its powers has performed only those acts the law specifically authorized, or those acts which “may fairly be regarded as incidental to or consequential upon those things which the legislature has authorised”.⁷

Dillion⁸ in an effort to answer this question explained that: it is a general and undisputed preposition of law that Municipal Corporation possesses and can exercise the following powers and no other:

- i. Those powers granted in express words.
- ii. Those powers necessarily or fairly implied in or incidental to the powers expressly granted; and
- iii. Those powers essential to the accomplishment of the declared objects and purposes of the corporation, not simply convenient but indispensable.

This indeed gives the court the discretion of applying the rule of interpretation. It must however be noted that, this problem seems to have been settled, yet there appears to be some difficulty in this area. Sometimes the court can apply strict interpretation and declare such incidental acts or those necessarily or fairly implied null and void and hence *ultra vires*, and in some, liberal interpretation is applied by declaring them not *ultra vires*.⁹ In this case it is clear that the court gave the statute its literal meaning, that the delegated power given to the committee ought not to be sub-delegated to another sub-committee which the statute did not provide for so the court was right when it declared that sub-committee had no power to exercise the power it did, being not empowered by the statute, which was the right position of the law under judicial review.

For example, in *Akingbage vs Lagos Town Council*¹⁰ strict construction was applied. In this case, the plaintiff’s claims were for the declaration that the purported

⁷ Malemi, E. op.cit p.348

⁸ Municipal Corporation 5Lhed. p. 448.

⁹ Danladi, K.M.op.cit p. 127

¹⁰ (1955) 21 N.L.R 90

making of Public Health Rule No. 55(3) (as amended by the Public Health Rule 1954). Under the provisions of the Public Health Ordinance was *ultra vires* and that the said rule was therefore void and of no effect. The issue for determination in the case was whether the making of Public Health Rule No. 55 (3) made under section 42 of the Public Health Ordinance (cap. 183) was *ultra vires*. Section 42 comes under the heading “miscellaneous provisions” and empowers the making of rules relating to the general public health... The appropriate authority subsequently amended the rule to provide for a fee of £5 instead of 5 shillings. The amendment is stated in the western Region Legal Notice No. 54(3) of 1954 and made under the powers conferred by section 42.

The court held that, the plaintiff is entitled to succeed in this action and declared that paragraph 3 of the Public Health Rule No. 55 (as amended) is *ultra vires*, and therefore void and of no effect and order the refund of £5 paid by plaintiff. Here the court upheld the application of the plaintiff for the declaration that the appropriate authority acted *ultra-vires* the powers conferred on them by increasing the fees to £5 instead of 5 shillings. Which also shows the attitude of the court as being an umpire that wants the rule of law to prevail over the rule of man. In this case the strict construction of the enabling statute by the court brought out the justice of the case, as laws have an end to achieve, which is the duty of the court to discover and which it did in this case. The authorities are expected to confine themselves within the bounds of their enabling law.

3.2.2 Procedural *Ultra Vires*

Where an enabling statute which gives an administrative agent power to take or exercise some actions lays down the procedure to follow before such action can be exercised, failure to comply with such procedures will lead to declaring such action as *ultra vires* by the court¹¹. Procedural *ultra vires* usually occurs in an act that is actually “*intra vires*” that

¹¹ Danladi K.M.op.cit p. 131

is an act that is within ones power to do¹². In declaring any administrative act as *ultra vires* on ground of procedures, the court take into cognizance whether such procedure required are mandatory or directory.¹³ Where mandatory procedures required are not observed, the action will be declared as *ultra vires*. If the procedures are directory, then non-compliance may not lead to declaring it as *ultra vires*¹⁴. In fact, it has been declared over a century ago that:¹⁵

No universal rule can be laid down for the construction of statutes as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.

The words “shall or must” have been associated with a duty or command while “may” is taken to be permissive as has been in many decisions of the courts. In *Bradbury vs London Borough of Enfield*¹⁶ S.13 of the Education Act, 1944 requires that any local education authority which decides to cease to maintain a school or to establish a new school should give notice to the public of its plans to do so. A local education authority adopted a comprehensive system of secondary education but omitted to publicise such proposals. There were however, interesting arguments as to whether the authority’s plans amounted to ceasing to maintain or establishing new school within the meaning of the Act, which of course, the Court of Appeal held they were because the changes were fundamental enough to a new establishment of a new enterprise.

But for our purpose, the main question was whether the requirement of publicity was mandatory or directory. The Court of Appeal answered in favour of mandatory

¹² Malemi, E. op.cit p.349

¹³ Danladi, K.M. op.cit p. 131

¹⁴ Ibid

¹⁵ Eka B. U. (2001) *Judicial Control of Administrative Process in Nigeria*, Obafemi Awolowo University Press Ltd. Ile-Ife pp. 144-145

¹⁶ *ibid* p. 145.

procedure and granted the injunction prayed for. In this case the violation, which necessitated the nullification of the whole process as judicial review requires administrative authorities exercising powers to follow the due process of the law, so as to safeguard public interest and rights. Also, in *Fletcher, vs Minister of Town and County Planning*¹⁷ “F” challenged the order by which the minister designated Hemel Hempstead as a new town. He said that, the meetings which had taken place did not constitute that consultation which the minister was required to have with local authorities. Morris, J. said that the meeting should not be looked at separately “consultation may often be a somewhat continuous process”. He found that the local authorities has been clearly informed of the minister’s intention and could say anything they wanted to say.

In above case the court construed the meetings to be consultation which the plaintiff thought otherwise, because the meetings were not per se a meeting for consultation, as the statute requires, here the court gave a narrow interpretation of the word consultation, had it been that the court gave a broader interpretation, the meetings will have not amounted to consultation, as the plaintiff prayed the court, so it means the outcome of an application for judicial review is subject to the interpretation the court gives to a statute or word in the statute. In this instant the court applied the natural law view to attain justice.

3.2.3 Rules of Natural Justice

As one of the principles of Judicial control, the concept of natural justice performs a very important function in the field of administrative law in that it helps to maintain certain standards of fairness in administrative justice.¹⁸ Within the context of administrative law, natural justice may mean treating a person in a fair and justifiable manner to the standard

¹⁷ (1947) 2 ALL ER 496 op.cit p.132

¹⁸ Eka. B.U., op.cit p. 242

required by any reasonable person of law¹⁹. There is no universally or generally accepted definition of natural justice.²⁰ However, Lord Denning in the case of *Kadan vs Government of Malaya*²¹ puts it thus:

The rule against bias is one thing; the right to be heard is another. Those two rules are essential characteristics of what is often called natural justice. They are twin Pillars supporting it. The Romans put them in the two maxims: *Nemo Judex In Causa Sua*; and *Audi Alteram Partem*. They have recently been put in the two words impartiality and fairness.

Historically, natural justice developed in English Law as a concept founded upon the moral and ethical notions of justice.²² Today rules of natural justice, fair hearing or trial rights are much more comprehensive and are better particularised and expressed in the form of a fair hearing provision in the constitution of a country, such as, the Nigerian Constitution. The two main requirements of natural justice have been adequately incorporated into the Nigerian Constitution by the words “fair hearing” meaning *audi alteram partem* and “impartiality” meaning *nemo Judex in causa sua* which are inserted in section 36(1) of the 1999 Constitution (as amended).²³ The remaining requirements of natural justice or fair hearing are comprehensively and adequately set out in the rest of the fair hearing clause of the Nigerian Constitution²⁴ Therefore, rules of fairness maybe used interchangeably with rules of natural justice.²⁵ It has been observed that there are two rules of natural justice which are; *Audi alteram partem* and *Nemo Judex in causa sua*. Which are considered in turn.

¹⁹Danladi, K.M.op.cit p.115

²⁰ Malemi, E., op.cit p.206

²¹ (1962) A.C. 322 at 336-337

²² Eka B.U. op.cit p. 242.

²³ Danladi, K.M.op.cit p.116

²⁴ Ibid

²⁵ Malemi, E., op.cit p.206

3.2.3.1 *Audi Alteram Partem*.

Audi alteram partem is a Latin expression which means, hear the other party. It means hear the other side or the various sides in a dispute before reaching a decision or judgment.²⁶“*Audi Alteram Partem*” means “hear the other side”. It denotes basic fairness and it is a canon of natural justice.²⁷In other words, no person shall be penalised by a decision of any court, tribunal or administrative decision unless he has been given adequate opportunity to answer the case against him. It also means that no man should be condemned unheard.²⁸ The essence of this right to be heard was aptly stated in the case of *R. vs Cambridge University*,²⁹ wherein the court stated that “Even God himself did not pass sentence upon Adam before he was called upon to make his defence”.

Also in *Ridge vs Baldwin*³⁰ the plaintiff a Chief Constable had been prosecuted on a charge of conspiracy but acquitted, in spite of the acquittal, his employer, a local authority dismissed him from his post. The plaintiff was not given any opportunity of being heard before his dismissal, the House of Lords, eventually granted a declaration that the dismissal was a nullity as the *Audi alteram partem* rule had been neglected. Here the court was right to have declared that the dismissal was a nullity as the *audi alteram partem* rule was not observed, since that rule was not observed the plaintiff had a right for judicial review, if the declaration was not allowed he could have suffered an irreparable injustice by losing his job.

Also in the Nigerian case of *Adedeji vs Police Service Commission*³¹ the appellant who was an Assistant Superintendent of Police in the Nigerian Police service was served

²⁶ Ibid

²⁷ J.S.C. Cross River State vs Young op.cit

²⁸ Danladi, K.M.op.cit p.116

²⁹ (1723) I str. 557

³⁰ (1964) A.C. 40 at 74

³¹ (1968) N.M.L.R. 102 at 107

with a corruption and contravention of certain general orders. The appellant replied to the order stating why he should not be dismissed. The appellant consequently applied to the High Court for an order of certiorari to quash the dismissal, the High Court considering the counter-affidavit by the respondents containing allegations not contained in the letter served to the appellant dismissed his application. On appeal to the Supreme Court, it was argued for the appellant amongst other things that there was denial of Justice, since the full facts or evidence upon which the respondents relied for his dismissal was not brought to his knowledge. The Supreme Court held that certiorari would lie against the dismissal as *audi alteram partem* was breached. Here justice was meted out by the Supreme Court which gave the right interpretation of what the word *audi alteram partem* meant, which the lower court failed to do, meaning that sometimes the court shy away from actually giving the right interpretation, and as such deny a citizen his right but upholding the wrong action of the administrative body.

In another case of *Garba vs University of Maiduguri*³² there was a student demonstration in the university. The Deputy-vice Chancellor was a victim of the rampage, since his house was burnt. On the 9th of February, 1983 the vice-chancellor set up various investigating panels, one of the panels was the Disciplinary Investigating Board was headed by the Deputy vice- Chancellor, during the conduct of the investigation 104 witnesses including students were interviewed. At the end of the investigation several students including appellants were expelled. The appellants brought an action to enforce their Fundamental Human Rights and one of the main grounds for their application was that they were not afforded any right of hearing, since they did not know the evidence given against them. On appeal to the Supreme Court, the Supreme Court held that the expulsion of the appellants from the university inter alia based on the said violation of the

³²(1986) I.NWLR. (Pt. 18) p. 550

fundamental rights of the appellants which guaranteed fair hearing was null and void. This case is similar to the above where it was the Supreme Court that gave the right decision, which the lower court failed to do, because even for the fact that *audi alteram partem* was not observed, the fact that the Deputy Vice-chancellor headed the investigation has laced the proceeding with bias or likelihood of bias, which can grant the court the power to nullify such proceedings, as justice must not only be done but must be seen to be done.

