



**A CRITICAL ANALYSIS OF THE GROUNDS FOR JUDICIAL REVIEW OF
ADMINISTRATIVE ACTIONS OF PUBLIC BODIES AND AVAILABLE REMEDIES
IN NIGERIA**

By

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Abstract

On a daily basis, Nigerian Courts review the administrative actions of public bodies. This is so because public bodies are saddled with the responsibility of taking decisions, and sometimes some of these decisions may be ultra vires, that is, above the power bestowed on them by law. Thus, if public bodies exceed the limits of their power as provided for by statute, or refuse to act when the statute says they should do so, an aggrieved person may have ground or grounds upon which to approach the court for a remedy. To this extent, using doctrinal research methodology, the article examines the concepts of judicial review and public bodies, grounds for judicial review and the remedies available to an aggrieved person or body against public bodies under Nigerian law. It also examines the challenges associated with the grounds and proffer lasting recommendations aimed at strengthening judicial review and its grounds, so that any person who approaches the court on the ground of any decision taken by a public body is compensated via any of the available remedies without any problems.

Key Words: *Judicial Review, Grounds, Administrative Actions, Remedies*

INTRODUCTION

Judicial review is, indubitably, an aspect of law that private legal practitioners meet in Court every day. This is so because public bodies, more often than, exceed the limit of the powers conferred upon by statute. There instances that these bodies do not even have the power to act, yet they proceed to do so. This makes it mandatory for their powers to be reviewed or checked in deserving cases by the courts, so that they do not proceed to act when are not permitted to, or exceed the powers provided them by law to act, amongst others. In most cases, injuries are suffered and the matter often proceed to court for judicial review.

In light of the above, therefore, this paper critically analyzes the grounds provided by law for judicial review as well as the remedies. It also considers some of the key challenges faced by

victims of these actions and provides virile recommendations that will assist in navigating through these challenges.

CONCEPTUAL CLARIFICATIONS

In order to properly appreciate this paper, some key concepts that form its very foundation are worthy of being defined. Some of these key concepts include judicial review and public bodies.

i. Judicial Review

According to De Smith¹ judicial review is not a term of art. It is sometimes used to mean judicial scrutiny and determination of the legal validity of instruments, acts, decisions and transactions. Udofa cited the Supreme Court case of *Abdulkarim v Incar (Nig) Ltd*², where the Supreme Court adumbrated the scope of judicial review as follows:

In Nigeria, which has a written presidential constitution, judicial review entails three different processes, namely:

- (i) The Courts, particularly the Supreme Court, ensuring that every arm of government plays its role in the true spirit of the principle of separation of powers as provided for in the Constitution;
- (ii) That every public functionary performs his functions according to law, including the Constitution; and

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¹ De Smith S A, *Judicial Review of Administrative Action* (2nd Ed. Stevens and Sons, 1968) 23.

²Udofa I J, 'The Power of Judicial Review in the Promotion of Constitutionalism in Nigeria: Challenges and Prospects' *Journal of Law, Policy and Globalization*, (40) (2015) or <www.iiste.org>, accessed on the 21st June, 2024.

- (iii) For the Supreme Court, that it reviews court decisions including its own, when the need arises in order to ensure that the country does not suffer under the same regime of obsolete or wrong decisions...

In the humble opinion, judicial review consists of the supervisory powers of the High Court or courts of co-ordinate jurisdictions to review decisions, actions or omissions of public bodies for the purpose safeguarding the rights of the citizens from being violated and, where appropriate, provide necessary remedy.

ii. Public bodies

A public body has been defined as a formally established organization that is (at least in part) publically funded to deliver a public or government service, though not as a ministerial department.³ The term refers to a whole range of entities that are covered as within the public sector.⁴ This does not include forms of public entity that do not require staff to carry out their functions such as public funds or trust.⁵ Examples of public bodies include government ministers, departments and agencies; local authorities (including social services, housing departments and local education authorities); health authorities; the police, prisons, courts, statutory tribunals, coroners' courts and regulatory and supervisory bodies like General Medical Council.⁶ In Nigeria, it is relevant, for ease of understanding, to classify public bodies into the following:

³ Cabinet Office, Public Handbook – Part 1 <<https://www.assets.publishing.service.gov.uk>> accessed on the 28th March, 2024.

⁴ Ibid.

⁵ Ibid.

⁶ Guide Series, An Introduction to Public Law <<https://publiclawproject.org.uk>> accessed on the 28th March, 2024.

- a. Bodies established by the Constitution such as the Nigerian Army⁷, the Nigerian Police Force⁸, the Independent National Electoral Commission⁹, the National Security and Civil Defence Corps (NSCDC)¹⁰, amongst others.
- b. Bodies established pursuant to Acts of the National Assembly such as the Economic and Financial Crimes Commission¹¹, Independent Corrupt Practices and Other Related Offences Commission (ICPC)¹², just to mention a few.
- c. Bodies established pursuant to laws enacted by State Houses of Assemblies such as Plateau State Independent Electoral Commission¹³ and Plateau State University, Boko, amongst others.
- d. Bodies that do not form any of a, b, or c, but exist to perform services of a public nature.

These bodies, in carrying out or performing their functions, often breach the individual rights of citizens. The law entitles any person who believes that any of his rights is, has been or is likely to be contravened to go to court. Thus, such individual can seek judicial review of actions of public bodies. Put differently, these are termed reviewable bodies in relation to judicial review.

