

RAISING AND DETERMINING ISSUES

Suo motu

The general rule, the exception and the imperative of fair hearing.

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“To know the law is knowledge; to understand its exceptions is wisdom; but to master when and how to deploy them in litigation is a masterstroke.”

WHAT IS RAISING AN ISSUE SUO MOTU MEANS?

The Latin expression suo motu means “of its own motion” or “on its own initiative.” Therefore, when a court raises an issue suo motu, it means that the court identifies and brings up a question, point of law, fact, jurisdiction, procedure, or other matter for consideration on its own, rather than because one of the parties specifically raised it in their pleadings, grounds of appeal, written submissions, or oral arguments. See *Angadi v. P.D.P.* (2018) 15 NWLR (Pt. 1641) 1

THRE THREE STAGES OR COMPONENTS OF SUO MOTU PROCEEDINGS.

The exercise of a court’s power to raise an issue suo motu is not a single-step process but one involving distinct procedural stages, each of which bears directly on the validity of the eventual determination. The fact that an issue has been raised suo motu does not, without more, signify that the court is at liberty to proceed immediately to determine it and found its judgment upon such determination. In essence, raising an issue suo motu is one thing; hearing the parties on the issue and subsequently determining it are distinct and consequential matters.

Thus, where a court raises an issue on its own motion, the critical inquiry extends beyond the mere fact of its being raised to whether the parties were afforded an adequate opportunity to address the court before the issue was resolved and, ultimately, relied upon in the adjudication of the substantive dispute. It is this procedural progression—from the raising of the issue, through the opportunity afforded to the parties to address it, to its

eventual determination—and the legal consequences that attend compliance or non-compliance with these stages that constitute the central concern of this article.

In other words, by way of illustration and to place the foregoing distinction in clearer perspective, the exercise may be understood as comprising three sequential stages. The first is the stage at which the court identifies or raises an issue *suo motu*—that is, an issue which has not been raised by either of the parties or which, although arising from the proceedings, has not been placed in issue by them. The second is the stage at which, having raised the issue, the court draws it to the attention of the parties and affords them a fair and reasonable opportunity to address it. The third is the stage at which, after receiving and considering the submissions of the parties, the court proceeds to resolve or determine the issue. These stages are analytically distinct, and the observance of one does not dispense with the necessity of observing the others.

It follows, therefore, that the mere raising of an issue *suo motu* does not, without more, complete the process. The material question is what follows thereafter. Once the court elects to raise an issue which was not canvassed by the parties, the rules of fair hearing ordinarily require that the parties be given a meaningful opportunity to address the court on the point before it is determined. The court may thereafter consider the submissions made and reach its own conclusion on the issue in accordance with law.

The significance of this sequence lies in the fact that a judicial determination ought not ordinarily to rest upon a point upon which the affected party has had no opportunity to be heard.

The three stages therefore constitute a connected procedural sequence: raising the issue identifies the point for determination; hearing the parties affords them the opportunity to address it; and determining the issue entails the court reaching its conclusion after considering their submissions. Consequently, where the court determines and relies upon a *suo motu* issue without first hearing the parties, the legal sustainability of the resulting determination or judgment falls to be examined against the principles of fair hearing and the circumstances of the particular case.

GENERAL RULE GOVERNING SUO MOTU PROCEEDINGS.

The general rule is that a court may, where necessary for the proper determination of a case, raise an issue *suo motu*, but it must ordinarily afford the parties an opportunity to address it before resolving or relying upon it in its decision. The principle derives principally from the constitutional right to fair hearing and the rule of *audi alteram partem*: a court should not determine a material issue against a party without first giving that party an opportunity to be heard on it. Accordingly, where a *suo motu* issue is material to the determination of the proceedings, the proper sequence is raising the issue, hearing the parties, and thereafter determining the issue.

The critical point, therefore, is that the court's power to raise an issue *suo motu* is distinct from its power to determine that issue without hearing the parties. Where the court proceeds to determine a material *suo motu* issue without affording the parties an opportunity to address it, and particularly where the determination forms the basis of its judgment, such a course may

constitute a breach of fair hearing and render the resulting decision liable to be set aside, subject to the circumstances of the particular case. The general rule may thus be stated succinctly: a court may raise an issue suo motu, but where that issue is material to its decision, it should hear the parties on it before determining and relying upon it.

MASTERING THE EXCEPTION OF RULE OF SUO MOTU PROCEEDINGS.

1.EXCEPTION: ISSUES OF LAW AND JURISDICTION.

