RE-IMAGINING FAIR HEARING IN NIGERIA: A CRITIQUE OF ABALAKA V MINISTER OF HEALTH, AND THE SUPREME COURT'S RESTRICTIVE APPROACH TO ADMINISTRATIVE JUSTICE

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Abstract

This paper discusses the Supreme Court decision in the recent case of Abalaka v Minister of Health (2025) 15 NWLR (Pt 1890) 1, and its implications for judicial, quasi-judicial, and administrative bodies. The Apex Supreme Court ruled that the constitutional protections for fair hearing, provided in section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, applied only to courts and tribunals created by statute. Administrative bodies or non-statutory tribunals, by contrast, may seek redress only through Judicial Review. This article analyses the effect of this narrow interpretation of the section on Nigerian jurisprudence, comparing it with earlier authorities, such as Denloye v Medical and Dental Practitioners Disciplinary Council (1968) 1 All NLR 306 *and Garba and Others v University of Maiduguri* (1986) 1 NWLR (Pt 18) 555 (SC). *In those earlier decisions the Supreme Court adopted a broader, functional, rights-centered approach, holding that whenever civil rights are in issue, procedural fairness must be embedded in the decision-making process. Through doctrinal and comparative approach, the paper analyzed Nigerian case laws and scholarly opinions, as well as drawing on comparative jurisprudence from other jurisdictions. The findings show that the Abalaka judgement excludes many administrative bodies from the earlier constitutional safeguards. Comparative legal systems favour the broader, effects-based approach, suggesting that the Abalaka decision is not aligned with prevailing global practice. The paper concludes by recommending an*

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amendment of section 36(1) to clarify its scope, and to strengthen fairness standards for administrative bodies.

Keywords: Fair Hearing, Civil rights, Administrative Justice, Judicial Review, Constitutional safeguards, Comparative jurisprudence

1.0 INTRODUCTION

The core argument of this paper is that the Supreme Court's decision in *Abalaka v Minister of Health*[1], which limits the protection of fair hearing as provided in section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, to Courts and statutory tribunals only, addresses the letter rather than the spirit of the constitutional guarantee. The decision diminishes constitutional protections and significantly restricts access to justice.

In the *Abalaka* case, Dr. J. Abalaka claimed that he had discovered an effective vaccine for HIV and had successfully treated patients with the said vaccine. His claim attracted scrutiny from the Minister of Health, the Medical and Dental Council of Nigeria (MDCN), and the Medical and Dental Practitioners Investigating Panel (MDPIP). The MDPIP invited him to appear before it over allegations of professional misconduct arising from this claim. Dr. Abalaka declined, rather filing a suit at the Federal High Court of the Federal Capital Territory (FCT), alleging that the panel would act in breach of his right to a fair hearing guaranteed under section 36 (1) of the Constitution, by being the accuser, prosecutor and judge in the proposed hearing. The matter continued right up to the Supreme Court, which held that section 36 (1) of the constitution, guaranteeing fair hearing, applies only to courts and tribunals established by law. The apex court held that the MDPIP was not a court or tribunal established by law for the purposes of section 36(1), though it performed quasi-judicial functions.

[1] Abalaka v Minister of Health and Ors (2025) 15 NWLR (Pt 1890) 1 (SC)

Consequently, alleged breaches by such panels cannot be challenged by fundamental rights enforcement proceedings, as the doctor was attempting to do. Rather, the proper remedy is an application for judicial review. In the words of Kekere-Ekun, CJN:

> 'The right to fair hearing under s. 36(1) is not a general guarantee of procedural fairness in all decision-making processes. It is limited to judicial or quasi-judicial proceedings before courts or tribunals established by law"[2].

Section 36(1) in essence, provides that "in the determination of his civil rights and obligations…. a person shall be entitled to a fair hearing, within a reasonable time, by a court or other tribunal established by law, and constituted in such manner as to secure its independence and impartiality"[3].

