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AN EXAMINATION OF MISCARRIAGE OF JUSTICE BY COURTS IN NIGERIA

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Abstract

The paper looks at the important concept of miscarriage of justice and its significance and effect to the dispensation of justice in courts in Nigeria. The study adopts the doctrinal approach to research and focuses on case law as reported in the assorted law reports available in the country. It highlights the effects of miscarriage of justice and the many instances that could lead to miscarriage of justice. It further suggests ways in which the courts, counsels and litigants can prevent the miscarriage of justice in the resolution of conflicts. The paper recommends a careful study of the various instances in which decisions or actions of courts can lead to the miscarriage of justice and recommends that practitioners see themselves as ministers in the temple of justice who should pursue it at all cost, even at personal cost. Courts should always do substantial justice and not rely on undue technicalities.

Keywords: Miscarriage, Justice, Perverse Decision, Fair Hearing

1.0. Introduction

The purpose of the law is to serve the cause of justice.[1] Justice must be done according to law.[2] Miscarriage of justice varies from case to case and it really depends on the facts and circumstances of the case. Miscarriage of justice occurs if what occurred is not justice according to the law;[3] or justice misapplied. Put in another way, it is failure of justice. In effect, there is miscarriage of justice if the order of the court is prejudicial or inconsistent with the right of a party.[4] It is a

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[1] Passco Intl Ltd v. Unity Bank Plc (2021) 7 NWLR (Pt. 1775) 224 (P. 263, paras. E-F) S.C.
[2] Gbedu v. Itie (2020) 3 NWLR (Pt. 1710) 104 S.C.; Agbomeji v. Bakare (1998) 9 NWLR (Pt. 564) 1; N.E.P.A. v Ososanya (2004) 5 NWLR (Pt.867) 601; Odiba v. Azege (1998) 9 NWLR (Pt.566) 370; Nnajifor v. Ukonu (1986) 4 NWLR (Pt. 36) 505; Sanusi v. Ameyogun (1992) 4 NWLR (Pt. 237) 527; Okonkwo v. Udoh (1997) 9.
[3] Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 (P. 93, paras. G-H) S.C.; Nnajiofor v. Ukonu (No.2) (1986) 4 NWLR (Pt. 36) 505; Okonkwo v. Udoh (1997) 9 NWLR (Pt. 519) 16 referred.
[4] Nagebu Co. (Nig.) Ltd. v. Unity Bank Plc (2014) 7 NWLR (Pt. 1405) 42 (P. 67, paras. F-H) C.A.; Abubakar v. Nasumu (No.2) (2012) 17 NWLR (Pt. 1330) 523;Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 referred.

decision or outcome of judicial proceeding that is prejudicial or incompatible with the substantial rights of the parties.[5]

Failure of justice is very much the same thing as miscarriage of justice.[6] Miscarriage of justice varies from case to case. The facts and circumstances of the case must be examined. It could mean failure of the court to do justice, or justice misapplied. Put in another way, it is failure of justice. In effect, there is miscarriage of justice if the order of the court is prejudicial or inconsistent with the right of a party.[7]

1.1. Conceptual Clarifications

In this section, the keywords in this paper shall be discussed to give insight into the subject of the research study.

The Concept of Miscarriage of Justice

Miscarriage of justice simply means failure of justice;[8] or justice which is not in consonance with the law.[9] It is the failure on the part of the court to do justice. It is justice misplaced, misappropriated.[10] The Supreme Court, in *Tyonex (Nig.) Ltd. v. Pfizer Ltd.*,[11] stated that the term "miscarriage of justice" is defined as a grossly unfair outcome in a judicial proceeding. miscarriage of justice is a failure of justice. What will constitute miscarriage of justice varies from case to case depending on the facts and circumstances. But to reach the conclusion that such a miscarriage occurred; it does not require a finding that a different result necessarily would have been reached in the proceedings to be affected by the miscarriage. It is enough if what has happened is not justice according to law. Per Mudashiru Nasiru Oniyangi, JCA, in *Ayala v. Daniel*,[12] stated that A miscarriage of justice has been described as a departure from the Rules which permeates a judicial procedure as to make that which happened not in the proper sense of the word a judicial proceeding at all.

[5] Usman v. C.O.P. (2020) 10 NWLR (Pt. 1732) 262 (P. 286, paras. E-F) C.A.; Morah v. Nwalusi (1962) 2 SCNLR 73; Osuolale v. State (1991) 8 NWLR (Pt. 212) 770 referred.
[6] Gazzali v. State (2019) 4 NWLR (Pt. 1661) 98 (Pp. 110, paras. D-E; 111, paras. B-C) S.C.
[7] Nagebu Co. (Nig.) Ltd. v. Unity Bank Plc (2014) 7 NWLR (Pt. 1405) 42 (P. 67, paras. F-H) C.A.; Abubakar v. Nasumu (No.2) (2012) 17 NWLR (Pt. 1330) 523;Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 referred to.
[8] Obim v. Achuk (2005) 6 NWLR (Pt. 922) 594 (P. 621, paras. G-A) C.A.; Ojo v. Anibire (2004) 10 NWLR (Pt. 882) 571 referred to.
[9] Ogungwa v. Williams (2020) 8 NWLR (Pt. 1725) 38 (P. 62, para. A) C.A.
[10] John Holt Plc v. Nwabuwa (2021) 11 NWLR (Pt. 1787) 325 (P. 349, paras. A-B) C.A.; Oguntayo v. Adelaja (2009) 15 NWLR (Pt. 1163) 150 referred to.
[11] (2020) 1 NWLR (Pt. 1704) 125 (P. 163, paras. D-F) S.C.
[12] (2019) LPELR-47184(CA) (P. 43, paras. A-C); See the cases ADELAJA V. OGUNTAYO (2001) 6 NWLR (PT. 710) 603 AND JINADU V. ESUROMBI - ARO (2005) 14 NWLR (944) 142 at 194.

What constitutes a miscarriage of justice varies from case to case depending on the facts and circumstances.[13] A miscarriage of justice is a failure of justice that can lead to a decision of a court being set aside for gross injustice to the party complaining.[14] A miscarriage of justice is a failure of justice. It simply means that the court failed to do justice. It occurs when there are grave or serious errors in the proceedings as to make the proceedings fundamentally flawed, when outcome of legal proceedings is prejudicial or inconsistent with the substantiated rights of the party or when what is done is fundamentally not justice according to law.[15] The definition of "miscarry" includes failing to achieve the intended purpose. miscarriage of justice is the failure of a court to do justice. It means a reasonable probability of more favourable outcome for the defendant.[16]

The Supreme Court, in *Umar v. Geidam*,[17] it was stated that the term 'miscarriage of justice' refers to a legal act or verdict that is clearly mistaken, unfair or improper, and this is only declared when the court, after an examination of the entire case, including the evidence, is of the opinion that it is reasonably probable that a result more favourable to the appealing party would have been reached in the absence of the error. miscarriage of justice connotes a decision or outcome of legal proceedings that is prejudicial or inconsistent with the substantial rights of the party alleging it. miscarriage of justice means a reasonable probability of more favorable outcome of the case for the party. It is injustice done to the party. Simply put, miscarriage of justice is a wrong decision made by a court, and the burden is on the party alleging miscarriage of justice to prove it.

Miscarriage of justice is such a departure from the rules which permeates all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all. That the violation of some principle of law or procedure must be such an erroneous proposition of law that if such proposition be corrected

[13] Maluna v. Usman (2014) 16 NWLR (Pt. 1432) 160 (P. 206, paras. B-D) S.C.; Ojo v. Ambire (2004) 10 NWLR (Pt. 882) 571 referred to.
[14] Slok (Nig.) Ltd. v. Chief Judge, FHC., Nig. (2020) 11 NWLR (Pt. 1735) 338 (P. 379, para. G) C.A.; Tyonex Nigeria Ltd. v. Pfizer Ltd. (2020) 1 NWLR (Pt.1704) 125 referred to.
[15] Ukoh v. Ukoh (2021) 7 NWLR (Pt. 1775) 303 C.A.; Aigbobahi v. Aifuwa (2006) 6 NWLR (Pt. 976) 270, Gbadamosi v. Dairo (2007) 3 NWLR (Pt. 1021) 286, Oke v. Mimiko (2014) 1 NWLR (Pt. 1388) 225, Nwankwoala v. F.R.N. (2018) 11
[16] Ebinis v. Ikorodu Local Govt. (2021) 1 NWLR (Pt. 1757) 279 (P. 312, paras. E-F) S.C.; Larmie v. Data Processing Maintenance & Services Ltd. (2005) 18 NWLR (Pt. 958) 438 referred to.
[17] (2019) 1 NWLR (Pt. 1652) 29 (P. 43, paras. A-D) S.C.; Gbadamosi v. Dairo (2007) 3 NWLR (Pt. 1021) 282 referred to

the findings cannot stand.[18] Miscarriage of justice refers to a grossly unfair outcome in judicial proceedings, such as when a defendant is convicted despite a lack of evidence on an essential element of crime. Put differently, it means a departure from the rules which permeate all judicial procedure as to make that which happened not, in the proper sense of the word, judicial procedure at all.[19]

The Court of Appeal, in *Donald v. Saleh*,[20] stated that a miscarriage of justice is a departure from the rules which pervades a judicial proceeding as to make what happened not in the proper sense of the word, judicial procedure at all. It implies a decision or outcome of legal proceedings which is prejudicial or inconsistent with the substantiated rights of a party. It means a reasonable probability of more favourable result of the case for the party alleging it. It is an injustice done to the party alleging it. In this case, the decision of the trial court was not wanting in proper judicial procedure nor did it disclose any inconsistency with the rights of the appellants. Furthermore, there was no reasonable probability, apparent or latent, that the appellants would have earned more favourable result after thorough consideration. In the circumstance, the decision of the trial court did not amount to a miscarriage of justice.

