

*When Grievance Touching on Chapter IV of the Constitution Will Not
Constitute Breach of Fundamental Human Rights*

In the Supreme Court of Nigeria
Holden at Abuja
On Wednesday, the 4th Day of June, 2025

Before Their Lordships
Uwani Musa Abba Aji
Ibrahim M. Musa Saulawa
Emmanuel Akomaye Agim
Chioma Egondu Nwosu-Iheme
Jamilu Yammama Tukur
Justices, Supreme Court

SC. 196/2005

BETWEEN
DR. JEREMIAH ABALAKA APPELLANT
AND

1. MINISTER OF HEALTH RESPONDENTS
2. MEDICAL & DENTAL COUNCIL OF NIGERIA
3. MEDICAL AND DENTAL PRACTITIONERS
INVESTIGATING PANEL

(Lead judgement delivered by Honourable Uwani Musa Abba Aji, JSC)

“... It is not every grievance that perches or touches on the provisions of Chapter IV of the 1999 Constitution that constitutes a breach to or calls for enforcement of fundamental rights. They must be the main and predicate claims, and not the ancillary or remote to it.”

Facts

The Appellant, Dr. Jeremiah Abalaka, claimed that he had made a therapeutic breakthrough in the treatment of HIV. Following his claim, he was invited by the Medical & Dental Practitioners Investigating Panel (the “3rd Respondent”), on 22nd May 2022, to appear before the 3rd Respondent for investigation of his HIV treatment claims. To enforce his fundamental rights to fair hearing, the Appellant filed an *ex-parte* application at the High Court of the Federal Capital Territory, arguing that the 3rd Respondent was acting as the accuser, prosecutor, and judge in its own case.

The court initially granted an interim injunction restraining the Respondents from investigating the Respondents. However, it eventually struck out the motion on jurisdictional grounds. The Appellant filed the same application before the Federal High Court but it was refused on the ground that the reliefs sought by the Appellant fell outside the scope of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The Appellant appealed to the Court of Appeal, which dismissed the appeal. Dissatisfied, the Appellant appealed to the Supreme Court.

Issue for Determination

On the merits, the Supreme Court considered a sole issue for determination of the appeal, to wit:

- i. WHETHER the lower court was wrong to affirm the judgement of the trial court and to dismiss the claims of the Appellant against the Respondents that they are outside the provisions of Chapter IV of the 1999 Constitution.*

Arguments

Counsel for the Appellant argued that the 3rd Respondent manufactured evidence (a letter from Dr. Seyi Roberts) and committed perjury by lying under oath about its existence before 22nd May 2000. He highlighted the impossibility of the Respondents' explanation as proof of bias. He contended that the trial court failed to resolve five out of nine issues raised, and the Court of Appeal similarly failed to address some, resulting in a miscarriage of justice. He argued further that the

2nd and 3rd Respondents were not properly constituted as statutory bodies due to the Minister of Health's failure to appoint members under the Medical and Dental Practitioners Act. The Appellant argued that the matter is a fundamental rights enforcement action as it involves bias, fair hearing, and freedom from oppressive government actions. Additionally, the Appellant alleged that the 3rd Respondent acted as accuser, prosecutor, and judge in its own case, in contravention of the principles of natural justice. The Appellant submitted that he should not be bound by traditional medical ethics, as his HIV vaccine work fell outside mainstream practice. He urged the Supreme Court to set aside the decision of the Court of Appeal, and grant his appeal, or remit the suit for retrial.

In response, the 1st Respondent submitted that no issue arose regarding the proper constitution of the 2nd and/or 3rd Respondents due to the alleged default in appointing members, and sought dismissal of the appeal.