A CRITICAL ANALYSIS OF THE GROUNDS FOR JUDICIAL REVIEW

The grounds for judicial review include illegality, legitimate expectation and estoppel, unreasonableness and irrationality, Natural Justice: Procedural Impropriety, abuse of power, error on the face of the record, amongst others. Some of these mentioned grounds are discussed below:

i. Illegality

⁷ Section 217 (1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

⁸ Section 214 (1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

⁹ Section 15, Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999, as amended.

¹⁰ The National Security and Civil Defence Corps Act, 2003, as amended.

¹¹ The Economic and Financial Crimes Commission (Establishment) Act, 2004.

¹² Plateau State University Boko Law, 2005.

¹³ Plateau State Independent Electoral Commission Law, 2005.

The action of a public body can be reviewed on the ground that such an action amounts to illegality. On illegality as a ground for judicial review, Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service*,¹⁴ held:

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is *par excellence* a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

Lord Diplock's quote explains the broad range of potentially illegal acts that can be carried out by public authorities, acting in excess of, or contrary to, their legal powers, which a court of law seised of jurisdiction, can review, upon an appropriate application.¹⁵ The court can declare the action of a public body *ultra vires*, that is 'beyond its power' in any of the following cases: (a) when a public body acts outside of its legal authority; this is a central principle of administrative law;¹⁶ (b) when a public body takes decisions for improper purposes; and (c) when a public body abdicates or delegates responsibility for a decision or impermissibly fetters a decision.

ii. Legitimate Expectation and Estoppel

¹⁴ [1984] UKHL 9.

¹⁵ 'Application, Grounds and Remedies for Judicial Review Lecture,' available on <<https://www.lawteacher.net/lectures/public-law/judicial-review/applications-grounds-remedies/>> accessed on the 4th April, 2024.

¹⁶ Ibid.

On the one hand, the doctrine of legitimate expectation is one of the Court's controls over the exercise of a decision-makers' power.¹⁷ The general principle is to the effect that the court will intervene to prevent a decision-maker from making a particular decision or will quash a decision that is already made, where the decision-maker's prior actions or inactions would make it unfair for the decision to stand.¹⁸ Simply put, the doctrine postulates that when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty, otherwise a court of law seised of jurisdiction will intervene.¹⁹ On the other hand, the basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his detriment²⁰ in reliance on the truth of it is not allowed to deny it later, even though it is wrong.²¹ In the case of *Asiru v Asiru & Ors*²², the Supreme Court, amongst others, held that estoppel is that doctrine where a party is not allowed to say that a certain statement of fact is untrue whether in reality it is true or not.

iii. Unreasonableness and Irrationality

Unreasonableness and irrationality as grounds for judicial review of actions of public bodies finds anchorage in the decision of Lord Macnaghten in the cases of *Westminster Corporation v London and North Western Railway*²³ and *M.R. in Associated Provincial Picture Houses Ltd v*

¹⁷*Orient Properties Devt. Co. Ltd. v Federal Ministry of Housing and Urban Development & Anor* (2020) LPELR-51430 (CA).

¹⁸*R (Bhaff Murphy) v The Independent Assessor* (2008) EWA CW 755.

¹⁹*Mobil Producing (Nig) Unlimited v FIRS* (2017) LPELR-509010 (CA).

²⁰*Norfolk CC v Secretary of State for Environment* (1973) 1 WLR 1400 (A planning authority erroneously informed an applicant that planning permission had been granted; error corrected before applicant had relied to his detriment, so authority not estopped from denying planning permission.)

²¹*Ozde Distillers Ltd v Diamond Bank Plc* (2013) LPELR-20172 (CA). Estoppel is a multifaceted subject, and it is defined as "a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true; a bar that prevents the re-litigation of issues

²²(2013) LPELR-22075 (CA);

²³ [1905] AC 426.

Wednesbury Corporation.²⁴ In these cases the Masters of the Rolls cited various defects which might render a decision of a public body unreasonable and irrational. The court, went on, however, to envisage the possibility of a decision being open to challenge on the ground that it is unreasonable in the sense that, in the view of the court, it was a decision which no reasonable body could reach. Lord Greene's judgment has been frequently quoted in subsequent cases and is so well known that later judges often refer to 'the wednesbury principle' without any further explanation. In *Secretary of state for Education and Science v Tameside Metropolitan Borough Council*²⁵ the House of Lords referred to Lord Greene's judgment in the wednesbury case and Lord Diplock said:

In public law 'unreasonable' as descriptive of the way in which a public authority has purported to exercise a discretion vested in it by statute has become a term of legal art. To fall within this expression, it must be conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt.²⁶

He went on to explain that head of review as applying to 'a decision which 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 to be decided could have arrived at it.' Byelaws may be held void for unreasonableness. In *Kruse v Johnson*²⁷ Lord Russell of Killowen C.J said that local byelaws are not unreasonable merely because particular judges may think that they go farther than is necessary or convenient; but a court might hold them unreasonable if they were found to be partial or unequal

²⁴[1948] 1 KB 223.

²⁵(1977) A, C. 1014. See post, para. 32-020.

