EFFICACY OF PRINCIPLES OF NATURAL JUSTICE IN SAFEGUARDING A RIGHT TO A FAIR HEARING IN EAST AFRICA.CASE STUDY OF UGANDA.

BY NABAASA RODGERS

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MAY 2016

DECLARATION

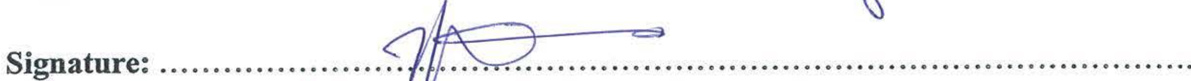
I declare that this dissertation is the work of NABAASA RODGERS; LLB/37988/123/DU alone, except where due acknowledgement is made in the text. It does not include materials for which any other University degree or diploma has been awarded.

Signature:....Nabaasa....

Date:....17/05/16....

APPROVAL

I certify that I have supervised and read this study and that in my opinion; it conforms to the acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelor of Laws of Kampala International University,



Name of Supervisor: Dr Chiana Magaws

Signature: ....

Date: 17-5-2016

DEDICATION

I dedicate to my parents Mr. Asiimwe Rodgers Buzaabo and Mrs. Bashemeire Edith more so, Mr. Akandonda Hakim Nsamba and all other academic friends at Kampala International University.

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ABSTRACT

The right to a fair hearing is one of the fundamental human rights that is recognized under article 28 of 1995 constitution of Uganda.

The right to a fair hearing, like any other right to be promoted and protected throughout East Africa, especially Uganda. It is fundamentary entrusted in the hands of judicial officers and administrative officers in general who are charged with the duty that the principles contained therein are enjoined while administering just ice.

The researcher was intended to critically examine the efficacy of principles of natural justice in safeguarding the right to a fair hearing.

As it is universally known, a reject to a fair hearing cannot be recognized where there is breach of principles of natural justice simply because itself is a principle of justice.

The research contains introduction, a brief back ground of a right to a fair hearing, literature review, key aspects of a right to a fair hearing, remedies available in case of breach, efficacy of principles of natural justice;

The research also contains impediments to realization of a right to a fear hearing and possible solutions to the impediments.

And finally the researcher under chapter five makes possible recommendations and conclusive remarks.

During the research the research finds that the principles of natural justice through the application have greatly enabled the realisation the few challenges or impediments hindering the realisation of a right to a fair hearing.

CHAPTER ONE.

1.0 CHAPTER SUMMARY

This chapter serves as the introduction and provides the general background and framework for the study. it covers the introduction of the study, statement of problem, purpose and objectives of the study, research questions, and the scope of the study, methodology and literature review.

1.1 INTRODUCTION

A right to a fair hearing is one of the fundamental rights that are guaranteed by the principles of natural justice.

The right to a fair hearing or trial has been defined in numerous regional and international human rights instruments. It's one of the most litigated human rights and substantive case has been established on the interpretation of this human right, despite variations in the wordings and placement of the various trial rights.

According to Professor Cram Stone in his publication,[1] Human rights are inherent entitlements that accrue to every human being merely for being human. This is supplemented by **Article 20**[2] which provides that human rights are inherent and not granted by the state.

This right to a fair hearing being fundamental is also provided under 1995 constitution of Uganda. **Art 28 (1)** [3] provides that; in determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy, and public hearing before an independent and impartial court or tribunal established by the law.

Article 28(3)[4]provides that every person who is charged.with a criminal offence shall be;

(a) Presumed to be innocent until that person is or has pleaded guilty.

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[1] what are human rights 1973

[2] 1995 constitution

[3] 1995 constitution

[4] 1995 constitution

(b) Be informed immediately in a language that he understands of the nature of the offence.

(c) Be given adequate time and facilities for the p[reparation of his or her offence

(d) Be permitted to appear the court in person or at that person's expense by a lawyer of his or her own choice.

(e) In the case of any offence which carries a sentence of death or imprisonment for life, is entitled to legal representation at the expense of the state.

(f) Be afforded without payment by that person, the assistance of the interpreter if that person cannot understand language at the trial.

(g) Be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the court.

A right to fair hearing is a supernatural one in that its value is recognised after the violation or denial of the same right.

1.2 BACKGROUND

A right to a fair hearing is one of the principles of natural justice normally termed as (**audialterampartem**) which means that no man should be condemned unheard or that both sides must be heard before passing any order.

The right to a fair hearing can hardly be **defined** with a lot of precision. However, it encompasses a fair, speedy and public hearing before an impartial court or tribunal established by law[5].

In one of the **oldest cases of early part of this Century, Lopointevs. Association**[6] it has been observed that **"the rule audialterampartem"**is not confined to the conduct of strictly legal tribunals, but is also applicable to every tribunal or body of persons vested with authority to adjudicate about involving civil consequences to individuals.

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[5] Massey Dr. in IP Administrative law 7th Edition Eastern Book Company

[6] (1906)AC535(539)

There is thus no reason to doubt that the administrative actions are as such as much under the strains of principles of natural justice as judicial and quasi-judicial decisions.

Besides promoting an individual asliberties, the right to a fair hearing has also been used by the courts as a base on which to build up fair administrative procedures[7].

In United Kingdom, prior to Ridge vs. Baldwin[8], the scope of right to a fair hearing was severally restricted by case law following **Cooper vs. Wards Worth Board of works**[9].In **Rvs. Electricity Commissioners, ex parte London Electricity Joint Committee Co.**[10] **Lord Atkins** observed that the right only applied where decision makers had **"the duty to act judicially"**. In natural justice cases this dictum was generally understood to mean that a duty to act judicially was not to be inferred merely from the impact of the decision on the rights of subjects; such a duty would arise only if there was a**"superadded"** express obligation to follow a judicial type procedure in arriving at the decision[11].

In **Ridge vs. Baldwin**, **LordReid** reviewed the authorities extensively and attacked the problem at its root by demonstrating how to term judicial had been interpreted as requiring some additional characteristic over and above the characteristic that the power affected some person's rights. In his view the mere fact that the power affects persons rights or interests is what makes it" **judicial"** and so subject to the procedures required by natural justice[12].This removal of earlier misconception as to the meaning of the

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[7] Wade and Forsyth Administrative Law (1977) Page.402,

[8] (1964) AC 40

[9] (1863)14CBNS 180

[10] (1923)1 KB 171

[11] De Smith "Judicial Review" page.330.

[12] Wade and Forsyth Administrative law (1977 pp. 413-415)

judicial is thought to have given the judiciary the flexibility it needed to intervene in cases of judicial review[13].

The right to a fair hearing is reflected in numerous declarations which present customary law, such as **Article 10**[14] provides that "Everyone is entitled to a fair hearing by an independent and impartial tribunal in the determination of his or her rights and obligations and of any criminal charge against him or her"

The International Convention On Civil And Political Rights (ICCPR), Article 14 provides that "all persons shall be equal before the courts and tribunals in the determination of any criminal charge against him, or of his or her rights and obligations in a suit at law, every one shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by the law..."

The right to a fair hearing largely evolves through the control exercise by the central courts over bodies of inferior jurisdictions, such as local justices and the governing bodies of the corporations. The right to a fair hearing applies to arbitrators, the disciplinary functions of the professional bodies and voluntary associations.

Due to the fact that legislation is rigid in the administration of justice, and more so sometimes abused by arms of the government, the principles of natural justice normally come in to intervene so that equity and justice is achieved.

1.3 STATEMENT OF A PROBLEM

In East African .countries, principles of natural justice .have been emphasised. in Uganda, under **Art.20**[15] provides that all human rights are inherent and not granted by the state.

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[13] Natural Justice, Fairness, and Administrative functions1917 by M.Sornarajah.

[14] Universal Declaration of Human Rights

[15] 1995 constitution of Uganda

Under **Art.28**[16], provides for a right to a fair hearing before a court or tribunal.

In addition Universal Declaration of Fundamental human rights emphasises the same.

Principles of natural justice uphold that for any person to be adjudged of any offence, he should be accorded a chance to appear and defend himself as to the disputed fact.

To some extent East African countries through its courts, organs, government and state agencies, NGOs have tried to implement a right to a fair trial, however, on the other extent they have totally failed due to internal and external factors, especially in Uganda.