A miscarriage of justice is inherent in a denial of a right to a fair hearing. Thus a party who establishes a denial of his right to a fair hearing under the Constitution is not required to prove that he suffered a miscarriage of justice.[21] The Supreme Court, in *Akoma v. Osenwokwu*,[22] held that there would be miscarriage of justice when an error can be seen in the proceedings or judgment and a more favourable decision would have been given to the party that lost had it not been for the error. There is a miscarriage of justice when the decision given is inconsistent with established rights of the party complaining.

Perverse Decision

A perverse decision means one which is persistent in error different from what is reasonable or required against the weight of evidence.

[18] Magaji v. Dankirana (2015) 3 NWLR (Pt. 1447) 502 (P. 521, paras. A-C)C.A.; Egbo v. Laguma (1988) 3 NWLR (Pt. 80) 109 referred to.
[19] Adeyemi v. State (2014) 13 NWLR (Pt. 1423) 132 (P. 156, paras. A-C) S.C.; Nnajiofor v. Ukonu (1986) 4 NWLR (Pt. 36) 505 referred to.
[20] (2015) 2 NWLR (Pt. 1444) 529 C.A.; Amadi v. NNPC (2000) 10 NWLR (Pt. 674) 76; Gbadamosi v. Dairo (2007) 3 NWLR (Pt. 1021) 282; Aigbobahi v. Aifuwa (2006) 6 NWLR (Pt. 976)270; Akpan v. Bob (2010) 17
[21] Mpama v. F.B.N Plc (2013) 5 NWLR (Pt. 1346) 176 (P. 204, paras. E-F) S.C.
[22] (2014) 11 NWLR (Pt. 1419) 462 (P. 497, paras. E-F) S.C.

A decision may be perverse where the trial Judge took into account matters which he ought not to have taken into account or where the court shuts its eyes to the obvious.[23] In *Fawehinmi v. Akilu*,[24] the Court of Appeal held that the word "perverse" when used in relation to the decision of court simply means persistent in error, different from what is reasonable or required, a decision against the weight of evidence. Thus, a decision may be perverse where a Judge took into account matters which he ought not to have taken into account, or where the judge shuts his eyes to the obvious. Where a decision of a trial court is perverse an appeal court has the power to set aside the decision and proceed to do what it considers the justice of the case dictates. "Perverse" is defined as meaning "persistent in error"; different from what is reasonable or required. A decision may be perverse where the Judge took into account matters which he ought not to have taken into account, or where the Judge shuts his eyes to the obvious.[25]

The Supreme Court, in *Enyinnaya v. Nkwonta*,[26] stated that the word "perverse" simply connotes "persistent in error, different from what is reasonable or required, against weight of evidence. "A decision may be perverse where the trial Judge took into account matters which he ought not to have taken into account, or where the Judge shuts his eyes to the obvious. In the instant case, the abysmal failure of the tribunal to apply the appropriate provisions of the law on the appellant's preliminary objection filed before the commencement of pre-hearing session occasioned miscarriage of justice. It rendered the decision perverse.

A perverse decision is one which ignores the evidence before the court and which results in or amounts to a miscarriage of justice.[27] The decision of a trial court is perverse when it is not based on the

[23] A.C.B. Ltd. v. Nwadiogbu (1994) 7 NWLR (Pt. 356) 330 (P. 344, paras. A - B) C.A.; Kaduna Textiles Ltd. v. Umar (1994) 1 NWLR (Pt. 319) 143; Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360.

[24] (1994) 6 NWLR (Pt. 351) 387 (Pp. 467-468, paras. H-A; D) C.A.; Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360 at 375; Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1 at 16 referred to followed and applied.

[25] Egba v. Appah (2005) 10 NWLR (Pt. 934) 464 (Pp. 480-481, paras. H-A) C.A.; Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360 referred to.

[26] (2021) 11 NWLR (Pt. 1788) 587 (Pp. 604-605, paras. G-A) C.A.; Atolagbe v. Shorun (1985) 1NWLR (Pt. 2) 360; Ansa v. Ntuk (2009) 9 NWLR (Pt. 1147) 557; Ekeowa v. NCC Plc. (2009) 4 NWLR (Pt. 1131) 285 referred to.

[27] F.B.N. Plc v. Ozokwere (2014) 3 NWLR (Pt. 1395) 439 (P. 467, para. C) S.C.; Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360 referred to.

[28] Onyekwelu v. Elf Pet. (Nig.) Ltd. (2009) 5 NWLR (Pt. 1133) 181 (P. 202, paras. A-B) S.C.; Karibo v. Grend (1992) 3 NWLR (Pt. 230) 426 referred to.

evidence before the court. The appellate court will thereby be justified in setting aside the judgment.[28] A decision is perverse where the t rial Judge takes into account matters which he ought not to have taken into account or where the judge shuts his eyes to the obvious or proved facts in favour of a party, or distorts the facts or evidence in the case so as to tilt the scale of justice in favour of a party.[29] A decision is perverse where it is persistent in error, different from what is reasonable or required. Where the court takes into account matters which it ought not to have taken into account or where the court shuts its eyes to the obvious.[30]

The Court of Appeal, in *Enyinnaya v. Nkwonta*,[31] held that the word "perverse" simply connotes "persistent in error, different from what is reasonable or required, against weight of evidence". A decision may be perverse where the trial Judge took into account matters which he ought not to have taken into account, or where the Judge shuts his eyes to the obvious.

A decision will be held to be perverse where there is insufficient evidence to support the findings, a serious violation of some principles of law and/or procedure or substantial error of law apparent on the record, which if not disturbed, would lead to a miscarriage of justice.[32] A perverse decision is one said to be persistent in error, different from what is reasonably required of a court of justice. Therefore, a decision is said to be perverse when:[33]

(a) it runs counter to the evidence before the court, as it is not supported by the evidence adduced; or
(b) where it has been shown that the court took into account extraneous matters, or
(c) matters it ought not to have taken into account or shuts its eyes to the obvious; or
(d) when it has occasioned a miscarriage of justice.

[29] Ige v. Adegbola (1998) 10 NWLR (Pt. 571) 651 (P. 660, paras. F-G).C.A.

[30] Oju L. G. v. INEC (2007) 14 NWLR (Pt. 1054) 242 (P.273, paras. C-E) C.A.; Atolagbe v. Shorun (1985) 1 NWLR (Pt.2) 360; Nwosu v. Board of Customs & Excise (1988) 5 NWLR (Pt. 93) 225; Egba v. Appah (2005) 10 NWLR (Pt.934) 464 referred to.

[31] (2021) 11 NWLR (Pt. 1788) 587 (Pp. 604-605, paras. G-A C.A.; Atolagbe v. Shorun (1985) 1NWLR (Pt. 2) 360; Ansa v. Ntuk (2009) 9 NWLR (Pt. 1147) 557; Ekeowa v. NCC Plc. (2009) 4 NWLR (Pt. 1131) 285 referred to.

[32] Abdulmumini v. F.R.N (2018) 13 NWLR (Pt. 1635) 106 (P. 124, paras. C-D) S.C.; Coker v. Oguntola (1985) 2 NWLR (Pt. 5) 87; Chinwendu v. Mbamali (1980) 3-4 SC 31; Nsiegbe v. Mgbemena (2007) 10 NWLR (Pt. 1042) 364 referred to.

[33] Abdulmumini v. F.R.N (2018) 13 NWLR (Pt. 1635) 106 (P. 124, paras. C-D) S.C.; Coker v. Oguntola (1985) 2 NWLR (Pt. 5) 87; Chinwendu v. Mbamali (1980) 3-4 SC 31; Nsiegbe v. Mgbemena (2007) 10 NWLR (Pt. 1042) 364 referred to.

A perverse finding is an unreasonable and unacceptable finding because it is wrong and completely outside the evidence before a trial court.[34] The Supreme Court, in *Wada v. Bello*,[35] stated that the decision of a court or tribunal is said to be perverse when it runs counter the pleadings and proved facts or draws from wrong application of law to ascertained facts and on being considered on the whole amounts to a miscarriage of justice.

In *Tarzoor v. Ioraer*,[36] the apex court stated that where there is sufficient evidence to support concurrent findings of fact by two lower courts, such findings should not be disturbed by the Supreme Court unless there is a substantial error apparent on the record: that is, the findings have been shown to be perverse, or some miscarriage of justice or some material violation of some principle of law or of procedure is shown. In the instant case, the appellant failed to show that the findings of fact by the trial court and the Court of Appeal were perverse. The findings were unassailable.