²⁶*Pickwell v Camden L.B.C.* (1983) Q.B. 962, per Ormrod L.J.; *R. v Chief Registrar of Friendly Societies ex p. New Cross Bldg. Society* (1984) 2 W. L. R. 370, per Griffiths L.J.; *R. v Home Secretary, ex p. Benwell* (1984) 3 W.L.R. 855 per Hodhson J.

²⁷ (1898) 2 Q.B. 91; *The judgment in Kruse v Johnson* has been quoted so frequently in subsequent cases that it has almost been erected into a sacred text"; *Belfast Corporation v Daly* (1963) N.I. 78, 88, per Black L.J. for Byelaws made by non-elected bodies see *Cinnamond v Daly v. British Airways Authority, ex p. Wheatley* (1983) 3 All E.R. 6; *R. v British Airways Authority, ex p. Wheatley* (1983) R.T.R. 466, CA.

in their operation between classes, or if they were manifestly unjust, disclosed bad faith, or involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men. Applying this test, the court held that the byelaw in question, which authorized a householder or police constable to request a person to desist from playing a musical instrument within fifty yards of any dwelling house, was not unreasonable.

In subsequent cases the courts have emphasized the heavy burden lying on anyone who challenges the reasonableness of a byelaw.²⁸

iv. Natural Justice: Procedural Impropriety

When a public body acts without regard for natural justice, the court is empowered to review such an action.²⁹ The principle contemplates two fundamental elements, to wit: that whoever takes a decision should be impartial, having no personal interest in the outcome of the case (*nemo judex in re sua*) and that a decision should not be taken until the person affected by it has had an opportunity to state his case (*audi alteram partem*). The principles of natural justice were originally applied to the decision of a lower court, which could be upset by a higher court. In the course of time these principles came to be applied to administrative authorities.³⁰ To achieve justice, the court, in exercising its power of judicial review, ensures that parties are heard and that a party who has interest in the matter shall not be a judge in his own case. These twin principles are encapsulated in two latin maxims, namely: *nemo judex in causa sua* and *audialterem*

²⁸*Burnley B. C. v. England* (1978) 76 L. G.R. 393; 77 L. G. R. 227; *Statin v. Solihull M.B.C* (1979) R.T.R. 228.

²⁹*Ongah Chuan v Public prosecutor* (1981) A. C. 648

³⁰*Spackman v Plumstead District Board of Works* (1885) 10 App. Cas. 229, per Lord Selbourne L.C.; *Errington v Minister of Health* (1935) 1 K. B. 249, per Greer L. J., and p. 279, Maugham L.J. cf. *General Medical Council v Spackman* (1943) A.C. 627, per Lord Wright; *White v Kuzych* (1951) A.C. 585 (P.C.) per Viscount Simon at p. 600.

partem.³¹In the case of *Olatunbosun v N. I. S. E. R Council*,³² the Supreme Court, amongst others, held that ‘no man is to be judged unheard was as old as creation, as old as Genesis and as old as the Garden of Eden.

v. Abuse of Power

Statutes often confer upon local authorities and other public bodies discretionary powers. However, where this power is abused, for instance, using the power for unauthorized purposes, disregarding relevant considerations in reaching a decision³³, or taking into account irrelevant considerations, the court will intervene by way of judicial review.³⁴ Similarly, where discretion seems unfettered, the courts will interfere where it has been exercised in a way which thwarts or frustrates the objects of the Act conferring the power. In the case of *Padfield v Minister of Agriculture, Fisheries and Food*,³⁵ a minister possessing an apparently unlimited power to revoke licenses was held not to be entitled to use that power to revoke licenses bought before the date of an unannounced increase in license fees. It cannot be assumed merely from a minister’s refusal to give reasons for the way he has exercised a discretionary power that he has reached his decision by taking into account factors which he ought to have ignored or that he has disregarded factors which he ought to have regarded as relevant.³⁶

Abuse of power may be either in good faith or in bad faith. An authority acts in bad faith if it acts dishonestly, in order to achieve an object other than that for which it believes the power has been given. The court may infer the purpose for which the enabling Act granted a specific

³¹*State v Chief Magistrate Aboh-Mbaise, Ex parte Onukwe* (1978) 1 LRN 316, at p. 325.

³²*Mpama v F.B.N. Plc* (2013) 5 NWLR (Pt. 1346) 176 SC; *Akila v Director General, S.S.S.* (2014) 2 NWLR (Pt. 1392) 443 CA.

³³*R v Greater Birmingham Appeal Tribunal, ex parte Simper* (1974) Q. B. 543; *Grunwick Processing Laboratories v A.C.A.S.* (1978) A.C. 665.

³⁴*Short v Poole Corporation* (1926) Ch. 66; *Broomley L.B.C. v G.L.C* (1983) A.C. 768.

³⁵ (1968) A.C. 997.

³⁶*Congreve v Home Office* (1974) Q. B. 629.

power and hold that the power has been abused. The High Court can control the exercise of statutory powers, if they are being exercised otherwise than in accordance with the purpose for which they were conferred. The question is complicated where a power is exercised both for an authorized and an unauthorized purpose.³⁷

vi. Error on the Face of the Record

Part of the essential requirements in judicial review is that the findings or judgment of an inferior tribunal or body must be exhibited or produced before the High Court.³⁸ This, of course, is the basis of the review.³⁹ Review cannot be conducted in vacuo. It is only when the impugned proceedings are before the supervisory court that it can ascertain if the proper thing had been done or not.⁴⁰ Where the record of proceedings of the inferior tribunal or body discloses error, it is a ground to issue certiorari or prohibition, as the case may be. The error must be substantial and not a flimsy one. This is because ‘it is not every error of law that is subject to an order of certiorari.’⁴¹ What would seem to be a controversy as to the meaning to be assigned to the word ‘record’.

