

RAISING ISSUE *SUO MOTU* AND THE QUESTION OF FAIR HEARING: CASE LAW ANALYSIS OF IMPLICATIONS AND EXCEPTIONS

By

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Abstract

The question of whether a Court can raise an issue suo motu and determine it suo motu cannot be resolved easily. This is because, on one hand, it seems forbidden for a Court to raise issues suo motu and make it the basis of its decision as this offends the rule of fair hearing- audi alteram partem. Conversely, circumstances exist when, in the interest of justice, a Court of law is consecrated with the vires to raise issue suo motu and resolve it suo motu. How then can parties in litigation or the Court itself discern these exceptions? To untangle this legal conundrum, this paper deployed the doctrinal research method and examined judicial decisions that outlaw raising and resolving issues suo motu and those that recognised exceptions to this general rule. The paper found out that even in those exceptional circumstances, the need to accord parties fair hearing cannot be diminished. Hence, it was recommended that for procedural fairness, the Court should seldom raise and determine issues suo motu and when constrained to do so, it must be in the interest of justice and ensure that the facts in support of the issue raised suo motu exist in the litigation.

Keywords - Adjudication, fair hearing, issue, suo motu, nullity

Introduction

Against the impregnable constitutional requirement that parties to a case must be heard or accorded fair hearing, can a Court of law raise an issue on its own accord, meaning *suo motu*, and determine it without recourse to the parties before it? If the answer is positive, to what extent can the Court exercise its power to raise and determine an issue *suo motu* without violating or offending the right to a fair hearing? The resolution of these two questions has always been controversial in the adjudicatory process. Therefore, this paper aims to interrogate the extent of the power of a Court to raise issue *suo motu* and determine it without hearing parties in view of the sacrosanct principle of fair hearing. To attain this objective, the paper will examine a plethora of judicial decisions highlighting the implications of raising issues *suo motu* and when it is permissible for the Court to raise issue *suo motu* and determine it without recourse to the parties. Hence, the paper is divided into segments that dwell on the following: constitutional guarantee of the right to fair hearing and duty of court during trial; general rule on the power of a court to raise issue *suo motu*; exceptions to the general rule; distinction between raising an issue *suo motu* and the court looking into the case file of the court *suo motu* to determine a matter; resolving the controversial question whether the Court must call parties to address it on issues raised *suo motu* and effect of failure to do so; distinction between raising an issue *suo motu* and the court looking into the case file of the court *suo motu* to determine a matter; and recommendations and conclusion.

The Constitutional Guarantee of Right to Fair Hearing and Duty of Court During Trial

The twin pillars of justice are *nemo iudex in causa sua* (no one should be a judge in his own cause) and *audi alteram partem* (hear both sides). Breach of all or any of these ancient rules or principles of natural

justice is fatal to any proceeding or trial. In *Sukubo & Anor v Boro & Ors*,¹ it was held among other things that

Natural justice demands that a party be heard before the case against him is determined. Once there is an infringement of the principle of natural justice against him, then the trial or hearing is not fair. The principle of fair hearing is not a mere adjudication but a doctrine that enjoins that once a party entitled to be heard before deciding a matter is denied the opportunity of being heard, the order or decision given thereon will be vacated or set aside, this is because the issue of fair hearing is constitutional and fundamental. See *Olufeagba v Abdulraheem & Ors* (2009) 18 NWLR (Pt. 1173) 384 and *Ararume v Ubah* (2021) 8 NWLR (Pt. 1779) 511 at 539, per Oseji, JSC.

The right to a fair hearing is guaranteed in *section 36* of the Constitution of the Federal Republic of Nigeria, 1999 as amended. Specifically, it is provided in *section 36(1)* thereof that "In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, 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." In *Mustapha v FRN*,² it was held that the rule of natural justice known to the law is the one which says that all sides to a dispute be heard; *audi alteram partem*, and that one should not be a Judge in his cause; *nemo judex causa sua*. The provisions of *section 36* of the Constitution are largely based on these twin pillars upon which the rule of natural justice stands. The first pillar of natural justice requires that all sides to a dispute be heard before a decision thereon is reached or taken by the adjudicator in line with the right to a fair hearing guaranteed by the constitutional provisions. It has also been held in *DHL Int'l (Nig) Ltd v Hunhumuapwa*³ and *Psychiatric Hospital v Edosa*⁴ that the procedure for fair hearing is enshrined in *section 36(1) - (4)* of the Constitution of the Federal Republic of Nigeria, 1999 as amended.⁵ Generally speaking, fair hearing is expressed in the Latin maxim "*audi alteram partem*" which is a doctrine that requires a person to be heard before he is condemned or judgment is passed on him. As vividly held by the Supreme Court in *Leaders of Company Ltd & Anor v Bamaïyi*,⁶

Audi alteram partem simply means to hear the other side. It denotes basic fairness and a generally accepted standard of natural justice. In practice, it means that the judge should allow both parties to be heard and ensure he listens to the point of view or case of each side.