2.0 OTHER CONSTITUTIONAL REQUIREMENTS

2.1 Reasonable Time –

There are several requirements embedded in the subsection, including adjudication within a reasonable time. In *Ariori* v *Elemo*[4], the Supreme Court considered excessive delay to be incompatible with a fair hearing. The case was filed in 1970, but witnessed protracted delays, with judgement finally delivered in 1975, fifteen months after evidence closed! The trial court delivered a judgement that was unconnected to the issues canvassed during the trial. On further appeal, the Supreme Court held that the appellant had been denied a fair hearing. The requirement for timely adjudication has been further

[2] Abalaka v Minister of Health and Ors (Supreme Court of Nigeria) (2025) 15 NWLR (Pt 1890) 1, per Kekere-Ekun CJN, 24.
[3] Constitution of the Federal Republic of Nigeria 1999, s 36(1)
[4] Ariori v Elemo (1983) 1 SCNLR 1; (1983) 14 NSCLR 8, SC 80/1981

reinforced by the Administration of Criminal Justice Act (ACJA) 2015, which provides for 'speedy dispensation of justice[5]."

2.2 Independence and Impartiality

The other requirement under the section, for an independent and impartial court, gives constitutional backing to the other pillar of natural justice - "*nemo judex in causa sua*," no man shall be a judge in his own cause. The maxim encapsulates the rule against interest and bias. As Lord Esher MR observed in the English Court of Appeal, "the question is not whether or not the judge was biased …… public policy requires that no judge should be in a position where he might be suspected of being biased[6]." This was the stance of the British courts as far back as the 19th century. In the Nigerian case of *Garba v University of Maiduguri*[7], one of the grounds for setting aside the University Panel decided that the Deputy Vice Chancellor, who was also the Panel Chair, was also a victim of the riot, thereby becoming a judge in a matter in which he had substantial interest. These cases illustrate the core attributes of fair hearing, relevant to this study.

Unfortunately, the narrow interpretation of section 36(1) in the Abalaka case, contradicts earlier Nigerian jurisprudence as the following cases demonstrate.

3.0 THE BROADER, EFFECTS-BASED APPROACH

3.1 Key Authorities: Denloye and Garba

In the much earlier case of *Denloye v Medical and Dental Practitioners Disciplinary Committee*[8], Ademola CJN observed:

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[5] Administration of Criminal Justice Act, (ACJA) 2015, s 1(1)
[6] Allison v General Council of Medical Education and Registration (1894) 1 QB 750, 758
[7]Garba v University of Maiduguri (1986) 1 NWLR (Pt 18) 550 (SC).
[8] Denloye v Medical and Dental Practitioners Disciplinary Committee (1968) 1 All NLR 306

"It is immaterial whether the body is a court or not. What matters is whether it is determining the civil rights and obligations of a person. If so, it must observe the rules of natural justice."[9]

In this case Dr Denloye was tried and struck off the medical register by the Medical and Dental practitioners' disciplinary body, acting in a quasi-judicial capacity, for medical negligence and malpractice bordering on criminality. However, despite the quasi-judicial nature of the body, the Supreme Court went ahead to insist on fair hearing in the above quoted words of the Chief Justice.

In the case of Garba v University of Maiduguri[10], which involved a student riot at the university, leading to damage and destruction of property, a university disciplinary panel was set up. However, the panel was chaired by the Deputy Vice Chancellor, who has also lost substantial property including his car, in the riot. In the ensuing court case, the Nigerian Supreme Court held that even University disciplinary panels must observe principles of fair hearing when determining cases affecting students' rights. Appointing a panel chair who was a victim of the riot, and therefore with substantial interest in the matter, was a breach of national justice. The University panel was held to the principles of fair hearing, especially under section 36(1), though it was not a Court or other tribunal set up by law!

3.2 Professional Bodies and Fair Hearing

[9] Denloye v Medical and Dental Practitioners Disciplinary Committee (1968) 1All NLR 306,317
[10] Garba v University of Maiduguri (1986) 1 NWLR (Pt 18) 550 (SC)

Similarly, in the Legal Practitioners Disciplinary Committee (LPDC) v Chief Gani Fawehinmi[11], the Court of Appeal affirmed that professional disciplinary bodies are bound by fair hearing principles as a result of the civil consequences of their decisions. In that case, the Attorney General of the Federation (AGF) at the time, took exception to an interview Chief Fawehinmi had given to the West Africa magazine, which the AGF felt was less than complimentary to his person. He therefore dragged Chief Fawehinmi before the disciplinary Body. Chief Fawehinmi appealed, arguing that as the First Gentleman of the Bar, with broad powers over the Nigerian Bar Association and the disciplinary body, the AGF was acting as a judge in his own case. The Court of Appeal in its verdict upheld this view, holding the matter in abeyance till the tenure of the AGF as minister ended, in order to avoid a breach of the fair hearing principles.