Lord Denning, had the opportunity to construe what constitutes record. In the case of *Baldwin & Francis v Patents Appeal Tribunal*,⁴² he held:

Your Lordships have been invited now to determine what documents are to be brought up in the case of certiorari to an appellate tribunal. Do they include the decision at the first instance? To answer this question, I have done as EARL CAIRNS, L.C., did in *Walsall Overseers v London & Northern Western Ry. Co.* (1878), 4 App. Cas. 30. I have gone

³⁷Ibid.

³⁸*Earl Fitzwilliams's Wenworth Estate Co. v Minister of Town and Country Planning* (1951) 2 K.B. 284, CA.

³⁹*Gyang v COP, Lagos State* (2013) LPELR-21893 (SC).

⁴⁰*Towaju v Governor of Kwara State* (2005) 18 NWLR (Pt. 957) 324 CA; *Onyekwuluje v Benue State Government* (2005) 8 NWLR (Pt. 928) 614 CA; *Bamaiyi v Bamaiyi* (2005) 15 NWLR (Pt. 948) 334 CA.

⁴¹*Onyekwuluje v Benue State Government* (2005) 8 NWLR (Pt. 928) 614 CA

⁴²(1959) 2 All ER 433 HL.

back to the old days when quarter sessions sat as an appellate tribunal on appeal from justices in civil matters. When the King's Bench issued a certiorari to quarter sessions, it was the invariable practice for the documents to include, not only the order of quarter sessions who had heard the appeal but also the order of the justices who had heard the case at the first instance, and also any other document which was recited or referred to by quarter sessions in terms which showed that it was the basis of the decision...

Where the record of proceedings of an inferior tribunal or body discloses error, it clearly, constitutes a ground to issue certiorari or prohibition.

vii. Ultra Vires

Where a public body acts outside or in excess of its powers, the decision will be termed *ultra vires* as held in *Ekanem & Ors v Obu*.⁴³ There are four instances where the Court can declare an act of a public body *ultra vires*. The instances are briefly discussed below:

- a. **Constitutional ultra vires.** This occurs where an action of a public body is inconsistent with the Constitution. In *Doherty v Balewa*⁴⁴ where the court held that the power conferred on the Prime Minister by Parliament through the Commission and Tribunals of Inquiry Act 1961, was in excess of the constitution, since the law permitted the setting up of an inquiry throughout the Federation when the contemplation of the constitution was the Federal Capital Territory, Lagos.⁴⁵ Also, the court may hold that the power was unlawfully given or unlawfully exercised. In *Williams v Majekodunmi*,⁴⁶ the court agreed that under emergency, the administrator was lawfully empowered to act under the

⁴³(2010) LPELR-4084(CA)

⁴⁴(1961), 1 All N.L.R. 604

⁴⁵Duru O, Ultra Vires as a ground for Judicial Review in Admin Law, available at <<http://legalempereors.blogspot.com/2016/12/ultra-vires-as-ground-for-judicial.html>>, accessed on the 22nd March, 2024.

⁴⁶(No.1) (1962) 2 SCNLR P.26.

Emergency Power Act 1961; the order to restrict the plaintiff's movement was declared *ultra vires* since there was no justification for it. This principle accords with the hierarchy of laws. Thus, power to be exercised must be within the contemplation of the constitution.

b. Substantive *Ultra Vires*

This occurs when an act performed or powers exercised by the administrative agent are in excess of the powers conferred by statute or violates a constitutional or statutory provision. It can also be expressed in terms of want or excess of jurisdiction (No legal backing, action taken by the wrong person or body, improper appointment or constitution of the body authorized to act, action taken in respect of a wrong person or subject-matter and imposition of a wrong order or penalty by the person or body authorized to act). It is important to note that public bodies created by statutes have their power categorized. They fall under the following:

- (a) Those granted in express words;
- (b) those necessary or fairly implied or incidental to the powers expressly granted; and
- (c) those essential to the accomplishment of the declared objects and purposes of the corporation not simply convenient but indispensable.

viii. Inconsistency with Statute

An administrative act is *ultra vires* to the extent that it conflicts with or contradicts the parent statute or the constitution. In *Powell v Hay*,⁴⁷ it was held that a byelaw cannot permit what the statute expressly forbids and *vice versa*, though it can forbid what would otherwise be lawful at common law. Therefore, where the enabling statute requires a power to be exercised in a certain form, the neglect of that form renders that exercise of power *ultra vires*. Furthermore, in *Jackson*

⁴⁷(1977) 38 P & CR 452, Ch D

⁴⁷[1948] 2 All ER 558.

