

ESIAGA V. UNIVERSITY OF CALABAR AND 2 OTHERS (SC 52/1999) [2004] 21 (02 APRIL 2004);

IN THE SUPREME COURT OF NIGERIA

ON FIDAY, THE 2ND DAY OF APRIL 2004

SC 52/1999

BETWEEN

ESIAGA APPELLANT

AND

UNIVERSITY OF CALABAR AND 2 OTHERS RESPONDENT

BEFORE: Salihu Modibbo Alfa Belgore; Umaru Atu Kalgo; Dahiru Musdapher; Dennis Onyejife Edozie;
Ignatius Chukwudi Pats-Acholonu, JJSC

ISSUES

Whether the provisions of Sections 33(1), (2) and (4) of the 1979 Constitution and the ratio in the case of Garba v University of Maiduguri (1986) 1 NWLR (Part 18) 550 applied to a situation in which a student was suspended for conduct which was potentially criminal, before he had been heard?

FACTS

The appellant was a final year University student who was suspended indefinitely after certain incriminating materials were found in his wardrobe in a room that he shared with other students.

The authorities felt strongly that the items constituted ex facie evidence of membership of a cult, which had been banned. The items were sent to the Commissioner of Police to take appropriate steps.

The University wrote a letter to the student informing him that he had been suspended pending investigation by a disciplinary committee. The letter invited him to attend the proceedings of the committee in order to make his representations.

Without waiting for the disciplinary committee to convene, the student applied to the court for an order declaring the suspension a nullity on the grounds that his fundamental rights to fair hearing enshrined in Sections 33(1), (2) and (4) of the 1979, had been violated.

The student also sought an order that his examination results be released along with those of other students when the examination is taken. The court of first instance granted his prayers.

The Court of Appeal allowed the University's appeal and the student appealed to the Supreme Court.

The appeal was dismissed.

HELD

1. On the appellant's right to be heard

"Does suspension amount to expulsion?.In Garba's case there was outright expulsion of the student before being heard. In the present case, an investigation body was to be set up to enable the appellant to put his own side of the case.The aim of suspending the student is to abort any likelihood of the threatened disturbing atmosphere snowballing into an uncontrollable situation. The university envisaged that they would set up a body exercising administrative power where the appellant would be given the opportunity to clear himself by offering his own defence. He jumped the gun by going to the court."

"The celebrated Garba v University of Maiduguri is not intended to be a court given licence . to provide students of recalcitrant and impetuous behaviour . (with) cause (for) ruination (of) the education institution."

"The representatives of the university in exercising their powers under Section 17 of the University Act were not exercising judicial function, and are not a legal authority to determine questions affecting the rights of subjects." Per Pats-Acholonu, JSC at 189.

2. On the obligation of the University Authority to release the result

Where an examination is taken and the institution suspects some unsavoury practices attendant to the behaviour by a student such result may not be released until the University Authority has satisfied itself that it is in the position to release the results of one who is considered worthy and fit in learning.

Where no examination has been taken it is idle to ask a court to grant a relief of the release of result. Per Pats-Acholonu, JSC at 189.

Chief O. Ugolo, with him Miss C.E. Ibomesi for the appellant

Chief Assam E. Assam for the respondent

The following cases were referred to in this judgment:

Garba v University of Maiduguri (1986) 1 NWLR (Part 18) 550

Board of Education v Rice (1911) AC 179

Cooper v Wandsworth Board of Works (1863) 14 CB (NS) 180

Durayappah v Fernando (1967) 2 AC 337

R v University of Cambridge (1723) 1 Str. 557

Ridge v Baldwin (1964) AC 40

Wiseman v Borneman (1917) AC 297

The following statutes were referred to in this judgment:

Nigeria Constitution 1979: Ss 33, 33(1), (2), 33(4)

Education Act 1902: Ss7, 7(3)

University of Calabar Act (Cap. 453) Laws of Nigeria 1990: Ss 17, 17(2)

The following book was referred to in this judgment:

Administrative Law (8ed) Wade and Forsyth at 467

Pats-Acholonu, JSC (Delivered the Leading Judgment):- The appellant in this case was a final year student in the Department of Political Science in the University of Calabar, as well as being the speaker of the students Union Parliament of the University of Calabar, and at one time the President of the Political Science Students Association of the University. He had instituted an action in Calabar High Court Division praying the court for an order for the enforcement of his fundamental rights as provided in the 1979 Constitution, the matter having been commenced sometime in 1991.