Similarly, in *Adigun vs A.G Oyo State*³³ a Commission made of a Sole Commissioner was appointed to inquire into the historical basis for the claims of parties to a certain Chieftaincy title. There was a failure to invite a section of the family, having invited others who were also interested in the result of the inquiry. The section which was not invited went to court to have the Sole Commissioner's report set aside. The Supreme Court held that there was a breach of *audi alteram partem* rule and accordingly the report of the Commission of inquiry was nullified. Where a Judicial or quasi-judicial body has written materials from both parties upon which it can rely for its decision, but goes further to demand and obtain oral hearing from any party interested in the decision, the elementary principles of Justice requires that the same be done in respect of all those who would be affected by such decision.³⁴

A hearing may be by both oral evidence and written representations, or by either one of the method alone.³⁵ Therefore, a decision reached after a full inquiry based on documentary evidence and written submissions alone without an oral hearing does not violate the rules of Natural Justice.³⁶ Therefore, in every hearing, whether it be purely

³³(1987) 1 NWLR. (Pt. 53) P.678 at 709.

³⁴Malemi, E., op.cit p.201

³⁵Ibid

³⁶Ibid. p. 211 - 212

administrative inquiry, opportunity to be heard must be given to all the parties who are involved in the matter³⁷ However, when a party has been properly charged or properly notified and confronted with accusation against him, and he has had an opportunity to fully state his case, if he freely and voluntarily admits the accusation against him, then such party may be sanctioned according to law.³⁸ Here the court was right to have nullified the proceedings of the commission of inquiry as the other side which has an interest in the outcome of the proceedings was not heard.

In another case of *judicial service commission Cross Rives State vs Young*³⁹ the respondent was the chief registrar of the High Court Cross Rivers state, she was appointed the receiver of the estate of a man who died intestate and was a subject of litigation. The respondent was subsequently re-assign to the office of the Director of Planning, Research and Statistic in the High Court which she refused to assume the office as she saw the deployment as a demotion. The respondent was, sequentially queried, suspended and retired, though the respondent responded to the queries, she was never called to appear and confront her accusers who testified before the 1st Appellant (judicial service commission)

An application for certiorari at the High Court and the appellants filed and argued that certiorari cannot lie against the 1st appellant, as it is an administrative body and acted in purely administrative capacity, the High Court agreed and struck out the respondent's application, aggrieved she appealed, and the court of Appeal set aside the order of the trial court. The appellant not satisfied appealed to the Supreme Court where the court held that: "Audi alteram partem" means "hear the other side". It denotes basic fairness and it is a canon of natural justice. It is the duty of anyone in control of proceedings to allow both

³⁷ Ibid. p. 212

³⁸ Ibid

³⁹ (2013) II NWLR (pt 1364) p.1 at p.38.

parties to be heard and should listen to the point of each party. In this case the argument that certiorari cannot lie against the 1st appellant which the lower court conceded to was that the 1st appellant was not acting judicially but rather acting administrative, which point of argument has always been raised by counsel for the administrative authorities, and were the lower courts uphold this argument the applicant will suffer wrong and that was what the lower court did until the Supreme court affirm to Court of Appeal's decision on same. This attitude of the courts have robbed many a citizen of the right were such arguments have been upheld which should not be the case.

3.2.3.2 *Nemo Judex in Causa Sua*

The Latin phrase, *nemo judex in causa sua* or *nemo debet esse judex in propria causa* means that, no one should be a judge in his own cause⁴⁰ No one should be both a prosecutor and a judge, in a matter in which he is a party, or has an interest, or stake.⁴¹ In *Dimes vs Grand Junction Canal Co.*⁴²The Lord Chancellor, Lord Cohenhan was a substantial shareholder in the respondent company in which he presided over as the keeper of the king's conscience, on appeal to the House of Lords, the House of Lords set aside the decision. This case clearly portrays the courts duty of insisting that the rule of law must be observed in all cases involving actions of interior authorities, because he cannot and should not be a judge in his own case. Similarly, in *R. vs Hendon RDC Ex Parte Chorley*,⁴³ in this case one of the members of the Committee dealing with the application was an estate agent acting for the applicants in connection with the sale of the property, the subject matter of the application. He was at the meeting that resolved to permit development, although apparently he took no part in the discussion. Certiorari was granted to quash the decision on the ground of bias. This is also a good decision to deter

⁴⁰ Malemi, E., op.cit p. 214

⁴¹ Ibid

⁴² (1852) H.L.C. 759

⁴³ (1933) 2 K.B. 696

authorities with interest to sit on matters that they have interest on, because by so doing an element of bias is being introduced into the proceeding.

The Nigerian position in respect of the principle of *Nemo iudex in causa sua* is similar to that of England as illustrated in *Obadare and Others vs President, Ibadan West District Grade D Customary Court*⁴⁴ where Brett Ag. CJN said: “The principle that a judge must be impartial is accepted in the Jurisdiction of any civilised country and there are no grounds for holding that in this respect the law of Nigeria differs from the law of England or for hesitating to follow English decisions”. In the case of *L. P. D. C. vs Fawehinmi*,⁴⁵ the Supreme Court considered the rule against bias extensively. Here a legal practitioner one Gani Fawehinmi was alleged to have committed a professional misconduct by engaging himself in ‘advertising, touting and publicity’ by reason of a publication in a weekly magazine, by the Legal Practitioners Disciplinary Committee (L. P. D. C).

Gani received a letter from the office of the Attorney General calling his attention to the advertisement, but before Gani had time to reply, the Attorney-General had filed a complaint and charges against Gani before the Committee. The Attorney-General of the Federation is the Chairman of L.P.D.C. Gani (applicant) filed a prohibition application under the Fundamental Rights (Enforcement Procedures) Rules alleging that the composition of the committee did not secure the independence and impartiality of the Committee in that the Chairman of the Committee (the Attorney-General of the Federation) was both the complainant and prosecutor, he alleged that there was a real likelihood of bias on the part of the Chairman of the Disciplinary Committee.

The High Court granted his application and prohibited L.P.D.C from trying him (Applicant/respondent) on appeal to the Court of Appeal by the L.P.D.C. the whole

⁴⁴ (1964) 1 ALL N.L.R. P.336 at 344

⁴⁵ (1985) 2 N.W.L.R. (Pt.7) p. 300

Justices of the Court of Appeal dismissed the appeal. The L.P.D.C. dissatisfied with the judgment of the Court of Appeal went to the Supreme Court. The Supreme Court held that in the exercise of its disciplinary authority, the L.P.D.C. must observe the rules of natural justice. Not only must it not be biased against a legal practitioner whose conduct is being questioned but also it must not place itself in a position in which it may appear that there is a real likelihood of bias. The word “bias” in its ordinary meaning is an opinion or feeling in favour of one side in a dispute or argument.⁴⁶ It is leaning or acting in favour of one side in a dispute, resulting in the likelihood that the court so influenced will be unable to hold an even scale.⁴⁷ The courts all did a good job in granting the respondent’s application, which was the right thing to do, since there is no way a person being prosecuted by a party who has interest will not create a feeling of bias in the mind of the person prosecuted. In *Eriobuna, vs Obiorah*,⁴⁸ Niki Tobi JCA (as he then was) explaining the meaning of bias said:

In a charge of bias, the integrity or fidelity of purpose and the judge’s traditional role of holding the balance in the matter are questioned. He is branded or seen as one who leaves his exalted, respected and traditional arena of impartiality to descend unfairly on one of the parties outside all known canons of judicial discretion. The judge is said to have a particular interest which cannot be justified on the scale of justice, as he parades that interest recklessly and parochially in the adjudication process to the detriment of the party he hates and to obvious advantage of the party he likes. The judge, at the level, is incapable of rational thinking and therefore is blurred against the party he hates. He is poised for a fight, an instigated fight in which he is the main participant. The conduct of the judge invariably and unequivocally points to one trend and it is that he will give judgment to the party he favours, at all cost, come day or night, come rain or sunshine. Such is the terrible state of mind of the bias judge or one who is likely to be biased. The law recognizes a number of cases of bias. I should confine myself to only one and that is the one relevant to this appeal. It is fore-knowledge or previous knowledge of

⁴⁶ Malemi, E., op.cit p. 216

⁴⁷ Ibid

⁴⁸ (1999) 8 NWLR. (Pt.616) P.622 at 628-629

the case. This arises when the judge at one time or the other had done something in the matter to the extent that he cannot be said to be a completely neutral person or stranger to it...

The test of bias is not subjective but rather objective. In other words, it is from the point of view of a reasonable man who happened to be present in the court and watched the proceedings.⁴⁹ Whenever, an appellate court is considering whether there was the likelihood of bias. The court looks at the impression that was given to right thinking people that observed the proceedings. Here Niki Tobi really stated the position of the law as against the likelihood of bias or bias, which a true reflection of the law on that point. In the words of Lord Hewart in *R. vs Sussex Justices, Ex Parte McCarthy*:⁵⁰ “Justice should not only be done but should be manifestly and undoubtedly be seen to be done”. In essence, administrative bodies or tribunals, acting judicially in the determination or imposition of a decision that is likely to affect the civil rights and obligations of a person are bound and enjoined to strictly observe the principles of fair hearing.⁵¹

3.2.4 Error of Law on the Face of the Record

This is the application of the wrong law or wrong legal procedure in the doing of a thing.⁵² An error is “on the face of the record” where it can be ascertained merely by examining the record of the proceedings kept by the court without having to have recourse to other evidence.⁵³In *Lazarus Estates Ltd vs Beasley*⁵⁴ per Lord Denning that “where a body under a duty to decide questions of law fails to direct itself properly on the law, the decision may be set aside by the courts”.

⁴⁹ Malemi, E., op.cit p.217

⁵⁰ Ibid

⁵¹ Gyang vs C.O.P. Lagos State (supra)

⁵² Ibid. p.350

⁵³ Danladi, K.M., op.cit p.120

⁵⁴ (1956)1 Q.B.702

The House of Lords in *Balwin and Francis Ltd vs Patent Appeal Tribunal*⁵⁵

attempted to delineate the phrase “error of law” thus:

...Is that an error of law? I have no doubt that it is; and it is an error of such kind as to entitle the Queen’s Bench to intervene. There are many cases in the books which shows that if a tribunal bases its decision on extraneous considerations which it ought not to have taken into account a vital consideration which it ought to have taken into account then its decision may be quashed on certiorari and a *mandamus* are clear enough; and if *mandamus* is issued to the tribunal, it must hear and determine the case afresh and it cannot well do this if its previous order is still standing. The previous order must either be quashed on certiorari or ignored; and it is better to be quashed... but allowing that a tribunal which falls into an error of this particular kind does exceed its jurisdiction, as I am prepared to do, nevertheless I am quite clear that at the same time it falls into an error of law too; for the simple reason that it was not determined according to law.