*Standfield & Sons v Butterworth*⁴⁸ – the Court of Appeal held that oral permission from a borough surveyor to build in the excess of the amount specified in the license was invalid since a written license was contemplated by the Act.

ix. Procedural Ultra Vires

The court will quash the decision of tribunals for non-compliance with statutory procedure that is mandatory. In *Agricultural Horticultural and Forestry Industrial Training Board v Aylesbury Mushrooms Ltd*⁴⁹ the Industrial Training Act, 1964, by section 1(4) required the Minister before making an order to consult any organization appearing to him to be a representative of the substantial number of employees engaged in the activities concerned. Failure to consult the body representing the mushroom growers association made the order invalid. In *Rayner v Stopney Corporation*⁵⁰, a local authority's failure to comply with a regulation requiring the service of notice before making an order in respect of an 'unfit house' rendered its proceedings void. *Ultra vires* affects all arms of government, be it legislative, executive or judicial. It must be noted that an order of court made without jurisdiction is ultra vires and is of no effect, whatsoever.

REMEDIES

It is important to state that these remedies are rooted in common law, but because the Nigerian legal system is borrowed from England, the remedies have been made part of our laws. To this extent, the Rules of various Courts in Nigeria have provisions for these remedies. In the light of the foregoing, it is germane to consider the available remedies under our laws.

⁵¹(1972) 1 All ER 280

⁵²(1911) 2 1 Ch. 312

i. Declaration

An aggrieved party who approaches the court for judicial review may be entitled to a remedy by way of declaration, which is a formal statement by the Court pronouncing upon the existence or non-existence of a legal state of affairs. In *Ehinle v Ikorodu Local Government*⁵¹, the Supreme Court, *inter alia*, stated that the purpose of declaration is to pray the court, in the exercise of its discretionary jurisdiction, to pronounce or declare an existing state of affairs in law in favour, as may be discernible from the averments in the statement of claim. In order to be entitled to a declaration, a person must show evidence of a future legal right subsisting or in the future and that the right is contested.

An action for declaration declares what the legal position is and what are the rights of the parties are. An action for declaration may be brought in the High Court even though no damages or other reliefs are claimed.⁵² The claim is often brought together with a claim for injunction. There must be a justifiable issue,⁵³ and this remedy cannot be brought in order to determine a hypothetical question.⁵⁴ The Court will not grant a declaration unless and until the remedy would be of real value to the claimant.⁵⁵

ii. Injunction

⁵¹(2021) 1 NWLR (Pt. 1757) 316-317; *Akande v Adisa* (2012) 15 NWLR (Pt. 1324) 538.

⁵² Paul Jackson and Patricia Leopold, *Constitutional and administrative Law* (Sweet & Maxwell, Asia 2001)735.

⁵³*Cox v Green* (1966) Ch. 216.; *Pharmaceutical Society of Great Britain v Dickson* (1970) A.C. 403.

⁵⁴*Mellstream v Garner* (1970) 1 W.L.R 865.

⁵⁵*Benneth v Chappell* (1966) Ch. 391, CA; The Court will not grant declarations ‘which are academic and of no practical value’.

Injunction is an order of court which commands or forbids. In its legal sense, an injunction is a judicial process or mandate operating *in personam* by which upon certain established principles of equity, a party is required to do or refrain from doing a particular thing.⁵⁶

Where a public authority threatens to do or to continue to do some unlawful act, such as nuisance, an action may be brought for an injunction to restrain the authority from doing or continuing to do so. In *Pride Derby Angling Association v British Celanese Ltd*⁵⁷ an injunction was granted against the Derby Corporation and the British Electricity Authority to restrain them from continuing a nuisance by polluting a river. Although injunction is discretionary and will not be granted if, for example, damages would be a sufficient remedy, yet there is *prima facie* right to injunction if the defendant threatens to continue the nuisance.

iii. Habeas Corpus

A writ of habeas corpus challenges the legality of an applicant's detention.⁵⁸ The term habeas corpus is a latin maxim, meaning that 'you have the body'. That is, that somebody is in the custody of another and it is desirable to produce him before a court or judge to determine the propriety or otherwise of that detention. Habeas corpus as a legal remedy dates to the period of common law and was used for different purposes at different eras. The same is still in used today, although its importance and use have been curtailed by other alternative legal reliefs and remedies.⁵⁹ In addition to being used to test the legality of an arrest or commitment, the writ may

⁵⁶See also *Omoroga & Ors v Gov. of Lagos State* (2018) LPELR-49866 CA; *Emeinike v Orji & Ors* (2008) LPELR-4103 CA.

⁵⁷*Ibid.*

⁵⁸Stanley-Idum, M. M. and Agaba, J. A., *Civil Litigation in Nigeria* (Abuja: Nelga& Company Limited, 2015) 1013.

⁵⁹ The Fundamental Rights (Enforcement Procedure) Rules, made pursuant to section 46(3) of the 1999 Constitution has covered the field of habeas corpus. Application for bail at the High Court is also an alternative vehicle to secure the release of a detained person, although it has limited application. The availability of alternative remedy notwithstanding habeas corpus remains a potent vehicle to secure the prompt release of person wrongly detained.

be used to obtain judicial review of: i. the regularity of the extradition process; ii. the right to or amount of bail; or iii. the jurisdiction of a court that has imposed a criminal sentence.