Therefore this research aims at finding out how principles of natural justice have been able to safeguard a right to a fair hearing.

According to Freeman, Micheal. "........it's in question as to whether the judiciary plays its role in ensuring that the responsibilities casted upon it are fully performed[17]"

1.4 PURPOSE OF THE STUDY

A right to a fair hearing is dependent on the application and realisation of principles of natural justice. Therefore the major purpose of this study is to evaluate how principles of natural justice have been able to safe guard a right to a fair hearing in Uganda.

1.5 SPECIFIC OBJECTIVES OF THE STUDY

The research mainly focused on the efficacy of principles of natural justice in safeguarding a right to a fair hearing in East Africa, Uganda.

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[16] 1995 constitution of Uganda

[17] Human Rights? An interdisciplinary approach(Cambridge; polity 2002)

However, there are other objectives that were put into consideration during research. **Among them include the following;**

1. To establish the strength and ability of principles of natural justice in safeguarding a right to a fair hearing.

2. To examine the law safeguarding a right to a fair hearing.

3. To establish the impediments to realisation of a right to a fair hearing in Uganda.

4. To examine remedies available for the violation of a right to a fair hearing/principles of natural justice.

5. To examine the impact of realisation of a right to a fair hearing.

6. To make Conclusions recommendations for possible reforms.

1.6 RESEARCH QUESTIONS

1. How have principles of natural justice been able to safeguard a right to a fair hearing in Uganda?

2. What are laws governing a right to a fair hearing in Uganda?

3. What are the impediments to the realisation of a right to a fair hearing?

4. What are remedies available upon the failure to realise a right to a fair hearing?

5. What are the possible solutions to impediments to realisation of a right to a fair hearing in Uganda?

6. What are the recommendations for possible reforms?

1.7 SCOPE OF THE STUDY

1.7.1 Theoretical scope

The researcher basically focused on principles of natural justice and a right to a fair hearing. The researcher examined how the right to a fair hearing

has been enjoyed as the result of consideration of principles of natural justice by impartial and independent tribunals or courts.

1.7.2 Geographical scope.

The study was region based one. It covered EAST AFRICA; however, it focused on Uganda as a case study.

1.7.3 Time scope

The study covered a period between 1995 up to now

1.7.4 Conceptual scope

The research basically covered the efficacy of principles of natural justice in safeguarding a right to a fair hearing.

1.8 SIGNIFICANCY OF THE STUDY

As it is judicially and public noticeable that there are many or several regional and international instruments such as International covenant on civil and political rights(ICCPR),Universal Declaration on Human rights, The African Charter of Human and Peoples rights interalia to which Uganda is a signatory to and of which these instruments provide for a right to a fair hearing ,and since the study/research focuses on the efficacy of principles of natural justice in safeguarding a right to a fair hearing ,it can be presumed that the study will assist in educating the public about their rights while in court proceedings.

More so the study will help in re defining procedure in courts by educating the judicial officers on how to treat the arrested and tried persons from the time of arrest up to the time of judgement.

The research will act as research source for students of **KAMPALA INTERNATIONAL UNIVERSITY** and other institutions and individuals interested in general.

1.9 METHODOLOGY

Research methodology is the part of a research work in which the techniques and methods to be used in conducting a research are described[18].

It's suffice to note that due to scarce financial resources, geographical limitations and time frame work, the research surveys were minimal. The research is heavily dependent on prior published documents such as newspapers, law reports, text books, and journals from libraries such as that of Kampala International University, law development centre, other universities libraries, high court, and court of appeal and Supreme Court libraries.

There is also information from the internet, conventions such as international convention on civil and political rights (ICCPR), Universal Declaration of Human Rights, European Convention on Human and Political rights.

The research employed qualitative method of data collection, since most of his research findings were from libraries.

1.10 LITERATURE REVIEW

According To Justice Brijesh Kumar Judge Of Allahabad High Court India[19], the concept and principles of natural justice and its application in justice delivery system is not new. It seems to be as old as the system of dispensation of natural justice itself. It has now assumed the importance of being so to say "an essential inbuilt component of rights and liberty of people. It's no doubt, a procedural requirement but it ensures a strong safeguard against any judicial or administrative; order or action, adversely affecting the substantive rights of the individuals"

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[18] free dictionary by fair Tex, 2012,

[19] Institute Published Journal Jelly sept.1995

According to Viscount Haldane, in Local Government Board Vs. Alridge[20], he observed that "..........those whose duty is to decide must act judicially. They must deal with the judicially. They must deal with the question referred to them without bias and they must give each of the parties the opportunity of adequately presenting the case made. The decision must come to the spirit and with the sense of responsibility of a tribunal whose duty is to meet out justice."

Everyone has a right not to be convicted for conduct that did not constitute a criminal offence at the time it was committed. This right applies at all times and can never be derogated from. The prohibition of expost facto laws is essential in order to ensure legal predictability which means that laws must be clear enough to guide the conduct of the individual who must be able to know possibly with some legal help what conduct is criminal and which is not[21].

The rule of fair hearing must be followed to prevent the miscarriage of justice. If he is punished unheard, the purpose of law is defeated .The adjudicatory authority doesn't know whether the accused is innocent or not. What if the accused is punished unheard and later he turns out to be an innocent? Before taking any action the adjudicatory authority has to keep in mind the several considerations[22].

MPJain[23], noted that (the doctrine of natural justice seeks not only to secure) justice but also to prevent miscarriage of justice. He further identified the norms of natural justice that are based on two ideas which are;

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[20] (1915) AC120

[21] Human Rights in the Administration of Justice. A manual on Human rights for Judges, Prosecutors, and Lawyers (Professional Training series no.9/add 1 UN New York and Geneva 2008)

[22] Wade, sir Williams; Administrative Law, 1stIndian edition 2005

[23] principles of administrative law, 5th edition (revised 2005) P.269

1audialterampartem, that is a person who has to be affected by decision has a right to be heard; and

2. nemojudexincasasua, that is no person can be a judge in his own case, and the authority deciding the matter should be free from bias.

UNIVERSAL DECLARATION OF HUMAN RIGHTS, Article 10 provides that "Everyone is entitled to a fair hearing by an independent and impartial tribunal in the determination of his or her rights and obligations and of any criminal charge against him or her"

THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS (ICCPR), Article 14 provides that "all persons shall be equal before the courts and tribunals in the determination of any criminal charge against him, or of his or her rights and obligations in a suit at law, every one shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by the law..."

1.11 CHAPTERISATION

The research is comprised of five chapters.

Chapter one: consists of introduction, background, problem statement, purpose of research, objectives of research, research questions, scope of the research, methodology to be employed in research, Data collections methods to be used in research, significance of the study, literature review and arrangement of the chapters in research.

Chapter two: consists of the general historical development of the principle of a right to a fair hearing in Uganda since 1962 up-to-date.it will explain how a right to a fair hearing has developed in Uganda though out all governments/regimes governed by different leaders.

Chapter three: comprises of the key aspects of a right to a fairing and remedies that may be available in case of breach of those rights. In other words it will explain what is meant by a right to a fair hearing in details.

Chapter four: is comprised of efficacy of principles of natural justice in safe guarding a right to a fair hearing in Uganda. it will explain how principles of natural justice has been influential in the realisation of a right to a fair hearing in Uganda, factors that hindered the realisation of a right to a fair hearing, and the importance of realising the principle of a right to a fair hearing.

Chapter five: is comprised of possible recommendations and conclusion.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF A RIGHT TO A FAIR HEARING IN UGANDA SINCE 1962-TODATE.

2.1 A right to a fair hearing is one of the fundamental and guaranteed rights by all Uganda's constitutions since 1962.

The 1962 constitution followed the termination of the colonial regime. **According to UPENDRA BAXI**, the colonial regime was marked by the law and politics of violent exclusion[24]. It is on the basis of colonial violations and developments on the whole world scene after 1945 that could probably explain the human rights emphasis in Uganda.

In 1945,the united nations adopted its founding chapter against a history of violence which had also witnessed the massive abuse of human rights.**Art.1(3) of the UN charter** states that one of the purposes of UN was" ....promoting and encouraging the respect for human rights and for fundamental freedoms for all without distinction..."