Similarly in an English case of *R. vs Northumberland Compensation Appeal Tribunal*⁵⁶ the tribunal was required in accordance with Regulations to fix compensations for loss of office occasioned by the National Health Service Act, 1946; the tribunal misconstrued the Regulations in considering the applicants services with a Hospital Board. He had other relevant service which was not considered by the tribunal. The court quashed the decision of the tribunal because it was based on the error of law. The court was right considering the records and discovered an error to have quashed it, because in similar cases the court is required to consider whether the requirement of the law was observed when it was arriving at its decision, this limits the administrative authorities the use of the powers capriciously, which is the basis of judicial review. Also in *Anisminic vs Foreign Compensation Commission*⁵⁷ the Anisminic Company claimed that on the true construction of the order, they were entitled to participate in a compensation fund.

⁵⁵ (1959) A.C. 665 at 688

⁵⁶ (1952) 1 K.B. 338

⁵⁷ (1969) 2 A.C. 149

The compensation tribunal rejected the company's claim. The company brought an action claiming a declaration that their claim was good; the trial judge gave judgment in favour of the company. The judgment was reversed by the Court of Appeal, but was restored by the House of Lords. The House of Lords held that the Compensation Tribunal made an error of law in misconstruing the order. From the foregoing, it is evident that the courts in Nigeria appreciate the Constitutional power and duty vested in them to review unlawful or unconstitutional exercise of powers by inferior tribunals or administrative agencies.

However, the court doesn't just intervene but only where the error committed is clear and manifest on the record of the tribunal.⁵⁸ This indeed suggests that the court does not need to go deep into the records to discover the error on the face of the record⁵⁹. Here the rule of interpretation was what the court use to arrive at its decision to discover that the tribunal did not construe the order property which helped in remedying the malady which the tribunal created. In *Bamaiyi vs Bamaiyi*⁶⁰ the court held that the relevant principles to be considered in an application for judicial review include inter alia: whether or not the order to be issued depends on whether the errors complained of are errors of law or facts. The error must disclose excess jurisdiction and the error of law must be one on the face of the record.

3.2.5 Abuse of Discretion

Discretion is a power to act. It is a right to do something or not to do it. Discretion is a power to act according to conscience and right judgment.⁶¹ Thus, administrative discretion is the duty or power of a public officer or agency to exercise proper judgment

⁵⁸ Danladi, K.M., op.cit p.121

⁵⁹ Ibid

⁶⁰ (2005) 15 NWLR. (Pt. 948) p. 335

⁶¹ Malemi, E. op.cit p.420

before acting or not acting in the discharge of his functions.⁶² The general rule of law is that where a person has satisfied or fulfilled the condition precedent for the exercise of a discretion, there is a duty upon the donee of the power to exercise the discretion in favour of the applicant.⁶³

However, failure to exercise discretion is more often challenged in the public sector, or public administration,⁶⁴ which is called the abuse of discretion, and is subject to the court's power of judicial review. In reviewing an abuse of discretion the purpose of the court is to see whether the discretion was exercised according to the purpose or reason it was given for by the legislature and exercised in good faith. Discretionary powers are often conferred on public officers, public agencies, administrative authorities and judicial bodies by statute to act in one way or the other, as such public authority or body may deem fit in the circumstance.⁶⁵ It means that the power to exercise discretion is given by a statute to the enabling authority. Where a public authority has refused or failed to exercise a discretion and a legal action is brought by an aggrieved party to compel the public authority to exercise such discretion and perform his public duty, a court of law may make an order of mandamus.⁶⁶ The power to exercise the discretion cannot be determined by the court all the court can order in such cases is for the public authority to exercise the discretion one way or the other.

Therefore, courts are usually reluctant to make an order of mandamus to compel the exercise of discretion. In the case of *Iwuji vs Fed. Commissioner for Establishment*⁶⁷ the appellant as a civil servant applied to the respondent for an exercise of a discretion to condone the break in the appellant's service for purpose of computation of pension in the

⁶²Ibid. p.421

⁶³Ibid. p.423

⁶⁴Ibid. p.424

⁶⁵Ibid. p.421

⁶⁶Ibid

⁶⁷(1985) 1 NWLR (pt.3) p.497 at 510

event of retirement. The respondent failed to exercise the discretion in his favour, so he sued and on appeal the Supreme Court held that the respondent's refusal to exercise the discretion was wrong and improper.

In reviewing the exercise of discretionary power, a court must examine the reasons given by the donee, that is, the person who is charged with the exercise of the power and come to a conclusion whether such reasons are proper and within those permitted for the exercise of the discretion or not.⁶⁸ The courts have developed various grounds within the general doctrine of ultra vires or jurisdictional control, to justify their intervene where the administrator has taken account of irrelevant considerations, or was prompted by improper purpose or motive, or acted unreasonably, arbitrarily or was activated by malice or bad faith, or where he adopted an improper procedure.⁶⁹

The circumstances listed above are the grounds upon which the discretion of an administrative or public authority can be challenged and where the court finds any of the listed grounds being proved it will grant the applicant's application, mostly either quashing it or ordering mandamus. That is why a person entrusted with discretion must direct himself properly in law and not allow other considerations to becloud his exercise of his discretion. So, since public office is a trust, those occupying those offices must exercise their powers according to reason and justice.

In the foregoing discussion, it was clear that the conditions upon which the courts in Nigeria can review administrative actions will be that the procedures laid down for carrying out an action was not followed, or fair-hearing was not granted to an affected party or a discretion was abused. Here the court was broadening the original ambit of judicial review, which usually does not use to look at the merit of the decision of interior

⁶⁸Ibid. p.422

⁶⁹Eka, B.U. op.cit p.63

bodies which is commendable, being a discretion it is expected that an interior body exercise its discretion one way or the other.

CHAPTER FOUR

METHODS OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

4.1 Introduction

The methods employed in reviewing administrative actions is considered. The 1999 constitutions (as amended) empowered the High Court to issue directions, orders or writs for the enforcement of fundamental rights of the Nigerian citizens.¹ The rules of court as well as the laws establishing those courts empowers them to grant judicial review where such applications are made. Reliefs or remedies such as the Habeas Corpus and various forms as well as *mandamus* were discussed. The previous chapter considered the grounds upon which the court will grant reliefs, while this chapter considers the types of relief that the court will grant in the circumstances.

4.2 Statutory Provision of Methods of Judicial Review of Administrative Actions

This chapter have examined the methods employed by the courts in reviewing acts that are ultra vires, error on the face of the records, violation of rules of natural justice, abuse of discretion. As we have seen in the preceding chapter. Judicial review is the corner stone of every Constitution based on the rule of law. The Constitution has specifically established the judicial arm of government and gives it an overriding checks on the two other organs of government to the extent that anything done by any of these two other organs which is inconsistent with the Constitution shall be declared void and of no effect by the judicial organs of the government, being exercised by the court. This overriding power of checks exercisable by the court on the other organs is further protected by the same Constitution by empowering the court to ignore any law made by the legislature to oust this power.²

¹ Section 46 (4)(a) of the 1999 Constitution of the Federal republic of Nigeria (as amended) Cap. C23 LFN 2011.

² Kabir M.D. (2012) Outline of Administrative Law and Practice in Nigeria Ahmadu Bello University, Press Limited Zaria p.110

The 1999 Constitution (as amended) empowered the High Courts to issue directions, orders or writs for the enforcement of fundamental rights of the Nigerian citizen and the National Assembly may confer more powers to the High courts if it is necessary or desirable for the purpose of enabling the court more effectively to exercise its jurisdiction³.

Thus, the Nigerian courts are authorised not only to issue the traditional common law writs, but also to issue other directions, or writs as may be necessary in a particular case. It may be noted that various statutes provide statutory machineries to obtaining a judicial review of an administrative action. In England, where a statute has indicated the methods by which and circumstances in which administrative action may be reviewed it is unlikely that the courts would permit the use of other devices for securing remedies⁴. It is obvious that the provision of section 46⁵ allows the High Court in Nigeria discretion than what is available to the courts in Britain. Furthermore, the significance of writs or orders in Nigeria seems to be greater than England were the origin of these writs or orders are issued only against persons, whereas in Nigeria they may issue against the government.⁶

The authority of the High courts to exercise supervisory jurisdictions over administrative action is not only contained in the Constitution, it has also found expression in statutory provisions as manifested in the High court rules of various states in the federation⁷. These laws are in effect legislative recognition of the enforcement provisions contained in the Constitution. In exercise of such supervisory jurisdiction the laws enabled the High courts to issue writs or orders in the nature of Habeas Corpus, mandamus, certiorari, prohibition, quo warrantor, injunction, declaration and damages.

³ Section 46(4) (a) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

⁴ Garner, J.F., (1967)Administrative Law, Butterworth, London p.125

⁵Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁶ Ibid

⁷ Ibid

In the High Court of Federal Capital Territory, Abuja civil procedure Rules,⁸ it provides for Habeas corpus proceeding in Order 40 Rules,⁹ it provides thus. “Where a person is alleged to be wrongfully detained, an application may be made for an order that he be produced in court for the purpose of being released from detention”. Also in order 42¹⁰ which makes provision for application for Judicial review. Particularly order 42 rules (1) which provides as follows:- 1(1) an application for:

- a. An order for *Mandamus*, prohibition or certiorari; or
- b. An injunction restraining a person from acting in an office in which he is not entitled to act, shall be made by way of an application for judicial review in accordance with this order. Other relevant procedures for the application of judicial review are made under the rules.

The Kaduna State High Court Law, 1990, section 9(1)¹¹ provides that a court may grant *mandamus* (as defined in subsection (4)) and subsection (4)¹² defined “*mandamus*” as .. . Means the order of *mandamus* made in an action, commanding the fulfilment by a person of a quasi-public duty in which another person has a personal and private interest”. Section 24¹³ provides:

The prerogative writs of *mandamus* requiring any act to be done or an order of prohibition prohibiting any proceedings or matter, or an order of certiorari removing any proceedings, cause or matter into the High Court for any purpose may be issued by the court in accordance with the rules and procedure applicable in the court or where the rules do not make any provision in accordance with a provision which the court thinks just and reasonable.

This section provides for the prerogative writs for judicial review with their explanations. Section 25, 26 and 27¹⁴ of the above provides for how this writs may be

⁸ High Court of the (Federal Capital Territory Abuja) Civil Procedure Rules, 2004

⁹ Ibid

¹⁰ Ibid

¹¹ Kaduna State High Court Law Cap. 67 Laws of Kaduna State 1990. p. 778

¹² Ibid

¹³ Ibid. p. 778-779

¹⁴ Ibid

used in the High Court. Order 34 Rules (1) of the Kaduna State High Court civil procedure Rules¹⁵ provides for an application for an order of *mandamus*, prohibition or certiorari or by way of Judicial review and also made other procedures and directives as to how these applications are to be made under Rules (7)¹⁶ and damages may be awarded if applied for. The Kaduna state High Court civil procedure rules¹⁷ provide in order 37 for similar orders to be made, that is *mandamus*, prohibition or certiorari, injunction and for judicial review and also made similar procedures and directives for the application and grant of such applications. While order 39¹⁸ provides for the procedure in an application for an order of Habeas Corpus. The research has gone through the laws establishing the Supreme Court and the Court of Appeal without seeing similar provisions as the rules of the court above did not make such express provision except for the general powers conferred on them by the Constitution of Nigeria.

