

■

EXAMINING THE  
LEGITIMACY OF **THE  
ADMINISTRATIVE  
PROCEEDINGS  
COMMITTEE** OF THE  
CAC THROUGH THE  
LENS OF ITS  
COMPOSITION AND  
PENAL JURISDICTION



## INTRODUCTION

The establishment of the Administrative Proceedings Committee (APC) by the Corporate Affairs Commission (CAC), under the provisions of the Companies and Allied Matters Act (CAMA) 2020, represents a significant innovation in corporate governance and dispute resolution. As a quasi-judicial body, the APC is tasked with addressing non-criminal allegations, resolving disputes or grievances related to the operation of CAMA, and imposing administrative penalties. Comprising key members from the CAC and the Federal Ministry of Industry, Trade, and Investment, the APC operates within a regulatory framework designed to enhance the efficiency of the Commission in handling corporate matters.

However, as the Committee exercises quasi-judicial powers, several important questions arise regarding its constitutionality and potential conflicts with the judicial system. This paper examines these issues, particularly focusing on the judicial composition of the APC, its adherence to the principle of fair hearing, and the potential jurisdictional overlap with the Federal High Court (FHC), which enjoys exclusive jurisdiction over corporate matters under Section 251 of the Constitution of the Federal Republic of Nigeria (1999) as amended (the Constitution). Additionally, concerns surrounding the APC's authority to impose penalties, traditionally reserved for courts, will be explored in light of constitutional principles such as the separation of powers.

This analysis aims to assess whether the APC's structure and powers align with established judicial norms and constitutional safeguards, ensuring that its operations do not undermine the principles of fairness and impartiality enshrined in the Nigerian legal system. Further, it will propose recommendations for recalibrating the Committee's powers to ensure that it functions effectively without encroaching upon judicial authority or violating constitutional mandates.



## ESTABLISHMENT OF THE ADMINISTRATIVE PROCEEDINGS COMMITTEE OF **THE CORPORATE AFFAIRS COMMISSION**

The establishment of the Administrative Proceedings Committee (APC) by the CAC as a quasi-judicial body represents a significant innovation of the CAMA 2020. Under the provisions of CAMA<sup>1</sup>, the Commission is mandated to establish an Administrative Proceedings Committee consisting of the following members:



The Registrar-General, who will serve as the Chairman of the Committee.



A representative from the Federal Ministry of Industry, Trade, and Investment, also not below the grade level of Director.



Five representatives from the operational departments of the Commission, each not below the grade level of Director, with one representative from the Compliance Department;

In line with this, the CAC issued the Companies Regulations 2021 to complement the provisions of the Act, thereby guiding the operations of the Committee.

The combined provisions of Section 851 of CAMA and Regulations 38-45 of the Companies Regulations empower the APC to address non-criminal allegations concerning violations of regulatory frameworks, resolve related disputes or grievances, and impose administrative penalties in the resolution of matters before it. These provisions confer upon the APC quasi-judicial powers, similar to the jurisdiction of the Federal High Court on the operation of CAMA 2020.

In the foregoing parts of the paper, we shall examine the constitutionality of the quasi-judicial powers of the APC vis a vis the principle of fair hearing, and the exclusive jurisdiction of the Federal High Court to adjudicate disputes arising from the operation of the CAMA 2020.

1. See Section 851 of CAMA

## THE COMPOSITION OF **THE APC**

It is important to recognize that in the exercise of its quasi-judicial functions, APC must adhere to established judicial principles and must not overstep its jurisdiction or encroach upon the powers of the courts. This is well encapsulated in *A-G, Ogun State v. Aberuagba case*,<sup>2</sup> where the Supreme Court held that administrative bodies or authorities while performing quasi-judicial functions, must exercise their powers strictly within the confines of their statutory mandate and jurisdiction.

The Court emphasized that administrative bodies must not encroach upon or overstep the limits of their jurisdiction by acting in a manner that interferes with the exclusive judicial functions vested in the courts. One of such fundamental principles of judicial proceedings is the principle of fair hearing. *See also Olayioye v. Oyelaran*<sup>3</sup>

It is the function Committee is to resolve disputes or grievances arising from the Operations of CAMA, or its regulations and provide the opportunity of being heard for persons alleged to have contravened the provisions of this Act or its regulations.

Such disputes may involve corporate bodies, shareholders, employees, and the CAC itself. For instance, disagreements between shareholders and directors: breach of shareholders' agreements: intellectual property disputes; disputes over company name or trademarks: conflicts between directors over company management etc In any of the above-cited instances, parties are required to refer the matter to the APC before going to the regular court.

2. [1985] 1 NWLR (Pl. 4) 697

3. [2019] 4 NWLR (Pl. 1662) 351

Usually, these cases are outside the purview of CAC, therefore, it would not necessarily be a party to the suit. However, CAC being the body responsible for ensuring compliance with the provisions of CAMA and other relevant regulations, it would be a necessary party and mainly the prosecutor in matters of allegations of the violation of the provisions of CAMA. Practical examples include disagreements over business registration and compliance; failure to file annual returns; non-compliance with regulations where there is a change in the company's ownership; disputes over shareholder matters and company changes; non-compliance with financial reporting and auditing requirements; conflicts over corporate governance issues; disputes regarding the incorporation of foreign companies; disagreement over the suspension or deregistration of a company; conflicts relating to the nature of a company's business activities; amongst others.