3.3 Scholarly Support

Some scholars reinforce the broader access view. Uzoechi posits that "the principle of fair hearing is not limited to judicial proceedings. It extends to administrative interests, or legitimate expectations of individuals[12]." He goes on to state that Nigerian courts particularly in Denloye v MDPPC[13]; and Garba v University of Maiduguri[14], have long recognized that administrative bodies must comply with natural justice when determining civil rights. He concludes by stating that the Abalaka judgement is a retreat from this position and risks undermining access to justice. In the same vein, Salawu et al contend

[11] Legal Practitioners Disciplinary Committee v Fawehinmi (1985) 2 NWLR (Pt 7) 300(CA)

[12] Reginald A. Uzoechi, "The Extent of the Applicability of the Principle of Fair Hearing in Administrative Adjudication in Nigeria', (2019) (available at <https:// www.academia.edu/110654190> accessed 18 May, 2026.

[13]Denloye v Medical and Dental Practitioners Disciplinary Committee (1968) 1 All NLR 306.

[14] Legal Practitioners Disciplinary Committee v Fawehinmi (1985) 2 NWLR (Pt 7) 300 (CA).

that administrative bodies are increasingly performing quasi-judicial functions, consequently, it is 'imperative' that they are held to the standards of fair hearing, regardless of their institutional label[15];

The authors put it succinctly when they state that the Supreme Court decision in the Abalaka case creates a doctrinal gap that excludes non-legal tribunals from constitutional protection, despite their power to affect rights.[16] They end by advocating a legislative intervention, along the lines of South Africa's Promotion of Administrative Justice Act (PAJA) 2000.[17] (The PAJA was enacted to give effect to section 33 of the South African Constitution of 1996, guaranteeing lawful, reasonable and procedurally fair administrative actions). Similarly, Oyindoubra posits that 'the principle of fair hearing is a cornerstone of administrative justice, which applies wherever decisions affect rights, even if the body is not a court[18]'. He states that the constitution must be 'interpreted purposively to ensure that administrative bodies do not escape accountability under the guise of institutional form'. He warns that 'the Abalaka decision risks creaking a two-tier justice system, one for the courts and another, less protected, for administrative bodies.'[19]

4.0 COMPARATIVE PERSPECTIVES: UNITED STATES, UNITED KINGDOM, SOUTH AFRICA

4.1 United States of America

[15] Busari M. Salawu, Foluke D. Morenikeji and Maimunat D. Salawudeen: 'A Consideration of the Question of Fair Hearing in Administrative Adjudication in Nigeria' (2024) Adeleke University Law Journal, vol 4, no 1 10- 24, 12.
[16] Ibid 17.
[17] ibid 22.
[18] Thompson E. Oyindoubra, 'Appraisal on the Doctrine of Fair Hearing in the Nigerian Legal System(2022) available at : https://bayelsastatepolylibrary.ng/publications/gs/nd/15.pdf> accessed 12 May, 2026.
[19] Ibid 14.

Comparative jurisprudence demonstrates a different broader approach. In Goldberg v Kelly[20], Justice Berman, of the United States Supreme Court, in his lead judgement, stated thus: "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be condemned to suffer grievous loss'. This reinforced the view that the greater the impact of the decision, the stronger the requirement for natural justice/fair hearing. The status of the decision maker should not be relevant to the need for fair hearing. Similarly, in Matthews v Eldridge[21], a balancing test for procedural due process was introduced. The test considered the private interest affected; the risk of erroneous deprivation of rights, and the value of additional safeguards. It also considered government's interest in the matter, taking into account both financial and administrative burdens. These two cases in particular are landmark decisions spelling out, and insisting on procedural due process. In Goldberg v Kelly, The Court emphasized that due process is not merely a technical formality but a functional safeguard against arbitrary actions. These cases give substance to the due process protections of the 5th and 14th Amendments to the United States Constitution, which guarantee that no one should be deprived of life, liberty, or property without due process of law. The decisions also prioritise effect over institutional form.