4.2.1 Habeas Corpus

According to Blacks' Law Dictionary,¹⁹ Habeas corpus is a name given to a variety of writs, having for their object to bring a party before a court or judge." The Latin term habeas corpus means, "you have the body". A habeas corpus is a writ for securing the liberty or immediate release of a person from unlawful custody or other unjustifiable detention.²⁰ It is a court petition which orders that a person being detained be produced before a judge for a hearing to decide whether the detention is lawful²¹. Initially, the writ only permitted a prisoner to challenge a state conviction on constitutional grounds that

¹⁵ Kaduna State High Court (Civil Procedure) Rules 2007

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Campbell H.B. (2009) Blacks' Law Dictionary (9th ed.) West publishing Company.709.

²⁰ Malemi E. (2012) Administrative Law (4thed.) Princeton Publishing Co. Lagos p. 317

²¹ www.duhaime.org/legal dictionary. Accessed on 21st August, 2019 at 4:19pm

related to the jurisdiction of the state court. But the scope of the inquiry was gradually expanded to all constitutional challenges.²²

The purpose of the writ is not to determine whether the detainee is guilty or innocent. The only question a writ of habeas corpus presents for determination is whether the detainee is being detained according to the due process of law. It is essentially issued to challenge the detention of a person in official custody, or even in private hands, for the custodians to show cause why the prisoner should not be released.²³ Historically, the order of Habeas Corpus was used in pre-trial cause, where it was a command addressed to a royal official in the king's court to bring a body of a person needed as a defendant, or as a witness. With the passage of time however, it started to take a definite form from the 14th century; it was issued to a person having the custody of another to bring such other before a court to test the legality of his detention. From, that time, the modern function of the writ emerged, requiring a person having custody of a prisoner to bring him before a court together with explanation of his detention.²⁴

In the case of *Alhaji Agbaje vs Commissioner of Police*²⁵ the applicant was detained by the Commissioner of Police on the orders of the Inspector — General of Police who had acted under the Armed Forces and police (special powers) Decree No 24 of 1967. The High Court issued habeas corpus to release him from detention. The court observed that “the writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate, release from unlawful or unjustifiable detention whether in prison or private custody.”

The court held that the police had no authority to detain the applicant in a police station in Ibadan when the Inspector- General of Police had ordered the applicant to be

²² Danladi, K.M., op.cit p.135

²³ Malerni E., op.cit p.317

²⁴ Danladi, K.M., op.cit p.135

²⁵ Suit No. CAN /81/69 of 27 August, 1969.

detained in civil prison in Western state for a period of three months. The detention was held unlawful and habeas corpus was issued. From the case cited above it is clear that the use of writ of habeas corpus has helped in securing the liberty of the applicant as the purpose of habeas corpus is not to consider the guilt or innocence of the applicant but to determine whether the applicant is being detained in accordance with the law. It is seen that habeas corpus has fulfilled its purpose by securing the immediate release of persons from unlawful detention of the government or its agencies. It is also clear that the attitude of the court is towards the natural law view rather than the positive law view. Unlike under the English system whereby the application of habeas corpus is regulated by the Habeas corpus Act and Bill of Right, in Nigeria the application of writ of habeas corpus is regulated by imported laws.

They are provisions of Chapter Four of 1999 Constitution as amended and Fundamental Rights Enforcement Procedure Rules (2009),²⁶the High Court civil procedure Rules of the various states of the Federation. Section 35(1)²⁷ provides that every person shall be entitled to his personal liberty while section 46²⁸ gives the High Court powers to entertain any case of abuse of this right. In this case the court considered that the due process of the law was not follow as the order was for imprisonment in a civil prison, while the applicant was detained in a police station contrary to the order, which makes the order subject to be set aside, giving such remedy its force.

²⁶ Danladi, K.M., opcit p.137

²⁷ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

²⁸ Ibid

4.2.1.1 Forms of *Habeas Corpus*

The following forms of *Habeas Corpus* as discussed below:

i. HABEAS CORPUS AD DELIBRANDUM AT RECIPIEDUM

This type of Habeas corpus is ordered to remove, for trial a person confined in one country to the country or place where offence of which he is accused was committed. Thus, it has been granted to remove a person in custody for contempt to take his trial for perjury in another country.²⁹

ii. HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM

This relate to order issue by the court in civil cases to remove the cause, and also the body of the defendant from an inferior court to a superior court having Jurisdiction, there to be disposed of, it is also called “habeas corpus cum causa”³⁰

iii. HABEAS CORPUS AD PROSEQUENDUM

A court issues a writ of “*habeas corpus ad prosequendum*” when it is necessary to bring a person who is confined for some other offence before the issuing court for trial.³¹

iv. HABEAS CORPUS AD RESPONDENDUM

This is an order of the court issued in civil cases to remove a person out of the custody of one court into that of another, in order that he may be sued and answer the action in the latter.³²

v. HABEAS CORPUS AD SATISFACIENDUM

This is an order of court which is issued when a prisoner has had judgment against him in action, and the plaintiff is desirous to bring him up to some superior court to charge him with process of execution.³³

²⁹Ibid pp.138-139

³⁰Ibid.p.139

³¹Ibid

³²Ibid

³³Ibid

vi. HABEAS CORPUS AD SUBJICIENDUM

This is an order directed to the person detaining another, and commanding him to produce the body of the prisoner, or person detained. This is the most common form of Habeas Corpus order (writ), the purpose of which is to test the legality of the detention or imprisonment not whether he is guilty or innocent.³⁴

vii. HABEAS CORPUS AD TESTIFICANDUM

This order is directed to a prisoner detained in a jail or prison to give evidence before the court.³⁵ Having seen all the different types of habeas corpus, a court will not grant a writ of habeas corpus to release a person who is serving a lawful sentence passed by a court of competent jurisdiction.³⁶ However, a writ of habeas corpus will issue to release a prisoner, if he is being held after the expiration of his prison sentence. The writ will also issue to release a prisoner, where a court has no jurisdiction to try him.³⁷

4.2.2 Mandamus

The term “*mandamus*” is a Latin word meaning “we command”.³⁸ *Mandamus* is an order of most extensive remedial nature and it is in form of a command issuing from the High Court of justice directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing in specified form which appertains to his or their office and is in the nature of public duty.³⁹ A (writ of) mandamus is an order from a court to an inferior government official ordering the government official to properly fulfil their official duties or correct an abuse of discretion.⁴⁰

Mandamus is captured in the maxim “*Ubi jus ibi remedium*” meaning where there is a wrong there is a remedy. This maxim was responsible for evolving a way to meet the

³⁴ Ibid

³⁵ Ibid.p.710

³⁶ Ibid

³⁷ *Gwaram vs Supt. of Prisons Kano* (1960) NRNLR.5

³⁸ Malemi, E., op.cit p.291

³⁹ Ibid

⁴⁰ www.duhaime.org/Duhaime's Law Dictionary. Accessed on 21st August, 2019 at 4:18pm

deficiency of the law. The deficiency is absence of remedy where one is entitled to a legal right, calling for its enforcement.

This presupposes that once a remedy already exists, there is no need to apply for an order of *mandamus*...⁴¹ Historically, *mandamus* (as the name implies) developed as a royal command issuing from the court of king's Bench and ordering the person or body to which it was directed to carry out the duty or duties specified therein. Indeed, Lord Mansfield quoted as saying in one case, that *mandamus* "was introduced to prevent disorder from failure of justice and defect from police. Therefore, it ought to be used upon all occasions where the law has established no specific remedy and where injustice and good government there ought to be one".⁴²

The writ of *mandamus* right from its earliest usage was used to review unlawful acts of administrators. However, it should be noted that review in the nature of *mandamus* is not a matter of right but in exercise of a sound judicial discretion and upon equitable principles. Thus, it was held that where the applicant has another remedy or where the duty sought to be performed is unclear and disputable *mandamus* will not be issued.⁴³ Unlike certiorari and prohibition that lies on persons exercising judicial or quasi-judicial administrative actions, *mandamus* order is open to bodies exercising any public duty be it judicial, administrative or any public action or functions.⁴⁴ In *Ikechukwu vs Nwoye*⁴⁵ the court said that in an action for judicial review in the nature of *mandamus*, the law requires that the court must be satisfied that; (a) the respondent has a duty of a public nature to perform and (b) That he has refused, on demand to perform it.

⁴¹ Danladi, K.M., op.cit p.146

⁴² Olong, A.M., op.citpp. 94-95

⁴³ Eka, B.U. (2001) *Judicial Control of Administrative Process in Nigeria*, Obafemi Awolowo University press Ltd. Ile-Ife. p.372.

⁴⁴ *Re. Fletcher* (1955) 1 ALL SR 891

⁴⁵ (2015) 3 NWLR (pt.1446) p.367 at pp.396-397.

It must be noted that the order of *mandamus* can be granted to not only person acting in any statutory or official obligation but it can also be applied to Tribunal established by law, person or custom or contract once the duty is imperative or obligatory in character and not merely permissive.⁴⁶ It must be noted that *mandamus* will not be issued if the authority is under discretion to act. The applicant for an order of *mandamus* must have requested for the performance of such act and the request must have been refused before he can apply for the order,⁴⁷ but where there is equally convenient, beneficial and effective way of enforcing the duty, then *mandamus* will not be granted.⁴⁸ The granting of *mandamus* is discretionary. Thus, in *Shitta-Bey vs The Federal Public Service Commission*.⁴⁹ The Supreme Court issued a *mandamus* to restore the applicant to his office as he was wrongly removed. The applicant a legal adviser in the Federal Ministry of Justice was for reasons stated in earlier correspondence was retired prematurely, by the respondent. The applicant obtained a declaratory judgment of the High Court of Lagos that the retirement was null and void. Still not reinstated to duty, he applied unsuccessfully to the High Court of Lagos and the Court of Appeal for mandatory injunction.

The reasons given for his failure in both courts was that the injunction applied for did not lie against the state or its agent and that no one would be compelled to retain an employee against his or its will, on appeal to the Supreme Court, it was held that the purpose of *mandamus* is to remedy defects of justice and although it is discretionary, courts of justice must always bear in mind the principal purpose of the order. In this case like in others the argument is usually that injunction or judicial review cannot lie against the state as it acted administratively and not judicially or quasi-judicially in which the

⁴⁶ Danladi, K.M., op.cit p.146

⁴⁷ Ibid p.146

⁴⁸ *Banjo vs Abeokuta D.C* (1965) NMLR 295

⁴⁹ Danladi, K.M., op.cit pp.146-147

court below did not uphold such argument which attitude is commendable, because sometimes if such arguments are sustained an aggrieved party cannot get justice. It is clearer that mandamus, is effective and fulfilling the purpose for its creation as a remedy for administrative actions. If the courts attitude is towards ensuring that justice is done in each case, then its attitude will be towards natural law than positivism.

In *Fawehinmi vs Akilu*,⁵⁰ the plaintiff/applicant requested the Director of Public Prosecutions (DPP) to exercise his discretion to prosecute the respondents and if he declines to prosecute, to endorse a certificate to that effect on the information and permit private prosecution. The DPP did not come to decision whether or not to prosecute. The applicant then applied for leave for an order of *mandamus* to issue on him to come to a decision. On further appeal the Supreme Court held: allowing the appeal, that leave to apply for an order of *mandamus* would be granted to compel the DPP to make a decision to prosecute or not to prosecute. After the order, the DPP exercised his discretion and decided not to prosecute the complaint filed by the applicant. In this case the court reinstated the powers of the court to grant mandamus, as the law expects an administrative body to exercise that right one way or the other failure which the person aggrieved can seek such an order to his aid. Meaning that this method of judicial review is effective in controlling or putting administrative authorities in check and under the law as expected.