The 2nd and 3rd Respondents argued that the Court of Appeal correctly dismissed claims relating to the validity of its constitution. On the allegation of breach of fair hearing *via* investigation invitation and alleged evidence manufacturing (Dr. Seyi Roberts' letter), the 2nd and 3rd Respondents offered explanations for the delay in the production of the letter and noted the failure of the Appellant to establish forgery/perjury beyond reasonable doubt. They submitted that the 3rd Respondent's role was purely investigatory, not adjudicatory, and as such, it did not act as accuser, prosecutor, and judge. Further, that the reliefs of the Appellant fell outside Chapter IV of the 1999 Constitution, as held by the trial court and affirmed by the Court of Appeal, with no miscarriage of justice. Citing *TUKUR v GOVERNMENT OF TARABA STATE (1997) 6 NWLR (PT. 510) 569 SC*, they emphasized that main reliefs determine the jurisdiction of the court to entertain the Appellant's fundamental rights action, which the Appellant's claims lacked. They urge the Supreme Court to uphold the decision of the lower court and dismiss the appeal.

Court's Judgement and Rationale

Before resolving the issue for determination, the Supreme Court noted that the trial and Court of Appeal, despite holding the Appellant's claims fell outside Chapter IV of the 1999 Constitution, proceeded to address the merits of the claim.

The Supreme Court held that, upon finding that they lacked jurisdiction, they ought to have struck out the suit rather than bearing the burden of deciding the issues presented by the Appellant. The Court proceeded by stating that "*what determines jurisdiction of Court to entertain a cause/matter, is the Plaintiff's claims. It is the claim before the Court that has to be looked at to ascertain whether it comes within the jurisdiction conferred on it.*"

Addressing the Appellant's claims, the Supreme Court held that upon a careful examination of the claims of the Appellant together with the reliefs sought in his application for enforcement of fundamental rights before the trial court, the Appellant's main claims and reliefs cannot be sheltered under the provisions of Chapter IV of the 1999 Constitution. Their Lordships held further that "*It is not every grievance that perches or touches on the provisions of Chapter IV of the 1999 Constitution that constitutes a breach to or calls for enforcement of fundamental rights. They must be the main and predicate claims, and not the ancillary or remote to it.*"

The apex court held that the subject matter of the Appellant's suit against the Respondents, which pertains to alleged professional misconduct and disciplinary action against the Appellant, the alleged vituperation by the 1st Respondent against the Appellant on media and the subsequent invitation of the Appellant by the Respondents, "*cannot transubstantiate and transmute into an attempted or perceived or likely breach of the Appellant's right under the provisions of Chapter IV of the 1999 Constitution.*" It is the position of the Appellant that the assessment and investigation of his claims of medical cure for HIV, and lack of fair chance to prove his claims before the Respondents, coupled with their hostile reactions, violate his right to fair hearing under Section 36(1) of the 1999 Constitution. While complaint about proceedings violating the rules of natural justice and right to fair hearing is proper and recognizable complaint in law, the Respondents not being courts or tribunals established as such by law, their said violation or likely violation of the rules of natural justice cannot be a violation of the Appellant's fundamental right to fair hearing guaranteed under Section 36(1) of the 1999 Constitution. *Breach of fundamental right to fair hearing under Section 36(1) of the Constitution only applies to proceedings before judicial bodies acting judicially and quasi-judicially. Therefore, the complaint that the proceedings and decisions of the Respondents violate or are likely to violate the rules of natural justice against the Appellant and his general legal right to fair*

hearing is not a complaint that any of the provisions of Chapter IV has been, is being or likely to be contravened and cannot be brought to the High Court by way of an application to remedy the same under Section 46(1) of the 1999 Constitution.

The Court reiterated that having established and ascertained that the main claims and reliefs of the Appellant did not fall under the provisions of Chapter IV of the 1999 Constitution, the trial and lower courts ought to have struck out the Appellant's suit. The Court relied on the decision in **NWANCHUKWU v NWANCHUKWU & ANOR. (2018) LPELR-44696 (SC) (PP. 29-30 PARAS. B).**

Further to the above, the Supreme Court affirmed the decision of the Court of Appeal, which upheld the decision of the trial court.

Appeal Dismissed.

Representation

I.G Abah, Esq. with C.S Achebe, Esq. for the Appellant

Martin Atojoko, Esq. with C.M. Odanwu, Esq. for the 1st Respondent.

Hassan T. Fajimite, Esq. for the 2nd and 3rd Respondents.

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