The universal declaration on human rights (UDHR) (1945) followed UN charter and made provision for an array of rights including a right to protection of the law (see art 7&10).

It's against this background that the 1962 constitution the full chapter(**chapter 3**)on hearing then known as the secure protection of the law and particularly for someone to be tried with in" a reasonable time" by the independent and impartial court. The enforcement of the substantive justice enshrined in **Art.17 to 29** was left to the high court of Uganda.(Art.32 of 1962 constitution).

The events between 1962 and 1986 provided a severe test to chapter 3 of the constitution, particularly with respect to the rights related to the fair trial. The political tensions of the time inevitably had dire consequences for human rights generally but also with respect to right to protection of the

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[24] Baxi 2000

law in particular. in the matter of **Grace Stuart Ibingira and ors vs. A.G**[25], The applicants were arrested on 22nd Feb. 1966,warrants under **Deportation Act (cap 308)** were issued a day later on the 23rd .an application for a writ of habeas corpus was made on the 7th march 1966.the matter was heard and disposed of by the trial judge on march 14,1966 rejecting the application. The appeal was finally allowed on 14th July 1966.applying the principles in determining whether the hearing was speedy or not, the matter lasted approximately five months up to the final determination. to this extent the matter was heard within reasonable time.

When the 1962 constitution was suspended, a new 1966interim constitution was adopted followed by 1967 constitution. Under chapter 3, **Art.15**[26] provided that "………any person charged with a criminal offence ……shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law". This was a reflection of provisions of 1962 constitution.

When Idi Amin Dada took power in 1971, He cited 18 reasons for his coup d'ĕtat among which was continued" unwarranted detention without trial for long periods of large number of people…."however, no sooner had he taken the power than people started to disappear.

It therefore, a little difficult to discuss a right to speedy trial during the period of 1971 to 1986.for instance, in Idi Amin's regime many people disappeared and were never seen again. For example Frank kalimuzo, Makerere university Vice Chancellor,BenedictoKiwanuka,ChiefJustice,W.WKalema,YekosofatiEngu,the latter two both ministers, and other several prominent men in the country[27].

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[25] (1966)E.A 445

[26] 1966 constitution of Uganda

[27] A.B.KASOZI, quoted by Kanyeihamba (2002)at 202.

In sum, while it is clear that all Uganda's Constitutions after 1962 guaranteed the right to protection of the law, this right was violated with impunity especially after 1971.The regimes of the day Amin to Obote 11 were much more interested in preserving themselves in power and hence resorted to extra judicial killings among other violations.

When **National Resistance Movement (NRM)/ARMY**, took over power on 26thJan 1986, the country had witnessed several human rights violations under prior regimes. In the NRM's ten point programme considerable emphasis was placed on the restoration of the security of the person and respect for human rights.

Legal notice no.5/1986 instituted a commission of inquiry into human rights violations that occurred between 1962 and 1986 and to make necessary recommendations.

After hearing several alarming testimonies and receiving various pieces of evidence pointing to the massive violation of human rights, the commission recommended that the new constitution of Uganda should have a complete bill of rights and mechanisms for their protection, respect, observance, promotion and enforcement. This led to the enactment of **1995 constitution**. All human rights in 1995 constitution are enshrined under chapter 4.

A right to a fair hearing in 1995 constitution is enshrined under **Art.28**[28].which states that in the determination of civil rights or obligations or any criminal charge, a person shall be entitled to a fair, speedy, and public hearing before an independent and impartial court or tribunal established by law.

[28] 1995 constitution of Uganda

CHAPTER THREE

KEY ASPECTS OF A RIGHT TO A FAIR HEARING AND REMEDIES AVAILABLE IN CASE OFBREACH.

3.1 KEY ASPECTS OF A RIGHT TO A FAIR HEARING

Prior notice of a hearing. The term notice originates from the word **"notitia"** which means "being known". Thus it connotes the sense of information, Intelligence or knowledge. Notice embodies the rule of fairness and must precede an adverse order. It should be clear enough to give the party enough information of the case he has to meet. There should be adequate time for the party so that he can prepare for his defence. It is the *sine qua* of the right of hearing. Natural justice allows a person to claim the right to adequate notification of the date, time, place of hearing as well as detailed notification of the case to be met. **According to Theo Liann,**[29], use notice is the starting point in hearing. This is because unless a person knows about the subjects and issues involved in the case, he cannot be in position to defend himself.

In **Rvs. Secretary for the state for the Home Department, exparte Doody**[30]**. Lord Mustill** famously held that "since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests .fairness will very often require that he is informed of the gist of the case which he has to answer. If the notice is a statutory requirement then it must be prepared in the manner provided by the law. Failure to give a notice immediately affected will invalidate the decision. However, **according university of Ceylon vs. Fernando**[31],in occasion where giving of notice is not a statutory demand, courts have insisted that fair hearing demands the giving of notice given the fact that the justice of common law will supply the omission of the legislature.

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[29] Law and Administrative state 1999) Singapore Legal System.2edition

[30] (1993)UKHL,(1994) AC 531.at 560

[31] (1960) 1 W.L.R233

The notice must be adequate. Its adequacy depends on the case. But generally, **According to Cooper vs. Wand worth Board of Works**, a notice, in order to be adequate must contain the following elements;

1. The time, place and nature of hearing.

2. Legal authority under which hearing is to be held.

3. Statements of specific charges which the person has to meet.

The test of adequacy of the notice will be whether it gives the sufficient information and material so as to enable the person concerned to prepare for his defence.

According to **DeSouza vs. Tunda Town Council**[32], there should be sufficient time to comply with the requirements of a notice.

The requirement of notice can be dispensed with, where the party concerned clearly knows the case against it and thus avails the opportunity of his defence.

Thus in the case of **Keshav Mills Co.Ltd vs. Union of India (1943)E.A 234**,the supreme court upheld the government order of taking over the mill for a period of five years. it quashed the argument of the appellants that they were not issued before this action was taken, as there was the opportunity of full scale hearing.

Opportunity to be hard

Every person has a right have a hearing and be allowed to present his or her own case. Should a person not attend the hearing even with adequate notice given, the adjudicator has the discretion to decide if the hearing should proceed. After the notice has been served, the parties affected must be given enough or adequate time to answer. This means that reasonable period of time must be afforded to them to answer back. Where a person is to appear in a person, he has a right to be represented by a counsel, for some time the

[32] (1961) E.A 377

thinking had been that the lawyers should be kept away from the administrative adjudication, as it saves time and expense. But the right to be heard would be of little avail if the counsel were not allowed to appear, as everyone is not articulate enough to present his case. Till the view was that the right to counsel was not inevitable part of natural justice. As it is provided under **Art.28 (3) (d)**[33].

At the hearing

In **Ridge vs. Baldwin**[34], a chief constable succeeded in having his dismissal from service declared void as he had not been given an opportunity to make a defence.

In **Chief constable of north Wales Police vs. Evans**[35], a chief constable required probationer to resign an account of allegations about his private life which he was given no fair opportunity to rebut. The **HOL** found the dismissal to be unlawful.

However, this requirement does not necessarily mean the decision maker has to meet the complainant face to face "natural justice does not necessarily demand it to be in oral form" it has been suggested that an oral hearing will almost be as good as useless if the affected person has no prior knowledge of the case.

In **Lloyd vs. McMalone**[36] an oral writing did not make a difference to the facts on which the case was based. Giving a judgment in the court of an Appeal of England and Wales **Lord Harry Woolf** held that an oral hearing may not always be the "very pitch of the administration of natural justice"

It has also been argued that an oral hearing is only required if issues concerning deprivations of legal rights or legally protected interests arise.

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[33] the 1995 constitution of Uganda

[34] (1964) AC 40

[35] (1982)1 W.L.R 1155

[36] (1987)

Conduct of hearing. When deciding how the hearing should be conducted, the adjudicator has to ask whether the person charged has a proper opportunity to consider, challenge or contradict any evidence, and whether the person is also fully aware of the nature of the allegations against him or her so as to have a proper opportunity to present his or her own case[37].

In **Secretary of State for the Home Department vs. A.F**[38], Lord Phillips of wathmatravers said, "the best way of producing fair trial is to ensure that a party to it has the fullest information of both the allegations that are made against him and the evidence relied upon in support of those allegations where the evidence consists of the oral testimony, then he should be entitled to cross examine the witnesses who give that testimony, whose identities should be disclosed.