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¹ (2022) LPELR-56595 (CA) paras. C 37, per Adegbehingbe, JCA.

² (2017) LPELR-50022(CA) para C 54-55 per Garba, JCA citing in support the decisions in *Eze v Attorney General Rivers State* (1999) 9 NWLR (Pt. 619) 430 and *Orugbo v Una* (2002) 16 NWLR (Pt. 792) 175.

³ (2021) LPELR-55108(CA).

⁴ (2001) 2 SCNJ 99, 109.

⁵ Hereinafter abbreviated and referred to as 'CFRN'.

⁶ (2010) LPELR-1771(SC) para D 19, per Rhodes-Vivour, JSC.

Parties are to conduct their cases in Court and must be heard in full. It was decided by the Supreme Court in the case of *Segun v The State*⁷ that the notice of the case a party is going to meet for him to plan adequately how to answer or defend it is the very essence of *audi alteram partem* principle in fair hearing or natural justice. As the prosecution has no right to deny the defence *audi alteram partem* so also the latter the former. Denial of a party of his right to *audi alteram partem* is, no doubt, an infringement of the other's right to a fair trial or hearing guaranteed by section 36 of the CFRN, 1999 as amended. The Courts of Law and Justice frown at a party in litigation laying ambush on his adversary. It is jurisprudentially unwholesome.

Following the principle of fair hearing, it is not the place of the Court to conduct the case of any party before it. The hallowed principle of fair hearing as an adjunct of the twin principles of natural justice requires that both sides to a case must be heard. This is expressed in Latin as *audi alteram partem*. The rule of *audi alteram partem* is sacrosanct and any adjudication without fair hearing is a nullity. The primary responsibility of a Court of trial is impartiality and fair adjudication. The law is well established that it is not competent for any Court *suo motu* to make a case for either or both of the parties and then proceed to give judgment on the case so formulated contrary to the case of the parties before it. This has been the decision in a long line of cases like *Commissioner for Works, Benue State & Anor v DEVCON Development Consultants Ltd*,⁸ *Nigerian Housing Development Society Ltd & Anor v Mumini*,⁹ *Adeniji v Adeniji*¹⁰ and *A.C.B. Ltd v Northern Nigeria*.¹¹

In summary, any adjudication adjudged to violate the rule of fair hearing remains null, void and of no effect whatsoever. The primary duty of a trial or appellate Court is to do justice and therefore all laws must be interpreted to ensure justice is done. Against the foregoing backdrop, the next segment of this paper will examine how the rule of fair hearing should be observed alongside the vires or power of the Court to raise an issue of its own volition, meaning *suo motu*.

General Rule on the Power of a Court to Raise Issue *Suo Motu*

Firstly, a matter is raised *suo motu* when a Court takes an action or decision of its own volition or its own accord without any request by the parties involved. A Court can only be accused of raising an issue, matter or fact *suo motu* if the issue, matter or fact did not exist in the litigation. On the contrary, a Court cannot be accused of raising an issue, matter or fact *suo motu* if the issue, matter or fact exists in the litigation. In *Mr. Michael Idachaba & Ors v The University of Agriculture Makurdi & Ors*,¹² the Supreme Court, per Abba Aji, JSC, held that

... a Judge can only be accused of raising an issue *suo motu* if the issue was never brought up by any of the parties or both parties in the litigation. A Court is not a Zombie

⁷ (2021) LPELR-56603(SC) para C 7.

⁸ (1988) 3 NWLR (Pt. 83) 407.

⁹ (1977) 2 SC 57

¹⁰ (1972) 1 ALL NLR (Pt.1) 298.

¹¹ (1967) NMLR 231.