The grouse or the complaint of the appellant was that the respondents representing the University Authority had illegally suspended him on the ground that they discovered certain incriminating materials in his possession and obviously in his control in a room which he shared with some other students. The discovery of the alleged incriminating materials led the University to suspend him indefinitely as he complained, as the authority strongly felt that these items constituted ex facie evidence of cult

membership. He stated that the action of the authority was borne out of malice more especially as the security people who searched the room did not allow themselves to be searched.

In the affidavit in support of his application he averred that his relationship with the University Authority was far from being cordial as he was accused of championing the disturbances in the institution. He further said that he was surprised to see a Vikings Confraternity insignia, a shot gun cartridge, and a history textbook said to have been found in his possession in the course of the search which led to his suspension. Consequently, on this he applied for the enforcement of his fundamental rights and

(a) For an order declaring as nullity and setting aside the indefinite suspension order of the applicant by the respondents on the 22 April 1991 as the appellant was never heard before the respondents took action.

(b) For an order for the first and second respondents to release the applicant's result along with others when the examination is taken.

The respondents in this action in their opposing affidavit to what was averred by the appellant in the High Court deposed amongst other facts stated therein that;

(a) An intelligent report had it that the appellant was a member of Vikings Confraternity, a secret society banned from operating on the instructions of the Federal Military Government.

(b) Other room mates of the appellant and the Hall 5 Chief Porter on duty O.T. Udoh signed as witnesses to the fact that the items recovered in the room belonged to the applicant although the appellant refused to sign.

(c) That the Vikings Confraternity Insignia the shot gun cartridge and the expired borrowed history text book were all discovered from the carton in the last cupboard of wardrobe belonging to the appellant emphasising that the wardrobe in question belonged to the appellant.

(d) And that it was a fallacy to say that the appellant was suspended indefinitely.

Now after arguments on the complaint and the answers proffered were heard in the court of first instance, that court, presided by Ita J, granted the appellant his prayers.

The respondents then appealed to the Court of Appeal. In his leading judgment Niki Tobi, JCA (as he then was) in a trenchant manner characterised by objective analysis and careful attentiveness, gave to the nuances of the case apropos of the judgment of the High Court, the Court of Appeal allowed the appeal. Interestingly he literally went to the market in his consideration of the ramifications of the case of Garba

& others v University of Maiduguri (1986) 1 NWLR (Part 18) 550 which it must be regretted has been used and variously relied both as a sword and a shield by litigants.

The losing party appealed to this Court. Counsel for the appellant distilled 3 issues from the grounds of appeal. However, in the course of hearing the appeal, the learned Counsel for the appellant abandoned 2 issues to wit (b) and (c) and based his argument on the first issue which is this;

"Whether the provisions of Section 33(1)(2) and (4) of the 1979 Constitution and the ratios in Garba v the University of Maiduguri (1986) 1 NWLR (Part 18) 550 are applicable to this suit."

The respondents on the other hand after what I would describe as a copious and detailed factual analysis of the backgrounds of the case have come to the conclusion that there is only one issue for determination and it is:-

"Whether under the circumstances of the case the Court of Appeal was wrong in holding that the lifting of an order suspending the applicant from the University of Calabar and the release of his examination results, (which he was yet to take) were not enforceable under the Fundamental Rights (Enforcement Procedure) Rules."

The action was commenced on the facts that the applicant was suspended indefinitely from the University on the ground that he has, either directly or circumstantially, been responsible for or connected with the crisis brewing in the University. Situations were not made better by the discovery of a shot gun cartridge, a Viking Insignia (a mark of membership of a cult) regarded by the University as a trade mark or the invidious and insidious characterisation of a secret body that sometimes constitutes into a menace and nemesis in the University Campus and which is not considered conducive to an atmosphere that would greatly optimise an academic pursuit.

There are, I believe, certain empirical factors that have to be brought in the determination of the case. The appellant went to court principally for the court to nullify the "indefinite suspension" order clamped on him, and for the court to order the release of the result of his examination when or after it might have been taken. Let me restate the prayer in respect of the release of the result as it was couched:-

"An order for the first and second respondents to release the applicant's result along with others when the examination is taken".