However, when hearing the multiple polycentric issues such as natural justice and the protection of the confidential information for national security reasons, both the concerns of the public security and the right to a fair trial must be met.

In European court of Human rights, **Chambers, A vs. United Kingdom**[39],court held that a person accused of terrorism against whom a control order has been issued must be given sufficient information about the allegations against him to enable him to give effective instructions to his special advocate. If this requirement is satisfied. A fair hearing can be conducted without disclosure of confidential information that might compromise national security.

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[37] Kay Sweet Pin vs. Singapore Island County Club (2008)2S.L.R 802 at 806.paragraph 7.

[38] (2010) 2 AC 269

[39] (2009)301

The decisions and reasons for it.

Currently the principles of natural justice in the united kingdom and certain other jurisdictions do not include the general rule that reasons must be given for decisions in **R vs. Northumberland compensation Appeal Tribunal, Ex parte Shaw**[40] **Denning L J** stated "I think the record must contain at least the document which initiates the proceedings ;the pleadings if any; and the adjudication; but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them. If the tribunal does state its reasons, and those reasons are wrong in law, certiorari lies to quash the decision".

It has been stated that" no single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon the public authorities to give reasons for their decisions".

Requiring giving of reasons helps ensure that decisions are carefully thought through which in turn aids in the control of administrative discretion.

Secondly, accountability Makes it necessary for the public authority to face up to the people affected by the decision when a public authority acts on all relevant considerations, this increases the probability of a better decision out comes and as such, is beneficial to public interests.

Another important benefit is that respect for decision makers is fostered which increases their integrity in public eyes.

Right to legal representation, a party may conduct his/her own case or may be represented by a lawyer,[41] where the enabling enactment provides or a tribunal exercises its discretion, a party or other participant may be represented by an agent. Any party or other participant may be represented by an agent. Any party or other participant appearing before a tribunal may be represented by lawyer. There is no absolute right to a lawyer. **However,**

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[40] (1951)

[41] Art.41,1995 constitution

the courts have found a right to a lawyer where they are formal and somewhat complex proceedings, or where the consequences of the proceedings to the individual are significant. Conversely, there has been found to be no right to a lawyer. Where the issues are not complex and the individual is capable of presenting his/her case, then the right to a lawyer in the complex and the individual is capable of presenting his/her case, then the right to a lawyer is dispensed with[42].

Right to adjournment

This simply refers to postponement of the date to a later date, adjournment is allows if sufficient cause is shown, but when hearing of evidence has started, the trial should continue until the trial is concluded[43].

If the party asks for adjournment either in order to gain time to prepare his defence or for a good cause is shown or reason and the tribunal refuses such adjournment it will be acting in contravention of the right to a fair hearing.

Adjournment is relevant especially if it is based on the genuine grounds as it will enable the adjourning party have adequate opportunity to prepare his case by acquiring relevant and enough evidence to the case at hand. **However,** if it done fraudulently, it may lead to unnecessary delay and may occasion miscarriage of justice since Nairobi liquor licencing justice delayed is justice denied.[44]

Acting as a Judge, Witness and a Prosecutor

The rule of fair hearing doesn't allow that one should be a plaintiff, a witness, and a judge in the same case at the same time and to decide in that particular case. Neither can a member of an authority act as a witness and a

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[42] (See for example. Robert w. MacAulay and James L.H Sprague, Practice and Procedure).

[43] Maina's application H.C Kenya Misc. Cause no.7/1969

[44] .SEC.112(1)MAGISTRATE COURT ACT

judge at the same time in the same case, by descending from the bench giving his own evidence and then return to his place upon the bench nor give the decision, possibly based on his own evidence[45]. The case in point in **Ndegwa vs Nairobi liquor licensing court[46],** the president of the court and other two members visited the applicant premises and told him that his licence would be cancelled. at the hearing of the complaint lodged against him the two members of the licencing court who went and visited the applicant premises gave evidence before court and went back to the bench and sat as the members of the court which decided to cancel the applicant licence. Court held that as the two members acted as the prosecutors, witnesses and judges in the same case, they must be considered biased.

It is against the rule of natural justice too for a judge to hear an appeal of his own decision. This is because he may be likely to be biased in favour of his initial decision and justice will not appear to be done.

Similarly one who is fact a respondent cannot participate in the determination of an appeal against his own decision unless he is authorised by the statute[47].

3.2 REMEDIES IN CASE OF BREACH OF A RIGHT TO A FAIR HEARING.

According to Modern Law Review[48], in administrative law especially where there is breach of principles of natural justice which include interalia right to a fair hearing; the most appropriate remedy is to apply for judicial review. Judicial review is defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Secondly, a court's review of a lower court's or administrative body's factual or legal findings[49].

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[45] Ndegwa vs Nairobi Liquor Licensing Court.(1957) E.A 709.

[46] (1957) E.A 709

[47] .Tailor vs. National Union of Sea Man(1967)ALL ER 767

[48] Vol.5 Published online 2011

[49] Black's Law Dictionary at page 852,

In Uganda, judicial review finds its basis in the Constitution, the Judicature Act Cap 13 and the Judicature (Judicial Review) Rules 11/2009.

Judicial review of an administrative decision is the procedure in English administrative law by which the courts in England and Wales supervise the exercise of public power on the application of an individual. A person who feels that an exercise of such power by a government authority such as a minister, the local council or a statutory tribunal is un lawful perhaps because it has violated his/her rights may apply to the administrative court(a division of high court)for judicial review of the decision and have it set aside(quashed)and possibly obtain damages[50]. .a court may also make mandatory orders or injunctions to compel the authority to do its duty or to stop it from acting illegally.

Amenability to Judicial Review

A decision complained of must have been taken by a public body that is a body established by the statute or otherwise exercising a public function. In **R vs. Panel for Takeovers and Mergers Ex p Data Fin**[51], the court of appeal held that a privately established panel was amenable to judicial review because it in fact operated as an integral part of a governmental frame work for regulating mergers and takeover, while those affected had no choice but to submit to its jurisdiction.

Ouster clauses

Sometimes the legislator may want to exclude the powers of court to review administrative decision, making them "final", "binding" and not appealablevs. Plymouth city council.

However, the courts have consistently held that none but the clearest words can exclude Judicial review[52]. When the government wanted to introduce a new asylum and immigration Act containing such clear words, members of

[50] AW. Bradley and K D Ewing Administrative and Constitutional law

[51] (1987)1 QB 815

[52] R vs. Medical Appeal Tribunal Ex parte Gilmore (1957)1QB 574

the judicially protested to the extent of saying that they will not accept even such exclusion[53]. The government withdrew the proposal.

The courts however do uphold time limits on applications for judicial review[54]

Exclusivity rule

The house of lords held in **O'Reilly v smack man[55]**.that where the public law rights were at stake, the claimants could only proceed by way of judicial review. They could not originate their action under the general civil law procedure, because that would be avoiding the procedural safeguards afforded to public authorities by the judicial review procedure, such as the requirement of sufficient interest, timely submission and permission for judicial review. **However**, a defendant may still raise public law issues as a defence in civil proceedings. so for example, a tenant of the public authority could allege illegality of its decision to raise the rents when the authority sued him for failing to pay under the tenancy contracts. He was not required to commence a separate judicial review process[56].if an issue is a mix of private law rights, such as the right to get paid under a contract, and public law issues of the competence of the public authority to take the impugned decision, the courts are also inclined to allow the claimant to proceed using ordinary civil procedure, at least where it can be demonstrated that the public interest of protecting authorities against frivolous or late claims has not been breached[57]

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[53] lord Woolf: the Guardian profile

[54] R vs. Secretary of State for the Environment Ex parte Oster (1976)) 3 ALLER 90.

[55] (1983)2 AC 237

[56] Wands Worth London Borough Council vs. Winder (1985) AC 345

[57]Ray vs. Kensington and Chelsea and Westminster family practitioner committee (1992), Trustees of the Dennis Rye pension fund vs. Sheffield City Council(1997).