¹² (2021) 1 SCM 53 at 68 C-H.

or robot to go along with the cliché "garbage in, garbage out". The Court exists to determine and examine with due diligence and sense, matters before it in its pursuit of justice. Therefore, where it would enthrone injustice, the Court will not close its eyes to any irregularity however shown on the record without *suo motu* dealing with it.

The general rule on an issue being raised *suo motu* by a Court was adumbrated by the Supreme Court in *Kraus Thompson Organisation Ltd v University of Calabar*¹³ where it held that it is settled law that when an issue is not placed before a Court, such Court has no business whatsoever to deal with it as decisions of a Court of Law must not be founded on any ground in respect of which it has neither received argument from or on behalf of the parties before it nor even raised by or for the parties or either of them.

However, there can be no doubt that Courts of law have the power to raise *suo motu* relevant issues or issues which are not before the Court for the determination of the case. In exercising this power, however, the Court must adhere strictly to the principles of natural justice and in particular, to the *audi alteram partem* rule. In *Ugo v Obiekwe*,¹⁴ it was held that the law is also well settled that on no account should a Court raise a point or issue *suo motu* no matter how clear it may appear to be, and then proceed to resolve it one way or the other without inviting the parties to address it on the point. If it does so, it will be in flagrant abuse and breach of the aggrieved party's right to a fair hearing as entrenched in the Constitution. In other words, when a Court, for any compelling reasons, finds it necessary and particularly in the interest of justice, to raise a point or issue *suo motu*, the parties must be allowed to be heard on such point or issue, particularly the party that may be prejudiced as the result of the point raised *suo motu*.¹⁵

The vires or power of the Court to raise issue *suo motu* is attached with certain conditions. A Court can raise issue *suo motu* but it cannot resolve it *suo motu* except on any of the notable exceptions to be discussed subsequently. There is no doubt, and this is settled, that it is within the competence and province of a trial or appellate Court to raise an issue *suo motu*, not canvassed by parties, to serve the interest of justice if the issue or point raised would assist the Court in the just determination of the case. It may also raise an issue *suo motu* where the issue will determine the fortunes of the parties and where the case cannot be determined one way or the other without raising the issue. However, whenever the Court raises an issue *suo motu* it is incumbent on it to invite the parties, particularly the party that may be adversely affected as a result of the point raised *suo motu*, to address it on the point before resolving and basing its decision thereon.¹⁶ Thus, while a Court of law has jurisdiction to raise an issue *suo motu*, it has no jurisdiction to resolve it *suo motu*. This is in fulfilment of the constitutional requirement of fair

¹³ (2004) 4 SC (Pt. 1) 65, per Musdapher, JSC (as he then was).

¹⁴ (1989) 1 NWLR (Pt.99) 566. This was also the line of reasoning in *Oje v Babalola* (1991) 4 NWLR (Pt.185) 267.

¹⁵ This is the kernel of the decision in plethora of cases like *Adegoke v Adibi* (1992) 5 NWLR (Pt. 242) 410, *Atanda v Akanmi* (1974) 3 SC 109, *Odiase v Agho* (1972) 1 All NLR (Pt.1) 76. See also *Stirling Civil Engineering (Nig) Ltd v Yahaya* (2005) 4 SC 124 and *Uleke & Anor v Kakwa & Anor* (2013) LPELR-20819(CA) para F21-23 per Otisi, JCA.

¹⁶ See *Odedo v PDP & Ors* (2015) 13 NWLR (Pt. 14756) 229, *Olusanya v Olusanya* (1983) ISCNLR 134, *Wagbatsoma v FRN* (2018) LPELR- 43722 (SC).

hearing guaranteed in section 36(1) and (2) of the CFRN, 1999 (as amended). Onnoghen, JSC, in the case of *Shashi v Smith*,¹⁷ stated

It is settled law that though a Court of law may raise an issue *suo motu*, it cannot base its determination of the appeal or case on the issue so raised except it calls on the parties or their counsel to address it on that issue. In other words, a Court of law has the vires to raise issues necessary for the determination of the matter before it is subject to its being addressed on that point/issue by counsel for both parties if the decision of the Court is to be rooted or grounded on the issue so raised *suo motu*.