The principle of fair hearing, encapsulated in the Latin maxim *nemo iudex in causa sua* (no one can be a judge in their own case), is enshrined in Chapter Four of the Constitution. This rule dictates that no individual should serve as both prosecutor and judge in the same matter. See *Ani v. Otu*<sup>4</sup>. Judges are required to remain unbiased and impartial in adjudicating matters before them. When a judge has an interest in a case, the appropriate course of action is to decline jurisdiction. Failing this, the trial becomes unfair, and any judgment rendered may be set aside by a superior court<sup>5</sup>.

Interestingly, the composition of the APC under CAMA is such that six out of the seven voting members of the Committee are employees of the CAC, with the seventh being a representative from its supervising ministry. This raises potential conflict with the principles of fair hearing, particularly the *nemo iudex in causa sua* rule. This is because, as earlier elucidated, CAC would in most cases be the prosecutor where there is an allegation of non-compliance with the provisions of CAMA and other relevant regulations. Considering that over 90% of the Committee are members of CAC, technically, CAC doubles as a prosecutor and judge thereby offending the long-standing rule of *nemo iudex in causa sua*.

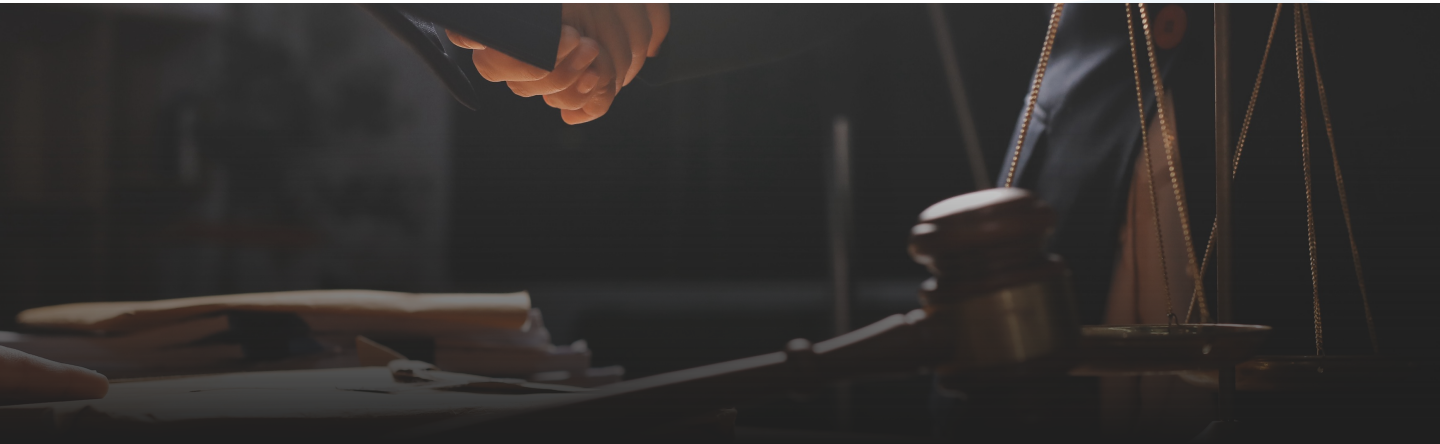
The legal implication of these is that where a party is dissatisfied with the decision of the committee, it can challenge such decision on the ground of violation of the fair hearing principle. This would in effect lead to the quashing of the decision of the committee,

In light of this, it is recommended that the composition of the Committee be restructured to ensure greater impartiality and independence. Specifically, the inclusion of CAC employees, who are often directly involved in the matters in dispute, creates a risk of bias, violating the constitutional guarantee of a fair hearing. To mitigate this concern, it would be prudent to ensure that the majority of the Committee's members are external to the CAC, with no direct involvement in the agency's operations. This would help preserve the integrity of the Committee's quasi-judicial functions and uphold the constitutional principles of impartiality and fairness.

4. [2023] 8 NWLR (Pt. 1886) 301

5. See *ORUGBO V. UNA* (2002) LPELR-2778 (SC); *R.N.H.W. V. SAMA* (1991) 2 NWLR (PT. 171) 64 and *EGWU V. UNIVERSITY OF PORT HARCOURT* [1995] 8 NWLR (PT. 414) 419; *YANAWO V. STATE* [2021] LPELR-56441(CA)

# QUASI-JUDICIAL POWERS OF **THE APC**



A significant issue often raised in the exercise of the Committee's powers is the potential jurisdictional conflict between the Federal High Court and the APC, particularly considering the exclusive nature of the jurisdiction granted to the FHC by Section 251 of the Constitution.

Section 251(1)(e) of the Constitution confers exclusive jurisdiction upon the FHC to adjudicate disputes arising from the operation of CAMA. This provision stipulates that the FHC shall have jurisdiction over civil matters arising from the operation of CAMA or any law regulating the operation of companies under CAMA, excluding the jurisdiction of any other court.