In Kasibo Joshua v Commissioner of Customs U.R.A.[58]**, Justice Kiryabwire held** that the prerogative orders made in pursuance of judicial review look to the control of the exercise of an abuse of power by those in public offices, rather than the final determination of private rights which is done in a normal civil suit. He held further that judicial review is not concerned with the decision, but the decision-making process, an assessment of the manner in which the decision is made and it is not an appeal and the jurisdiction is exercised in a supervisory manner; not to vindicate rights as such, but to ensure that public powers are exercised in accordance with the basic principles of legality, fairness and rationality.

In **Council of Civil Service Unions vs. Minister for the Civil Service**[59],and the case of **Aggrey Bwire v Attorney General, His Worship**[60] summarised the grounds for reversing an administrative decision by way of judicial review as follows;

(i) Illegality

(ii) Irrationality

(iii)Procedural impropriety.

It was further held that the first two grounds are known as substantive grounds of judicial review because they relate to the substance of the disputed decision.

Procedural impropriety is a procedural ground because it aims at the decision making procedure rather than the content of the decision itself and none of the afore-mentioned grounds were applicable to the proceedings or decision of the committee.

Illegality. In **Lord Diplock's** words in **Council of Civil Service Unions vs. Minister for the Civil Service**[61], this ground means that the decision maker "must understand correctly the law that regulates his decision making power and must give effect to it"

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[58] HCMA 44/2007

[59] (1985)AC 374

[60] CACA No. 9/ 2009

[61] (1985) AC 374

A decision may be illegal for many different reasons, there are no hard and first rules for their classification but the most common example of cases where the courts hold administrative decisions to be un lawful are the following;

The decision is taken by the wrong person (unlawful sub delegation)

If the law empowers a particular authority for example a minister to take certain decisions, the minister cannot sub delegate this power to another authority for example an executive officer or a committee. This differs from a routine job not involving much discretion being done by civil servants in the ministers name which is not considered delegation[62].

.An example of when this happened was in **Ellingham vs. the Minister of Agriculture and Fisheries** where a notice preventing farmers from growing sugar beet was unlawful because the power to put up the sign was delegated by the original committee.

Error of law or of fact

The court will quash a decision where the authority has misunderstood a legal term or incorrectly evaluated the fact that is essential for deciding whether or not it has certain powers.

So in **R vs. Secretary of State for the Home Department, Exparte Khawaja** [63]**HOL** held that the question whether the applicants were "illegal immigrants "was a question of fact that had to be positively proved by the home secretary before he could use the power to expel them. The power depended on them being" illegal immigrants" and any error in relation to the fact took the Home secretary outside the jurisdiction to expel them. **However**, where a term to be evaluated by the authority so broad and vague

[62] Ellinghamvs. the Minister of Agriculture and Fisheries(1948)HC),Carlton vs. Commissioners of Works (1943)C.A,R vs. Secretary of State for the Home Office ExpOladehinde(House Of Lords)1990

[63] (1984)AC74

that reasonable people May reasonably disagree about its meaning. For example, in **R vs. Hillingdon Borough Council exparte Pulhofer**[64], the local authority had to provide homeless persons with accommodation. The applicants were a married couple, who lived with her two children in one room and applied to the local authority for aid. The local authority refused aid because it considered that the pulhofers were not homeless and **House of Lords** upheld this decision because whether the applicants had accommodation was a question of fact for the authority to determine.

The powers used for the purpose different from the one envisaged by the law under which they were granted.

A good example of this is the case of **R vs. Secretary of state for foreign affairs Exp the world movement. Section 1**[65] empowered the secretary of state for foreign affairs to assign funds for development aid of economically sound projects. The secretary assigned the funds for a project to construct a power station on the Pergau River in Malaysia which was considered as uneconomic and not sound. **The House of Lords** Held that this was not the purpose envisaged by enabling statute and the minister therefore exceeded his powers similar principle exists in many continental legal systems and is known by the French name of ***detournement du pouvoir***.

Ignoring relevant considerations or taking irrelevant considerations into account.

This ground is closely connected to illegality as a result of powers being used for a wrong purpose. For example in **wheeler vs. Leicester city council**, where the city council banned a rugby club from using its ground because three of the club's members went on a tour in south Africa at the time of apartheid. in **R vs. Somerset County Council Ex parte Fewings,** the local authority decided to ban stag hunting on the grounds of it being immoral. In **Pad Fieldvs. Ministry of Agriculture, Fisheries and Food,** the

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[64] (1986)AC 74

[65] Overseas Development and Cooperation Act 1980

minister refused to mount an inquiry into a matter because he was afraid if bad publicity. In **R vs. ILEA Ex parte Westminster City council**[66]**,** the London education authority used its powers to inform the public for the purpose of convincing the public of its political point of view. In all these cases, the authorities have based their decisions on considerations, which were not relevant to their decision making power and have acted unreasonably.

Note that improper purpose or the irrelevant consideration must be such as to materially influence the decision. Where the improper purpose is not of such material influence, the authority may be held to be acting within its lawful discretion. So in **R vs. Broadcasting Complaints Commission Exparte Owen (1985) QB1153**, where the broadcasting authority refused to consider a complaint that a political party has been given too little broadcasting time mainly for good reasons, but also with some irrelevant considerations, which however were not of material influence on the decision.

Fettering discretion

An authority will be acting un reasonably where it refuses to hear applications or makes certain decisions without taking individual circumstances into account by reference to certain policy.**BOC vs. minister of technology (1971) QB 664**.when an authority is given discretion, it cannot bind itself as to the way in which this discretion will be exercised either by internal policies or obligations to others. Even though an authority may establish internal guidelines, it should be prepared to make exceptions on the basis of every individual case[67]. This has changed in modern times, with the new coalition government an overulement.

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[66] (1948)

[67] Lavendervs. Minister of Housing and Local Government (1970)IWLR 1231

Irrationality

Under **Lord Diplock's Classification**, a decision is irrational if it is "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it "this standard is also known as wednesbury unreasonableness, after the decision in associated provincial picture houses ltd vs. Wednesbury corporation, where it was first imposed.

Unlike illegality and procedural impropriety, the courts under this head look at the merits of the decision, rather than at the procedure by which it was arrived at or the legal basis on which it was founded "makes sense". in many circumstances listed under "illegality "the decision may also be considered irrational.

Proportionality

Proportionality is a requirement that a decision is proportionate to the aim that it seeks to achieve. For example in order to forbid a protest match on the grounds of public safety should not be made if there is an alternative way for protecting public safety, for example by assigning an alternative match for the route. Proportionality exists as a ground for setting aside administrative decisions in most continental legal systems and is recognised in England in cases where issues of EC law and ECHR rights are involved. **However**, it is not as yet a separate ground of judicial review, although **Lord Diplock** alluded to the possibility of it being recognised as such in the future. at present, lack of proportionality may be used as an argument for a decision being irrational[68].

[68] (R(Daly) vs. Secretary of State for Home Department (2001) 2 AC 532.

Statutory Procedures

An act of parliament may subject the making of a certain decision to a procedure, such as the holding of a public hearing or inquiry[69],or consultation with an external adviser[70].some decisions may be subject to approval by a higher body. Courts distinguish between "mandatory" requirements. A breach of mandatory procedural requirements will lead to a decision being set aside for procedural impropriety.

Procedural Impropriety.

A decision suffers from procedural impropriety if in the process of its making the procedures prescribed by statute have not been followed or if the rules of natural justice have not been adhered to.

There are majorly three remedies available in case of breach of a right to a fair hearing, that is; Mandamus, certiorari, and prohibition.

Section 36 (1)[71] provides that the High Court may upon an application for judicial review, make an order, as the case may be, of;

(a) Mandamus, requiring any act to be done;

(b) Prohibition, prohibiting any proceedings or matter; or

(c) Certiorari, quashing any decision of the lower tribunal.

Section 36(2) also provides that no order of mandamus, prohibition or certiorari
shall be made in any case in which the High Court is empowered by the exercise of the powers of review or revision contained in this or any other enactment to make an order of like effect as the order applied for where the order applied for would be rendered unnecessary.

