

## NATIONAL INDUSTRIAL COURT: COURT WITH A DIFFERENCE AND THE NEED TO REVIEW ITS LEGAL STATUS

### **Abstract**

*Prior to the enactment of the Constitution (third alteration) Act, 2010, National Industrial Court was established by the Trade Dispute Decree, 1976, where matters relating to labour, trade union dispute, employment, conditions of service, welfare of employees were adjudicated upon. However, the National industrial Court faced so many difficulties as to its jurisdiction, powers and status. National Industrial Court was widely criticised by scholars and jurists due to its inefficiencies. However, with the enactment of the National Industrial Court Act 2006 and the 1999 Constitution (Third Alteration) Act, 2010, the National industrial Court has gained recognition in all spheres of Nigerian economy; it is well known for its distinct jurisdiction. This paper examined the jurisdiction, composition, status, appeals and the establishment of National Industrial Court. This paper used both secondary and primary source such as statute, case law, journals, textbooks etc. This paper recommended further amendment to the provisions of the Constitution of the Federal Republic of Nigeria (third alteration) Act, 2010 and the National Industrial Court Act 2006.*

**Keywords:** *National Industrial Court, Constitution, Appeals, Jurisdiction,*

### **1. Introduction**

In 1967 after the Nigerian Civil war<sup>1</sup>, governments made intervention in trade disputes mandatory by enacting laws which prescribed procedures for the resolution of trade and industrial disputes such as the Trade Disputes (Emergency Provisions) Decree No. 21, 1968 and the Trade Disputes Emergency Provisions (Amendment) Decree No. 2 1969. Section 16 of the 1968 Decree for the first time in Nigeria restricted the right of workers to take part in a strike action and the right of employers to lock out their workers. In the event of a trade dispute, either party was compelled to declare it to the commissioner of labour who could appoint a conciliator to assist both sides to reach settlement. The 1969 Decree totally banned strikes and lockouts through the Nigerian Federation.<sup>2</sup> The prevailing situation back then which was obtainable under the legal regime ushered in by the Trade Disputes Ordinance 1941 was altered with the promulgation of two decrees in 1968 and 1969, the Trade Disputes (Emergency Provisions) Decree 21, 1968 and the Trade Disputes Emergency Provisions(Amendment) Decree No.2 1969. The compulsory powers introduced by these two decrees as opposed to the voluntary option open to the disputing parties under the 1941 and 1951 Trade Disputes Ordinances, were subsequently re-enacted in the Trade Disputes Act which established two judicial institutions for the settlement of industrial disputes. These two judicial institutions are the Industrial Arbitration Tribunal (IAT) and the National Industrial Court (NIC).<sup>3</sup>

The National Industrial Court of Nigeria was established in 1976 by virtue of Section 19(1) the Trade Disputes Decree No. 7 of 1976<sup>4</sup>. Section 19(1) of Trade Disputes Act 2004 provides that the Court shall have jurisdiction and power as conferred on it by the said law or any Act with respect to the settlement

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<sup>1</sup> There was increase in price of commodity which led to the call for increase in wages by workers. When their needs were not met, they abandoned their work while their employers employed new workers to replace them

<sup>2</sup> O. Edigie 'The Expanded Jurisdiction of the National Industrial Court: Its Implication for Industrial dispute in Nigeria' (2015) (2) *Journal for Worldwide Holistic Sustainable Development* 2

<sup>3</sup> Ibid

<sup>4</sup> Now Trade Disputes Act, Chapter T8, Volume 15, Laws of the Federation of Nigeria, 2004

of trade disputes, the interpretation of collective agreements and matters connected therewith.<sup>5</sup> Under the provisions of the Trade Dispute Act, litigants could not go directly to the arbitration panel, rather matters were referred by the Minister to the panel, which in turn submitted award to the Minister. Minister had so much power under Section 8 of the Trade Dispute Act, due the absolute power bestowed upon the minister.<sup>6</sup> Under Section 15 of the Trade Disputes Act, the National Industrial Court had the original jurisdiction to entertain applications seeking the interpretation of the provisions of a collective agreement.<sup>7</sup> The exclusive jurisdiction of the National Industrial Court to hear and entertain trade dispute, inter and intra union disputes was affirmed in the case of *Udoh v. OHMB*.<sup>8</sup>

Prior to the enactment of the National industrial Court Act, 2006, Labour relations and practice in Nigeria was near comatose, this was due to the confusion as to the various existing courts as to the jurisdiction of the various existing courts over the subject matter of labour.<sup>9</sup> With the enactment of the National Industrial Court Act, 2006, National Industrial Court was re-established, it became a superior court of record and Section 2<sup>10</sup> by fiat abated the jurisdiction of the Federal High Court, the State High Court and the High Court of the Federal Capital Territory, Abuja to entertain labour or industrial disputes or any matter related thereto except where such matters were part-heard.<sup>11</sup> In spite of this pragmatic step taken by the government in identifying the jurisdiction of the National Industrial Court, litigants continued to institute their cases in the Federal High Court and the State High Court instead of the National Industrial Court. The apparent justification of government's intervention was that industrial disputes, by their very nature, were not like any other civil dispute in the sense that they relate to the smooth running of commerce and industry as well as the day to day administration of government. Commerce and day to day running of government could adversely be affected when parties are at liberty to do what they like in relation to industrial disputes which could cripple the economy.<sup>12</sup> Apart from being a superior court of record under the National Industrial Court Act, 2006, National Industrial Court had equivalent powers of a High Court which violated the provisions of Section 6(4) (a) and section 6(5) of the 1999 Constitution. Section 6(4)(a) of the 1999 Constitution enables the National Assembly or State House of Assembly to establish a court with subordinate jurisdiction to that of a High Court while Section 6(5)<sup>13</sup> contains a list of Nigeria's superior courts of record, of which the National Industrial Court was not one of them.