The main purpose of the writ of habeas corpus is to compel the production of a person in unlawful detention to ascertain the reason for his detention, and to possibly discharge him if not justifiable reason is made out. Habeas corpus is not designed to punish such a person detaining and is not issued after the detention complained of has come to an end.⁶⁰ There are different types of habeas corpus, but the most viable is habeas corpus *ad subjicendum*, which is synonymous with habeas corpus. *Habeas corpus ad respondendum*, meaning in Latin ‘that you have the body to respond’ was a writ used in civil cases to remove a person from one’s court’s custody into that of another court in which the person may then be sued. *Habeas corpus satisfaciendum* in its English equivalent means ‘that have the body to make amends’. Practically, in England, it was a means used to bring a prisoner against whom a judgment has been entered to some superior court so that the plaintiffs can proceed to execute that judgment. Another type is *Habeas corpus as prosequendum*. This translates to ‘that you have the body to prosecute’. It is issued in criminal cases to bring before a court a prisoner to be tried on charges other than those for which the prisoner is currently being confined. *Habeas corpus ad testificandum* means ‘that you have the body to testify’. It is issued in civil and criminal cases to bring a prisoner to court to testify. The remedy of habeas corpus shall lie where a person alleges that his detention or imprisonment is unlawful.

iv. Certiorari

The remedy of certiorari lies to quash a decision that has already been made.⁶¹ This remedy is available where an inferior court or an administrative tribunal or authority has acted in excess

⁶⁰*Barnardo v Ford* (1892) AC 326 HL;

⁶¹ Remedies in Administrative Law, Working Paper No.4, Her Majesty’s Stationary Office, 11th October, 1971

or abuse of jurisdiction or contrary to the rules of natural justice.⁶² Certiorari is one of the prerogative Writs which ensure that inferior courts or anybody entrusted with performance of judicial or quasi-judicial function keep within the limits of the jurisdiction conferred upon them by the statutes which create them.⁶³

More recently, in the case of *Adebiyi v Adebiyi*⁶⁴, the Court of Appeal on the purpose and scope of the writ of certiorari, cited with approval the decision of *Anismic Ltd. v Foreign Compensation Commission*⁶⁵, wherein Lord Pierce aptly postulated: ‘The Court may correct any lower Court’s decision departing from the rules of natural justice...it ought to be reiterated, that the fundamental object of the writ of certiorari, its sister, the writ of prohibition is to promptly curb the wanton excessive application by an inferior court or tribunal of its jurisdiction. Invariably, certiorari only aims to control inferior tribunals from exercising their jurisdiction or inherent powers wrongly. The body to be curbed by certiorari must be by its instrument empowered to act judicially. Therefore, it is a fatal misconception to apply via certiorari to quash an entirely administrative or executive exercise of power.’⁶⁶In the case of *R v Legislative Committee of the Church Assembly*,⁶⁷ both Writ of prohibition and certiorari were sought, but same were refused on the grounds that the Assembly or its legislative committee is not a body of the kind to which it would be appropriate to issue a writ, whether of prohibition or certiorari.

v. Mandamus

⁶² Ibid.

⁶³ T. O. Aguda, Practice and Procedure of the Supreme Court, Court of Appeal and High Court of Nigeria. 5thedn 654-655.

⁶⁴ (2018) LPELR-45964 CA.

⁶⁵(1969) 2 AC 147; (1969) 2 WLR 163.

⁶⁶ See also, the cases of *Nwaboshi v Military Governor of Delta State* (2003) LPELR-2113 (SC).

⁶⁷ (1928) 1 KB 411. The Court of Appeal relied on this case in *Nwaoboshi v Military Administrator, Delta State* (2003) 11 NWLR (Pt. 831) 305; *Zenith Bank Plc v Omorodion&Ors* (2013) LPELR-20755 (CA).

Mandamus is one of the prerogative orders which are discretionary common law remedies a High Court may grant in its supervisory jurisdiction over proceedings and decisions of inferior courts and Tribunals. Mandamus lies to secure the performance of a public duty, in the performance of which the applicant has sufficient legal interest. It gives a command that a duty or function of a public nature, which normally, though not necessarily, imposed by statute but is neglected or refused to be done after due demand, be done.⁶⁸ It is also granted to compel the performance of a public duty owed to an applicant with a sufficient legal interest in its performance as held in *Akintemi v Onwumechili*.⁶⁹

Mandamus is typically granted to compel the exercise of a duty imposed by statute. The duty imposed by statute must be a legally binding one, not a mere declaration of responsibilities intended only to have political sanctions.⁷⁰ For an order of mandamus to lie, it must be issued by a court of competent jurisdiction, commanding an inferior body to perform or cause the performance of a particular act or duty imposed by law.⁷¹ An order of mandamus is not granted as a matter of course, nor as of right; but will be granted if the duty sought to be enforced is in the nature of public duty, which specifically affects the rights of an individual, provided that, there is no other appropriate remedy. Consequently, the courts have always refused an order for mandamus, if there exists another remedy open to the party seeking it.⁷²

vi. Prohibition

⁶⁸*Onyekwuluje & Anor v Benue State Government & Ors* (2015) LPELR-24780 (CA); *Archibong v Nkan* (2010) LPELR-3802(CA).

⁶⁹ (1985) 1 NWLR (Pt.1)68; See also, *Dododo v EFCC* (2013) 1 NWLR (Pt. 1336)468; *Ojie & Ors v Govt. of Cross River State & Anor* (2016) LPELR-41381 (CA).

⁷⁰*Itaye v Ekaidere* (1978) 9-10 SC, 35.

⁷¹*Minister of Internal Affairs v Okoro* (2004) NWLR (Pt. 853) 58; *Jos Electricity Distribution Plc. v John* (2018) LPELR-46395 (CA).