Certiorari; this will issue to quash a decision to quash an order made by an administrative body only if the functions of that body are characterised as being at least partly judicial. Those who insist that a clear cut distinction

[69] (Jackson Stansfields vs. Butter worth)

[70] (R vs. Social Services Secretary Ex parte Association of Metropolitan Authorities)

[71] Judicature Act cap 13

exists between judicial and administrative functions have argued that certiorari is appropriate to review judicial error only[72]. A quashing order nullifies a decision which has been made by the public body. The effect is to make the decision completely invalid. Such an order made in successful judicial review proceedings is a quashing order. If court makes a quashing order it can send the case back to the original decision maker directing it to remake the decision in the light of the court's findings. Or very rarely, if there is no purpose in sending the case back, it may take the decision itself.

Certiorari is appropriate remedy in the following circumstances;

1. Where the administrative body uses its powers ostensibly for the purpose for which they were granted but in reality for a wholly unauthorised purpose, certiorari may properly issue to quash its act or decision[73].
2. Whether or not the body intended to misapply its powers is immaterial. it is probably immaterial whether parliament has permitted the purposes expressly or by implication[74].
3. Where the administrative body makes an order which shows on its face that irrelevant consideration has been taken into account or that relevant considerations have been disregarded in the exercise of its discretion, certiorari may properly issue to quash the order.
4. Where the administrative body has in exercising its discretion, taken irrelevant matters into account or disregarded relevant matters or to come to a grossly un reasonably decision, but has not made an order that exhibits these defects on its face, it is very doubtful whether certiorari will issue to it, unless the abuse of powers is tantamount to an attempt to use them to effect on entirely different purpose from that for which they were conferred.

[72] Notably D.M Gordon in Administrative Tribunals and Courts (1933)49 LQR 94.

[73] Rvs.L.C.C (1931)2 K.B 215

[74] Bell Rent Tribunal Case 1949 I K.B 666

Mandamus

By a singular foot of judicial law making remedy devised to restore persons to public offices from which they had been illegally excluded has been converted into a comprehensive remedy for controlling the exercise of administrative discretions.

Mandamus issues to secure the performance of a public duty.an authority entrusted with discretionary powers cannot be ordered to exercise them in any particularway, but if it has a duty to exercise discretion and omits to do so then mandamus will go to order it to address itself to the matter. If the mandatory order is not complied with, it is punishable as a contempt of court. **Examples** of where a mandatory order might be appropriate include: compelling an authority to asses a disabled person's needs, to approve building plans, or to improve conditions of imprisonment. A mandatory order may be made in conjunction with a quashing order, **forexample**, where a local authority's decision is quashed because the decision was made outside its powers, the court may simultaneously order the court(did the author mean to write the words "local authority's" instead of the word "court" here?)to remake the decision within the scope of its powers.

In**R vs. Adamson**[75], the law concerning mandamus was placed on its present footing. The court ordered the mandamus to go to justices who had refused to issue summons for conspiracy against persons who were alleged to have broken up a public meeting.

Prohibition

A writ of prohibition is an order issued to a tribunal coming it to cease proceedings on a matter found to be outside its jurisdiction[76]

Administrative agencies are subject to writs of prohibition under judicial decisions.A prohibiting order is somehow similar to a quashing order in that it prevents a tribunal from acting beyond the scope of its

[75] (1875)1 Q.B.D 201

[76] Allenvs. Yeaman1969

powers. The key difference is that a prohibiting order acts prospectively by telling an authority not to do something in contemplation. Examples of where prohibiting order may be appropriate include stopping the implementation of a decision in breach of natural justice or prevent a local authority licensing indecent films, or to prevent the deportation of someone whose immigration status has been wrongly decided[77].

The plaintiff made a claim that vegetable seed committee made orders which were alleged to solely to protect and further trading and financial interest of the committee and provide relief of from the competition from seed merchants. The plaintiff claims a declaration that the orders were made mala fide and capriciously in relation to any relevant power given to the committee by the under said regulation. it was said that orders made by the committee were legislative in nature conferred by regulation 14 and court cannot inquire into the motive actuating a legislative body.

The regulation provided that the regulation shall be administered for the purpose of securing an adequate supply of vegetable seeds in Australia which are true to type and of a satisfactory standard of parity and germination and that those seeds are effectively distributed.

The order contained a general prohibition against selling the commodity except with the approval of the body.

Held:

The enactment of a law cannot itself give any cause of action to a person who is injured by the operation of the law they have no remedy for any injury consequently suffered unless law provides for some form of compensation when the law is valid. If however acts are done under the possessed authority of an invalid law and those acts constitute a wrong or a breach of contract then the invalid law does not provide any defense to the person acting under it.

The vegetable seed committee was held to be an administrative not a legislative body. The complaint that the order is a product of an improper or

[77] Yates vs. vegetable seed committee

inadmissible purpose does not depend upon an imputation of motive bearing on their private and personal interest actuating individual members to give their concurrence in orders. It relates tote effect upon the affairs of the body itself. The effect which it was sought to achieve means of the orders.

The object ascribed to it in making the orders is outside the purpose for which it was set up and in variance with it. That purpose forms a condition to which the exercise of the power must conform.

The gist of the allegation is that the determination of the vegetable seed committee to make and serve on vegetable seed merchants the committees financial and trading interests and excluding completion...

In **Pius Nuwagaba vs. LDC**[78] a prohibition order was granted preventing LDC tribunal from any more proceedings against applicants.

Injunction. an injunction is an order made by the court to stop a public body from acting in unlawful way. Less commonly, an injunction can be mandatory, that is, it compels a public body to do something. Where there is an imminent risk of damage or loss, and other remedies would not be sufficient, the court may grant an interim injunction to protect the position of the parties before going to a full hearing. If an interim protection can compensate the other party for its losses. This does not happen where the claimant is legally aided.

Damages. Damages are available as a remedy in judicial review in limited circumstances. compensation is not available remedy merely because a public authority has acted unlawfully. For damages to be available there must be either;

a) A recognised private law cause of action. **Article 50**[79] provides that any person who thinks that his right has been violated can apply to court for

[78] (2005),

[79] 1995 constitution of Uganda

redress of which it includes compensation/damages. Damages were granted in the case of **R vs. Secretary of State for the home department ExpDoody**[80].

[80] (1993)3 ALLER 92

CHAPTER FOUR

EFFICACY OF PRINCIPLES OF NATURAL JUSTICE IN SAFEGUARDING A RIGHT TO A FAIR HEARING IN UGANDA.

4.0 INTRODUCTION

Principles of natural justice have done a lot in safeguarding a right to a fair hearing in Uganda. This has been done in conjunction with the supreme law of the land, 1995 constitution of Uganda and other related international provisions.

As stated earlier a right to a fair hearing is dependent on the realisation of principles of natural justice in the administration of justice. Hence for there to be observation of a right to a fair hearing, there must be recognition and implementation of principles of natural justice by judicially.

Principles of natural justice have been able to safeguard a right to a fair hearing in Uganda as discussed below;

Principles of natural justice hold that before any person is adjudged wrong, that person should be accorded a chance to defend his or her case. This is also provided for **under Article 28(1)**[81] which states that; in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

More so **Art.42(1)**[82] states that "every person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

In the **case of Pius Nuwagaba vs. Law Development centre**[83] court of appeal of Uganda. Pius Nuwagaba and other students were from Pentecostal

[81] 1995 constitution of Uganda

[82] 1995 constitution of Uganda

[83] 2005/2006

university, **however,** LDC tribunal refused to admit them to the bar course by refusing them to do pre entries reasoning that, the university was not recognised by the centre among the universities offering Bachelor of Laws. Applicants challenged the decision by saying that they had not been accorded a fair hearing as required by principles of natural justice. Court applying principles of natural justice ordered certiorari leading to the cancellation of the decision and other orders like mandamus compelling LDC to admit the Students and prohibitive order prohibiting all proceedings of the same nature against them were issued.

A right to a fair hearing includes the right to access information for the purposes of enabling the accused to prepare their answers and defences. This is provided under **Article 28(3) (c)**[84] which states that every person who is charged with a criminal offence shall be given adequate time and facilities for the preparation of their cases. In **Soon Yeon KongKim and kwangamao vs A.G**[85], court recognised an application by the applicant seeking for an order that DPP supply the applicants with the copies of all the exhibits that the prosecution would rely on at the trial to enable the applicants prepare their answers and defences to charges. **Court held** that the disclosure is not limited to reasonable information only like how the prosecutor was contending. That disclosure is a pre-trial one. This justifies the efficacy of principles of natural justice in safeguarding a right to a fair hearing.