As a result of this, question arose as to the clear standing and status of the court vis-à-vis the constitutionally created superior courts of record and this question was resolved against the National Industrial Court in the Supreme Court<sup>14</sup> case of *National Union of Electricity Employees v. Bureau of*

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<sup>5</sup> L.C Opara 'The Legal Frame Work of Trade Union Activism and the Role of National Industrial Court (NIC) in Handling Trade Disputes' (2014)(4) *International Journal of Humanities and Social Science*. 3

<sup>6</sup> S.A Fagbemi 'An overview of the Institutional mechanism for the Settlement of Labour Dispute in Nigeria' (2014)(11) *US-CHINA Law Review*1325 <http://www.davidpublishing.com> accessed 10 June 2016

<sup>7</sup>Trade Dispute Act 1992, s47. Collective agreement is any agreement in writing for settlement of disputes and relating to terms of employment and physical conditions of work concluded between an employer or a group of employers and a trade union or trade unions

<sup>8</sup> (1993) 7 NWLR (Pt. 304) 139

<sup>9</sup> *FRN V Oshiomole* (2004) NLLR (PT. 1) 339 AT 355

<sup>10</sup> National Industrial Court Act 2006

<sup>11</sup> S. Fagbemi. Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis. (2014)(28) *Journal of Law Policy and Globalisation*. 54. <http://www.iiste.org/journals>. Accessed 09 June 2016

<sup>12</sup> Edigie (n2) 9

<sup>13</sup> Constitution of the Federal Republic of Nigeria, 1999.

<sup>14</sup>O.V Ojo, 'The Jurisdiction of the National Industrial Court in Nigeria' Reviewed .2 <https://www.wordpress.com> accessed 10 June 2016

*Public Enterprise*<sup>15</sup> The Bureau of Public Enterprise (BPE) sought a declaration from the State High Court that neither the National Union of Electricity Employees (NUEE) nor any of its members was entitled to embark on any form of industrial action without faithful adherence to all the strict mandatory procedures. Thus the Bureau of Public Enterprise applied for an interim injunction to restrain the National Union of Electricity Employees from carrying out its threat to strike pending hearing of the interlocutory injunction.<sup>16</sup> The National Union of Electricity Employees sought to use the strike action to forestall the Bureau of Public Enterprise's statutory duty in privatising the National Electric Power Authority. By a notice of preliminary objection, the National Union of Electricity Employees questioned the jurisdiction of the court to entertain the suit. After considering all the processes, the trial court held that the subject matter of the suit was a trade dispute and that by virtue of Decree 47/1992, jurisdiction over such matters lies exclusively in the National Industrial Court. The court struck out the suit on that basis. Dissatisfied with the decision, the Bureau of Public Enterprise appealed to the Court of Appeal, which allowed the appeal and held that: the trial court had jurisdiction to entertain the suit, the subject matter of the suit was not a trade dispute and the decree 47/1992 was inconsistent with Section 272 of the 1999 Constitution. The National Union of Electricity Employees appealed to the Supreme Court to determine whether trade dispute suits fall within the exclusive jurisdiction of the National Industrial Court and whether vesting such jurisdiction in the National Industrial Court is inconsistent with Section 272 of the Constitution. The National Union of Electricity Employees argued that the jurisdiction of the State High Court could not be co-extensive with the jurisdiction of the National Industrial Court over trade disputes, to the extent that the 1999 Constitution vesting jurisdiction on the State High Court must be read subject to the provisions of decree 47/1992, against the backdrop of Section 315 of the 1999 Constitution as an existing law.<sup>17</sup> The Supreme Court initially considered whether the claim in this suit was a trade dispute and thus within the exclusive jurisdiction of the National Industrial Court. The Court held that a '*trade dispute*' as defined by Section 47 of the Trade Dispute Act did not exist between the parties; thus, the privatisation of National Electric Power Authority could not constitute a trade dispute between the parties. In response to the National Union of Electricity Employees submission that an act of the National Assembly (i.e. Decree 47/1992, being an existing law under Section 315(1)(a) of the Constitution could confer exclusive jurisdiction on a court over a matter within its legislative competence and oust the jurisdiction of the State High Court, Justice Chukwuma-Eneh in his lead judgment stated as follows:

Again, it is trite law that the jurisdiction of the State High Court as conferred by the Constitution can only be curtailed or abridged or even eroded by the Constitution itself and not by Act or law respectively of the National Assembly or State House of Assembly, meaning that where there is conflict in that regard between the provisions of the Constitution and the provisions of any Act or law of National Assembly or House of Assembly respectively, the constitution shall prevail if I may emphasise except as I have observed above by direct and clear provision in the constitution itself to that effect...