Orders of court must be obeyed, even if it is perverse.[37] It is not usual for the Supreme Court to interfere with the findings unless they are perverse or result in miscarriage of justice. In this case, the Supreme Court declined to interfere with the concurrent findings as they were not perverse nor constitute miscarriage of justice.[38] A perverse decision of a lower court is liable to be set aside.[39]

Where the complaint of a ground of appeal is that the judgment appealed against is perverse, it is a ground of mixed law and facts because it entails examining facts and evidence ignored by the court, or determining whether the court took into account irrelevant matters and based its decision thereon, or determining whether the court misconceived the thrust of the case of the appellant.[40]

[34] John Shoy Intl Ltd. v. A.E.P.B. (2013) 8 NWLR (Pt. 1357) 625 (P. 640, para. A)C.A.; Iwuoha v. NIPOST Ltd. (2003) 8 NWLR (Pt. 822) 308 referred to.
[35] (2016) 17 NWLR (Pt. 1542) 374 (P. 437, paras. B-D) S.C.; Baridam v. State (1994) 1 NWLR (Pt. 320) 250; Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1 referred to.
[36] (2016) 3 NWLR (Pt. 1500) 463 (P. 520, paras. A-D)S.C.; Amadi v. Nwosu (1992) 5 NWLR (Pt. 241) 273; Onwujuba v. Obienu (1991) 4 NWLR (Pt. 183) 16; Odofin v. Ayoola(1984) 11 SC 72; Ogundipe v. Awe (1988) 1 NWLR (Pt. 68) 118; Eholor v. Osayande (1992) 6 NWLR (Pt. 249) 524 referred to.
[37] E.F.C.C. v. Dada (2016) 1 NWLR (Pt. 1494) 567 (P. 598, paras. F-G)C.A.; Aladegbami v. Fasanmade (1988) 3 NWLR (Pt. 81) 129 referred to.
[38] Opia v. INEC (2014) 7 NWLR (Pt. 1407) 431 (Pp. 462, para. C; 465, paras. B-C) S.C.; Anaeze v. Anyaso (1993) 5 NWLR (Pt. 291) 1 referred to.
[39] F.B.N. Plc v. A.-G., Fed. (2014) 12 NWLR (Pt. 1422) 470 (P. 518, para. E)C.A.; Udengwu v. Uzuegbu (2003) 13 NWLR (Pt. 836) 136 referred to.
[40] Nikagbate v. Opuye (2018) 9 NWLR (Pt. 1623) 85 (P. 110, paras. A-C) S.C.; Ekunola v. C.B.N. (2013) 15 NWLR (Pt.1377) 224 referred.

"Perverse" is defined as a jury verdict so contrary to the evidence that it justifies the granting of a new trial.[41] In *Uzodinma v. Ihedioha*,[42] the apex court stated that the Supreme Court does not lightly set aside concurrent findings of the lower courts. It will, however, disturb those findings where it is satisfied that there is an apparent error on the face of the record of proceedings showing or manifesting that the findings are perverse.

Breach of Right to Fair Hearing

Any proceedings conducted in breach of a party's right to fair hearing, no matter how well conducted would be rendered a nullity.[43] Fair hearing has several components; it could mean "fair hearing", "within reasonable time", "by a court or tribunal established by law", "constituted in such a manner as to secure its independence and impartiality".[44] Fair hearing is a constitutional right. Every judicial or quasi-judicial body must be seen to have observed all the implications and attributes of fair hearing. The effect of the breach of the rule of fair hearing; which is an off-shoot of the principle of natural justice and section 36 of the extant 1999 Constitution, is that the proceedings and the decisions emanating therefrom are a nullity.[45] The question of fair hearing is not just an issue of dogma. Whether or not a party has been denied of his right to fair hearing is to be judged by the nature and circumstances surrounding a particular case. The crucial determinant is the necessary to afford the parties every opportunity to put their case to the court before the court gives its judgment. A complaint founded on denial of fair hearing is an invitation to the court hearing the appeal to consider whether or not the court against which a complaint is made has been generally fair on the basis of equality to all parties before it.[46]

It is pertinent to observe that the right of fair hearing is not a technical doctrine, it is one of substance. It therefore follows that

[41] Taiga v. Moses-Taiga (2012) 10 NWLR (Pt. 1308) 219 (P. 250, para. D) C.A.
[42] [2020] 5 NWLR (Pt 1718) 529(P. 571, para. A)
[43] Per KEKERE-EKUN, J.S.C. (Leading) in UKACHUKWU v PDP (2014) LPELR-22115(SC); See: Tsokwa Motors (Nig.) Ltd. Vs U.B.A. Plc, (2008) All FWLR (Pt.403) 1240 @ 1255 A - B; Adigun Vs A.G. Oyo State (1987) 1 NWLR (Pt.53) 674; Okafor Vs A.G. Anambra State (1991) 3 NWLR (Pt.200) 59; Leaders & Co. Ltd. Vs Bamaiyi (2010) 18 NWLR (Pt.1225) 329
[44] Per KEKERE-EKUN, J.S.C. (Leading)in UKACHUKWU v PDP (2014) LPELR-22115(SC)
[45] Olayioye v. Oyelaran 1 [2019] 4 NWLR (Pt 1662) SC 351 (P. 380, paras. C-D); Deduwa v. Okorodudu (1976) 9 - 10 SC 329; Kenon v. Tekam (2001) 14 NWLR (Pt. 732) 12; Adigun v. A.-G., Oyo State (1987) 1 NWLR (Pt. 53) 678; Otapo v. Sunmonu (No.1) (1987) 2 NWLR (Pt. 58) 587; Garba v. University of Maiduguri (1986) 1 NWLR (Pt. 18) 550 referred to.
[46] Ukachukwu v. PDP (2014) 17 NWLR (Pt.1435) 134 SC, (P.164, paras. D-F); Pam v. Mohammed (2008) 16 NWLR (Pt.1112) 1 referred to.

where there is a cry of the breach of a right of fair hearing, that, it is the duty of the court to examine the proceedings to ascertain whether there is such a breach.[47]

By virtue of section 36(1) of the 1999 Constitution, in the determination of his civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to fear hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.[48]

It is a well settled principle of law that a trial or hearing is only fair when all the parties to the, dispute are given an opportunity of being heard. Thus, where a party to the dispute is denied an opportunity of being heard, the trial or hearing cannot, for all intents and purposes, qualify as fair hearing.

The right of a person to a fair hearing is so fundamental to our concept of justice that it can neither be waived nor taken away by a statute, whether expressly or by implication.[49] It is unquestionable that the principle of fair hearing is a double- edged sword and seeks to give equal protection to parties in any dispute and where a party was given ample opportunity to be heard, he cannot complain thereafter if he refused failed and/or neglected to exploit the opportunity so given him.[50]

A judgment which is given without compliance with rules of court and which non-compliance has breached a fundamental human right such as the right to fair hearing, is a nullity and is capable of being set aside either by the court that gave it or by an appellate court.[51] Where a party has been denied fair hearing, the correctness or otherwise of the decision becomes irrelevant the entire proceedings are a nullity and must be set aside.[52] It has been long settled that the test whether a party in a case was given a fair hearing is the

[47] Per Omoleye, JCA, (Leading) in Ekpenetu v. Ofegobi (2012) LPELR-9229(CA) (Pp. 44-47, paras. C-D). See also the cases of: (1) Ntukidem v. Oko (1986) 5 NWLR (Pt.45) p. 909; (2) UNTHMB v. Nnoli (1994) 8 NWLR (Pt.363) p.376 and (3) Bamgboye V. University of Ilorin (1999) 10 NWLR (Pt.622) p.290.

[48] ACN v. Lamido (2012) 8 NWLR (Pt. 1303) 560 SC (p. 593, paras. E-F)

[49] Per Omoleye, JCA, (Leading) in Ekpenetu v. Ofegobi (2012) LPELR-9229(CA) (Pp. 44-47, paras. C-D)

[50] Per Agube, JCA, (Leading) in Nguroje v. El-Sudi (2012) LPELR-20865(CA) (P. 109, Paras. A-F); see Per Niki Tobi, JSC, in the celebrated cases of Inakoju V. Adeleke (Ladoja's case) (2007) 1 CCLR (S.C.) 240 at 361 -362; Magaji V. Nigerian Army (2008) 8 NWLR (Pt.1089) 338 at 371 paras. E- H and Newswatch Communications Ltd. V. Atta (2006) 11 ALL NLR (pt.1) 211 at 224.

[51] Per Tobi, JSC, in Pam v. Mohammed (2008) LPELR-2895(SC) (P.71, Paras.F-G)

[52] Per Omoleye, JCA, (Leading) in Ekpenetu v. Ofegobi (2012) LPELR-9229(CA) (Pp. 44-47, paras. C-D)

impression of a reasonable person who was present at the trial or who was aware of the proceedings. From his observation he would have no difficulty concluding if justice has been done in the case.[53] The standard of fair hearing requires the observance of the twin pillars of the rules of natural justice namely:[54]

(a) audi alteram partem, that is hear the other side; and
(b) nemo judex in causa sua - that is, no one should be a judge in his own cause.

A violation of right of hearing by a tribunal or court of a party amounts to a flagrant breach of the aggrieved party's right to fair hearing as entrenched in the Constitution. Indeed, it equiponderates to a miscarriage of justice and is a failure of justice,[55] or justice which is not in consonance with the law.[56] Although election petitions are sui generis proceedings which by their nature dictate expeditions hearing and determination, in spite of that they are still bound by the provisions of the 1999 Constitution Section 36 which deals with fair hearing.[57]

Some of the grounds for the objections would include but not limited to: failure to exercise discretion judicially and judiciously;[58] refusal of adjournment;[59] court raising matter *suo moto*;[60] failure to pronounce on application;[61] failure to consider points in favour of party;[62] failure to join necessary parties;[63] speedy trial;[64] denial of interrogatories;[65] framing of issues by the court;[66] order against

[53] Per Rhodes-Vivour JSC, in ACN v. Lamido (2012) LPELR-7825(SC) (P. 40, paras. C-F); See I. Mohammed v. Kano N.A. (1968) 1 ALL NLR p. 43; Akeredolu v. Akinremi (1986) 2 NWLR Pt.25 P.710; F.C.S.C. v. Laoye (1989) 2 NWLR Pt. 106 p.652; Salu v. Egibon (1994) 6 NWLR Pt.348 p. 34

[54] Per Adekeye, JSC, in Dingyadi v. INEC (2010) LPELR-952(SC) (Pp. 167-168, paras. G-D)

[55] Per Dongban-Mensem, JCA Ogboru v. Uduaghan (2011) 8 EPR 476 at Page 506; Ojo v Anibire (2004) 5 NWLR (pt 177) 1205, 1207.