In sum, the Court hearing a matter, whether as a Court of first instance or an appellate Court has a duty to ensure that the processes by which a party seeks relief before it complies with the relevant provisions of the applicable law. It may raise an issue *suo motu* provided that if the issue so raised is one on which the matter will be disposed of, learned Counsel for the parties must be heard on it before a decision is taken. A Court of record must jealously guard the judicial process from being ridiculed or scandalized to achieve a just, equitable and expeditious dispensation of justice. This was the decision in and *Dingyadi v INEC (No. 2)*¹⁸ and relied on in *PDP v Okorocha & Ors*.¹⁹

Exceptions to the general rule

The general rule that a Court cannot raise an issue *suo motu* and determine it without recourse to the parties is however not absolute. The body of decided cases is subject to some notable exceptions which are identified hereunder. In the very recent 2024 decision in *Ughanwa v IGP*,²⁰ the apex Court restated that the settled law is that no Court is at liberty to raise and resolve any issue *suo motu* without inviting the parties to address it. Therefore, when the Court finds, in the course of writing a judgment, that a fundamental issue has arisen that may sway the decision in the matter, one way or the other, it must invite the parties to address it on such issue(s) before proceeding to determine the case.²¹ However, the general principle of law which states that an appellate Court, or any other Court, should not raise and proceed to resolve an issue without affording the parties the opportunity to be heard on the issue so raised, is not inelastic. It is, therefore, unnecessary for the Court to call for the address of the parties when: -

- (a) the issue relates to the jurisdiction of the Court;
- (b) both parties are or were not aware of or ignored a statute which may have a bearing on the case;
- (c) on the face of the record, serious question(s) of the fairness of the proceeding is evident.

¹⁷ (2009) 18 NWLR (Pt. 1173) 330, 346.

¹⁸ (2010) 18 NWLR (Pt. 1224) 154.

¹⁹ (2012) LPELR-7832(SC).

²⁰ (2024) LPELR-62592 (SC) para C 4-8 per Tsammani, JSC.

²¹ See the following cases cited in support namely: *Solomon Bem Kweney v The State* (2022) LPELR-57561 (SC) 17 - 19 per Augie, JSC; *Stirling Civil Eng. (Nig). Ltd v Yahaya* (2005) 11 NWLR (Pt. 935) 181; *Ebele Okoye & Ors v Commissioner of Police & Ors* (2015) LPELR-24675 (SC) and *Total Engineering Services Team Inc. v Chevron Nigeria Limited* (2018) All FWLR (Pt.919) 158, 180-182.

It was held that the issue in contention in this appeal related to the territorial jurisdiction of the trial Court, to wit: the High Court of the Federal Capital Territory Abuja to have heard and determined the charge against the Appellant. Being an issue of jurisdiction, this Court has the vires to resolve the same *suo motu* without the need to call on Counsel to address the issue. Relying on its earlier judgment in *Edevie v Orohwedor & Ors*,²² the Supreme Court reiterated its pronouncement that it is settled law that it is not in all circumstances that raising of an issue by a Court *suo motu* and the Court deciding the same without calling on parties to address it, is fatal to a judgment based on the said issue or issues raised *suo motu*.

Earlier in *Akingbulugbe v N.I.R.O.W.I*,²³ the apex Court had held that it has become accepted that a Court can raise an issue *suo motu* and decide same without calling for the address of parties in the following instances:

- (a) When the issue relates to the Court's jurisdiction;
- (b) When both parties are not aware of or ignored a statute which may have a bearing on the case;
- (c) When on the face of the record, serious questions of the fairness of the proceedings are evident. In 2013, in the case of *Omokuwajo v FRN*,²⁴ the Supreme Court had made a similar pronouncement thus:

The need to give the parties a hearing when a judge raises an issue on his motion or *suo motu* would not be necessary if:

- (a) the issue relates to the Court's own jurisdiction;
- (b) both parties are/were not aware of or ignored a statute which may have a bearing on the case. That is to say where by virtue of statutory provision the Judge is expected to take judicial notice. See *section 73* of the Evidence Act;
- (c) when on the face of the Record serious questions of the fairness of the proceedings is evident. It is not open to the Court of Appeal to raise issues which the parties did not raise themselves either at the trial Court or during the hearing of appeal.

