

## **The Principles of natural justice in public administration and administrative law**

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**Abstract :** According to S.B.M Marume (1988) and J.M Stevens (1982:279), it is maintained that in many democratic societies both developed and developing ones where administrative adjudication affects the rights of an individual, the common law principles of natural justice require that an individual citizen affected by a decision should: be given a fair hearing; that s/he be informed of the case against him/her; be given an opportunity to prepare and present his/her case and that the institution taking the decision be unbiased.

**Keywords:** administrative adjudication, democratic societies, common law principles, natural rights, fair hearing and unbiased.

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### **I. Introduction**

In current administrative law textbooks, greater attention is paid to the judicial review of administrative action. Macro-perceptually this judicial review of administrative is intended to deal with general principles governing administrative action, orders, decision.

#### **Purpose of this article**

For the express purposes of this article, attention is confined to: (a) **those administrative actions linked directly to adjudication**; and (b) **administrative adjudication can be defined as judicial decision that is derived from the existence and application of enabling provisions, that is, that statutory provisions in terms of which the legislature delegates powers to a person or body**. According to **Street and Brazier** (1983: 332 – 37), the exercise of such delegated powers is based upon the assumption that the individual or group so charged uses discretion in wielding such powers. **J. M. Stevens** (1982:279) maintains that today a great number of individuals or special institutions, for example, tribunals are virtually exclusively involved in adjudication that is, giving of judgement. And **Stevens** (1982:278) states:

*“A tribunal is a body which discharges judicial functions, in that sense not only that it occasionally takes decisions as to individuals’ rights, but is in fact specially set up for the purpose of adjudication; that is, determining disputes by applying the law”.*

#### **Application of administrative adjudication**

Administrative adjudication affects the rights of an individual citizen. The common law principles/rules of natural justice require that an individual affected by a decision shall be given a fair hearing, that s/he is informed of the case against him, given an opportunity to prepare and present his/her case, and that the institution taking the decision be unbiased (J. M. Stevens: 1982:279). Thus the three fundamental principles of natural justice that should be adhered to by an administrative tribunal are that no man/woman should be a judge in his/her own cause, that both sides to a dispute should be heard, that the principles against bias should at all times be complied as follows:

**1. The principle nemo debet esse judex in causa propria sua.**

According to **D. Foulkes** (1976:79), the principle **nemo debet esse judex in propria causa sua** precludes a justice or any other party who is interested in the subject matter of a dispute from acting as a justice therein.

**2. The audi alteram partem principle (rule):**

The **audi alteram partem principle/rule** means, broadly speaking, that both sides to a dispute must be heard. There are some preconditions that must be met under this particular principle. These preconditions are:

- The **first** is that that affected person must be informed about the case against him.
  - **Secondly**, the affected person must be given the opportunity to answer the case disclosed by the notice.
  - **Thirdly**, the affected person should be informed of the reasons for the decisions by the tribunal (G. M. Cockram 1967:43).
- a. **Principle/rule against bias.**  
The **nemo iudex in propria causa sua** principles stipulates that the adjudicator must be free from bias

## II. Comments on the principle of bias

This principle/rule of **bias** has **two main** aspects; namely, **firstly**, an adjudicator must **not** have any **direct financial or proprietary interest** in the outcome of the proceedings, and **secondly**, the adjudicator **must not be reasonably suspected** or show a real likelihood of **bias**. But according to **G. G. M Cockram** (1967:43), the practical application of the first principle (no man should be a judge in his own cause: **nemo debet esse iudex in propria causa sua**), is fixed and does not present any further questions the **second principle/rule**, that is, the **audi alteram partem rule**, must be applied much more realistically.

Therefore these in public administration and constitutional and administrative law should be quite aware of the practice these principles of natural justice

## III. Conclusion

In any constitutional democracy, where the administrative law contains the vital component of administrative adjudication, the **three fundamental principles/rules of natural justice** that should be adhered to by an administrative tribunal are that (a) no man should a judge in his own cause; (b) that both sides to a dispute should be heard, and (c) that the rule against bias should at all times be complied with. Thus, **fairness** must be guiding philosophy in public administration.

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