Also in *Associated Discount House Ltd vs Minister F.C.T & Anor*⁵¹ the appellant filed an application for an order of mandamus to compel the 1st respondent to perform his statutory duty of granting consent to a deed of tripartite legal mortgage in respect of a property in the federal capital territory. The trial court granted the appellant's application, subsequently the 2nd respondent who is the owner of the property and was not a party applied to be joined, and to set aside the mandamus order, the trial court set-aside the

⁵⁰ (1981)1SC40

⁵¹ (2013) 8 NWLR (pt. 1357) p.493 at 520-521.

order of mandamus and joined the 2nd respondent, the appellant aggrieved appealed to the Court of Appeal where the Court of Appeal dismissed his appealed dissatisfied he appealed to the Supreme Court where the court allowed the appeal and held that an order of mandamus will only issue to a person, body of persons or corporations requiring him or them to do some particular thing therein specified which pertains to his or their office and is in the nature of a public duty; but if the duty imposed by a statutory provision leaves a discretion in whom it is imposed as to the mode of performance, an order of mandamus will not issue to compel performance of that duty in a specific way. In this case the order of mandamus was properly and rightly issued by the trial court against 1st respondent. Here the court distinguished when it can grant mandamus and when it cannot grant mandamus, and encouraged the granting of same when the proper conditions have been fulfilled, which was the case in this case. The order was properly and rightly issued by the trial court against 1st respondent and since the order was granted and carried out, it therefore, means that this method is effective and achieving the purpose for which it was created.

Also in *Shell Petroleum Development company of Nigeria Limited vs Registrar of Business Premises Abia State*,⁵² at the High Court, the respondent instituted an action for an order of mandamus compelling the appellant to Register its oil wells where the court held that it has powers to grant same, on appeal the Court of Appeal held that, mandamus is an order that directs performance of a certain and established public duty which appertains to the office of the respondent. It is observed that the order of mandamus has helped to compel administrative bodies with public duties to exercise their powers or discretion one way or the other, thereby meeting the need for its creation.

⁵²(2016) 2 NWLR (pt.1496) p.226 at 345

Generally, where a person has failed to carry out his statutory duty, an applicant is justified to bring an application for an order of *mandamus* to compel the person to perform that duty. Where an applicant has *locus standi*, such an applicant cannot be described as a busy body with misguided complaint.⁵³ *Mandamus* may issue for a discretion to be exercised though as a general rule the court cannot direct that the discretion be exercised affirmatively or negatively.

The duty to grant an order of *mandamus* must be reasonably, certain but it may be a duty to exercise discretion. However, where the power vested in a public officer is to act ministerially as oppose to judicially, then, although the public officer has a discretion in exercising the power, he however has a duty to exercise the power one way or the other. Where a public officer, such as a Director of Public Prosecution is placed under ministerial duty to perform a specified act or exercise a discretion, once the prescribed conditions are satisfied, an order of *mandamus* will issue to compel him to perform that act or exercise the discretion.⁵⁴ This case further goes to state the attitude of the court that in deserving circumstances were the conditions have been made the court will grant *mandamus*.

4.2.2.1 Requirements for the Grant of Order of *Mandamus*⁵⁵

The order of *mandamus* cannot be ordinarily granted except on the following conditions:⁵⁶

- a. There must be an imperative public duty imposed on someone and not just a discretionary power to act
- b. The applicant must have made a request for the performance of the duty and the request must have been refused. In *State vs Electricity Corporation of Nigeria*.⁵⁷ The applicant had fulfilled all necessary conditions to qualify him to have electricity connected to his premises. The

⁵³ (1987)4 NWLR (Pt. 67), p. 797

⁵⁴ Malemi, E., op.cit p.300

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Danladi, K.M., op.cit p. 147

Corporation failed to discharge this public duty in spite of the applicants repeated demands the court granted order of *mandamus* compelling the corporation to discharge its public duty.

- c. The applicant must have a substantial personal interest in the performance of the duty concerned.
- d. If the applicant has a remedy equally convenient, beneficial and effectual, an order of *mandamus* will not be granted.
- e. The court before which the application is made must have jurisdiction to entertain such case.⁵⁸

There are two stages in an application to court for an order of *mandamus*. These are:

- a. Ex parte application for leave to apply for an order of *mandamus* and
- b. An application on notice for issue of the order of *mandamus* after leave has been granted.⁵⁹

The purpose of the first stage, which is application for leave to apply for the order, is to enable court to ascertain the locus standing of the applicant and the propriety of the application. It is also to prevent the time of the court from being wasted by busy bodies with misguided or trivial complaints of administrative wrongs, and it also helps to remove the long uncertainty public officers and authorities might be left in before they could safely proceed with a public or administrative act when a proceeding of judicial review is pending, even though misconceived. Once the application is not proper in the circumstances of the case, leave to apply for the order of *mandamus* is usually refused and the way is paved for the public or administrative authority to act, instead of being left in uncertainty whether to act or not to act because of an application for leave to apply for an order of *mandamus* which is pending.⁶⁰

⁵⁸*State vs Electricity Corporation of Nigeria, ex parte Savage*. 8 BNLR,P.55 In: Kabir M.D.,(2012) Outline of Administrative Law and practice in Nigeria, Ahmadu Bello University Press Limited, Zaria p.147

⁵⁹ Danladi, K.M., op.cit p. 147

⁶⁰ Malemi. E. op.citp. 300-301

4.2.3 *Certiorari*

Certiorari is a Latin word which means “to be informed of”. A certiorari is an order directing a lower court, public or administrative authority to forward its record of proceedings to a higher court for that court to inquire into the legality of its decision and review it as maybe necessary. A certiorari is an order made by a Superior Court to an inferior court or tribunal requiring it to produce a certified record of a particular matter or proceedings for its information, so that the Superior Court may determine whether there has been any defect in procedure or decision.⁶¹ A formal request to a court challenging a legal decision of an administrative tribunal, judicial office or organization (eg. government) alleging that the decision has been irregular or incomplete or if there has been an error of law.⁶² In the case of *Northumberland Compensation Appeal Tribunal*,⁶³ Lord Denning said:

The court of King’s Bench used certiorari to quash the order of the commissioners for error on the face of them, such as when they fail to set out facts necessary to show that they had jurisdiction in the matter or when they contain some error in point of law. It is suggested before us on behalf of the Crown that in the case of these statutory tribunals, the court of king’s Bench only interfered by certiorari to keep them within their jurisdiction and not to correct their error of law. There are however, many cases in the books where certiorari was used to correct errors of law on the face of the record. A striking instance was where the commissioners of Seward imposed an excessive fine and it was quashed by the court of king’s Bench on the ground in law their fines ought to be reasonable.

It is evident from the above that in England there must be a body or authority with some legal authority to make decisions in order to provide scope for a writ of certiorari at common law. Previously, the courts have taken a very inflexible view that only the courts

⁶¹Ibid. p. 301

⁶²www.duhaime.org/legal-dictionary/c/certiorari.aspx. Accessed on 21st August, 2019 at 4:50pm

⁶³Ibid p.302

and authorities having the duty to act judicially alone could be subjected to order of certiorari. But recently, the position was gradually changed and now any authority judicial or administrative having legal authority to determine or affect the right and interest of the subject shall be subjected to certiorari. In *Adekunle vs University of Port Harcourt*,⁶⁴ the applicants/plaintiffs who were students of the respondent/defendant university were expelled following some allegations. The appellants appealed to court on ground of breach of rules of fair hearing. The Court of Appeal allowed the appeal and ordered a certiorari quashing the expulsions. In this case the court upheld the traditional grounds of which judicial review can be granted, which is for lack of observance of the rules of fair hearing, giving credence to the need for administrative authorities to observe such a rule. And it has shown that this method is effective and achieving the purpose for its creation, and also the attitude of the court which is natural law in perspective is commendable.

Also, in *Omwumechi vs Akintomi*,⁶⁵ it was held that a panel which was set up to examine the causes of examination leakages was not a Disciplinary Committee and that the decision of the Vice-chancellor to suspend the students based on the report of the panel was against rules of natural justice and void, especially where there was no formal charges against the students or that they should defend themselves. Under judicial review procedure and the observance of the principles of natural justice is very important failure to observe same, invites the powers of the court under judicial review. This method is very effective and it can be seen to achieve its purpose. In *Judicial Service Commission Cross Rivers State vs Young*⁶⁶. The respondent was the chief registrar of the High Court Cross Rivers State, she was appointed the receiver of the estate of a man who died instate

⁶⁴ (1991) 3 NWLR (pt.181) p. 534

⁶⁵ [1985] 3 NWLR (pt. 13) p.504

⁶⁶(2013) II NWLR (pt 1364) p.1 at p.34

and was a subject of litigation. The respondent was subsequently re-assign to the office of the Director of Planning, Research and Statistic in the High Court which she refused to assume the office as she saw the deployment as a demotion. The respondent was, sequentially queried, suspended and retired, though the respondent responded to the queries, she was never called to appear and confront her accusers who testified before the 1st Appellant (judicial service commission) she filed an application for certiorari at the High Court and the appellants filed and argued that certiorari cannot lie against the 1st appellant being an administrative body, that it acted on a purely administrative capacity.

The High Court agreed and struck out the respondent's application, aggrieved she appealed, and the Court of Appeal set aside the order of the trial court. The appellants not satisfied appealed to the Supreme Court where the court held that: A person can seek redress in court through the prerogative writ of certiorari to quash the decision of an agency of a state government which is charged with quasi-judicial functions. This method has helped to do justice in this case and as such it has achieved its purpose, and the attitude of the court of Appeal as well as the Supreme Court commendable as they ensured that justice was done, meaning they applied the natural law view rather than the positive law view which was what the trial court applied to deny the applicant justice at that court.

It is obvious from the above that in Nigeria recently, the courts have taken the position that any authority be it judicial or administrative that exercises the authority to determine the rights and interest of individuals shall be subjected to certiorari. The truth is that all inferior courts or tribunal have limited powers.

Therefore, in the interest of the liberty of the common man and good administration such bodies must be kept strictly within legal bounds.⁶⁷ One of the special characteristics of certiorari is the fact that it is issued not because of any personal injury to the applicant but because of the need to control the machinery of justice in the general public interest⁶⁸. When a superior court of records is considering whether or not an order of certiorari will issue against the findings of an inferior tribunal, such superior court of record must be guided by the following principles:⁶⁹

1. The superior court acts not in an appellate capacity but in a supervisory capacity.
2. The control over inferior courts is not only to see that the inferior tribunal keeps within its jurisdiction, but also to see that it observes the law and
3. The superior court must not substitute its own views for those of the tribunal as an appellate court would do.