From the foregoing therefore, it needs to be reiterated that it is not an irrevocable principle that a Court cannot raise and determine an issue *suo motu* although it should be noted that these exceptions are independent of each other as a question of jurisdiction is different from questions of judicial notice and lack of fair hearing respectively. With respect to jurisdiction, the Court must ensure its competence and the competence of any matter brought to it for adjudication. One of the elements constituting the competence of a matter before a Court and *ipso facto* the competence of that Court to hear it is that "the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction."²⁵ The Court is bound to take judicial notice of facts which need not be proved under *sections 122 and 124* of the Evidence Act, 2011 as amended. With respect to the

²² (2023) 8 NWLR (Pt.1886) paras. D – F 219, 275. See also *See Angadi v PDP* (2018) LPELR -44375 (SC).

²³ (2023) 11 NWLR (Pt. 1895) 339, 355 See also *Obasan v Abudu* (2023) 8 NWLR (Pt. 1887) 423; *Edede v Orohwedor* (2023) 8 NWLR (Pt. 1886) 219; *Angadi v PDP & Ors* (2018) LPELR-44375 (SC); *Persons, Names Unknown v Sahris Int'l Ltd* (2019) 13 NWLR (Pt. 1689) 203.

²⁴ (2013) LPELR-20184 (SC).

²⁵ *Madukolu v Nkemdilim* (1962) 2 SCNLR 341, 348.

duty of the Court where a party decides or neglects to invoke the provisions of the Constitution, it was held in *PDP v Okorocha & Ors*²⁶ that where a party, either by accident or design, decides or neglects to invoke the provisions of the Constitution, it is the bounden duty/responsibility of this Court and indeed any other Court established by the same Constitution to bring the issue to light, and, bring same to the notice of the parties to the action/appeal and then afford each of them an opportunity to be heard on same.

Resolving the Controversial Question of Whether the Court Must Call Parties to Address it on Issues Raised *Suo Motu* and Effect of Failure to do so

Having established in the preceding paragraph that there are exceptional circumstances when a Court can raise issues *suo motu* and determine it *suo motu*, it is important at this juncture to address the question of the effect of the failure of the Court to call parties to address it on such issues raised *suo motu*. It bears repeating that the law is well settled that a Court has the powers to *suo motu* raise issues that none of the parties to a case before it has raised. However, it has no power to proceed and determine the case or any matter in the case based on the issues it has raised *suo motu*, without hearing the parties on the said issues or giving the parties reasonable opportunity to address it. Upon raising the issues, the Court has a duty to invite both sides to address them before proceeding to determine the case or any matter therein based on the said issue. If the Court raised and determined the issues without hearing the parties or giving them a reasonable opportunity to be heard, an error in the proceedings occurs and a violation of the right of the parties to fair hearing results. In *Obumseli v Uwakwe*,²⁷ the Supreme Court held that on no account should a Court of law raise a point *suo motu* no matter how clear it may appear to be and proceed to resolve it one way or the other without hearing the parties. If it does so, it will be in breach of the parties' right to a fair hearing.

What seems to be debatable is the legal effect of this kind of error on the decision rendered without hearing the parties. Should it be treated like errors in proceedings that can vitiate proceedings only if they occasion a miscarriage of justice? It must be noted that judicial opinion on the matter is divided. One view represented by the 2010 decision of the Supreme Court in *Victino Fixed Odds Limited v Joseph Ojo & Ors*²⁸ holds that it has a vitiating effect without more. In other words, the denial itself amounts to a miscarriage of justice. The Supreme Court in this case held that a trial Court has the right to raise an issue *suo motu*, however, it is imperative that parties must be allowed to address it thereon in order not to breach the rule of fair hearing. The right to a fair hearing is a fundamental right, a constitutional right guaranteed by the 1999 Constitution of the Federal Republic of Nigeria - and a breach of it particularly in trials vitiates such proceedings, thereby rendering the same null and void. A hearing cannot be said to be fair if any of the parties is refused a hearing or denied the opportunity to be heard, present his case, or call witnesses. When a judge raises an issue *suo motu*, it raises an issue not in contemplation of the parties, and not before the Court in the circumstances. Procedural fairness entails that judges must afford parties before them the right to be heard before deciding a matter. In the

²⁶ (2012) LPELR-7832(SC) paras. A-B, 37 per Muhammad, JSC.

²⁷ (2009) All FWLR (Pt. 486) 1994. Similar restatements were also made in *Dalek Nigeria Ltd v Oil Mineral Producing Areas Development Commission (OMPADEC)* (2007) 2 SC 305 and *Mojekwu v Iwuchukwu* (2004) 18 NSCQR 184.