[56] Per Dongban-Mensem, JCA Ogboru v. Uduaghan (2011) 8 EPR 476 at Page 506; Wilson v Wilson (1969) ALR 191.

[57] Per Peter-Odili, JCA, (Leading) in INEC v. ADC (2008) LPELR-4312(CA) (P. 19, paras. D-G); Eriobuna v. Ezeife (1992) 4 NWLR (pt. 236) 417.

[58] Per Tobi, JSC, (as he then was, now of blessed memory) whilst dissenting in Pam v. Mohammed (2009) 5 EPR 288 at pages 351-352.

[59] Per Lokulo-Sodipe, JCA, in APGA v. Ameke (2012) 8 NWLR (Pt. 1303) 433 CA (Pp. 456-457, paras. H-B); at pages 457-458, paras: B-A.

[60] Ezeudu v. John (2012) 7 NWLR (Pt. 1298) 1 CA, (P. 19, paras. F-G); Okonji v. Njokanma (1999) 14 NWLR (Pt.638) 250 referred to.

[61] Uzo Ndukwe-Anyanwu, JCA, in Riruwai v. Shekarau (2010) 6 EPR 462 at page 629; Afro - Cont. Ltd vs. Co-op Assoc of Prof. Inc. (2003) 5 NWLR (Pt. 813) Pg. 303.

[62] Per Olagunju, JCA, in Sanyaolu v. INEC (2007) 3 EPR 579 at page 593.

[63] Per Uwaifo, JSC, (as he then was) in Buhari v. Yusuf (2004) 1 EPR 1 at page 18.

[64] Per Tobi, JSC, in Abubakar v. Yar'Adua (No.1) (2009) 4 EPR 333 at page 366.

[65] Per Tobi, JSC, in Abubakar v. Yar'Adua (No.1) (2009) 4 EPR 333 at page 366.

[66] Per Tobi, JSC, (as he then was, now of blessed memory) in Adeogun v. Fashogbon (2009) 4 EPR 569 at pages 603-606.

persons not parties;[67] tribunal or court examining documents in its chambers;[68] Overreliance on technicalities;[69] court sitting on appeal over its own judgment or ruling;[70] discretion of court exercised in breach of the law;[71] ignoring a party's process or objection;[72] denial of application to recall witnesses where necessary;[73] denying counsel right to address the court;[74] bias and prejudice by court or tribunal;[75] order made in chamber;[76] unclear pleadings;[77] undue interference by the judge;[78] undue delay;[79] failure to hear the other side;[80] failure to allow for cross examination;[1] failure to serve process on a party;[2] failure to consider all issues raised by the parties;[3] allowing substantial amendments;[4] inconvenient forum of division;[5] premature close of pleadings;[6] judgment by judge who did not participate in full hearing

[67] Per Aderemi, JCA, in Ngige v. Obi (2010) 6 EPR 1 at page 134.
[68] Tunji v. Bamidele (2012) 12 NWLR (Pt.1315) 477 CA, (Pp. 491-492, paras. G-B); A.N.P.P v. Usman (2008) 12 NWLR (Pt. 1100) 1; Amachere v. Goodhead (2009) All FWLR (Pt.461) 911; Chime v. Ezea (2009) 2 NWLR (Pt.1125) 203; Audu v. I.N.E.C. (No.2) (2010) 12 NWLR (Pt.1212) 456; A.N.P.P. v. I.N.E.C (2010) 13 NWLR (Pt.1212) 549; Iniama v. Akpabio (2008) 17 NWLR (Pt.1116) 296 referred to.
[69] Ekpenetu v. Ofegobi (2012) 15 NWLR (Pt.1323) 276 CA, (P. 308. Paras. A-C); Amaechi v. I.N.E.C. (2008)5 NWLR (Pt.1080) 227; A-G., Bendel State v. A.G. Fed. (1982)3 NCLR 116; Magit v. University of Agriculture, Makurd i(2005)19 NWLR (Pt.959) 211 referred to.
[70] Ugba v. Suswam (2014) 14 NWLR (Pt.1427) 264 SC, (P.306, paras. C-F), Igwe v. Kalu (2002) 14 NWLR (Pt.787) 435 referred to.
[71] Azubuike v. PDP (2014) 7 NWLR (Pt.1406) 292 SC, (Pp. 319-320, paras. H-B)
[72] Per S.A. Ibiyeye, OFR, JCA, in Amgbare v. Sylva (2011) 8 EPR 700 at page 803.
[73] Per Onnoghen, JCA, (as he then was, later CJN) in Jang v. Dariye (2006) 2 EPR 839 at page 865-866.
[74] Ibiyeye OFR, JCA, in Amgbare v. Sylva (2011) 8 EPR 700 at pages 781 – 782; See Obiora V. Osele (1989) 1 NWLR (PT 97) 279 at 300. Lawal V. Oke (2001) 7 NWLR (PT. 711) 88; Lawal V. Salami (2002) 2 NWLR (Pt. 752) 681 at 710.
[75] Per I.M.M. Saulawa, JCA, in Ewang v. Akpabio (2010) 7 EPR 602 at Page 666.
[76] Per Adekeye, JSC, in Dingyadi v. INEC (2010) LPELR-952(SC) (P. 168, paras. E-G).
[77] Per Oputa, JSC, in Elike v. Nwokwoala (1984) LPELR-1118(SC) (Pp.37-38, paras.G-B).
[78] Per Oputa, JSC, (as he then was, now of blessed memory) in Elike v. Nwokwoala (1984) LPELR-1118(SC) (Pp.38-39, paras.G-D).
[79] Per Bello, JSC, (as he then was) in Unongo v. Aku (1983) LPELR-3422(SC) (Pp. 42-43, Paras. E-A).
[80] Per Rhodes-Vivour, JSC, (leading) in Emeka v. Okadigbo (2012) LPELR-9338(SC).
[1] Per Mshelia, JCA, (Leading) in Arebi v. Gbabijo (2008) LPELR-3803(CA) (Pp. 37-38,paras. G-F).
[2] Per Okoro, JCA, (as he then was) (Leading) in Olukolu v. Okoli (2011) LPELR-4250(CA) (Pp. 24-25, Paras G-D); see Banna v. Telepower Nig. Ltd. (2006) 15 NWLR (pt.1001) 198 at 221 para D.
[3] Emeka v. Okadigbo (2012) 18 NWLR (Pt. 1331) 55 SC (Pp. 92-93, paras. H-A; 94, paras. A-C).
[4] Per Yargata Byenchit Nimpar, JCA, in APC v. PDP (2019) LPELR-48425(CA) (Pp. 21-33, paras. B-D).
[5] Per Emmanuel Akomaye Agim, JCA, in Satumari v. Ndume (2019) LPELR-48875(CA) (Pp. 4-12, para. C-C).
[6] Per Ibrahim Mohammed Musa Saulawa, JCA, in Maku v. Sule (2019) LPELR-48272(CA) (Pp. 43-53, paras. E-B).

in all proceedings;[7] rejection of evidence of witness;[8] wrong procedure;[9] and restating or rearguing an appeal.[10] Other instances include: granting leave to raise an issue and then decline to consider it;[11] allowing party to raise fresh issue on appeal without leave;[12] striking out a discernible ground of appeal;[13] unsworn documents and statements;[14] tribunal pronouncing guilt;[15] disturbing a concurrent finding of fact;[16] failure to create the atmosphere for fair hearing;[17] default judgment;[18] lack of notice;[19] failure to serve process;[20] denial of leave to file additional witness statements consequent upon inspection of election materials;[21] reliance by tribunal on previous cases decided by the supreme court as against