When a public authority is given discretion and he exercises it for reasons which are wrong, the court can interfere. Where a public or administrative authority assumes disciplinary powers, he becomes not a court but a tribunal established by law acting in a quasi-judicial capacity. Having assumed judicial functions, he is bound to pass the qualification test as a fit and proper person to adjudicate without offending the rules of *nemo iudex in causa sua* and *audi alteram partem* and is bound to act judicially and comply with the constitutional requirements of natural justice or fair hearing. In this case the High Court upheld the argument of 1st appellant that it is an administrative body and acted in purely administrative capacity and struck out the respondent's application, while the Court of Appeal and the Supreme Court held that certiorari can lie against it since it acted quasi-judicially. This attitude of upholding arguments that an administrative body was acting administratively or not in a judicial or quasi-judicial capacity has failed to do

⁶⁷ Danladi, K.M., op.citpp. 140-141

⁶⁸ Olong A.M., op.cit p. 102

⁶⁹ Oluyede P.A., op.cit p. 531

justice to an applicant for judicial review. In this case the reason for the argument that the disciplinary committee was to avoid the decision of the committee being that it was acting judicially or quasi-judicially, intending the court to hold that the committee was acting administratively.

*Korea National Oil Corporation vs Owel Petroleum Services Nigeria Ltd ORS.*⁷⁰

In March, 2005 the ministry of petroleum Resources (the 5th respondent) conducted bidding/licensing round for the award of exploration rights, at the end of the bidding. OPL (Oil Prospecting License) 321 and 323 were granted to appellants. Subsequently the appellant received a letter written on behalf of the president of Nigeria voiding the OPL 321 and 323. The appellants aggrieved with voiding their licences applied for Judicial review seeking for several declaratory reliefs and an order of certiorari and an order of injunction, the court voided the revocation of the licences and entered judgment in favour of the appellants.

The 1st respondent dissatisfied appealed to the court of Appeal, which allowed the appeal, on the ground that certiorari does not lie against executive or legislative acts so the appellant in turn appealed to the Supreme Court, where the Supreme Court also dismissed the appeal and held that there is a caveat to the court's wide powers of judicial review. Accordingly, a legislative or an executive act is not subject to the controlling jurisdiction of the writ of certiorari on the ground that it is not an act performed or expected to be performed judicially. The rationale for this is that it will be a contradiction in terms and offensive to the ideal underlying the doctrine of separation of powers because certiorari lies against only judicial or quasi-Judicial acts. And a legislative or executive act cannot by rational thinking come within acts that are to be performed judicially.

⁷⁰ (2018) 2 N.W.L.R. (pt.1604)p.394 at pp.437-438

When it is thought that the issue on the grounds for applying for certiorari has been established then the case of *Korea National Oil Corporation vs O.P.S. (Nig) Ltd*⁷¹ comes with a reverse on that position. It is obvious that when cases for judicial review are brought the contention by the respondents are always that they are acting administratively, executively, publicly and not judicially or quasi-judicially as in the above case, which in the opinion of the research robbed the appellants' of justice.

The reason why decisions of inferior bodies should forward their decisions to the superior courts for scrutiny is important if that decision affects the right or interest of a citizen, because in making that decision the administrative body is acting quasi-judicially and not executively or administratively like in the case of Korea National Oil Corporation which decision took the right and interest of the appellants, and should not be allowed to stand as due process was not followed, because the main aim of judicial review is to ensure that authorities and bodies do not act outside the law. The attitude of the apex court was more positivist in view that natural law inclined.

4.2.3.2 The Conditions for Granting an Order of Certiorari

An order of certiorari can be issued by the superior court in the following circumstances:⁷²

- i. When the authority has exceeded its jurisdiction or acted ultra vires Whenever any inferior court, authority, administrative officer acted in excess of power given to it or him by law and such abuse of power continuously affects prejudicially the rights of a citizen, certiorari will be issued. In *R. vs Electricity Commission*, Lord Atkin remarked thus: Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects and having duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in this writ.
- ii. Whenever any administrative authority has acted in violation of the principles of natural justice. The order of certiorari can be ordered when Rules of Natural justice and minimum standards of fair

⁷¹ ibid

⁷² Malemi. E., op.cit p.304

decision making imposed by the common law on person and bodies or persons who are under the duty to act judicially.⁷³

- iii. Where the superior court discovers that an error of law has appeared on the face of the record. In *State vs Acting Chief Magistrate*,⁷⁴ one of the accused persons brought an application for an order of certiorari to quash on the ground that the Chief Magistrate did not read and explain the charge to the accused contrary to the mandatory provision of section 215 of the Criminal Procedure Act and also section 208 for failing to read the charges as given to the prosecution for the accused person to admit or deny. The court held, that, since the Chief Magistrate did not comply with the provisions of these sections of the Criminal Procedure Act, his act amounted to error of law on the face of the record for which certiorari order could lie.⁷⁵

4.2.4 Prohibition

Aprohibition is an order of court restraining an inferior court, tribunal, public or administrative authority from exercising its judicial or quasi-judicial powers. An order of prohibition maybe pre-emptory to stop a judicial body from commencing its proceedings at all or a temporary prohibition until certain conditions are fulfilled at which the order will be discharged...⁷⁶ An order of prohibition is similar to certiorari and both are simultaneously used together. Where certiorari is sought to quash the decision, prohibition is issued to restrain its execution. According to Akin L.J.⁷⁷

Both writs are of great antiquity, forming part of the process by which the king's courts of inferior jurisdiction are restrained from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction. Certiorari requires the record or the order of the court to be sent up to the kings Bench Division, to have its legality inquired into, and if necessary to have the order quashed... Doubtless in their origin (both writs) dealt almost exclusively with the jurisdiction of what is described in ordinary parliament as a court of justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be and would not be recognized as courts of justice. Wherever anybody of

⁷³ Danladi, K.M., op.cit p. 142

⁷⁴(1924) 1KB. 171 at 204

⁷⁵*Onwumechi vs Akintomi* (1985) 3 NWLR (Pt.13) p.504

⁷⁶ Danladi, K.M., op.citpp.142-143

⁷⁷(1973) NLBLRC p. 967

persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority they are subject to the king's Bench Division exercised in this writs.

The only border line between certiorari and prohibition is that certiorari is applicable to quash the decision already concluded by the inferior court, administrative tribunal or any person exercising quasi-judicial action while the latter is applicable where an administrative tribunal has not yet concluded its decision.⁷⁸ An order of prohibition can be directed to any inferior court, any person or body of persons exercising public functions of a judicial or quasi-judicial character, including administrative tribunal, government department, public servant, ministers of state and individuals authorised by or under any law to make determinations or take decisions affecting the rights, duties or interest of the people. It does not however apply to purely administrative decision or action.⁷⁹

This order is negative in nature, that is, it commands the lower court or administrative tribunal not to do a thing which it is not authorised to do. Thus, in *Balogun vs Adejo Telegon*⁸⁰ an order of prohibition was granted prohibiting the Chief Magistrate from hearing and determining the charge against the applicant. The applicants alleged that the Chief Magistrate showed bias by his remarks in open court, his refusal to grant bail and by the undertaking he gave to the two leaders of a political party to send the applicant to jail. The learned judge of the High Court found the allegations to be true thus, issued a prohibition order against the learned Chief Magistrate. In this case the court exercised the right attitude when it discovered the truth of the application, the prohibition order was granted to right the wrong bringing the effect of prohibition to bear and achieving its

⁷⁸Malemi. E., op.cit p.309

⁷⁹*R. vs Electricity Comrs. Exp. London Electricity Joint Committee Co.* (1920) Ltd [1924] 1 K.B 171 at 204.

⁸⁰(1980) 2 SC 30

purpose. In *Shugaba vs Minister of Internal Affairs & Ors*⁸¹ the plaintiff/ applicant was deported by the Federal authority and its agents. An application was filed on behalf of the plaintiff to enforce his fundamental rights. The court held that once a person proves that he is a Nigerian, he cannot be deported from Nigeria. The purported appointment and constitution by the third respondent of Akpamgbo Tribunal of Inquiry to determine the nationality of plaintiff/applicant was ultra vires and contrary to section 32 and 42 of the 1979 Constitution. An order of prohibition would therefore issue against the four respondents. Tribunal of Inquiry to stop it from proceeding with the business of determining the nationality of the plaintiff. In this case, the plaintiff requested and was granted a declaration of rights, an injunction, an order in the nature of *mandamus*, prohibition and an award of damages. This case is highly commendable as the remedy of prohibition was of use in stopping the proceedings of the tribunal of inquiry as well as safeguarding the right of the applicant. In this case the court exercised the right attitude in granting the relief sought. It is clear that prohibition has helped in restraining illegality and thereby achieving its purpose.

Also, in *LPDC vs Fawehinmi*⁸² the plaintiff/respondent was invited to appear before the defendant/appellant body to answer charges alleging professional misconduct. The Attorney-General of the Federation who was the complainant was the chairman of the appellant Legal Practitioners Disciplinary Committee by virtue of his office. The respondent filed an application for an order of prohibition under the Fundamental Right (Enforcement Procedure) Rules 1979 alleging that his fundamental right to fair hearing under section 33(1) of the 1979 Constitution had been or was likely to be contravened. The Lagos High Court granted order of the prohibition. On further appeal, the Supreme Court affirming the judgement and issue of the order of prohibition held, that the position

⁸¹ Danladi, K.M., op.citpp.143-144.

⁸² (1979)2 FNR 321 (1981) 1 SC40

of the Attorney-General as the chairman of the LPDC and as the complainant and the prosecutor offends against the principles of natural justice and raised a substantial issue of real likelihood of bias by the LPDC.

It is clear from the above cases that when a decision or an action has already been taken or made an order of prohibition will not be granted for there is nothing to prohibit. This case shows that a person cannot be judge in his own case which was what the Attorney General was doing. It was the power of judicial review under the method of prohibition that helped to save the respondent by stopping the proceedings which has the element of bias. It shows that judicial review helps to maintain justice which must not only be done but must be seen to be done. It is also settled that an order of prohibit can be claimed by an aggrieved person or persons as a matter of right. The question is whether a stranger can demand an order of prohibition as of right? In *State vs Magistrate Court Ex parte Kaine*⁸³ the applicant, the second prosecution witness in charge No. MGB/130^c/75 *Commissioner of Police vs Nzekwe and others*,⁸⁴ pending in the magistrate court, Ifi and others pending in the Magistrate Court, Atanti, sought an order of prohibition to restrain the Magistrate Court from hearing the case.

It was held that a stranger could not demand an order of prohibition as of right, the court would go into the matter and if there was a clear case of acting in excess of jurisdiction on the part of the lower court or departure from the rules of natural justice, it could exercise its discretion in favour of the stranger applicant and issue the prohibition. It maybe stated that the applicant for an order of prohibition must have sufficient legal interest. Under the Fundamental Enforcement Rules (2009), order of prohibition can be sought by anybody irrespective of lack of *locus-standi* particularly if the illegality is

⁸³ (1981) 1 NCLR 25.

⁸⁴ (1983) 2 NWLR (pt.7) p.300

centred on human rights abuses. *Locus standi* relates to the qualification of a person to institute an action or claim relief in the court.

4.2.4.1 Types of Prohibition

Under prohibition there are different types of headings of prohibitions which are considered accordingly.

- a. **Quosque Prohibition**⁸⁵ Quosque is an order of prohibition which only removes the wrong things in the proceedings and allow the proceedings to continue
- b. **Peremptory Prohibition**⁸⁶ This is an order of prohibition which brings to an end the whole (nature of the) proceedings. However, where prohibition is simply applied for, it is usually referred to mean pre-emptory prohibition.