²⁸ (2010) 8 NWLR (Pt. 1197) 486

case at hand, the Learned Judge raised an issue *suo motu* in the process of writing his judgment when he should be clothed with the toga of impartiality. Earlier in 1992, the Supreme Court had in *Eholor v Osayande*²⁹ held, per Nnaemeka-Agu, JSC, that our system of appeals in our adversary system does not permit a Court to dig into the records and fish out issues, no matter how obvious, and, without hearing the parties use it to decide an issue in controversy between the parties to the appeal. It runs counter to the impartial status and stance expected of a judge in the system. It is better that the parties raise and argue it by themselves but if it is so fundamental that it goes to the jurisdiction or vires of the Court then it must be brought to the notice of the parties to the appeal and argument received on it before it is decided. The notions underlying this view are that: (i) the denial of the right of address itself is a miscarriage of justice in that it results in the violation of the party's right to a fair hearing. (ii) Even though addresses of Counsel are not substitutes for evidence and the relevant or applicable law and the decision must be based on the evidence and the applicable law, addresses can however influence the approach of the Court in the application of law to the facts of a case. This likely influence of addresses on the Court's application of law to the facts of a case was highlighted by the Supreme Court in *Obodo v Olomu & Anor*³⁰ and *Pam & Anor v Mohammed & Anor*.³¹ In these cases, the Court stated and restated that addresses form part of the case and failure to hear the address of one party, however overwhelming the evidence seems to be on one side, vitiates the trial, because in many cases, it is after the addresses that one finds the law on the issues thought not in favour of the evidence adduced.

On the contrary, the other view represented by the 2010 Supreme Court decision in *Effiom & Ors v Cross River State Independent Electoral Commission & Anor*³² is that the denial of the right of the address itself does not occasion a miscarriage of justice and so cannot vitiate the decision until the party denied the right of address shows that such denial or failure to hear him on the point has occasioned some miscarriage of justice. The Supreme Court in this case held, per Tabai JSC, that while the Court has a duty to allow the parties to be heard on any issue it raises *suo motu*, a failure to do so does not necessarily lead to a reversal of its decision, the appellant must go further to show that the failure to hear him on the point occasioned some miscarriage of justice. The same apex Court in *Leaders of Company Ltd & Anor v Bamaiyi*³³ held, per Adekeye, JSC, that it is not in all cases where a Court raises an issue *suo motu* that will lead to reversal of the decision so reached. The appellate Court sitting over such judgment must be convinced that the issue so taken *suo motu* is substantial and has led to a miscarriage of justice against the appellant. A case is won on credible evidence and not on address. No amount of brilliant address or playing to the gallery by counsel can make up for the lack of evidence to prove or defend a case in Court. The main purpose of an address is to assist the Court and is never a substitute for compelling evidence. Failure to address this will not be fatal or cause a miscarriage of justice. This is so because whether counsel addresses a Court or not the Court must do its research with the sole aim of seeking the truth and determining which side is entitled to judgment. In the absence of address by counsel, the trial was fair.

²⁹ (1992) 7 SCNJ 217.

³⁰ (1987) 3 SC 43.

³¹ (2008) 5-6 SC (Pt. 1) 83.

³² (2010) 14 NWLR (Pt. 1213) 106.

³³ (2010) 18 NWLR (Pt. 1225) 329.

The most recent inclination of the Supreme Court in *IGP v Achi*³⁴ decided in 2024 is very instructive. In that case, the appellant canvassed extensive arguments on the principle of law which forbids a Court of law from raising an issue *suo motu* and resolving the same without allowing the parties or their counsel to address the Court on the issue so raised without lending any attention to the exceptions to the general rule. The apex Court held that admittedly, the general principle of law is that on no account should a Court of law raise an issue, *suo motu*, which is not in the contemplation of both parties or their counsel in their grounds of appeal or submissions therefrom and not a sham issue, no matter how clear it may appear to be, and proceed to resolve it without affording the parties or their counsel the opportunity of addressing the Court on the issue so raised citing in support *Adegoke v. Adibi*.³⁵ This principle of law is in tandem with the fundamental right to fair hearing enshrined under section 36 of the CFRN, 1999 as amended. Thus, where in the course of composing its judgment, the Court discovers an important issue that was not addressed by the parties at the time of the hearing, it is duty bound to re-open the proceedings and invite the parties to address it on the discovered issue before it decides the issue, provided the statutory time limit for delivery of its judgment, had not lapsed.