A recognised exception to the general rule is that the requirement to hear the parties before determining an issue suo motu applies principally to issues of fact. In *Effiom v. Cross River State Independent Electoral Commission*(2010) 14 NWLR (Pt. 1213) 106, the Supreme Court drew a distinction between questions of fact and questions of law or jurisdiction, holding that, in appropriate circumstances, a pure issue of law or jurisdiction may be raised suo motu and determined without first inviting the parties to address the court. The rationale is that jurisdiction is fundamental and cannot be conferred on a court by consent, while questions of law fall within the court's judicial competence.

The exception, however, is not an unrestricted licence to determine every suo motu issue without hearing the parties. Where the issue involves disputed facts, or a matter upon which the parties could properly make competing factual or legal submissions, the general requirement of fair hearing remains applicable. Thus, the principle emerging from *Effiom* is that while a court may, in appropriate circumstances, raise and determine a pure question of law or jurisdiction suo motu without prior address, a factual issue should ordinarily not be determined until the parties have been given an opportunity to be heard on it.

2.EXCEPTION: WHERE THE PARTIES HAVE OVERLOOKED AN APPLICABLE STATUS.

A further exception arises where both parties have overlooked or are unaware of a statute which has a material bearing on the determination of the case. In such circumstances, the court may raise and apply the relevant statutory provision suo motu, without necessarily inviting the parties to address it, since courts are required to take judicial notice of statutes and are not dependent upon counsel to draw their attention to the law. This principle was recognised in *Omokuwajo v. FRN* (2013) 9 NWLR (Pt. 1359) 300 at 332 and reaffirmed in *Akingbulugbe v. NIROWI* (2023) 11 NWLR (Pt. 1895) 339.

The exception, however, is limited to the application of the law and does not authorise the court to introduce disputed factual matters under the guise of applying a statute. Where the application of the statute depends upon disputed facts or raises a substantive issue requiring submissions from the parties, the requirement of fair hearing may still arise. The principle is therefore that while the court may take judicial notice of and apply an overlooked statute which bears upon the case, it must not use that exception to determine a new or factually contested issue without giving the affected parties an opportunity to be heard.

3.EXCEPTION: WHERE THE RECORD DISCLOSES A SERIOUS QUESTION AS TO THE FAIRNESS OF THE PROCEEDINGS.

A further exception arises where the record itself discloses serious questions concerning the fairness of the proceedings. In such circumstances, the court may raise and determine the matter suo motu, notwithstanding the general rule requiring parties to be heard before a suo motu issue is determined. The rationale is grounded in the court's overriding duty to ensure that its proceedings conform to the requirements of justice and fair hearing; the court cannot reasonably be expected to ignore a manifest defect affecting the fairness or integrity of the proceedings merely because the parties have failed to draw its attention to it. The Supreme Court recognised this exception in *Omokuwajo v. FRN* (2013) 9 NWLR (Pt. 1359) 300 and subsequently reaffirmed it in *Akingbulugbe v. NIROWI Ltd* (2023) 11 NWLR (Pt. 1895) 339.

The exception is, however, narrow and fact-sensitive; it is not a general licence to determine issues without hearing the parties. It applies where the defect or question affecting the fairness of the proceedings is apparent from the record itself and requires the court's intervention in the interest of justice. Thus, the principle recognises that the court may, in appropriate circumstances, act suo motu to protect the integrity of its proceedings, particularly where the record itself reveals a matter that cannot properly be ignored.

CONCLUSION

In conclusion, the recognised exceptions to the general rule governing suo motu proceedings should not be understood as displacing or weakening the fundamental requirement of fair hearing. Rather, they represent limited and carefully circumscribed circumstances in which the court may raise and determine an issue without first inviting the parties to address it. The Supreme Court's decision in *Akingbulugbe v. NIROWI Ltd* (2023) 11 NWLR (Pt. 1895) 339 is particularly instructive in this regard, as it identifies three recognised circumstances: an issue of jurisdiction; an applicable statute overlooked or ignored by the parties; and a serious question concerning the fairness of the proceedings apparent from the record.

The enduring principle is therefore that while the court possesses the power to raise issues suo motu, that power must be exercised within the bounds of justice, procedural fairness and the peculiar circumstances of each case.

These exceptions should not, however, be regarded as an exhaustive or immutable catalogue. The Supreme Court may, in an appropriate case and in the exercise of judicial wisdom, recognise other exceptional circumstances or open further windows of exception where the demands of justice so require. The recognised exceptions therefore represent the present judicial guideposts, not a closed end to every unforeseen situation that may arise in the administration of justice, subject always to the principles of fairness and fair hearing.