4.2 United Kingdom

Even as far back as the 19th century, the United Kingdom has been in the forefront of jurisdictions upholding natural justice and extending its application beyond formal courts. In Wood v Woad and Ors[22], Kelly CB held that the *audi alteram partem* principle (fair hearing), was not confined to the conduct of strictly legal tribunals, but is

[20]Goldberg v Kelly 397 US 254 (1970)
[21]Matthews v Eldridge 424 U.S. 319 (1976).
[22] Wood v Woad and Ors (1873 -1874) LR Exch 190

applicable to 'every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals'[23]. In that case, what was in issue was the decision of an insurance society (the Mutual Insurance Society). In the much later case of Ridge v Baldwin,[24] involving the dismissal of a Police Chief Constable without his having an opportunity to defend himself, the House of Lords held the dismissal void for that same reason. In that case, Lord Reid held that the body was under a duty to act judicially, and that duty had been breached by the failure to give Ridge an opportunity to be heard. He emphasized that natural justice applies to administrative decisions that affect rights, not just judicial ones. The case established the principle that procedural fairness applies to decisions affecting rights, even if those decisions are made by non-judicial bodies, as in the instant case. Here, the decision was made by the Watch Committee, which was not a judicial body but an administrative body. Similarly, in Council of Civil Service Unions v Minister for the Civil Service[25]. (GCHQ Case). Here the United Kingdom Prime Minister, in exercise of his prerogative powers, banned employees, the staff of GCHQ, a UK intelligence agency, from joining trade unions for reasons of National Security. Neither the staff nor the unions were consulted before the decision was made, so they challenged it on grounds of procedural unfairness. Though the claim failed eventually on national security grounds, the trial extended procedural fairness to executive decisions, including those made under prerogative powers; it also introduced the idea that what is fair is context dependent. Fairness can only be effectively determined based on the nature and circumstances of each particular case.

[23] Ibid
[24]Ridge v Baldwin (1964) AC 40 (HL).
[25] Council of Civil Service Unions v Minister for the Civil Service (GCHQ) (1985) AC 374 (HL).

4.3 South Africa

In South Africa, the Promotion of Administrative Justice Act (PAJA), 2000 was enacted to give effect to section 33 of the South African Constitution, 1996. The section guarantees everyone the right to administrative action that is lawful, reasonable and procedurally fair. The Act defines administrative action broadly to include decisions by public officials that affect rights. Procedural fairness includes notice of the proposed action, a reasonable opportunity to make representations, and clear reasons for decisions reached. In the case of President of the Republic of South Africa v South African Rugby Football Union (SARFU)[26], the South African President appointed a commission of inquiry into the South African Rugby Union, without allowing the affected parties to be heard. The Constitutional Court held that the President's action was administrative, and therefore subject to section 33 of the Constitution and PAJA. Consequently, the failure to involve the affected parties violated procedural fairness. This case confirmed that even executive decisions could be subject to administrative justice. It also reinforced the view that procedural fairness is a constitutional requirement that applies across the board, and not merely a discretionary right or courtesy.

5.0 THE NARROW INSTITUTIONAL APPROACH

5.1 Sri Lanka/ United Kingdom

From the above examples across different jurisdictions, it is evident that global best practices align with the effects-based model espoused in the Denloye, and Goldberg v Kelly cases. This is in sharp contrast to the institution-focused formalism underpinning the Abalaka case. Indeed, the narrow interpretation adopted in the Abalaka case, mirrors the reasoning in Nakkuda Ali v Jayaratne[27], (an appeal to the Privy

[26] President of the Republic of South Africa v South African Rugby Football Union (SARFU) (2000) (1) SA 1 (CC).
[27] Nakkuda Ali v Jayaratne (1951) AC 66 (P C).