In *Registered Trustees of Mission House v All States Trust Bank Plc & Ors*,³⁶ also decided in 2024, the Supreme Court, per Saulawa, JSC, held that.

In addition to the fact that Ground 2 of the 1st Respondent's Notice of Appeal and the issue distilled therefrom are both incompetent (as resolved under issue 2 above), the finding of the Court below on the issue was made *suo motu* without according to the parties especially the Appellant to address on the point. The said finding amounts to breaching the Appellant's right to fair hearing, as cherishingly enshrined in section 36(1) of the 1999, Constitution, as amended (*supra*). See *Cole v Mattins* (1968) ALL NLR 161.

Indeed, not too long ago, this Court had the privilege of reiterating the importance of the trite fundamental right to fair hearing to the administration of justice. That's the case of *Musa Muhammad Usman Obe v Murtala Abdullahi Abubakar & 5 Ors* (Appeal No. SC/CV/248/2023), judgment delivered on 31/3/2023, wherein this Court aptly remarked:

'My noble Lords, we have frequently reiterated, that it is most desirable that where a Court, as in the present case, after hearing argument of Counsel, deems it expedient that the matter before it can in fact be decided on a sheer technical point upon which it has not been addressed, then it behoves the Court to invite the Counsel to address it thereupon. As aptly once reiterated by this Court in *Cole v Mattins* (1968) All NWLR 161, It is our view only after so acting that a Court should adjudicate on a technical point taken by the Court itself particularly when

³⁴ (2024) LPELR-61781(SC) para. A 18-19, per Okoro, JSC.

³⁵ (1992) 5 NWLR (Pt. 242) 410, (1992) 6 SCNJ 136. See also the cases of *Cole v Martins* (1968) 1 ALL NLR 161; *Ifezue v Mbadugha and Anor* [1984] 5 SC 79; and *Nigerian Tobacco Co. Ltd v Agunanne* (1995) LPELR-2034 (SC).

³⁶ (2024) LPELR-61723(SC) para. A 44-45).

the defect if there is one, could be cured if the Court in its discretion, gives leave to amend Per Lewis, FJSC @ 244.’

Without a doubt, the preponderance of judicial opinion is that a decision on an issue raised by the Court *suo motu* without hearing the parties or allowing them to address the Court on it is a nullity for violating the right of the parties to a fair hearing. There is no doubt that the decision of a Court must be based on the evidence before it and the applicable law and that Counsel addresses cannot replace the evidence or applicable law. It is equally beyond doubt that Counsel addresses greatly influence the judicial approach to the application of the relevant law to the facts before the Court. The denial of the right to address robs a party of an opportunity to proffer views that can influence the Court's approach in applying the applicable facts of the case. There is also the real likelihood of the impartiality of the Court being rendered suspect when it decides the case on a point it raised *suo motu* without allowing the parties to address it on that point. Finally, there is a need to restrain the exercise of judicial power in that manner to avoid encouraging the development of a regime in which cases are routinely decided on issues not within the contemplation of the parties or which they have not had prior notice of or on grounds they have not joined issues on.

Distinction between Raising an Issue *Suo Motu* and the Court Looking into the Case File of the Court *Suo Motu* to Determine a Matter

Parties in litigation must not be lost as to the distinction between raising an issue *suo motu* and the Court looking into the case file of the Court *suo motu* to determine a matter. It is hornbook law that a Court is entitled to look into its records *suo motu* to resolve an issue raised by the parties. In the quest for justice, the Court can glean through its records and all processes transmitted to it in respect of the appeal to ensure compliance with the law and rules as held in *PDP v Okorocha & Ors (supra)*. Thus, when a Court looks into its case file to resolve a matter, it has not raised an issue *suo motu* and it has not breached the rule of fair hearing. In *Engr. Chine-Dum O. Anya V Barr Onwuchekwa O. Anya & Ors (supra)*, the appellant's case before the trial Court was founded on the fact that the will left by the deceased was forged wherein in proof or otherwise, a handwriting expert testified, which was in favour of the respondents. On appeal, the appellant alleged a breach of fair hearing contending that the issue of forgery was raised *suo motu*. The appellate Court held that the facts in this case did not show that this was the case as the issue of forgery did not become fresh on appeal. Rather, it held that the lower Court being confronted with the whole facts and as reflected in the record, discovered that the issue of forgery was well founded and cannot be a new issue calling for the address of parties.