The right to a fair hearing also includes the presumption of innocence.

This is a key feature of criminal justice system in most law jurisdictions. it is a part of the criminal doctrine that places a burden of proof on the prosecutor to prove the guilt of the accused person. The right is guaranteed under **Article28(3)(a)**[86] which states that in any criminal charge a person shall be presumed innocent until proved guilty. This presumption has

[84] 1995 constitution of Uganda

[85] 2005 (Const.Reference no.6/2007),

[86] 1995 constitution of Uganda

enjoyed long standing recognition at common law and has gained wide spread acceptance as evidenced from its inclusion in major international human rights documents. In light of these sources, the right to be presumed innocent requires a minimum that **(a)** an individual be proven guilty beyond reasonable doubt, **(b)** the state must bear the burden of proof and**(c)** criminal prosecutions must be carried out in accordance with lawful procedures and fairness. **Dickson** in the case of **R vs. Oaks**[87], said that "presumption of innocence protects fundamental liberty and human dignity of any and every person accused by the state of criminal conduct...An individual charged with criminal offence faces grave social and personal consequences including potential loss of physical liberty, subjection to social stigma and ostracism from community, as well as other social psychological and economical harms. in light of the gravity of these consequences, the presumption of innocence is crucial. This is essential in society committed to fairness and social justice..."

the right to presumption of innocence has been addressed in Uganda in different judicial judgements, **for example** in **Mubangizi vs. Uganda**[88], supreme court **held** that because of the provisions of **Art 28(3)** of the constitution by which an accused person is presumed to be innocent until proved guilty, an advocate should not concede the guilty of the accused.it should be the accused in person.

The accused's right to notice or information and adequate time for preparation of the defence.

Principles of natural justice require that the accused must be informed immediately in the language that he understands of the nature of the offence. This is also provided for under **Article 28(3) (b)**[89]. This gives the accused the right to know the acts or omissions which constitute the offence, practice has shown that most of the times the accused have not

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[87] (1986)26DLR

[88] (2003)1EA 164

[89] the 1995 constitution of Uganda

been afforded that opportunity. They are not given all the information on the pretext that that information should be limited to reasonable information only. A prosecutor's violation to disclose favourable evidence accounts for more miscarriage of justice than any type of malpractice but rarely sanctioned by the courts and never by disciplinary bodies. In **Col. (Rtd) Dr. Kiiza Besigye and 22 ors vs. A.G**[90] where the accused was charged with terrorism, it was held that the disclosure should not be limited to reasonable information only. This Article states that the accused must be informed in the language one understands.

Right to appearance and legal representation.

Article 28(3)(d)[91] joins fair hearing to include accused being permitted to appear before court in person before court in person or at that person's own expense, by his lawyer of his or her choice. The words "of his or her own choice" give clue that the state does not have a duty to assign a counsel. This is mainly in non-criminal charges where right to counsel could mean duty to inform the person charged he is entitled to legal representation to accord adjournment**(Secremose Rwamukaaga vs. Uganda**[92]**.**

However, the constitution provides for mandatory legal represention. **Article 28(3)(e)**[93] every person who is charged with a criminal offence shall in case of any offence which carries death or imprisonment for life, be entitled to legal representation at the state's expense. Practice has shown that the poor are the ones who suffer much as the state digs into the pursue to get counsel for the accused in most cases they are not effective. It's always proved that such counsel rarely attend their clients. They do not take trouble finding.progress of the case. A recent example is that of **Uganda vs. Nkulungila Thomas and Another**[94] where **Hon Mr Justice Rugadia**

[90] Constitutional Petition no.12/2006

[91] the 1995 constitution of Uganda

[92] (1998) KALR 61)

[93] the 1995 constitution of Uganda

[94] (2010) HCT

Atwoki said that "failure by counsel to appear in court always sends a wrong signal." "A society wins not only when the guilty are convicted but when criminal trials are fair, our system of administration of justice suffers when an accused is treated unfairly[95].

According to **Mwanga Francis and another vs. Uganda**[96], it's an obligation for government to hire counsel for the accused because majority of the people accused lack legal knowledge and in most cases are convinced upon incompetent evidence.

4.1 IMPENDIMENTS TO REALISATION OF A RIGHT TO A FAIR HEARING.

Although a right to a fair hearing is guaranteed under chapter four of 1995 constitution, that is under **Article 28**[97],there are number of obstacles that have greatly hindered its realisation which range from incompetence of the members of the tribunals administrative and disciplinary committees, lack of the legal frame work within the administrative bodies are supposed to execute their duties, lack of knowledge of rights which the law accords to members who appear before the administrative bodies and these include the following;

To begin with, unlimited adjournments alluding to the seriousness of delayed judgements and how they have hindered the realisation of the right to a fair hearing. **Justice James**[98] stated that judgements in many instances have been inordinately delayed resulting in embarrassing situations for judiciary.......the right to a speedy resolution of disputes is a fundamental aspect of justice itself and the delayed litigation itself may constitute denial of justice. A delay in the conclusion of matters indicates is

[95] Holding in Blady vs. May land (1963)

[96] C.A CR APP, NO.88/1993

[97] the 1995 constitution of Uganda

[98] (2006)

indicative of the fact that the matters have defined time frames within they must be disposed of.

In addition, rule UHC(procedure rules)states that all persons claiming that their rights have been violated may apply to the commission for redress.**S.1 NO.16/1998.**After the complaint has been lodged, there is no time stipulation on the proceedings of the matter that is investigations, filling papers, replies, interalia. The implication is that matters have no determinable time frames with which to be disposed of limiting the process to neglect and at worse abuse and hence unnecessary prolonging the trial which inevitably violates the right to a fair hearing.

Secondly, the other impediment relates to the inadequate funding of the courts.it was largely observed that the majority of courts lack the necessary facilities to effectively carry on their work. This ranges from necessary equipment such as furniture. In addition there is shortage in number of judicial officers. This problem has accelerated the delayed disposal of suits. This has also worsened especially by the magistrates and in the lower courts by frequently absenting themselves in courts which is due to ineffective monitoring system that is in place and as a result the right to a fair hearing of accused persons has been infringed upon as their cases have not been heard on time.

Persistence interference by the state in the decisions made by the courts has greatly hindered the realisation of the above right. The state and its machinery such as police has been instrumental in violating the accused's right to a fair hearing especially with the accused's right to appear before an independent and. impartial court. **A clear example** of this was evident in a more serious attack by the military in an incident on **16th NOV 2005,** on this fateful day, the high court had granted bail to **Dr. Kiiza Besigye and 22ors**[99] who was charged with and being prosecuted for treason. When the armed personnel who had surrounded the court stormed the court premises.

[99] Constitutional Petition no.12/2006

The 22 other suspects opted not to take up the grant of bail and returned to prison as they were concerned about re arrest by the military personnel.

Secondly, the military personnel entered the registry cells and interrupted the processing of bail for the accused. Such an action clearly points to the fact that much as the courts have to protect the accused's right to appear before an independent and impartial court, the state on the other hand has been a major obstacle towards realisation of this right.

Incompetence of the committee members

Most of the members who sit in the administrative bodies to hear complaints

Against the members of the public consist majorly of the former rebel movement militants(SPLA)who became part of the civil administrative bodies after the signing of the peace agreement, because of this military background, most people of the members sitting in the public bodies do not have the capacity to be able to make and arrive at just and sound decisions given the fact they lack the relevant training in the field they are serving and in the end a lot injustice is committed on the side of the complainants because of the fact their cases are heard by people who do not know anything about the job they are doing[100].

Lack of the knowledge of one's right contribution

It has been observed by this researcher during the course of this research that violation of the right to fair hearing during administrative proceedings is being by the contribution of the fact that most individuals who appear before these administrative bodies do not know their rights, most people who are summoned to come to the hearing do not know what to expect from the tribunal and what the tribunal expects from them.

Though anyone who appears before a public body has the right to be notified of the charges pending against him or her, adjournment where the justice of the case may require to being able to prepare his/her lawyer or both buy

[100] Citizen newspapers of 21 May 2010

him/herself and a lawyer, an interpreter where he/she does not understands the language of the tribunal. Adherence to the above requirements before the hearing could is start not always expected, this is because of the fact neither suspect or the public body hearing the matter understands the requirements of the law.