Implicit in this prayer is that the examination, sought to be released sometime in future, had not been taken by the time the relief was sought. It was not equally shown when that examination was to be taken or how imminent it was. Apparently too, it did not consider an extreme situation as to whether having regard to the vagaries of life and that life itself is like a flower that blossoms in the morning and withers at night fall, the appellant would even be alive to take the examination in the future for which the prayer was sought. There are myriads of other circumstances that could occur.

In the complex world we live, it must be pointed out, there are a lot of imponderables and there are a great deal of elemental factors which affect our lives so much that we do not know what tomorrow will bring. The appellant's Counsel after restating the provision of Section 33(1) and (b) of the 1979 Constitution then extant, which section stated that one being charged with a criminal offence should be brought to the court within a reasonable time submitted that the respondents did not controvert the averment that the three items allegedly discovered in the wardrobe which gave rise to the suspension and were offensive materials and criminal in nature, were found in a room the appellant shared with others. He submitted that the University Authority had no jurisdiction to deal with the matter.

With the greatest respect to the submissions of the learned Counsel for the appellant, it seems to me that he started first by jumping the gun.

To begin with, there is nowhere in the record or from the letter of suspension one can discern that the University is now assuming the power to try the appellant for being in possession of materials variously described as criminal. The empirical facts are that some materials of disquieting and unedifying nature and description were found in a box said to be the property of the appellant. Hitherto before that episode, the University had not appeared to be happy with the activities of the appellant which that body felt were nefarious in nature. To be factual it is essential to point out that even the appellant in his affidavit had averred that the relation between him and the University Authority had been bad. Now the act of suspension seemed to have arisen from the combination of two ungainly and disturbing facts, id est, the appellant not only being suspected or engaged in contributing to a disharmony in the University premises, but also being in possession of materials which in no way help in the advancement of knowledge but rather can constitute a situation that would be debilitating to an atmosphere that would promote learning and greatly optimise the growth of scholarship, research and generally enhance academic progress. I shall come to this later.

The learned Counsel for the appellant dwelt needlessly, I think, on the purport of Section 33 of the 1979 Constitution and its ramifications. I say this because in his brief the learned Counsel for the appellant droned on endlessly in his submission that the Court of Appeal misconceived itself of the situational premise at the time, in that their Lordships in the court below lost sight of the argument that the issues which gave rise to the suspension are criminal offences which are only triable by a court or tribunal under Section 33(4) of the 1979 Constitution.

I do not agree with the over-simplistic deduction which tends to ignore the factual situation on the ground that made the University Authority act in the way it did. The reason for the suspension and other disciplinary acts following are contained and detailed in the letter of suspension. Let me set out the pertinent contents in that letter of rustication.

"By being in possession of a Vikings Confraternity insignia (or costume), you are strongly suspected of being a member of the secret society known as the Vikings Confraternity.

You will recall that students had been warned on several occasions not to join any secret society and that most recently, a circular, Ref No UC/R.14/S.5 dated April 12, 1991, was issued banning all secret societies in this University as well as membership of such secret societies. Furthermore, being in possession of live ammunition poses a great danger to the life of the students who share the room with you.

You are, therefore, hereby informed that you have been suspended from the University of Calabar with immediate effect until further notice, for your involvement in a secret society and for being in possession of live ammunition. You are required to leave your contact address with the Registrar before you leave as you will be called upon to defend yourself before a disciplinary panel against the above charges.

You are to hand over all University property-books, games equipment, furniture, documents, etc. in your possession before you leave the campus. You are also not to be found on campus at any time during the period of your suspension, except when you are officially invited to appear before the Disciplinary Committee."

When the University Vice-Chancellor and those who administer the body with him clearly conceived or more appropriately discovered to their chagrin that a particular student or students by their mysterious activities in the campus and also being in possession of materials that did not advance the cause of academic knowledge but were more likely to cause mayhem and crisis or turbulence, should the University fold its hands and said laconically "I am tied to the decision of Garba v University of Maiduguri". Would they like Nero play the fiddle when the University would be engulfed in a miasma of boiling cauldron caused by people who though and still think that a University is no longer a place for learning but a place to cause all sorts of disaffection. I think not. Would the University Authority act only when or after the institution was boiling? It is not a candle you can easily put off and easily too rekindle.