[7] Per Jummai Hannatu Sankey, JCA, leading in Oyetola v. Adeleke (2019) LPELR-47529(CA) (Pp. 30-44, paras. C-F).
[8] Ibrahim v. Ogunleye (2012)1NWLR (pt.1282)489 CA, (Pp. 511-512, paras.D-A); Chime v. Egwuonwu (2008)2 LRECH 575; Chime v. Ezea (2009)2 NWLR (Pt.1125) 263; Abubakar v. Yar'Adua (2008)4 NWLR (Pt.1078) 465; I.N.E.C v. Iniama(2008)5 NWLR (Pt.1088) 82; Ogunsakin v. Ajidara(2008)6NWLR(Pt.1082)1 NWLR (Pt.1232) 1; Ogboru v. Dr.Uduaghan (2008)2011 2 NWLR (Pt.1232)538 referred to.
[9] Oshiomhole v. Airhiavbere (2013) 7 NWLR (Pt. 1353) 376 SC (P. 405, paras. A-C), Josiah v. State (1985)1 NWLR (Pt.1) 125 referred to.
[10] Ugba v. Suswam (2014) 14 NWLR (Pt.1427) 264 SC, (P.306, paras. C-F), Igwe v. Kalu (2002) 14 NWLR (Pt.787) 435 referred to.
[11] Per Kekere-Ekun, JSC, in Anyanwu v. Ogunewe (2014) 8 NWLR (pt.1410) 437 SC, (Pt.460, paras. D-G) at page 462, paras. F-H; Petrojesica Ent. Ltd. v. Leventis Tech. Co. Ltd. (1992) 5 NWLR (Pt.244) 675; Obiuweubi v. C.B.N. (2011)7 NWLR (Pt.1247) 465 referred to.
[12] Donald v. Saleh (2015) 2 NWLR (Pt.1444) 529 CA, (P.566, paras. C-E).
[13] Per Saulwa, JCA, in Ewang v. Akpabio (2010) 7 EPR 602 at Page 645.
[14] Per Aderemi, JCA, in Haruna v. Modibbo (2006) 2 EPR 664 at page 705
[15] Per Fabiyi, JSC, (Leading) in Effiom v. Cross River State Independent Electoral Commission (2010) LPELR-1027(SC) (Pp. 40-41, Paras. D-A).
[16] Per Ngwuta, JSC, in INEC v. Ogbadibo Local Government (2015) LPELR-24839(SC) (P. 41, paras. A-C); See Njoku & Ors v. Eme & Ors (1973) 5 SC 293 at 306; Kale v. Coker 12 SC 252 at 271.
[17] Per Ogbuinya, J.C.A. (Leading) in ACN V. Lamido (2011) LPELR-9174(CA) (Pp. 53-54, paras. G-D); See O.O.M.F Ltd. v. NACB Ltd. (2008) 12 NWLR (Pt. 1098) 412; Leaders & Co. Ltd. V. Bamaiyi (2010) 18 NWLR (Pt.1225) 329; Agbiti V. Nigerian Navy (2011) 4 NWLR (Pt. 1236) 175.
[18] Per Peter-Odili, JCA, (as he then was), (Leading), in INEC v. ADC (2008) LPELR-4312(CA) (P. 18, paras. D-G); Alabi v. lawal (2004) 2 NWLR (pt. 856) 134 at 145 - 147; Mohammed v. Husseini (1998) 14 NWLR (pt. 584) 108; Oyeyipo v. Oyinloye (1987) 1 NWLR (pt.50) 356; State v. Onagoruwa (1992) 2 NWLR (pt. 221) 33; Long-John v. Blakk (1998) 6 NWLR (pt. 555) 524.
[19] Per Saulawa, JCA, (Leading), in Okoreaffia v. Agwu (2008) LPELR-4724(CA) (Pp. 33-34, paras.E-B)
[20] Per Okoro, JCA, (as he then was), (Leading), in Olukolu v. Okoli (2011) LPELR-4250(CA) (Pp. 24-25, Paras G-D); see Banna v. Telepower Nig. Ltd. (2006) 15 NWLR (pt.1001) 198 at 221 para D.
[21] Per Samuel Chukwudumebi Oseji, JCA, in Ndah v. INEC (2019) LPELR-48920(CA) (Pp. 14-27, paras. B-D)

later authorities;[22] unclear grounds of appeal;[23] court of appeal exercising powers of hearing as trial court instead of remitting case to the trial court for hearing de novo;[24] allowing a petitioner to introduce new facts not contained in his petition in his reply;[25] inappropriate order of dismissal;[26] denying litigant right of a counsel of his choice;[27] etc.

A judgment which is given without compliance with rules of court and which non-compliance has breached a fundamental human right such as the right to fair hearing, is a nullity and is capable of being set aside either by the court that gave it or by an appellate court.[28] Where a party has been denied fair hearing, the correctness or otherwise of the decision becomes irrelevant the entire proceedings are a nullity and must be set aside.[29]

1.2. Constitution of Miscarriage of Justice

What constitutes miscarriage of justice varies from case to case as the concept is denoted by the facts of the given case. Howbeit, put simply, miscarriage of justice is a failure of justice. miscarriage of justice occurs when a court fails or refuses to follow the rules and arrives at a decision which is prejudicial and inconsistent with the legal rights of a party. miscarriage of justice is failure on the part of the court to do justice. It is justice misplaced or misappropriated.[30]

The Supreme Court, in *Okonkwo v. Udoh*,[31] stated that what will constitute a miscarriage of justice may vary, not only in relation to the particular facts, but also with regard to the jurisdiction which has been invoked by the proceedings in question; and to reach the conclusion that a miscarriage of justice has taken place does not

[22] Per Ayobode Olujimi Lokulo-Sodipe, JCA, in Oji v. Ndukwe (2019) LPELR-48226(CA) (Pp 46-50, paras C-D)
[23] Per Jummai Hannatu Sankey, JCA, in Ogbaji v. Onche (2019) LPELR-48879(CA) (Pp. 6-9, paras. D-C)
[24] Per Biobele Abraham Georgewill, JCA, in Elohor v. INEC (2019) LPELR-48806(CA) (Pp. 56-58, para. F-F)
[25] Per Onyekachi Aja Otisi, JCA, in Akpoti v. INEC (2020) LPELR-50174(CA) (Pp. 59-61, paras. D-B)
[26] Per Joseph Tine Tur, JCA, dissenting, in Stephen v. Moro (2019) LPELR-48406(CA) (Pp. 244-251, para. C-C)
[27] Per Isaiah Olufemi Akeju, JCA in Obaghama v. Apiafi (2019) LPELR-49076(CA) (P. 30, paras. B-F)
[28] Per Tobi, JSC, in Pam v. Mohammed (2008) LPELR-2895(SC) (P.71, Paras. F-G)
[29] Per Omoleye, JCA, (Leading) in Ekpenetu v. Ofegobi (2012) LPELR-9229(CA) (Pp. 44-47, paras C-D)
[30] A.-G., Fed. v. Kashamu (No.2) (2020) 3 NWLR (Pt. 1711) 281 (P. 336, paras. D-E) C.A.; Oguntayo v. Adelaja (2009) 15 NWLR (Pt.1163) 150 referred to.
[31] (1997) 9 NWLR (Pt. 519) 16 (Pp. 20-21, paras. H-A) S.C.

require a finding that a different result necessarily would have been reached in the proceedings said to be affected by the miscarriage. It is enough if what is done is not justice according to law. To reach the conclusion that a miscarriage of justice occurred, it does not require a finding that a different result necessarily would have been reached in the proceedings. It is enough if what happened is not justice according to law.[32]

a) Error or mistake by court: The Supreme Court, in *Akoma v. Osenwokwu*,[33] held that there would be miscarriage of justice when an error can be seen in the proceedings or judgment and a more favourable decision would have been given to the party that lost had it not been for the error. There is a miscarriage of justice when the decision given is inconsistent with established rights of the party complaining.

In *Faleke v. INEC*,[34] the apex court stated that the Supreme Court would not readily interfere with concurrent findings of fact by lower courts unless such findings are perverse, not supported by the evidence on record, or where there is a substantial error on the face of the record or some miscarriage of justice has occurred. In the instant case, the findings of the Court of Appeal and the election tribunal were concurrent in their determination of the case. The appellant failed to show any reason why the Supreme Court should disturb the unanimity of the two lower courts both on facts and issues of law. In other words, the appellant did not show that the concurrent findings on the interpretation and application of the Constitution and the Electoral Act were perverse and had occasioned any miscarriage of justice.

b) Denial to use vital documents: In *Aregbesola v. Oyinlola*,[35] the Court of Appeal held that the rejection of documentary evidence to with: Police Security Report, Forms EC8A, EC8E and the rulings of the tribunal of 18/2/2008 and 28/4/2008 wherein the appellants were denied the use of vital documents to support their case, amounted to a miscarriage of justice.

[32] Unilorin v. Akinola (2014) 12 NWLR (Pt. 1422) 435 (P. 466, paras. E-H) S.C.; State v. Ajie (2000) 11 NWLR (Pt. 678) 434; Ojo v. Anibire (2004) 10 NWLR (Pt. 882) 571; Oniah v. Onyia (1989) 1 NWLR (Pt. 99) 514 referred to.
[33] (2014) 11 NWLR (Pt. 1419) 462 (P. 497, paras. E-F) S.C.
[34] (2016) 18 NWLR (Pt. 1543) 61 (Pp. 131-132, G-A; 159, paras. A-C) S.C.; Tarzoor v. Ioraer (2016) 3 NWLR (Pt.1500) 463; Akeredolu v. Akinremi (No.3) (1989) 3 NWLR (Pt.108) 164; Gbadamosi v. Dairo (2007) 3 NWLR (Pt.1021) 282 referred to.
[35] (2009) 14 NWLR (Pt. 1162) 429 (Pp. 479-480, paras. H-A) C.A.; Okonkwo v. Udoh (1997) 9 NWLR (Pt. 519) 16; ANPP v. INEC (2004) 7 NWLR (Pt. 871) 16; Nnajiofor v. Ukonu (1986) 4 NWLR (Pt. 36) 505 referred to.

c) Departure from laid down legal principles: Miscarriage of justice occurs when the court fails or refuses to follow its rules or arrives at a decision which is prejudicial or inconsistent with the legal rights of a party.[36] In *Eze v. Unijos*,[37] the Supreme Court stated that there would be miscarriage of justice where there is a departure from well laid down procedure before a court arrives at a decision, and that results in a failure of justice. There is miscarriage of justice when the court fails to do justice. Where there is a miscarriage of justice, the decision would be inconsistent with the substantial right of the party. In such a case, injustice reigns supreme. In short, it is justice misapplied. The miscarriage of justice on the basis of which an appellate court will interfere is where the violation of some principle of law or procedure is such that if corrected, a different result will be the outcome; or it may be the neglect of some principle of law or procedure which if it had not been neglected, a different result will be the outcome.[38]

d) Breach of the rules of natural justice: By virtue of section 36(1) of the 1999 Constitution (as amended), fair hearing means a trial or hearing conducted according to all legal rules formulated to ensure that justice is done to the parties. It requires the observation or observance of the twin pillars of the rules of natural justice, namely audi alteram partem and nemo judex in *causa sua*.[39] The rules of natural justice, namely the obligation to hear the other side of a dispute or the right of a party in dispute to be heard, is so basic and fundamental a principle of the adjudicatory system in the determination of disputes that it cannot be compromised on any ground.[40] In *Ikomi v. State*,[41] per Karibi-Whyte, JSC, (as he then was), held thus:

> The purpose of vitiating proceedings on a breach of the rules of natural justice is to obviate a miscarriage of justice. Chief Williams has contended that the breach of natural justice invariably results in a miscarriage of justice. I do not think it necessarily so follows. Where there is a technical breach as occurred in this case as opposed to an actual breach of the rule of natural justice, it is pertinent to consider

[36] Ahayonni v. Saap-Tech (Nig.) Ltd. (2020) 1 NWLR (Pt. 1706) 453 (P. 488, paras. C-E) C.A.
[37] (2017) 17 NWLR (Pt. 1593) 1 (P. 17, paras. D-F) S.C.; Djukpan v. Orovuyovbe (1967) SCNLR 245, Okonkwo v. Udoh (1997) 9 NWLR (Pt. 519) 16; Ojo v. Anibere (2004) 10 NWLR (Pt. 882) 571 referred to.
[38] John Holt Plc v. Nwabuwa (2021) 11 NWLR (Pt. 1787) 325 (P. 349, paras. B-F) C.A.; Dagaci of Dere v. Dagaci of Ebwa (2006) 7 NWLR (Pt. 979) 382 referred to.
[39] State v. Yanga (2021) 5 NWLR (Pt. 1769) 375 (Pp. 389-390, paras. H-A) S.C.
[40] State v. Yanga (2021) 5 NWLR (Pt. 1769) 375 (P. 390, paras. A-D) S.C.; Eye v. F.R.N. (2018) 7 NWLR (Pt. 1619) 495 referred to.

> whether a miscarriage of justice has been occasioned. I do not think there was any miscarriage of justice.

Where a Judge or court fails to consider an issue adjudged not to be relevant or crucial to the determination of the case or appeal before the court, the non-reference to it would not be a denial of fair hearing and would not amount to miscarriage of justice.[42] A miscarriage of justice is inherent in a denial of a right to a fair hearing. Thus, a party who establishes a denial of his right to a fair hearing under the Constitution is not required to prove that he suffered a miscarriage of justice.[43]

e) Undue reliance on technicalitites: Substantial justice remains the focus of the law, not technicality.[44] The Supreme Court, in *Akpan v. Bob*,[45] held that technical justice is no justice at all and a court of law should distance itself from it. Courts of law should not be unduly tied down by technicalities, particularly where no miscarriage of justice would be occasioned. justice can only be done in substance and not by impeding it with mere technical procedural irregularities that occasion no miscarriage of justice. Thus, where the facts are glaringly clear, the courts should ignore mere technicalities in order to do substantial justice. In the instant case, no miscarriage of justice was shown to have existed.

The apex court, in *Adeleke v. Oyetola*,[46] reiterated that the Supreme Court has enjoined courts not to be unduly tied down by technicalities, particularly where no miscarriage of justice would be occasioned. justice can only be done in substance and not by impeding it with mere technical procedural irregularities that occasion no miscarriage of justice. The 1st respondent by his preliminary objection sought to achieve a result through technicalities. The fact that the learned counsel for the appellants described themselves as counsel for the respondents must not be allowed to defeat the cause of justice in the instant appeal. For human beings are mere mortals susceptible to human error. Where such errors are harmless, they are pardonable.

[41] (1986) 3 NWLR (Pt. 28) 340 S.C.
[42] Owuru v. Adigwu (2018) 1 NWLR (Pt. 1599) 1 (Pp. 19-20, paras. H-A) S.C.; Federal Ministry of Health v. Comet Shipping Agencies Ltd. (2009) 9 NWLR (Pt. 1145) 193 referred to.
[43] Mpama v. F.B.N Plc (2013) 5 NWLR (Pt. 1346) 176 (P. 204, paras. E-F) S.C.
[44] Garan v. Olomu (2013) 11 NWLR (Pt. 1365) 227 (P. 253, para. G)S.C.
[45] (2010) 17 NWLR (Pt. 1223) 421 (Pp. 478-479, paras. H-C) S.C.; Famfa Oil Ltd. v. A.-G., Federation (2003) 18 NWLR (Pt. 852) 453 referred to.
[46] (2020) 6 NWLR (Pt. 1721) 440 (P. 540, paras. E-H) S.C.; Consortium M. C v. NEPA (1992) 6 NWLR (Pt. 246) 132; Falobi v. Falobi (1976) 1 NMLR 169; Bello v. A.-G., Oyo State (1986) 6 NWLR (Pt. 45) 828; Okonjo v. Odje (1985) 10 SC 267 referred to.

f) Variation of panel- justice who did not participate in hearing: The Supreme Court, in *Faluyi v. NUT*,[47] held that by virtue of section 247(1) of the 1999 Constitution, it is not open for any justice who did not participate in the hearing of an appeal to appear on the day of judgment, either in substitution for or in addition to those who heard the appeal. To do so would amount to injustice or miscarriage of justice to the parties to the appeal. In the instant case, the judgment delivered by Hon. justice E. Ekanem who did not sit with the panel of justices that heard the appeal on the date set for hearing affected the competence of the Court of Appeal in the proceeding conducted in the delivery of the judgment.

g) Denial of right of final address: The Supreme Court, in *State v. Yanga*,[48] held that it is a party's constitutional right to be heard through his written/oral address or counsel's address on his behalf. When counsel or a party is denied the right of final address, the trial court is equally deprived of its enormous benefits. Its inevitable consequence is that a miscarriage of justice is occasioned.

h) Speculation by court on incomplete record: In *Access Bank Plc v. Onwuliri*,[49] the Supreme Court stated that a court is not entitled to speculate on matters not before it. On no account must a court deliberate on an incomplete record. In the instant case, the court held that without seeing the material that was before the trial court, the Court of Appeal would not be in a position to reach a just resolution of the issues brought before it. A decision reached in such circumstances, affecting the rights of the parties, would no doubt lead to a miscarriage of justice.

i) Perverse decision: Where a decision is not supported by evidence, same is perverse, and can be set aside by an appellate court. Where a finding of a trial court is shown to be perverse or not supported by the evidence, it is bound to be set aside by the appellate court. The Supreme Court, in *Uzodinma v. Ihedioha*,[50] stated that a decision is perverse where, for example, the trial court (or the appeal court) took into account matters that it ought not to have taken into account

[47] (2021) 5 NWLR (Pt. 1768) 98, (Pp.114-115, paras. G-B) S.C.
[48] (2021) 5 NWLR (Pt. 1769) 375 (Pp. 396, paras. C-D; 397, para. D) S.C.; Okafor v. A.-G., Anambra (1991) 6 NWLR (Pt. 200) 659; Obodo v. Olomu (1987) 3 NWLR (Pt.59) 111; Adigun v. A.-G., Oyo State (1987) 1 NWLR (Pt. 53) 678 referred to.
[49] (2021) 6 NWLR (Pt. 1773) 391 (P. 416, paras. F-H) S.C.
[50] (2020) 5 NWLR (Pt. 1718) 529 (P. 571, paras. A-B) S.C.; Ayeni v. Adesina (2007) 7 NWLR (Pt. 1033) 233 referred to.

or where the decision occasioned a miscarriage of justice. In this case, the consideration of the appellants' case on a wrong premise occasioned a miscarriage of justice because the trial tribunal and the Court of Appeal were wrong when they held that the appellants failed to prove their entitlement to the reliefs claimed.

j) Fresh issue adducing further evidence on appeal: The Supreme Court, in *NJC v. Dakwang*,[51] stated that an appellant will not be allowed to raise on appeal a question which was not raised or tried or considered by the trial court. However, where the question involves substantial point of law, substantive or procedural and it is plain that no further evidence would be adduced to thrash the issue, the court will allow the question to be raised so as to prevent an obvious miscarriage of justice.

k) Failure to consider and determine all issues: The effect of the failure to consider and determine all issues presented by the parties in a dispute, apart from showing that the court failed in its duty, also could occasion a miscarriage of justice.[52]

The Supreme Court, in *Ziregbe v. Eyekpimi*,[53] stated that the failure to consider and pronounce on all issues submitted to a court or tribunal is not necessarily evidence of a miscarriage of justice when the record shows that what ought to be done by the court is fully done. In the instant case, the Court of Appeal affirmed the findings of the trial court after analyzing and reviewing the evidence on record which had to do with issues 5, 10 and 11, and so the Court of Appeal could not be criticized for not considering each and every of the issues crafted by the appellant when no miscarriage of justice had occurred with the consideration of the questions embedded in those issues considered, and the Court of Appeal referred to the proliferation of issues and so the issue of a denial of fair hearing could not be successfully raised.

l) Judgment delivered in absence of parties: In *Okoye v. Mbaya*,[54] the Court of Appeal stated that the delivery of judgment without notice