Council from Ceylon (Sri Lanka)). Nakkuda Ali was a textile trader whose trading licence has been revoked under emergency regulations by the controller of textiles. The controller suspected him of abusing his licence, but did not give him an opportunity to defend himself before the revocation. Ali sued on grounds of breach of natural justice. The Privy Council held that natural justice did not apply in the case, because the controller was acting administratively, and not judicially. The power to revoke licences was a discretionary one based on subjective satisfaction. This decision rested on the premise that natural justice applied only to judicial and quasi-judicial functions, and not to purely administrative decisions; Also, that where subjective discretion is conferred, the courts would not imply a duty to hold a hearing. Thus, the institutional character of the decision maker was treated as determinative of whether procedural fairness was required.

Needless to state, the decision was widely criticized for its unduly narrow view of natural justice- a criticism equally applicable to the Abalaka case, despite its nominal reliance on judicial review as a remedial pathway.

5.2 United Kingdom

Fortunately, the Nakkuda Ali decision was decisively rejected in Ridge v Baldwin, where the House of Lords affirmed that natural justice applies to administrative decisions as long as rights are in issue, even if the decision-making body is not judicial. The GCHQ case extended this principle even further, to executive decisions, including those made under prerogative powers. It has been argued that the Abalaka decision does not deny the existence of a right to fair hearing in administrative contexts, but merely clarifies that such breaches must be pursued through judicial review rather than appeal.While this is technically correct, it obscures the practical reality: judicial review is a discretionary remedy, not one that could be claimed as a right. It

entirely depends on the discretion of the courts. So, if the court exercises its discretion by refusing a review, then the party is denied natural justice. This scenario played out in the Nakkuda Ali case[28] discussed earlier, and Mr. Ali lost his right to trade in textiles because of the subjective and unreviewed discretion of the Controller of textile trade, a result fundamentally at odds with modern administrative justice.

5.3 Nigeria

Closer home, the Supreme Court's reasoning in *Mogaji v Nigerian Army*,[29] aligns with the Abalaka approach. Mogaji was convicted by a General Court Martial (GCM) for alleged sodomy, under the Armed Forces Act, 1993. He challenged the proceedings, alleging breach of fair hearing provisions contained in section 36 of the 1999 Constitution of Nigeria. The Supreme Court held that the GCM, though a military tribunal, is a court of law established under section 36 (4) of the Nigerian Constitution. Therefore, the GCM was bound by the provisions of fair hearing in section 36, and had also complied with the said requirements in the case. This case is on the same page as the Abalaka case, because the case hinged on the status of the deciding body - if it was a court or other tribunal established by law, and therefore bound to apply the rules of fair hearing, or if it was merely an administrative body, which is not so bound. The court did not take into account the effect of its decision on the rights of the party before it. So, it aligns with Abalaka in approach.

Similarly, in the case of *Tukur v Government of Gongola State*.[30] Here, Alhaji Umaru Tukur challenged his removal as Emir of Muri by the State Government, via a suit filed at the Federal High Court, in which

[28] Ibid.
[29] Mogaji v Nigerian Army (2008) 8 NWLR (Pt. 1089) 338(SC).
[30] Tukur v Government of Gongola State (1989) 4 NWLR (Pt. 117) 517.

he alleged a breach of his fundamental rights under the 1979 constitution. However, the Supreme Court held that the Federal High Court lacked jurisdiction to hear the matter as the subject was solely within state jurisdiction. The apex court emphasized that the fundamental rights enforcement must be tied to a subject matter within the court's jurisdiction. This case aligns with the Abalaka case by underscoring the procedural limitations of the Fundamental Rights (Enforcement Procedure) Rules. (The court held that the Federal High Court was the only proper forum for the case). In the Abalaka case, on the other hand, the claim failed because the court held that the procedure was wrong. The Supreme Court held that the proper procedure was via judicial review and not fundamental rights enforcement. Both decisions undermine substantive rights through procedural barriers. Both decisions reflect a strict, narrow and technical approach to access to justice.

4.4 Other Scholarly Views

Support for this view is also found in the works of some scholars. For instance, Garba posits that Abalaka was rightly decided,[31]opining that "to allow every administrative grievance to be dressed up as a fundamental rights claim would collapse the distinction between constitutional and administrative law."[32]However, this view arguably underestimates the civil consequences often attached to administrative decisions.