In his submission the learned Counsel for the appellant specifically referred to the observation of Uwais, JSC (as he then was) in the case of Garba v University of Maiduguri (*supra*) which runs thus:-

"When the Vice-Chancellor or the Disciplinary Board comes to consider the sanction to be imposed under Section 17, he or it will as tribunal, be acting quasi-judicial because the power to restrict, suspend, rusticate or expel a student under paragraphs (a), (b), (c) and (d) of subsection (1) of Section 17 are very fundamental to the student concerned. (See *Glynn v Keele University* [1971] 2 All ER 89 at page 96) It therefore becomes necessary for the Vice-Chancellor or the Disciplinary Board to observe the rules of natural justice."

The complaint of the appellant is that his indefinite suspension (*italics is mine*) was not done in accordance with the dictates of fair hearing. In other words he was expelled or suspended without a word coming from him. When did the principle of fair hearing start and how has it fared in the history of jurisprudence.

I would state in synopsis that the historical starting point was the Magna Carta which came into existence as a result of a settlement between the Crown and the Barons in 1251. The rights enshrined therein although rudimentary laid the foundation for the rights we are now enjoying. Part of the settlement reads thus:

"No free man shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right."

In 1623 the Petition of Rights came into existence as a result of the famous Daniel's case otherwise known as (the Five knights' case 1627) when the defendants were convicted and imprisoned for refusing to pay a loan imposed by King Charles V. Of course thereafter it was superseded by the Bill Rights of 1689 which on a more constitutional note is of great constitutional and administrative importance to us. These laid the basis for the concept of fundamental human rights or peoples' rights. The Bill of Rights subsequently led to the Act of settlement when William of Orange became the King of Great Britain following the self exile of James II to France. In the circumstances of the case before us, was the appellant denied fair hearing by the University? Did the University shoot first and ask questions afterwards?

In the case of R v University of Cambridge (1723) 1 Str. 557, Fortesque J, observed as follows:-

"I remember to have heard it observed by a very learned man upon such an occasion that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. Adam, says God, where art thou? Hast thou not eaten of the tree, wherefore I commanded thee that thou shouldst not eat. And the same question was put to Eve also."

This was a case in which the University of Cambridge deprived a recalcitrant scholar of his degree on account of his having insulted the Vice-Chancellor. He was not given an opportunity to proffer a defence.

In an ancient case of Cooper v Wandsworth Board of Works (1863) 14 CB (NS) 180, a case which has been approved in Ridge v Baldwin (1964) AC 40, Durayappah v Fernando (1967) 2 AC 337 and Wiseman v Borneman (1917) AC 297 - all of very persuasive influence and importance and showing the historical sequence of the development and application of that aspect of the law (coming from the society i.e. England from which we inherited a bulk of our law and practice,) the facts of the case were these. By a statute passed in 1855, it was provided that no citizen could erect a building in London without giving seven days notice to the local Board of Works, failing which such structure should be pulled down. A builder in defiance of the prescription of the law erected a house in Wandsworth area of London without being given due notice. The building was of course pulled down, the Board acting in its administrative capacity. The builder brought an action in court for damages to his building. In that case Erle, CJ said:-

"I think the Board ought to have given notice to the plaintiff and to have allowed him to be heard. The default in sending notice to the Board of the intention to build, is a default which may be explained. There may be a great many excuses for the apparent default. The party may have intended to conform to the law. He may have actually conformed. . . though by accident his notice may have miscarried . . . I cannot conceive any harm that could happen to the district Board from hearing the party before they subjected him to a loss so serious as the demolition of his house; but I can conceive a great many advantages which might arise in the way of public order, in the way of doing substantial justice, and in

the way of fulfilling the purpose of the statute, by the restriction which we put upon them, that they should hear the party before they inflict upon such a heavy loss."