⁷²*W.A.P.G.M.C. v Okoye* (2004) 2 NWLR (Pt. 852) 232; *Archibong v Nkan* (2010) LPELR-3802(CA).

Prohibition bears similarity with certiorari. However, it is different from certiorari in that certiorari is retrospective (seeking to quash what has been done), while prohibition, as the nomenclature appears, is prospective (seeking to prevent or prohibit what is yet to be done).⁷³ In what might be called the jurisdictional warfare of the seventeenth century, it was an important weapon of the King's Bench when the court struck down the pretensions of competing jurisdictions such as those of the Court of Admiralty and the ecclesiastical courts.⁷⁴ Prohibition, later like the quashing order, developed into part of the regular mechanism of judicial control both of inferior tribunals and administrative authorities generally. In the much-cited case of *R v Electricity Commissioners Ex.p London Electricity Joint Committee Co. (1920) Ltd.*,⁷⁵ Atkin LJ, stated:

I can see no difference in the principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction.

Typical examples of where prohibition has been used are to prevent authorities from proceeding with a scheme which was outside its powers;⁷⁶ to prevent the execution of a decision vitiated by a breach of the principle of natural justice;⁷⁷ and to prevent a rent tribunal from proceeding with a case outside its jurisdiction.⁷⁸ Although a prohibitive order was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally

⁷³ H.W.R. Wade, C.F. Forsyth, *Administrative Law*, 10thedn (Oxford University Press,2009) 511.

⁷⁴ *Ibid.*

⁷⁵ (1924) 1 KB 171 at 206.

⁷⁶ *Ibid.*

⁷⁷ *R v North ex p.* (1927) 1 KB 491.

⁷⁸ *R v Tottenham and District Tribunal ex p. Northfield(Highgate) Ltd.* (1957) 1 QB 103.

effective and often used to prohibit the execution of some decision already taken ultra vires. So long as the tribunal or administrative authority still had some power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by a prohibiting order.⁷⁹ The prohibiting order is employed primarily to control inferior courts, tribunals and administrative authorities. These inferior courts, tribunals or administrative tribunals are liable to have their proceedings prohibited.

An application for prohibition under Order 40 Rule 1(a) (in parimateria with Order 44 Rule 1(a) of the Lagos and Abuja Rules was successfully brought in the case of *Mrs. Oyeyemi Odutayo v President and Members of Grade 'A' Customary Court, Surulere & Anor*⁸⁰ In that case, the applicant applied, pursuant to Order 40 Rule 1(a) for an order of prohibition to prohibit the Customary Court of Surulere, Grade 'A' from hearing a landlord and tenant case in Suit No. SCC/MKJ/A/1/1104, between *C.A. James v Odutayo* on the 17/12/04. The gravamen of the application was that the Surulere, Grade 'A' Customary Court lacked jurisdiction to entertain matters relating to possession of commercial premises between landlord and tenant. The High Court held that the lower Court lacked the requisite jurisdiction to entertain the suit

From the above English and Nigerian decisions, it is opined that prohibition has, over the years, proved itself to be an effective tool against injurious anticipated cases. It goes without saying that prohibition practically manifests the banal adage: prevention is better than cure. It is suggested that our courts will do well to ensure that a clear-cut dichotomy between prohibition and certiorari is made. It makes common sense to keep each legal concept within common sense and functionality. Thus, when the damage or injury has occurred, certiorari should be the remedy,

⁷⁹*Estate and Trust Agencies (1927) Ltd. v Singapore Improvement Trust* (1937) 1 QB 103.

⁸⁰ Suit No. M/675/04 delivered by Justice Y. O. Idowu (Mrs) High Court of Lagos State on 30th June, 2005 (Unreported)

while prohibition operates in the futuristic reality. This is not only neater and in consonance with practical functionality, but it also makes for certainty in the right application to make to support the appropriate and applicable remedy.

vii. Damages

Damages are pecuniary compensation obtainable by success in an action for a wrong which is either a tort, a breach of contract, or violations pursuant to compensation, which is in the form of a lump sum awarded unconditionally and generally.⁸¹ In judicial review, the court does not award special, general, punitive, aggravated damages. Rather in deserving circumstances it may award damages as compensation for the loss or injury. Judicial review is more concerned with correcting public wrongs and not with award of damages.⁸² The increase in the powers of public authorities is rightly accompanied by a concern that they should be neither abused nor exceeded. Regardless of the loss sustained, the unlawfulness of an administrative act does not automatically confer any right to compensation by way of damages. The fact that an act is *ultra vires* does not, ordinarily, entitle the individual victim to compensation for loss or injury caused thereby. An individual must establish that the unlawful action also constitutes a recognizable tort or involves a breach of contract.

Where an administrative act is unlawful because it involves a tort, such as negligence, nuisance or trespass, then it is well established that the public authority responsible will be liable to pay damages to the appropriate victim.⁸³ It is unlikely that one of those torts will be committed

⁸¹*Agbanelo v UBN Ltd.* (2000) LPELR-234 (SC); *Wahabi v Omonuwa* (1976) LPELR-3469 (SC).

⁸²Application, Grounds and Remedies for Judicial Review Lecture. Available at <<https://www.lawteacher.net/lectures/public-law/judicial-review/applications-grounds-remedies/>> accessed on the 23rd March, 2023.