5.0 Findings.

5.1 It is submitted that the Garba view risks oversimplifying the issues. Denying a party the opportunity to be heard cannot be dismissed

[31] I.B.Garba,'Abalaka v Minister of Health: "The Supreme Court Clarifies Rights Enforcement vs Judicial Review"(2025)<https://legalnaija.com/abalaka-v-minister-of- health-sc-clarifies-rights-enforcement-vs-judicial-review/legalnaija.com in Bing)> accessed 22nd May,,2026.

[32] Ibid 4.

merely as 'an administrative grievance'. In the case at hand, Dr. Abalaka was denied a hearing on the merits of his claim to have discovered a cure for the HIV virus. The decision of the panel had weighty civil consequences for him, hence his crying out and seeking redress. The better view, it is opined, is that of Salawu et al in their paper, where they stated thus: "Administrative bodies are increasingly performing quasi-judicial functions. It is therefore imperative that they be held to the standards of fair hearing, regardless of their institutional label."[33]

Further, the argument that the Abalaka decision is not a denial of fair hearing, rather, that it clarifies the proper procedural route for seeking and enforcing it, is faulty. This is because judicial review, which is the recommended format, is a discretionary remedy; it is never given as a matter of right. This alone makes the process selective rather than mandatory, contrary to what the constitutional provision under section 36 (1) provides. Consequently, the restriction on the enforcement procedure not only restricts fair hearing to courts and legal tribunals, but also downgrades fair hearing from a constitutional right to a discretionary remedy for administrative bodies. At best, it becomes a common law principle which is certainly not binding on administrative agencies, as demonstrated by the Nakkuda Ali and similar cases discussed above.

Earlier Nigerian cases, such as Denloye and Garba, applied a rights-centered approach to fair hearing, focusing on the effect of the decisions on civil rights. Thus, the greater the effect on rights, the more imperative the requirement for procedural fairness. However, the doctrinal shift in the Abalaka decision, limiting fair hearing only to statutory courts and tribunals, marks a significant departure from this

[33] Salawu (n 18) 12

tradition, excluding administrative bodies from constitutional scrutiny in spite of their considerable impact on civil rights.

The study also revealed that comparative systems abroad, such as the United States, United Kingdom and South Africa favour the broader access view, or the effects or rights centered view. This suggests that the current narrow access view espoused by the Nigerian Supreme Court is out of touch with global administrative jurisprudence.

6.0 CONCLUSION

The analysis demonstrates that the fair hearing principle in Nigerian jurisprudence is at the crossroads. While earlier decisions such as the Denloye and Garba cases made it the cornerstone of their decisions because of the consequences attached, the Abalaka decision has changed all that by limiting procedural fairness to statutory tribunals and courts. All other bodies, no matter the consequences following their decisions must seek procedural fairness by way of judicial review. The effect of this is that the constitutional safeguards envisioned by section 36(1) of the Nigerian constitution of 1999, become optional for administrative bodies, and contingent on judicial discretion.

Given the volume of matters handled by administrative bodies in the country, it becomes necessary to seek a recalibration, either judicial or legislative, so that administrative accountability and access to justice are not undermined. This is important, in order to put paid to the different interpretations of the application of section 36(1) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999, by successive judicial administrations. Clarifying the scope of section 36(1) is necessary to ensure consistent interpretation and application.

7.0 RECOMMENDATIONS

The Legislature should consider enacting an Administrative Procedure Act, modelled on the South Africa's PAJA 2000, that binds all administrative agencies to apply the rules of natural justice as part of their procedures. This would resolve the issue definitively for all time, while also providing uniformity, certainty, and equal access to justice.
Secondly, the Supreme Court should revisit the Abalaka judgement to clarify the scope of procedural fairness and ensure that administrative bodies remain subject to constitutional safeguards.

Lastly, administrative, regulatory, and professional bodies are enjoined to adopt mandatory internal procedural safeguards encompassing notice, representation, impartial adjudication, and timely decision-making to ensure compliance with fair hearing principles.