In *Olaleke Obadara & others vs The President Ibadan West District Council*⁸⁷ the appellants were charged before a customary court with various offences, but before the case was heard they obtained the order Nisi for order of prohibition to stop the customary court from further proceeding in the case on the ground that the president of the customary court was biased. The Supreme Court applied *R. vs Camborne*⁸⁸ and held that:

To disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject matter of the proceedings, a real likelihood of bias must be made to appear not only from the facts ascertained by the party complaining but from such further facts of his inquiries.

4.2.5 *Quo Warranto*

Quo-warranto means an order in civil proceeding which is made up of a prerogative writ to ascertain the existence or extent of a civil right or a claim of title or for inquiring into the authority by which a person holds office.⁸⁹ A writ quo warranto is used to challenge a

⁸⁵Ibid p.144

⁸⁶ Ibid

⁸⁷ (1965) NNLR 39

⁸⁸ 6 E.C.S.L.R 40

⁸⁹ Danladi, K.M., op.cit p.148

person's right to hold a public or corporate office.⁹⁰ The purpose of this writ is to ask a person who has assumed an office improperly to show his authority for acting in that capacity, in case he fails to produce any authority he may be restrained from acting by *Quo warranto*.

It originated in England, as a writ issued in the name of the king or Crown against any person who usurped or claimed an office, inquiring from him by whose authority he held the office. It was incorporated into the system of Administrative Law in Nigeria through the Common Law of England and Statutes of General Application; but later superseded by injunction in the nature of *quo warranto*.⁹¹ The essence of granting the order is premised on the ground that, it is better the legality of a person holding a public office is determined at the earliest times, otherwise if his holding the office is illegal, then, all acts and decisions done by him would be illegal, and the general public would suffer quite considerably irreparable injury. Any person can have the *locus standi* in *quo-warranto* because no one can be sure as to whose interest and rights will come to be affected by the decision of such an official.⁹²

4.2.5.1 Requirements for Granting *Quo-Warranto*

- i. Before *quo-warranto* can be granted, the office occupied by the respondent must be a public office and created by statute.⁹³
- ii. The office must be a substantive and not merely the function and employment of a deputy or servant held at the will and pleasure of others.⁹⁴
- iii. The occupant of the office must have exercised the office; a mere claim to it is insufficient to grant an order in *quo-warranto*.⁹⁵

⁹⁰<http://www.law.Cornell.edu-wex> Accessed on 21st August, 2019 at 4:51pm

⁹¹Ibid

⁹²Ibid

⁹³Ibid

⁹⁴Ibid

⁹⁵Ibid

4.2.6 Injunction

An injunction is an order of court prohibiting a person or body from doing a specified thing⁹⁶. Injunction is an equitable remedy order requiring the party to whom it is addressed to do or refrain from doing a particular thing.⁹⁷ An injunction is an order of a court addressed to a party to proceedings before it and requiring him to refrain from doing or to do a particular act.⁹⁸ In law, an injunction is an order by a court to one or more of the parties in a civil trial to refrain from doing, or less commonly to do, some specified act or acts.⁹⁹

The order is granted by the court when any authority administrative or judicial commits illegal act or is about to commit an illegal act.¹⁰⁰ An injunction order can be of two types; prohibitory injunction and mandatory injunction. Prohibitory injunction is also known as negative injunction which is geared towards directing a person not to do or continue with a wrongful act while mandatory injunction which is also called positive injunction directs the doing of an act.¹⁰¹ Each of these maybe issued permanently (i.e perpetual or permanent injunction) or temporarily (i.e interlocutory or temporary injunction) according to the discretion of the court and the circumstances or merit of the applicant's case.¹⁰² We shall now discuss these types of injunctions as follows.

4.2.6.1 Interim Injunction

Interlocutory injunction is sometimes referred to as interim injunction¹⁰³. An order of interim injunction is an order usually granted to maintain the status quo for a short period of time, which is sufficient to put the other party on notice. It is usually granted upon an

⁹⁶ Ibid

⁹⁷ *American Cyanamid Co. Ltd vs Ethicon Ltd.* (1975) 1 All ER 504 HL.

⁹⁸ Kabir M.D., op.cit p.149.

⁹⁹ [https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.law.cornell.edu/wex/Injunction.](https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.law.cornell.edu/wex/Injunction)

Accessed on 21st August, 2019 at 6:10pm

¹⁰⁰ De-Smith. S.A. op.cit p.388

¹⁰¹ Danladi, K.M., op.cit p.149

¹⁰² Ibid p. 149

¹⁰³ Eka, B.U. op.cit p. 385

ex parte application brought by an applicant to maintain the status quo from damage or further damage.¹⁰⁴ An ex parte injunction is granted in cases of real urgency, but not self-induced urgency.¹⁰⁵ An interim injunction may be *quia timet* in nature, in the sense of being pre-emptive or preventive, that is, preventing the commencement of a threatened act. An interim injunction usually lasts for instance until a specified date or until an interlocutory is granted.¹⁰⁶ Interim injunction being a ex parte injunction will not be granted unless the applicant makes an undertaking as to damages. In *Kayoye vs CBN*¹⁰⁷ NNAMANI JSC said:-

The undertaking to pay damages applies whether the plaintiff has not been guilty of misrepresentation, suppression or other default in obtaining the injunction... The undertaking is equally enforceable where a court of first instance fails to extract an undertaking as to damages, an appellate court- ought normally to discharge the order of injunction on appeal.

In *Pharma-Deko Plc vs Financial Derivates Co. Ltd.*¹⁰⁸ The respondent filed a petition for the winding up of the appellant for its inability to pay its debts to the respondent and the trial court ordered for the advertisement of the petition in the official gazette of the federation and two newspapers. Subsequently the respondent filed an ex-parte application for orders of interim injunction against appellant from operating its accounts with banks or financial institution; and alienating or dissipating its assets, which the trial court granted same.

The appellant was aggrieved and appealed, where the court of appeal held that, an interim order of injunction is a part of the inherent powers conferred under section 6(6) of the Constitution of the federal republic of Nigeria, 1999, to enhance the administration of

¹⁰⁴ Ibid.p.392

¹⁰⁵ Malemi. E. op.cit p. 313.

¹⁰⁶ Ibid

¹⁰⁷ (1989) 1NWLR (Pt.98) p.419

¹⁰⁸ (2015) 10 NWLR (pt. 1467) p.225 at 252.

justice and is usually granted to protect a party's existing legal right from invasion by another. The main features of an interim injunction are:-¹⁰⁹

- i. It issues to preserve the status quo until a name, date or until a further order is made or until an application on notice for an interlocutory injunction is heard. The essence is to preserve the status quo until the application for interlocutory injunction can be heard and determined. It can be made until a certain date usually the next motion day by which time the other party should have been put on notice.
- ii. It is for situation of real urgency to preserve and protect the rights of the applicant, seeking it from injury or destruction.
- iii. It is made when it is shown that irreparable mischief or damage maybe occasioned before the completion of the hearing of a motion on notice for an interlocutory injunction.

4.2.6.2 Interlocutory Injunction

An interlocutory injunction is usually granted upon a motion on notice, copies of which processes are served on the party against whom the order of injunction is sought, so that he may appear in court for its hearing. An interlocutory injunction is to maintain the status quo until the final determination of the case or matter.¹¹⁰ Therefore an interlocutory injunction is a temporary or preliminary injunction granted after a respondent has received notice and been heard by the court, before the final determination of the case or matter.¹¹¹

In *Obeya Memorial Hospital vs A. G. Federation & Others*.¹¹² The government of Benue State with the aid of armed forces personnel forcibly ejected the staff of the applicant hospital, took over the premises and remained in possession. The

¹⁰⁹ Malemi. E. op.cit p. 313.

¹¹⁰ Ibid

¹¹¹ Ibid

¹¹² (1987) 3 NWLR (pt. 60) p.325

plaintiff/appellant filed action asking for orders of injunction to restrain the defendants/respondents inter alia from preventing the plaintiff/applicant from obtaining access to and occupying the premises, and restraining the respondent from delivering the premises to any other person other than the plaintiff. The applications for injunctions were dismissed by the High Court and the Court of Appeal on further appeal the Supreme Court held: unanimously allowing the appeal and granted the injunction.

When an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be a violation of the plaintiff's legal right is made upon contested facts, the decision whether or not to grant the interlocutory injunction has to be taken at a time when the existence of the right or the violation of it or both are uncertain and will remain uncertain, until final judgement is given in the action. This case would have set a bad precedent if it was not overturned by the Supreme Court. The lower courts did not do justice to the applicant/appellant, at that, because considering the manner the government used the security personnel to take possession of the premises itself should have been a reason to grant the remedy as that process orders on self-help which the law frowns at.

The reason why the trial court as well as the Court of Appeal did not grant the relief was because they kept upholding the argument that injunction cannot lie against the state. Also, the reason that the Supreme gave for granting injunction is sound. In *Statoil Nigerian Ltd vs Star Deep Water Petroleum Ltd. & Ors*¹¹³ the parties and Nigerian National Petroleum Corporation (NNPC) entered into an agreement, the agreement was for the joint development of the Agbami field as a unit Area for oil mining through tract participation. The agreement recognised that the tract participation could be changed by the process of determination and re-determination.

¹¹³(2015)16 NWLR (pt. 1485) p.361 at 388)

The 1st respondent invoked the re-determination process, certain technical disagreement arose as well as dispute concerning the interpretation of the lent agreement, they referred the matter to an expert who gave his decision, dissatisfied with the expert decision, the appellant initiated arbitration, the appellants commenced litigation seeking for an order restraining the respondents from implementing the decision of the expert pending arbitration. The respondents filed preliminary objection that the court lacked the jurisdiction to grant injunctive relief pending arbitration.

The trial court in its judgment dismissed the preliminary injunction and also held that they did not satisfy condition precedent for the grant of the injunctive order, it held that the matter should go to arbitration, dissatisfied the appellant appealed and the Court of Appeal dismissed the appeal and held that the aim of an interlocutory injunction is to maintain the status quo pending the determination of the issue submitted for adjudication. In an application for interlocutory injunction the court has to decide a number of important factors which includes¹¹⁴:-

1. The applicant must show that there is a serious question to be tried at the hearing of the case, that is, the applicant must have a real possibility of success and not a probability of success at the trial, notwithstanding the defendant's technical defence if any.
2. The applicant must show that the balance of convenience is on his side for a grant of the order that is, that more justice will be done by granting the application than in refusing it.
3. The applicant must show that damages cannot be an adequate compensation for his damage or injury, if the order of injunction is not granted and he succeeds at the trial of the case.
4. Where a court of first instance fails to extract an undertaking as to damages, an appellant court ought normally to discharge or vacate the order of injunction on appeal, and so a trial court should always extract an undertaking for damages from the party applying for the order of injunction. No order for an interlocutory injunction should be granted unless the applicant gives a satisfactory undertaking as to damages save in recognised exceptions.

¹¹⁴ Malemi, E. op.cit p.316.