Conversely, CAMA<sup>6</sup> empowers the APC to "resolve disputes or grievances arising from the operations of this Act or its regulations." This provision has raised concerns regarding the potential encroachment on the FHC's exclusive jurisdiction. If this is established, it implies that parties may challenge the decisions of the APC or contest its jurisdiction on matters that are constitutionally vested in the FHC under Section 251.

However, a review of judicial authorities reveals that the exercise of quasi-judicial powers by administrative bodies are accommodated and widely regarded as crucial for ensuring an efficient judicial system, and in a bid to offer complainant an opportunity to explore other dispute resolution mechanisms before resorting to the regular court system.

For instance, In the *NNPC v. Clifco Nigeria Ltd*<sup>7</sup>, the Supreme Court held that a party must first exhaust the available remedies provided by an administrative body or a quasi-judicial body before seeking judicial intervention from the courts. This is grounded in the principle of **exhaustion of administrative remedies** or **pre-action procedure**, which requires a party to engage with the relevant administrative body or authority and give it the opportunity to resolve the dispute before the matter can be brought to the court.

6. See Section 851

7. [2011] 8 NWLR (Pt. 1249) 1 SC



Section 851 (4)(c) provides that the “**Administrative Committee shall impose administrative penalties for the contravention of the provisions of this Act or its regulations in the settlement of matters before it**”.

This process not only helps to alleviate the burden on formal courts but also enables them to focus on more complex matters, while administrative bodies handle routine regulatory issues. Thus, enhancing access to justice and minimizing delays typically associated with litigation.

The administrative proceedings before the APC is considered a condition precedent to the exercise of the judicial powers of the Federal High Court. Whilst the committee’s power is merely administrative, the FHC remains the only court with exclusive jurisdiction to entertain corporate matters as enshrined in the Constitution.

This was emphasized in the judicial pronouncement in **ESSO EXPLORATION AND PRODUCTION NIGERIA LIMITED AND SNEPCO v. FIRS**<sup>8</sup>, where the Court of Appeal clarified the procedural path for resolving disputes with tax authorities, reiterating the jurisdiction of the Tax Appeal Tribunal and categorically noting that approaching the TAT is a vital step towards the resolution of tax related dispute before appealing to the Federal High Court.

Having examined the power of the APC to “resolve disputes or grievances arising from the operations of this Act or its regulation”, it is equally significant to consider the power of the body to impose penalties. **Section 851(4)(c)** provides that the “Administrative Committee shall impose administrative penalties for the contravention of the provisions of this Act or its regulations in the settlement of matters before it”.

8. [2020] 2 NWLR (Pt. 1733) 468 (SC)

The courts have consistently ruled that penalties, due to their criminal nature, may only be imposed by a court of competent jurisdiction, in accordance with Section 6 of the Constitution. Specifically, in the case of **NOSDRA v ExxonMobil**<sup>9</sup>, the Court of Appeal affirmed that "penalties or fines are imposed as punishment for an offence or violation of the law. The power, as well as the competence, to impose them rests solely with the Courts."

Given this legal precedent, there exists a potential for the administrative penalties imposed by the Committee to be invalidated, as they could be deemed unconstitutional and an encroachment upon the judicial powers expressly granted to the courts under Section 6 of the Constitution.

The rationale for this is that the Constitution recognizes the principle of separation of powers, which states that judicial powers are solely conferred on courts, while executive and legislative functions are reserved for the executive and legislative branches respectively. Allowing administrative/regulatory bodies within the executive branch to exercise powers reserved for the courts can lead to conflicts with the principle of separation of powers.

It is recommended that the powers of the Administrative Committee be reassessed to exclude the authority to impose administrative penalties, drawing inspiration from the Tax Appeal Tribunal, which is similarly empowered but does not have the authority to impose penalties. This adjustment is essential to strike a balance between the operational efficiency of administrative bodies in managing regulatory matters and the imperative of safeguarding judicial authority, in line with the principle of separation of powers within the Nigerian legal framework.



## CONCLUSION

In conclusion, while the establishment of the APC within the CAC is a positive development, significant constitutional concerns arise regarding its composition and powers. To address these issues, it is recommended that the APC's composition be restructured to ensure impartiality, its jurisdiction be aligned to be within constitutional limits, and its power to impose penalties be reconsidered. These reforms would safeguard the APC's legitimacy and ensure its operations are consistent with constitutional principles.

**Lagos**

The Adunola,  
401 Close, Banana  
Island, Ikoyi,  
Lagos, Nigeria

**London**

29th Floor, 30 St Mary  
Axe, London.  
EC3A 8AF,  
United Kingdom

**Abuja**

4th Floor Leadway House,  
Plot 1061, Cadastral  
Avenue,  
Central Business District,  
Abuja, Nigeria.

**Port Harcourt**

17, Road 315, Flat 5, BICS  
Suites, 25 Herbert  
Macaulay Street,  
Old GRA, Port Harcourt,  
Rivers State, Nigeria

+234 1 270 2551

[www.olaniwunajayi.net](http://www.olaniwunajayi.net)

---