[51] (2019) 7NWLR (Pt. 1672) SC 532 *(P. 550, paras. A-D); International Bank Plc v. Olam (Nig.) Ltd.* (2013) 6 NWLR (Pt. 1351) 468; *Ibrahim v. Lawal* (2015) 17 NWLR (Pt. 1489) 490 referred to.
[52] Unity Bank Plc v. Igala Constr. Co. Ltd. (2021) 10 NWLR (Pt. 1785) 407 (P. 439, paras. B-C) C.A.
[53] (2020) 9 NWLR (Pt. 1729) 327 (P. 358, paras. C-F) S.C.
[54] (2020) 8 NWLR (Pt. 1726) 383 (P. 400, paras. A-G) C.A.; Cotecna International Ltd. v. Church Gate (Nig.) Ltd. (2010) 18 NWLR (Pt.1225) 346; Veritas Insurance Company Ltd. v. Citi Trust Investment Ltd.(1993) 3 NWLR (Pt.281) 349 referred to.

to a party will not nullify the judgment unless the appellant shows that it has resulted in a miscarriage of justice. Parties and or their counsel sit in court and listen to the judgments being delivered. They do not play any role beyond listening and at times taking down random notes in the course of the delivery of the judgment. In this case, the appellants did not show that the delivery of the judgment on a later date than earlier scheduled occasioned a miscarriage of justice.

m) Issues raised suo moto: In *Orji v. State*,[55] the Supreme Court stated that the utilisation of an issue raised suo motu by the court to reach a decision without hearing from the parties or just the party that would be jeopardised by the use of that issue to determine the case is deplorable. Such a decision can only stand if no miscarriage of justice has been occasioned. But where a miscarriage of justice is the result then the decision must be jettisoned. In the instant case, the issue of the non filing of the appellant's brief of argument was raised by the Court of Appeal itself on its own and no opportunity given to the appellant to address the court on the point.

The mere failure of a court to give parties the opportunity to address it on an issue will not per se lead to reversal of the decision except such failure leads to miscarriage of justice.[56] The Court of Appeal, in *Eluemunoh v. Obidigwe*,[57] held that if a court sees the need of considering a point not canvassed by the parties, it is bound to call on them to address it on the issue before taking or reaching a decision on the said issue. When the issue or point raised and resolved suo motu by a court without affording the parties a hearing, deals with issues of fact, the court invariably commits a breach of fair hearing on the issue, as it relates to the parties, particularly in respect of the party likely to be adversely affected by the issue. Although a decision reached by a court in respect of an issue or point of law, raised and resolved by it suo motu, does not necessarily have to lead to a reversal of the decision of that court on appeal, such a decision must however be reversed where an appellant shows that failure to hear him on the point or issue of law, has occasioned some miscarriage of justice.

n) Failure to evaluate evidence by court: The Supreme Court, in *Fredrick v. Ibekwe*,[58] stated that the only way a court can do substantial

[55] (2019) 13 NWLR (Pt. 1688) 93 (P. 118, paras. A-C) S.C.
[56] C.B.N. v. Hydro Air PTY Ltd. (2014) 16 NWLR (Pt. 1434) 482 (P. 508, paras. E-H) C.A.; Ogembe v. Usman (2011) 17 NWLR (Pt.1277) 638 referred to.
[57] (2012) 13 NWLR (Pt. 1317) 369 C.A.; Effiom v. C.R.S.I.E.C. (2010) 14

justice between the parties to a suit is by giving equal consideration to the evidence adduced by either side.

o) Evidence of party used in favour of the adverse party: Using evidence of a party, mistaking it to be that of the adverse party, to advance the case of the adverse party, could lead to a miscarriage of justice. The Supreme Court, in *Nikagbate v. Opuye*,[59] stated that a ground of appeal, such as ground five in this case, which complains that evidence in support of a party's case was used in favour of his adverse party leading to a miscarriage of justice is a ground of mixed law and fact.

p) Discretion not exercised judicially and judiciously: Judicial discretion must be exercised judicially and judiciously. That is to say, it must be exercised in accordance with common sense and according to justice. Where there is evidence of miscarriage of justice, an appellate court is in good position to review same.[60]

q) Misdirection: The Supreme Court, in *Mulima v. Usman*,[61] stated that in determining whether an alleged misdirection was prejudicial to the appellant, the test is whether on a fair consideration of the proceedings as a whole, it can be held that in all probability, the alleged misdirection turned the scale against the appellant. In the instant case, there was no misdirection at all on the part of the Court of Appeal on the face of the record of appeal showing clearly that facts in support of the issue relating to revocation and compensation had been pleaded by the parties. Therefore, the question of any miscarriage of justice resulting from the conduct of the Court of Appeal does not arise at all. The phrase "miscarriage of justice" simply means a failure of justice.

r) Delay in delivery of judgment: On what party alleging miscarriage of justice by reason of delay in delivery of judgment need show, the Court of Appeal, in *Nagebu Co. (Nig.) Ltd. v. Unity Bank Plc*,[62] held that the concept of miscarriage of justice is not a speculative concept and it is not considered in the abstract but in concrete terms based

[58] (2019) 17 NWLR (Pt. 1702) 467 (P. 498, paras. F-H) S.C.
[59] (2018) 9 NWLR (Pt. 1623) 85 (Pp. 100-101, paras. G-A; 103, paras. B-C; 107, paras. D-F; 110, para. F) S.C.
[60] Dick v. Our and Oil Co. Ltd. (2018) 14 NWLR (Pt. 1638) 1 (P. 30, paras. A-B) S.C.
[61] (2014) 16 NWLR (Pt. 1432) 161 (Pp. 205-206, paras. H-B) S.C.; Yaro v. State (1972) 2 SC 63 referred to.
[62] (2014) 7 NWLR (Pt. 1405) 42 (P. 67, paras. C-E) C.A.; Baban-Lungu v. Zarewa appeal No CA/K/259/2011 delivered on the 22nd of March, 2013 referred to.

on the peculiar facts of each case. Thus, a party alleging miscarriage of justice by reason of delay in the delivery of judgment by a court will not succeed by merely parroting the concept, he must show in clear and real terms the injustice or injury he suffered on the face of the records and which is traceable to the failure of the court to deliver judgment within the statutory period. The acceptable criteria for whether there has been a miscarriage of justice by reason of delay in delivering a judgment is that if inordinate delay bet ween the end of trial and the writing of the judgment apparently and obviously affected the trial Judge's perception, appreciation and evaluation of the evidence so that it can be easily seen that he lost the impression made on him by the witnesses then in such a case, there might be some fear of a possible miscarriage of justice and there, but only there, will an appellate court interfere. The emphasis is not on the length of time simpliciter but on the effect it produced in the mind of the trial Judge.[63]

s) Overlooking vital issues by court: In *Obiegue v. A.-G., Fed.*,[64] the Court of Appeal stated that when a trial court overlooks vital issues or evidence before it, the judgment arrived at amounts to a miscarriage of justice. Such judgment will be set aside. In the instant case, a reflection of the facts of the case vis-à-vis the judgment of the trial court showed that the trial court did not grasp the issues involved in the appellant's case. Consequently, the issues were left undetermined or unresolved.

t) Relying on abandoned brief: The Court of Appeal, in *Ugwa v. Lekwauwa*,[65] in all cases where an abandoned brief is used as against an extant brief, there is a presumption, so to say, of lack of fair hearing and miscarriage of justice.

u) Deciding cases on basis of sentiments: In *Okogie v. Epoyun*,[66] the Court of Appeal stated that a court should never allow sentiments to becloud its sense of judgment. In the instant case, the trial court imported religion and morality into its judgment which may have occasioned a miscarriage of justice.

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[63] Ibid

[64] (2014) 5 NWLR (Pt. 1399) 171 (P. 204, paras. A- B-C) C.A.; S.B.N. Plc v. C.B.N. (2009) 6 NWLR (Pt.1137) 237 referred to.

[65] (2010) 17 NWLR (Pt. 1222) 211 (P. 234, paras. G-H) C.A.

[66] (2010) 11 NWLR (Pt. 1206) 456 (P. 480, para. D) C.A.

v) Rejection of admissible evidence: In *Aregbesola v. Oyinlola*,[67] the Court of Appeal stated that miscarriage of justice is a failure of justice and it varies from case to case, depending on where it falls. Once what occurs in trial is not justice according to law, a miscarriage of justice has occurred. In the instant case, the rejection of documentary evidence to with: Police Security Report, Forms EC8A, EC8E and the rulings of the tribunal of 18/2/2008 and 28/4/2008 wherein the appellants were denied the use of vital documents to support their case, amounted to a miscarriage of justice. Per Frederick Oziakpono Oho, JCA, in *Ahmad v. Bala*,[68] held thus:

It is also important to point out here straight away that it is not enough to allege that a given Court or Tribunal failed in evaluating the evidence adduced before it. Any such allegation, to be taken seriously has to in addition, demonstrate the why, when, where and how the Court/Tribunal failed in its responsibility with regards to evidence adduced by the parties, which was placed at its disposal for purposes of evaluating same. Usually, a complaint of improper evaluation of evidence in bare terms must refer to the evidence that was supposed to have formed part of the lower Court's exercise, but which the Court had wittingly or unwittingly excluded and the level of miscarriage of justice it has also occasioned by so doing. See the old case of ELI DAKUR vs. ALI DAPAL & ORS (1998) 10 NWLR (PT. 571) 573 at 586-589.

w) Wrongful admission of inadmissible evidence: Wrongful admission of evidence per se may not necessarily affect the decision of a court fatally unless the use of such evidence has brought about a miscarriage of justice. In other words, admission of inadmissible evidence is not a ground for reversing a judgment of a trial court.[69] Per Joseph Eyo Ekanem, JCA, in *Wombo v. Gbande*,[70] stated that the law is that wrongful admission of evidence by itself cannot lead to a reversal of a judgment unless it has occasioned a miscarriage of justice. Holding in this vein, his lordship stated further thus:[71]

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[67] (2009) 14 NWLR (Pt. 1162) 429 (Pp. 479-480, paras. H-A) C.A.; Okonkwo v. Udoh (1997) 9 NWLR (Pt. 519) 16; ANPP v. INEC (2004) 7 NWLR (Pt. 871) 16; Nnajiofor v. Ukonu (1986) 4 NWLR (Pt. 36) 505 referred to.