In the same case Willes, J said;

"I am of the same opinion. I apprehend that a tribunal which is by law invested with power to effect the property of one of Her Majesty's subjects, is bound to give such subject an opportunity of being heard before it proceeds: and that the rule is of universal application, and founded on the plainest principles of justice. Now, is the Board in the present case such a tribunal? I apprehend it clearly is. . . "

And Byles, J also said;

"It seems to me that the Board are wrong whether they acted judicially or ministerially. I conceive they acted judicially, because they had to determine the offence, and they had to apportion the punishment as well as the remedy. That being so, a long course of decisions beginning with Dr Bentley's case, and ending with some very recent cases, establish that, although there are no positive words in a statute, requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

The learned writers Wade and Forsyth at 467 of the (8ed) of their book, Administrative Law write as follows:-

"The term 'quasi-judicial' accordingly came into vogue, as an epithet for powers which, though administrative, were required to be exercised as if they were judicial, i.e. in accordance with natural justice. This at least was less of a misnomer than 'judicial', and made it easier for the courts to continue the work of developing their system of fair administrative procedure, 'quasi-judicial' was the subject of a classic discussion and definition by the Committee on Ministers' powers, who emphasised that a judicial decision consists of finding facts and applying law whereas a quasi-judicial decision consists of finding facts and applying administrative policy."

Let us for one moment consider the case of Board of Education v Rice (1911) AC 179 at 182. This case arose to determine the application of Section 7 of the Education Act 1902 on the duty of maintaining and keeping efficient a non provided school. The questions required by Section 7(3) to be determined by the Education Board were:-

- (a) whether the Local Education Authority have in fixing and paying the salaries of the teachers fulfilled the duty on the Section 7(1); and
- (b) whether the salaries inserted in the teachers' present agreements are reasonable in amount and ought to be paid by the authority. In its decision, the board failed to deal with the matters in issue.

The house of Lords held as follows:-

"Comparatively recent statutes have extended, if they have not originated, the practice imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view."

I have set down few of those cases that have helped to shape our understanding and appreciation of the niceties of fair hearing particularly the need and necessity to hear the other side before a punishment is invoked in some matters.

Having said so far, to what extent if any is *Garba v University of Maiduguri* applicable to the present case. In *Garba's* case some students were expelled by the University for riotous

behaviour which involved allegation of arson, stealing and otherwise or other mayhem. An investigation body was set up by the authority under the Chairmanship of the Deputy Vice-Chancellor. The report stated that the students involved were connected to some criminal offences of arson, looting and indecent assault. Those accused it turned out were not given the opportunity of explaining their own side of the story. They were outrightly expelled. Of course since allegations of criminal offence were made, the University based its disciplinary act of expulsion on the allegations which really meant dismissal. In the Supreme Court it was held there was evidence of unfair hearing. In other words, the appellants i.e. the students were not allowed to give their own side of the story. The Supreme Court reprimanded the University for purporting to clothe itself or assume the jurisdiction of the court to mete out a punishment in a matter where committal of criminal offences was made. I have hitherto referred to the opinion of Uwais, JSC (as he then was) which reflected and represented the opinion and the decision of the Supreme Court in that case.

The questions one would ask are as follows:-

Does suspension amount to expulsion? What does that term connote? The verb "suspend" from which the word suspension (which is a noun) emanates means in the context it was used essentially, "to defer, interfere, interrupt, lay aside, temporise, hold in abeyance." That term cannot be construed to mean "terminate, extinguish, bring to an end." It means what it says, that is to cause to abet for a while or halt midway but not to bring to an end. It always connotes a state of affairs that should wait until a certain event takes place. In *Garba's* case (*supra*) there was outright expulsion of the students before being heard. In the present case, an investigation body was to be set up to enable the appellant put his own side of the case. It is important to emphasise that the cult system which pervades the University campus is now an evil phenomenon that is threatening to tear the University system apart and I strongly believe

it will be remiss of the University Authority to wring its hands in desperation and frustration on the erroneous or misguided view of interpretation of the judgment on Garba's case. That case did not and cannot be said to be construed that in all circumstances when the atmosphere in a University is threatened and there is a reasonable possibility that if the rampaging act of a student or students is not nipped at the bud by the act of suspending the perpetrators of the seeming ignoble act, the University Authority should do nothing. That is not the interpretation of that decision. The aim of suspending the student is to abort any likelihood of the threatened disturbing atmosphere snow balling into an uncontrollable situation. The University envisaged that they would set up a body exercising administrative power where the appellant would be given opportunity to clear himself by offering his own defence. He jumped the gun by going to the court. I believe that he was trying to be clever by half. It is perhaps tempting for a student who is suspended or expelled by a University to put himself in the garb or dress of the inimitable "Garba" in the Garba's case (supra) and cries blue murder for the suspension or outright expulsion. Are we now to understand that a University should be incapable of enforcing ultimate and extreme disciplinary measures of expulsions where the facts and circumstances of the case demand that it so acts? The celebrated case of Garba v University of Maiduguri (supra) is not intended to be a court given licence and judicial umbrella to provide students of unbridled, recalcitrant and impetuous behaviour in the University system who have no sense of ethics and acceptable level of decency in a civilised society to cause ruination to the education institution by their uncouth and display of primitive characterisations. No it is not. It is equally not intended to tie the hands of the College Authority and debar it from making an effort temporarily to arrest a perceiving evil that is seen rearing its head which if not nipped in the bud might conceivably raise again. To my mind what the University of Calabar and others - nay, the respondents- did was not assumption of judicial powers ordinarily exercisable by the courts. A wide and horizontal construction of the decision of Garba's case may have the unflattering and unexpected effect of sending discipline in our tertiary institutions to the doldrums.