The distinction between raising an issue *suo motu* and looking into the case file by the Court to determine a matter was lucidly drawn by the Supreme Court, per Okoro, JSC, in *Akeredolu v Abraham & Ors*³⁷ as follows:

³⁷ (2018) LPELR-44067 (SC). See also *Kerian Ikpara Obasi v Mikson Establishment Industries Ltd* (2016) LPELR-40704 (SC) cited and relied on by the Court of Appeal, per Ige, JCA, in *Metropolitan Shuttle Express Ltd. & Anor v Minister of the FCT & Ors* (2022) LPELR-57440 (CA) para. E 44-47. See also *Kerian Ikpara Obasi v Mikson Establishment Industries Ltd* (2016) LPELR-40704.

I agree with the Court below that the fact of the appellant carrying on part of his law business in Abuja was not introduced into the litigation by the learned trial Judge. Rather, it was exposed to the Court by the learned Senior Counsel for the Appellant via a letter to the Deputy Chief Registrar of the Court where one of the offices of the Appellant's Law office is shown to be located in Abuja.

A distinction must be drawn between a Court raising an issue *suo motu*, and the Court looking into its records *suo motu* to resolve an issue raised by the parties. In respect of the former, a Court raising an issue *suo motu* must invite the parties to address it before using the issue in the judgment. But in the latter situation where the Court looks into the record of appeal to enable it to resolve issues already raised by the parties, a Court is not bound to invite the parties to address it. A Court can only be accused of raising an issue, matter or fact *suo motu* if the issue, matter or fact did not exist in the litigation. A Court cannot be accused of raising an issue, matter or fact *suo motu* if the issue, matter or fact exists in the litigation. A Judge, by the nature of his adjudicatory functions, can draw inferences from stated facts in a case and by such inferences; the Judge can arrive at conclusions. It would be wrong to say that inferences legitimately drawn from facts in the case are introduced *suo motu*. That is not correct.

Recommendations and Conclusion

Fair hearing is a cardinal principle of natural justice. At all times, its sacred and solemn boundaries must be respected. Notwithstanding that a Court can in some exceptional circumstances raise issue *suo motu*, that discretion must be exercised sparingly. It is recommended that a Court should avoid raising and resolving an issue *suo motu* or initiating controversy in a matter lest there is a breach of the right to a fair hearing. Where the Court is constrained, in deserving cases, to raise and determine an issue *suo motu*, it must ensure that it is in the interest of justice and especially that the facts in support of the issue allegedly raised *suo motu* exist in the litigation.³⁸ Except for time constraints, parties should always be heard in full. Where a Court raises an issue *suo motu*, say of jurisdiction, it is commendable practice not to determine it without hearing parties. As was done by the Supreme Court in *PDP v Okorochoa & Ors (supra)*, it is better to invite Counsel to address the Court on it.

In conclusion, it is within the remit of a Court to raise an issue *suo motu* but in doing so it must do so with great circumspect and in circumstances that are legally permissible to promote justice and preserve the rule of fair hearing. The timely admonition of the Courts is that on no account should a Court of law raise a point *suo motu*, no matter how clear it may appear to be, and proceed to resolve the case between the parties thereon without inviting them or Counsel on their behalf to address the Court on the point. If it does so, it will be in breach of a party's fundamental right to fair hearing. It is wrong and a denial of fair hearing for a Court to raise an issue, even if it is of jurisdiction, *suo motu*, and proceed to decide the matter or appeal thereon without inviting Counsel to address it thereupon. It remains good law

³⁸ This line of reasoning was approved in *Engr. Chine-Dum O. Anya V Barr Onwuchekwa O. Anya & Ors* (2020) 8 SCM para D-H to 26 A, 16, 25 per Abba Aji, JSC.



validated by a plethora of decided cases that where a party has been denied fair hearing the entire proceeding no matter how well conducted will amount to a nullity.³⁹

³⁹ This was the kernel of the decisions in *Adigun v A-G of Oyo State (No. 2)* (1987) 2 NWLR (Pt. 56) 197 and *Okafor v A-G Anambra State* (1991) 6 NWLR (Pt. 200) 659.