4.2.6.3 Perpetual Injunction

This is an injunction that is granted after the final determination of a case to prohibit the threatened act for all time.¹¹⁵ It prohibits in perpetuity the doing of the things specified in the order.¹¹⁶

4.2.7 Declaration

Declaratory order or judgment is an order or judgment which is merely an opinion of the court conclusively stating the existence and nature of a legal state of affairs and does not contain a decree to be enforced against any person.¹¹⁷ It is a procedural device for ascertaining and determining the rights of parties or for determination of a point of law.¹¹⁸ It is the declaration of the legal rights and obligation or the relationship of the parties in a matter, with or without any consequential orders.¹¹⁹ A declaratory judgment or declaration of right is the earliest and first method, procedure, relief or remedy devised by court to do justice.¹²⁰ A declaration of rights is usually the first prayer a plaintiff or applicant asks of a court and which a court gives first or proceeds from.¹²¹ This, is so far until the rights of an aggrieved party is declared, there will be nothing for the courts to enforce, if it makes a consequential order.¹²²

A declaratory judgment, by a court that an administrative act is ultra vires or wrongful, makes such act null and void and of no effect.¹²³ A declaratory action is especially useful in complaints against the acts of government, its servant and agents.¹²⁴ A declaratory judgment is binding on all persons, bodies and even the government in Nigeria. Like other prerogative orders, a person wishing to invoke a court's jurisdiction to

¹¹⁵ Ibid

¹¹⁶ Ibid.

¹¹⁷ Danladi, K.M., op.cit p.150

¹¹⁸ Ibid.

¹¹⁹ Malemi, .E. op.cit p.293

¹²⁰ Ibid. p.294

¹²¹ Ibid

¹²² Ibid

¹²³ Ibid.

¹²⁴ Ibid

declare his rights must have *locus standi*. In other words such a person must have sufficient legal rights to so sue. The advantages of declaration lie in its speed and simplicity. As professor De smith has said “By making an order declaratory of the parties the court is able to settle issues at a stage before the status quo has been disturbed.”¹²⁵ For instance, in the case of *Shugaba vs Minister of Internal Affairs & Or.*¹²⁶ The plaintiff/applicant a member of the Great Nigeria Peoples Party (GNPP) and the majority leader in the Borno State House of Assembly in the Second Republic was deported by the Federal Authority and its agents from Nigeria.

An application was filed on behalf of the plaintiff/applicant to enforce his fundamental rights and for redress of the violation. He sought inter alia a declaration that he is a Nigerian citizen and as such has fundamental right of immunity from expulsion from Nigeria. The court held inter alia that the deportation of the applicant was unconstitutional, set aside the deportation order and granted the declarations, order of injunction, prohibition, *mandamus* and damages. This case is a good example of the attitude of the court in granting an aggrieved party a deserved relief and the relief has achieved its purpose.

Also in the case of *GE International operations ltd vs Q-Oil and Gas Services*¹²⁷ the respondent sued the appellant for some declaratory reliefs, special and general damages. The court processes were served on the appellant, upon failure of the appellant to enter appearance, the respondent filed an application for default judgment, the said application was served on the appellant, the application was heard and all the reliefs granted, the appellant aggrieved appeal to the Court of Appeal where the Court of Appeal held that a declaratory judgment is a binding adjudication that establishes the rights and other relations of the parties without providing for or ordering enforcement. A declaratory

¹²⁵ De-Smith. S.A op.cit p. 493

¹²⁶ (1981) 2NCLR 459

¹²⁷ (2015) 1 NWLR (pt. 1440) p.244 at pp. 267-268).

judgment is a solemn affirmation of a state or status by a court which is itself a complete relief that is not executory. The case helped to define and explain what a declaratory judgement or declaration means when an aggrieved party is seeking it before a court. This remedy has been able to achieve its purpose since it helps in settling disputes between parties by declaring who among them has what right or obligation and who is wrong or owes what obligation.

4.2.8 Compensation and Apology

As an offshoot of the application for Redress there is now the relief of “compensation and public apology” in the judicial remedy packet. This mean that in addition to any other remedy or remedies that may be claimed, the court can award as an express claim or on the omnibus prayer for ‘other further order or the orders as the court may deem fit to make in the circumstances; monetary damages by way of compensation and for an apology(public or otherwise) for the infringement of the applicant’s fundamental rights.¹²⁸ Section 35(6)¹²⁹ provide “Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person...”

Since it is a constitutional provision there are cases which buttress that fact. In *Ogor and ORS. vs Kolawole and Ors.*¹³⁰ Where the issue of compensation and public apology was raised in the address of applicants counsel on the omnibus prayer, the court held that he was perfectly in order. Consequently, the court held that on the authorities the second respondent- the commissioner of police as complainant in this case should therefore be called to pay compensation to the applicants. The quantum of compensation being at the discretion of the court, the police commissioner was ordered to pay the sum of ₦300.00 to each applicant for his unlawful detention from 14th to 28th February, 1983.

¹²⁸ OP. cit p.427

¹²⁹ 1999 Constitution (as amended)

¹³⁰ (1985) 6 NCLR 664

He was also to offer public apology in the radio Nigeria within a reasonable time and a copy of the apology was to be served on each of the applicants through his counsel. It is clear that this remedy has helped and is helping to confine the authorities within their statutory powers and also to abide by the provisions of the constitution it means that this remedy has achieved its purpose and is efficacious. Also in the case of *Bade Local Government vs Mai- Ado*¹³¹ the Court of Appeal affirmed the order of the High Court for substantial compensation and public apology by radio to the applicant who was wrongly convicted by an Area Court. These cases are good precedents that courts can grant compensation and apology where such is applied for.

4.2.9 Damages

An award of damages is the monetary compensation which court usually orders a defendant to pay to a plaintiff as a reparation or indemnity for the injury or loss suffered by the plaintiff. Thus, an award of damages is the monetary compensation a court may award to an aggrieved party who has suffered injury at the hands of another person or authority.¹³² Damages refers to the sum of money the law imposes for a breach of some duty or violation of some right.¹³³ While damages is the injury or loss suffered by a person as a result of the breach of his right by another person.¹³⁴

The law presumes damages to flow naturally from the injury complained about by the victim.¹³⁵ It is only special damages that the law does not presume but which must strictly be proved. In other words, what gives rise to a cause of action is not the damages claimed, but the injury complained of or sustained by the plaintiff. This means that “every

¹³¹(1982) 3 NCLR 804

¹³²Eka, B.U. op.cit p.323

¹³³www.law.Cornell.edu.wex Accessed on 21st August, 2019, at 4:55pm

¹³⁴*Per Holt C.J. in Ashly vs White* (1903) 2 Ld Raym. 938 at p. 955.

¹³⁵*Ahly vs White* (1903)2 Ld Raym 938, *Minister of Internal Affair vs Shugaba Abdurahman Darman* (1982)3 NCLR. 915.

injury imports a damage. When a man is thereby hindered of his right, general damages is the kind of damages which the law presumes to flow from the wrong complained of”¹³⁶

In *Nigerian Bottling Company Plc. vs Edward & 2 Ors.*¹³⁷ The respondents were at diverse times employed by the appellant company, on the 8th March 1999 the respondents were arrested on an allegation of stealing cocacola products, subsequently the appellant issued letters terminating their employment. The respondent sued the appellants, seeking among other things the sum of N1million damages in favour of each of them, the trial court granted some reliefs among which is the award of N300,000 as damages to each of the respondents.

The appellants aggrieved appealed and the Court of Appeal held that, the primary object of an award of damages is to compensate the plaintiff for the harm done to him. A possible secondary object is to punish the defendant for his conduct in inflicting that harm, in the circumstance the trial court properly exercised its discretion when it award N300,000 as damages to each of the respondents. This method is effective being that it compensates monetarily an aggrieved party that has suffered some form of injury or loss and it is also used as a form of punishment to deter future occurrence of a breach.

By way of conclusion this chapter discussed the remedies used in Nigeria to review administrative actions. It was also observed that these remedies have constitutional as well as statutory backings to them and they have achieved the purpose they were created for. It seems that the court do not make distinction between the grounds upon which an aggrieved applicant is seeking for a relief, the proper understanding of the ground of application and the appropriate remedy will reduce the misconception of application for judicial review. Sometimes the requirement of the judicial review is as to

¹³⁶Eka, B.U. op.cit p.427.

¹³⁷(2015) 2 NWLR (pt. 1443) p. 201 at 234-235.

procedure while at another is to the observance of the principles of natural justice and at another is for keeping within the bounds of the law.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

It has been noted in the preceding chapters that Courts in Nigeria are vested with powers of judicial review under the extant Constitution, that is to say in appropriate cases a court can declare invalid an administrative act for being in conflict with the Constitution or statute. It has also been noted in the preceding chapters that administration is the management, the executive arm of the government, and that these administrative bodies or agencies in managing the affairs of people make policies and decisions that may or likely infringe on the citizens' rights. Where there is such infringement then the power of the court to review such acts by either invalidating them and declaring them as null and void or upholding same.

It was also clear that the purpose of judicial review of administrative action is to ensure that the scope and limits of statutory powers are not exercised arbitrarily or exceeded. The discussion saw the Constitutional provisions that vested the courts with powers of judicial review, as the courts are the arms of government entrusted with the powers of interpretation. These courts are the Superior Courts of record. The grounds upon which the courts in Nigeria will exercise its powers of Judicial review of administrative actions have been discussed, which include substantive *ultra vires*, procedural *ultra vires*, rules of natural Justice and error of law on the face of the record. The methods employed by courts in order to review administrative acts was considered. These methods are through the issuing of writs and orders, such as *habeas corpus*, *mandamus*, *certiorari*, prohibition, *Quo warranto*, injunction and declaration in appropriate circumstances.

5.2 Findings

By virtue of the preceding discussions (from chapter one –four above) the followings are made:

- i. It is clear that lawyers argue that the administrative bodies are not acting judicially or quasi-judicially but rather acting publicly, executively or politically and should not be subject to judicial review, with the intention to defeat the challenge of those actions in court and by so doing limiting the scope of judicial review of administrative actions.
- ii. It has been realised that the main work of the courts under judicial review is the interpretation of statutes, in order to enable the courts know whether an administrative act falls under the powers of the court for judicial review, to achieve that purpose courts must construe enabling statutes to ascertain that fact.
- iii. The positive law view or attitude sometimes tends to defeat the cause of justice, because it looks at the form rather than the substance by applying the law as it is, without considering the intendment of the law which is to see that justice is done in each case at hand

5.3 Recommendations

In view of the findings made above the following recommendations are proffered:

- i. There is a need to settle the debate on whether acts of administrative bodies should be subject to judicial review should not be based on the classification of whether it is judicial or quasi-judicial, once a body is set-up under statute or delegated legislation the source of that body's powers should bring it within the scope of judicial review particularly where it is shown that the administrative

body has exercised powers of investigation, inspection, interrogation, seizure, subpoena, recovery, sanctions and inquiry.

- ii. The courts should not only give superficial interpretation of statutes they should where necessary break or lift the legislative veil to know the real intend of the legislature to ensure the observance of the rule of law and where the court has to make a choice between conflicting alternative interpretations of a provision of the law it should make a choice which will uphold the rights and freedom of citizens.
- iii. The application of natural law view or attitude is recommended as its aim is to achieve justice applying the maxim “*ubi jus ibi remedium*” and by so broaden the scope and application of judicial review.

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