It is noteworthy to observe that the respondents admitted and submitted that the Vice-Chancellor or the representatives of the University in exercising their powers under Section 17 of the University Act were not exercising judicial function, and are not a legal authority to determine questions affecting the rights of subjects. It is of course elementary to say that the question of whether the University arrogated itself the power of the court to act judicially or quasi judicially is for the court to decide. In a hypothetical case if the Vice-Chancellor becomes apprehensive that his house might be consumed by flames it will be irresponsible for him not to attempt to first begin putting out the fire before calling the fire-brigade fighters. I must warn in unmistakable terms that in our attempt to preserve or protect what we conceive as the civil liberties or fundamental rights of students of nowadays where the cult system like gorgons with hydro headed head is seeking to bestride and threaten the very existence of these institutions we do not wittingly help in destroying the University system and enthrone anarchy in the name of the protection of questionable rights of a scoundrel masquerading as a student. I say no more.

Connected to this is the relief sought to have the appellants results released along with others. This presupposes that he was asking for an order to be made in future. There was nowhere in his affidavit he averred he had sat for an examination. Results of examinations are released when an examination is taken. I believe that where an examination is taken and the institution suspects some unsavoury practices attendant to the behaviour by a student, such result may not be released until the University Authority has satisfied itself that it is in position to release the results of one who is considered worthy and fit in learning. Where no examination has been taken it is idle to ask a court to grant a relief of the release of a result. It is my view that should any court worth its self (sic) lend itself to such a persuasion, then it would have succeeded in no small measure in destroying the institution of higher learning. This type of relief is not of the nature that should come within the contemplation of Section 33, Chapter IV of the Constitution of 1979.

I view with great concern and trepidation any untoward act of a court which like a knight errant such as the mythical Don Quixote De La Manche charging at windmills conceiving them to be opposing knights in a mounted horse, might unwittingly but with the best altruistic intention interfere with the University system of which it is neither well experienced in nor suited for, nor does it form part of its functions. I am enamoured by the observations of Niki Tobi, JCA (as he then was) in this case when he said in the leading judgment in the court below:-

"Insofar as the examinations are conducted according to the University rules and regulations and duly approved, and ratified by the University Senate, the courts have no jurisdiction in the matters. A court of law which dabbles or flirts into the arena of university examinations, a most important and sensitive aspect of University function should remind itself that it has encroached into the bowels of University authority. Such a court should congratulate itself of being party to the destruction of the University and that will be bad not only for the universities but also for the entire nation."

It is not like a candle which when you put out the flame you can easily relight it.

Thus, Shakespeare in Othello said:-

"Put out the light, and then put out the light; if I quench thee, thou flaming minister I can again thy former light restore. Should I repent me; but once put out thy light thou cunning'st pattern of excelling nature, I know not where is that Promethean heat that can thy light relume."

I endorse the view expressed by the learned justices of the Court of Appeal in this case. The appeal is dismissed and I affirm the judgment of the court below. There shall be cost to the respondents assessed at N10,000.

Belgore, JSC:- I agree with my learned brother, Pats-Acholonu, JSC that this appeal has no merit. It must be clearly emphasised that the University has authority within its premises to discipline any erring or misbehaving student. The principle of fair-hearing as envisaged in the Constitution must however be the

guiding principle in applying any sanction against a misbehaving student. If the act of the student amounts to crime, the normal report should be lodged with the police but this will not preclude the University exercising its power under its statute to punish misconduct by any student. The case of *Garba v University of Maiduguri* (1986) 1 NWLR (Part 18) 550 has not precluded the University taking action against misconducting student within its campus.