⁸³ *Ibid.*

where the unlawfulness stems from a breach of the rules of natural justice or a failure to consider all relevant factors. Nor will they necessarily be involved where an authority misuses or exceeds its powers.⁸⁴ Generally, it is worthy of note that the nature of damages envisaged is not necessarily categorized as special or general, punitive or exemplary.

viii. Quo Warranto

Quo warranto is a formal order in writing issued under seal, in the name of sovereign, government, court or other authority commanding an officer or other person to whom it is issued to do or refrain from doing some acts specified therein. Originally, the writ of quo warranto was a writ of right for the King against the subject who claimed or usurped any office, franchise, liberty or privilege belonging the Crown, to inquire by what authority he supported his claim, in order to determine the right.

In *R v Hertford Corporation*,⁸⁵ quo warranto proceedings were initiated and the defendant was required to show by what authority he had admitted such persons to be freemen of the corporation who were not inhabitants of the borough. The writ of quo warranto can be issued against the holder of a public office. The writ calls upon him, to show the court under what authority he holds the office. If the holder has no authority to hold the office, he can be ousted from its enjoyment. If, on the other hand, he has the authority to hold it, the writ of quo warranto protects him from being deprived of the same. The power to issue a writ of quo warranto is not wider than that in England and the courts have followed principles as well as limitations as have been well established in England.⁸⁶It

⁸⁴ For example, by the wrongful or cancellation of a licence.

⁸⁵ *R v Hertford Corporation* [2001] UKHL 11

⁸⁶ Halsbury's Law of England, Vol. IX, p.804, para. 1373.

is a writ of technical nature issued against a usurper of an office or, against a person who is entitled to make an appointment to that office.

A writ of quo warranto against a Minister could not be issued, if the petitioner fails to make out that the Minister is not qualified under the law to hold his office or is not properly appointed.

ix. Mandatory Injunction

Mandatory injunction or positive injunction is an order of a court requiring a party to undo a specific act or action. Mandatory injunction or restorative injunction is granted in most cases to undo what has already been done.⁸⁷ In *Hon. Minister of FCT v Fayode & Anor*⁸⁸ the Court of appeal, amongst others, held that a mandatory injunction requires a party to do a specific act or acts; they are meant to be restorative by nature, they are invoked mainly to deal with parties who have little respect for Courts. The guiding principle for the grant of a mandatory injunction is the completion of the act which a party is complaining about. It is when the said act has already been completed that the court will invoke its inherent powers to restore the parties to status quo ante, that is, their respective positions before the act is completed. This key guiding principle for the grant of mandatory injunction was enunciated in the case of *Tobin v Idaibifiberesima & Anor*.⁸⁹

The remedy of mandatory injunction is a very effective remedy in judicial review, in that it controls the actions of public authorities who have no regard for the Courts. It is a suitable remedy because it is granted to undo actions of public authorities who are in flagrant disobedience

⁸⁷*Adeleye & Ors v The Executive Governor of Ogun State* (2012) LPELR-9584(CA).

⁸⁸ (2015) LPELR-41674(CA).

⁸⁹See *Vaswani Trading Co. v Savalakh & Co* (1972) 1 ALL NLR (PT. 2) P. 483; *Sulu - Gambari v Bukola* (2004) 1 NWLR (PT. 853) P. 122; *Platinum Habib Bank Ltd v Tari International Ltd.* (2008) LPELR-4855-CA.

to Court orders. The courts invoke this remedy by setting aside completed acts and restoring the parties to the *status quo ante bellum*.

PROBLEMS ASSOCIATED WITH THE GROUNDS FOR JUDICIAL REVIEW IN NIGERIA

The grounds for judicial review and the remedies available for breach have been discussed. However, there are issues associated with the grounds. These problems include the fact that the Nigerian Courts adhere to traditional and narrow interpretation, with particular focus on the legality of the action, rather than the merits or wisdom of the decision itself; inconsistency in the interpretation of the Constitution and other relevant statutes, which leads to lack of predictability; the rules of locus standing which are stringent, thereby limiting who can bring an action for judicial review; ouster clauses in statutes which oust the jurisdiction of the courts from reviewing certain administrative actions; and there are also challenges in situations where a statute grants wide discretion an administrative agency.

Other issues which are fundamentally systemic and institutional include lack of judicial independence, bribery and corruption, slow and cumbersome judicial process, financial constraints for citizens and disobedience to court orders. These issues are the issues that serves as a clog in the wheel of progress of judicial review of actions of public bodies in Nigeria.

CONCLUSION

In conclusion, it is apposite to state that this article has examined the meaning of judicial review and public bodies, grounds for judicial review, remedies for judicial review and the problems associated with grounds for judicial review. It is important, at this juncture, to proffer

recommendations that will help nip in the bud these issues for the effective and efficient application for judicial review in Nigeria. The recommendations are as follows:

1. The Nigerian Courts must be able to give interpretation to our statutes rather maintaining the narrow, strict and legalese interpretation.
2. The Court must consistent in the interpretation of the Constitution and other relevant statutes, for predictability and justice.
3. Unless it is necessary, the rules of locus standing which are stringent, should be relaxed so that anyone can institute an action against a public body, should the public breach its statutory provisions.
4. Ouster clauses in statutes which oust the jurisdiction of the courts from reviewing certain administrative actions should be repealed.