Improper investigations.

This is particular when the police detentions the suspect waiting trails. This causes a lot of detention and could affect the fairness of the proceedings[101]. Besides those limited technological gadgets for detecting crimes has left big gaps. This involves forensic techniques which they rely on science to gather, identify and analyse evidence. Analysis of semen, finger prints, blood, and textile has proved a difficulty to the police. In Uganda, police has one forensic centre in Wandegeya. Some cases are too complicated for police to investigate. They make an improper investigation that affects the accused. In **Uganda vs. Nkulungila Thomas and another**, police was unable to investigate properly. The accused gave the defence of alibi both forensic tests failed and the tracking system never brought proper results. Gathering of special kinds of non-testimonial evidence has been a problem. in the process someone who may be innocent may be detained on the pretext that investigations are still being carried.

Corruption.

Corruption has greatly impacted on the fair hearing. This includes prosecution corruption. In**Uganda vs. RA 14839 Mawanda Stephen[102]**, where the prosecution caused the file to get lost and for all the six months the accused was detained, he always said the file was at CID headquarters. This corruption is furthered by judicial corruption. This includes

[101] Richard Cayton), Hugh Tomlinson, "Fair Trial Rights"2009

[102] (1996) HCB 40

disappearance of the file, extending of dates of hearing. This was clearly corroborated by Justice Arach[103].

4.2 POSSIBLE SOLUTIONS TO DENIAL OF THE RIGHT TO A FAIR HEARING IN ADMINISTRATIVE PROCEEDINGS IN UGANDA.

The researcher believes that the only out in this kind of situations where administrative decisions are made without recourse or adherence to the rules of fair hearing in administrative proceedings and owing to the brutant denial of a right to a fair hearing by the administrative decision makers, only the training of the administrative officers, sensitisation of the members of the public about their rights, recruitment of people with relevant trainings and enactment of the legislations with rules and regulations which ensure just and fair treatment of members of the public who appear before the administrative bodies will go a long way in curving the violations of the right to a fair hearing in administrative proceedings and the decisions making processes.

Proper recruitment procedure

Appointment of administrative officers is not regulated by any law and this has subjected the recruitment of administrative officers to abuse by the opportunists who rush to recruit their relatives and friends who may not be having the competence and skill required of an administrative officer. Means leading to recruitment of competent administrative officers should be adapted to improve the performance of the administrative officers. it will be when administrative officers are appointed through transparent process that qualified officers can be appointed whose impact will be improved performance.

Appointment of qualified administrative officials who will be liable to make just and fair decision when they are presiding over administrative

[103] Judicial corruption under legal system, http://Human Right house.org Articles(accessed on the 16/7/2012.

proceedings can be guaranteed only if there are proper recruitments procedures in place.

Training of administrative officers.

Since administrative officers consist of former bush war officers and soldiers, there is a need that for such people to be able to effectively and discharge their duties. They should be given relevant abundant sufficient training such that matters related to administrative decision making process are attended to without abuse such that fair and just decisions can be reached.

Administrative officials should be trained on the rights of their subjects so that when they appear before them. They do not take the law into their own hands and decide according to their own will. They should know that anyone who appears before them has the right to be informed of the charges against him, that he or she has the right to adjournment if the justice of the case requires a right to a lawyer, an interpreter where a suspect does not understand the language of the court among others. Improving capacity of the administrative officers by training them on the administrative matters will enable them to deal with the issues of administration with relevant skills and knowledge. Administrative officers must perform their functions professionally and the only guarantee that they will do their job effectively and efficiently is when they have the required expertise. Administrative officers as seen above consist of mainly former rebel officers of NRA and they do not have the professional administrative skill, this requires that for them to deliver effectively and efficiently.

Unless the training of the administrative officers is taken as apriority, adherence to such right cannot be easily realised.

Training of administrative officers will improve public perception of them as people who are law violators given the fact that most of their decisions have been criticised by many as shams and lack legal basis under which they are taken.

Most of the public officers presiding over administrative matters need to be trained on the legal aspect of the administration such that alongside dealing with administrative issues, they should be able to deal with legal matters which fall under their jurisdiction on the line of duties.

This can be possible only if government establishes administrative officials training centres where they can put to practice what they learn in those trainings possibly where they are of weaknesses are identical first.

Sensitisation of members of the public about their rights.

People who appear before the administrative tribunal are denied justice due to their ignorance about their rights which the law accords them in administrative law. This can be stopped only if the general public is educated about their own rights such that is one appears before an administrative tribunal, she or he should be able to enforce their rights where they are likely to be violated or infringed upon.

Members of the public should be informed and educated about their own rights such that at any time, if one is to appear before an administrative tribunal/body he/she is able to know his/her rights, **for example** right to notice, adjournment, legal representation among others.

Most people don't apply for judicial review because they do not know about it as a remedy, but this could be an opportunity where one could have the last resort where due process of law leading to fair hearing was not followed or where one was not justly and fairly treated by an administrative body.

Sensitisation of the general public can be possible if the members of the administrative bodies are able to inform their suspects who are going to appear before them of their rights before the hearing commences so that as appears before he or she to do so with full knowledge of all hid and her rights.

The public through public gathering and seminars should be educated on their rights when they are undergoing hearing in administrative matters such that abuse of the process should be stopped.

Enactment of more relevant legislations.

Another possible solution to the blatant violation of the right to a fair hearing in administrative issues could be the enactment of the relevant statutes so that administrative tribunal officials are appointed through a procedure laid down by law and the composition of such committees is as law prescribed. The same law should also go ahead to stipulate as to the qualifications of the members to constitute the tribunal. The law should also put down in clear terms procedures to be followed during the hearing process such that they should follow established principles of law so that they are not at liberty to decide what to do or which procedure or way to follow according to the justice of the case while in the process of executing their duties.

Rules to be followed by administrative official should be provided by law which they must follow at all times without excuse.

The law should encourage that all those members who consider themselves aggrieved by the decisions of the administrative bodies should be able to apply to court for judicial review so that un just decisions reached by the administrative bodies are reviewed by the court. This will go a long way in improving the conduct of the administrative officials who have taken the lack of legal frame work to doing or making injustice to people.

The law should also make it a condition upon the administrative bodies to inform any suspect who appears before them to be informed of his/her rights before the hearing could commence such that if he/she chooses to waive his or her rights she or he should be informed of the consequences of waiving.

CHAPTER FIVE

RECOMMENDATION AND CONCLUSIVE REMARKS

5.1 RECOMMENDATIONS

Compulsory administrative law training to administrative officers.

It has been observed by the researcher during research that most of the employers and employees administrators holding administrative offices do not know administrative law. They don't know the procedure of commencing administrative proceedings, they don't know how to treat the accused or defendants during the administrative proceedings and don't know the rights that accrue to both parties in the proceedings. In other words, they are ignorant about the whole administrative procedure. This has always been the result of abuse of administrative offices. therefore, Government through parliament of Uganda should enact the law compelling all administrative officers before or immediately after attaining an administrative office to undergo at least a certificate award study of administrative law from any recognised institution teaching the law as a course so as to curb down the ignorance among the administrators and reduce the abuse of principles of natural justice, most especially a right to a fair hearing.

Penalty to Judicial officers.

It has been observed that whenever there is an abuse of principles of natural justice, particularly a right to a fair hearing. The remedies granted do not adversely affect the real administrators as an individual which has led to the repetition of the breach of the principles. Had it been that remedies granted particularly affect the administrators as individuals, the vice of violation would have reduced. Therefore, government through parliament should enact more relevant laws which provide for remedies or punishments against the administrators in breach of principles of natural justice particularly a right to a fair hearing individually so as to avoid repetition of violations or breaches of principles of natural justice.

5.2 CONCLUSIVE REMARKS.

Conclusively what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatory applied irrespective of the fact that as to whether there is any such statutory provision or not. **De Smith, in his Judicial Review of Administrative Action**[104], observed that "where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply the rule of universal application and founded on plainest principles of natural justice"

Wade [105]says that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power.

It is though true that the principles of natural justice are flexible in the application but its compliance cannot be jumped over on the ground that even if hearing had been provided, it would not have served any useful purpose.

[104] (1980), at page 161

[105] Administrative law (1977) at page 395

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