In the instant case the University of Calabar only set in motion machinery for dealing with the supposed misconduct of the appellant whereby he was merely suspended. It seems the appellant wanted to scuttle the investigation of how he came by offensive weapon and materials in his hostel room. Certainly he jumped the gun.

I also find no merit in this appeal and I dismiss it with the same order as in the judgment of Pats-Acholonu, JSC.

Kalgo, JSC:- I have read in draft the judgment of my learned brother, Pats-Acholonu, JSC, just delivered. I entirely agree with him that this appeal lacks merit and ought to be dismissed. I agree with the reasoning and conclusions reached in the said judgment.

The only issue for determination in this appeal was whether the provisions of Section 33(1)(2) and (4) of the 1979 Constitution and the ratio in the case of *Garba v University of Maiduguri* (1986) 1 NWLR (Part 18) 550 are applicable to this suit.

Sections 33(1) and (2) of the 1979 Constitution deals with fair hearing within a reasonable time in the determination of civil rights and obligations. Section 33(4) thereof also deals with fair hearing within a reasonable time of person charged with a criminal offence before a court or tribunal. In the circumstances of this case, it is abundantly clear that the appellant was not charged with any criminal offence before any court or tribunal. He was only suspended from the University by the Vice-Chancellor in his letter of 22 April 1991 (Exhibit 'A'). In that letter, the appellant was not suspended indefinitely; he was suspended pending investigation by the Disciplinary Committee on the matter and any action taken on the report of that committee. The letter informed him that he would be formally invited to attend the proceedings of the said committee to make his representations. The appellant went to challenge his suspension in court without waiting for the Disciplinary Committee to start the investigations. In the circumstances, the situation in the instant appeal is diametrically different from that in *Garba v University of Maiduguri* case (*supra*). In the *Garba* case, there was an outright expulsion of the student relying on the Disciplinary Committee report whereas in this case there was only suspension pending the report of the said committee.

It is also without any iota of doubt that the appellant was not charged with any criminal offence by the Vice-Chancellor or the University Council. The letter of the Vice-Chancellor (Exhibit 'A') to the appellant was very clear. It merely stated that the possession of the 3 items alleged to have been found in the

appellant's wardrobe may constitute a criminal offence, and realising that he had no jurisdiction to try any criminal offence, he sent the items (vide his letter Exhibit 'B') to the Commissioner of Police to take the appropriate action. It cannot therefore be said by any stretch of imagination that the Vice-Chancellor, by taking such steps, has charged the appellant with any criminal offence. His action in suspending the appellant after the discovery of the said 3 items in the possession of the appellant, amounts to a misconduct upon which he could act pursuant to Section 17 of the University of Calabar Act (Cap. 453) Laws of Nigeria 1990. This was an administrative act intended to ensure good and stable administration of the institution and which he was empowered to do. In the *Garba v University of Maiduguri* case (supra) this Court recognised the fact that suspension of a student in a University is an internal affair of the

University to enhance good administration and not necessarily a disciplinary measure. By Section 17(2) of the said Act, the appellant could have appealed to the University Council against his suspension but he did not. In any case a suspension is not a charge of criminal offence and the appellant was not on trial then. Therefore the question of fair hearing did not arise at all in the circumstances of this case and so neither Section 33 of the 1979 Constitution nor the ratio decidendi in *Garba v University of Maiduguri* case (supra) are applicable in the circumstance of this case.

For the above and the more detailed reasons given in the leading judgment of my learned brother Pats-Acholonu, JSC, I also find no merit in this appeal. I dismiss it and affirm the decision of the Court of Appeal. I abide by the order of costs made in the leading judgment.

Musdapher, JSC:- I have had the honour to have read before now the judgment of my Lord Acholonou, JSC just delivered. In the aforesaid judgment, his Lordship had adequately answered the question or questions submitted to this Court for the determination of the appeal. I adopt the reasoning as mine and accordingly, I too, dismiss the appeal as unmeritorious. I adopt the order for costs proposed in the leading judgment.

Edozie, JSC:- I had a preview of the leading judgment delivered by my learned brother, Pats-Acholonu, JSC and I am in agreement with his reasoning and conclusion in dismissing the appeal. I endorse the consequential orders including orders as to costs made in the leading judgment.

Appeal dismissed.