[68] (2019) LPELR-48811(CA)(Pp. 76-77, paras. D-B)

[69] Okamgba v. Eke (2009) 16 NWLR (Pt. 1166) 1 (Pp. 18, para. C; 19, para. H) C.A.; Shittu v. Fashawe (2005) 4 NWLR (Pt. 946) 671; Durosaro v. Ayorinde (2005) 8 NWLR (Pt. 927) 410 referred to.

[70] (2019) LPELR-48748(CA) (P. 13, para. A); See Section 251(1) of the Evidence Act, 2011 and Okpa V State (2017) 15 NWLR (Pt. 1587) 1, 27.

[71] Ibid, at (P. 12, paras. C-F)

Where it is contended on appeal that the lower Court wrongly made use of evidence of some witnesses and documents, it is the bounden duty of the appellant to point out not only the specific evidence of the witnesses and documents but also where it was considered by the lower Court. He must also demonstrate how the error, if established, caused a miscarriage of justice. This is because it is not the duty of a Court to descend into the arena to do any case for a party. He must present his case properly. This Court cannot without proper reference by counsel, dig through the record including the judgment to unearth information and facts which counsel ought to present to the Court to substantiate his assertion.

1.3. Effect of Miscarriage of Justice

Miscarriage of justice vitiates a judgment and renders it nullity.[72] The Supreme Court, in *Tyonex (Nig.) Ltd. v. Pfizer Ltd.*,[73] held that where there is miscarriage of justice in the sense that there is such a departure from the rules, which more or less turns judicial procedure on its head, a case for a retrial is made out. In other words, an order for a retrial is made where the interest of justice so demands. A miscarriage of justice warranting a reversal of a decision should be declared only when a court after examination of the entire case including the evidence is of the opinion that it is reasonably probable that a result favourable to the appellant would have been reached in the absence of the error.[74]

1.4. Duty of Party Alleging Miscarriage of Justice

The burden of proving miscarriage of justice is on the party alleging that the justice has been miscarried.[75] When there is a complaint that a re-arrangement or modification of issues by a court has caused a miscarriage of justice, the burden lies on the complainant to show that there was indeed a miscarriage of justice by the new arrangement or modification of the issues. It is not for the court to try to figure out how the re-arrangement or modification of the issue caused a miscarriage of justice.[76] The Supreme Court will not set aside the concurrent findings of the trial court and the Court of Appeal where as in this case, the appellant failed to show how the findings occasioned a miscarriage of justice, or exhibited a misapprehension of facts, and or a violation of some fundamental principle of law.[77]

[72] Access Bank Plc v. Y.K.M. Co. Ltd. (2021) 1 NWLR (Pt. 1757) 388 (P. 404, para. H) C.A.
[73] (2020) 1 NWLR (Pt. 1704) 125 (Pp. 163-164, paras. H-A) S.C.
[74] John Shoy Intl Ltd. v. A.E.P.B. (2013) 8 NWLR (Pt. 1357) 625 (P. 639, paras. D-E) C.A.
[75] Gbadamosi v. Dairo (2007) 3 NWLR (Pt. 1021) 282 (P. 306, para. F) S.C.
[76] P.S.H.S.M.B. v. Goshwe (2013) 2 NWLR (Pt. 1338) 383 (P. 399, paras. D-E) S.C.
[77] Fekolomoh v. State (2021) 6 NWLR (Pt. 1773) 461 (P. 494, paras. A-B) S.C.

In *Faleke v. INEC*,[78] the apex court stated that the Supreme Court would not readily interfere with concurrent findings of fact by lower courts unless such findings are perverse, not supported by the evidence on record, or where there is a substantial error on the face of the record or some miscarriage of justice has occurred.

1.5. Duty of Court

The duty of the court is always to do substantial justice between the parties.[79] In *Passco Intl Ltd v. Unity Bank Plc*,[80] the Supreme Court stated that the the fundamental duty of a court of law or tribunal is to administer justice in accordance with the rule of law. Thus, the court cannot shirk its onerous responsibility to the nation and the people to uphold the rule of law in accordance with the due process of law. It is both in the interest of the government and all persons in Nigeria. The law should be even-handed between the government and the citizen. The courts these days strive to do substantial justice as opposed to technical justice. They now shy away from technicality and move towards the doing of substantial justice in the administration of justice.[81] An appellate court must be satisfied that an alleged miscarriage of justice is really substantial, and not one of mere technicalities, which had caused no embarrassment or prejudice to the appellant before it interferes to decide in favour of the appellant.[82]

A court exists to balance the scale of justice between parties before it in the determination of disputes, and should always ensure that none of them is placed at an advantage over the other in the balancing of that scale so as to ensure that no miscarriage of justice occurs.[83]

2.0. Conclusion and Recommendations

Courts should not be unduly tied down by technicalities, particularly where no miscarriage of justice was done to the other party. A court exists to balance the scale of justice between parties before it in the determination of disputes, and will always ensure that none of them

[78] (2016) 18 NWLR (Pt. 1543) 61 (Pp. 131-132, G-A; 159, paras. A-C) S.C.; Tarzoor v. Ioraer (2016) 3 NWLR (Pt.1500) 463; Akeredolu v. Akinremi (No.3) (1989) 3 NWLR (Pt.108) 164; Gbadamosi v. Dairo (2007) 3 NWLR (Pt.1021) 282 referred to.
[79] Access Bank Plc v. Onwuliri (2021) 6 NWLR (Pt. 1773) 391 (P. 417, paras. F-G) S.C.
[80] (2021) 7 NWLR (Pt. 1775) 224 (P. 253, paras. E-G) S.C.; Gov., Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621 referred to.
[81] Ekwuruckwu v. State (2020) 4 NWLR (Pt. 1713) 114 (P. 131, paras. E-F) S.C.
[82] Awusa v. Nigerian Army (2018) 12 (Pp. 458-459, paras. G-C) S.C.; Adebayo v. A.-G., Ogun State (2008) 7 NWLR (Pt.1085) 201 referred to.
[83] Onwubuariri v. Igboasoiyi (2011) 2 NWLR (Pt. 1234) 357 (P. 381, paras. G-H) S.C.

is placed at an advantage over the other in the balancing of that scale so as to ensure that no miscarriage of justice occurs. Courts have the daunting duty to do substantial justice between parties before it and not be bugged down by technicalities. Courts should not take into account matters which it ought not to have taken into account or shuts its eyes to the obvious.

Miscarriage of justice is injustice done to the party alleging it and the burden of proof is on the party alluding that the justice has been miscarried and as such it is not for the court to figure it out. This is moreso where there is a concurrent finding by two lower courts. The appellant must show reason why the Supreme Court should disturb the unanimity of the two lower courts both on facts and issues of law. The appellant must show that the concurrent findings on the set of facts were perverse and had occasioned any miscarriage of justice. Where there is no miscarriage of justice, the Supreme Court has no reason to interfere with findings of lower courts.

It is therefore trite that parties pay close attention to instances or conditions that can give rise to the miscarriage of justice so as to ensure that substantial justice is dispensed at all times. Justice should not be sacrificed on the altar of technicalities. Legal practitioners, as ministers in the temple of justice, should pursue it, even if the heavens will fall

INTELLECTUAL PROPERTY AND THE LEGAL PROTECTION OF INDIGENOUS PEOPLES RIGHTS IN NIGERIA

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Abstract

Nigeria is endowed with diverse tradition and culture. As a product of their creative endeavour, indigenous people possess traditional knowledge (TK) particularly in the field of traditional medicines, technologies, agriculture and a vast collection of traditional cultural expressions (TCEs). The indigenous TK and TCEs are now confronted with threat of exploitation, misuse and extinction owing to insufficient protection. The aim of this study therefore, is to assess the framework for the protection of TK and TCEs in Nigeria in order to identify possible gaps that may exist in the system militating against their adequate protection. The main objective of the research is to ensure that the indigenous intellectual property (IP) right holders benefit from the cumulative innovation associated with TK and TCEs while enhancing socio-economic development of the country. The researcher adopted the doctrinal research methodology approach with textbooks, journals, conventions and the internet as the main sources of information. The paper argues that the absence of a clearly defined legal framework in Nigeria has exposed indigenous IP to expropriation and exploitation. The article calls for the entrenchment of national protection mechanism through the instrumentality of sui generis system in the form of enactment of national legislation for effective safeguard, preservation and promotion of indigenous peoples' IP rights in Nigeria.

Key Words: Intellectual Property, Traditional Knowledge, Traditional Cultural Expression, Legal Protection, Indigenous Peoples Rights.

1.1. Introduction

Indigenous people live in approximately 90 countries across the world and their total number worldwide is estimated to be more than 370 million.[1] Indigenous people are the descendants of those

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[1] See 'Indigenous Peoples Overview' *https://www.woldbank.org/en/topic/indigenouspeoples* accessed 23 July 2021.