The jurisdiction of the State High Court can only be restricted by the provisions of the 1999 constitution and not as is being urged by any Act of the National Assembly otherwise specifically conferring exclusive jurisdiction to a court or whatever to override the jurisdiction of the State High<sup>18</sup>

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<sup>15</sup> (2010) 7 NWLR (Pt. 1194) 538 at 575 paras. C-F, Chukwumah – Eneh, J.S.C

<sup>16</sup> O. Coker 'Clarifying the Jurisdiction of the National Industrial Court' 2011 <http://www.internationallawoffice.com> accessed 10 June 2016

<sup>17</sup> O. Coker (n 16) 2

<sup>18</sup> *National Union of Electricity Employees v. Bureau of Public Enterprise* (2010) 7 NWLR (Pt1194)538 @575 para C-F

In addition, the Supreme Court firmly rejected the Submission by the National Union of Electricity Employees that by virtue of a combined reading of Decree 47/1992 and Section 315(1) and 316(1) of the 1999 Constitution, the National Industrial Court is a superior court of record, notwithstanding not being listed among the superior courts of record under Section 6(5) (a)-(i) of the 1999 Constitution. The Supreme Court held that:

By Decree No.47 of 1992 arrogating to the National Industrial Court a superior Court of record as has been contended by the appellant does not by that token make the said National Industrial Court a superior court of record without an amendment of the provisions of Section 6(3) and (5) of the 1999 Constitution which has listed the only superior court of record recognised and known to the 1999 Constitution and the list does not include the National Industrial Court; until the Constitution is amended it remains a subordinate court to the High Court.<sup>19</sup>

To completely checkmate this, the Constitution of the Federal Republic of Nigeria was amended i.e. Constitution of the Federal Republic of Nigeria (third alteration) Amendment Act, 2010, thus incorporating the establishment of the National Industrial Court, its composition and powers like other superior courts of record into the provisions of the Constitution. Specifically Section 254C (1)<sup>20</sup> reaffirmed and reinforced the status and the jurisdiction of the National Industrial Court as contained in the National Industrial Court Act, 2006<sup>21</sup>. The National Industrial Court by Virtue of Section 7(1) of the National Industrial Court Act 2006 was vested with exclusive jurisdiction in civil causes and matters relating *inter alia* to ‘labour, including trade unions and industrial relations, environment and conditions of work, health, safety and welfare of labour, and matters etc. The jurisdiction of the court was extended by virtue of the Section 254C (1) of the 1999 Constitution (as amended), to include other jurisdiction that may be conferred by the National Assembly.

The objective behind the court was to create a specialised court to handle special matters connected with the economic growth, industrial relations, development and peaceful co-existence between and among labour and employers of labour as well as labour policy formulated i.e. the government. There is no gainsaying that from history, none of the developed economies have been able to grow without a stable industrial mechanism for settlement of industrial disputes.

## **2. Status and Composition of the National Industrial Court**

In order to find a lasting solution to the problems of the National Industrial Court of Nigeria, the first pragmatic step taken by the Nigerian government in 2006 was the enactment of the National Industrial Court Act, 2006. To avoid conflicting problems, the National Industrial Court Act repealed Part II of the Trade Disputes Act and re-established it as a superior court of record. To put an end to the confusion on the part of litigants, the Nigerian government amended her Constitution wherein the status of the National Industrial Court was reinforced and reaffirmed through the Constitution of the Federal Republic of Nigeria (third Alteration) Act, 2010.<sup>22</sup> Section 254C (1) of the Constitution (as amended) now confers exclusive jurisdiction on the National Industrial Court.<sup>23</sup> Apart from the recognition given

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<sup>19</sup> *Ibid*

<sup>20</sup> Constitution of the Federal Republic of Nigeria(as amended) 1999

<sup>21</sup>S.A Fagbemi ‘Jurisdiction of the National Industrial Court of Nigeria : A Critical analysis’(2014) (28), *Journal of Law Policy and Globalisation* 54

<sup>22</sup> CFRN 1999 s31(a)

<sup>23</sup> Fagbemi (n 6) 1328

to the National Industrial Court by the Constitution, the National Industrial Court Act, 2006 was established as a superior court of record. Section 1(3)<sup>24</sup> provides that the court shall be-

- a. A superior court of record; and
- b. Except as may be otherwise by any enactment or law, have the powers of a High Court

Until recently when the Constitution of the Federal Republic of Nigeria was amended, the National Industrial Court Act, 2006 recognised the National Industrial Court as a superior court of record. The National Industrial Court by virtue of the Section 6(5)(cc) 1999 Constitution (Third Alteration) Act, 2010 has gained the recognition of being a superior court of record. National Industrial Court consists of the President of the National Industrial Court and such numbers of judges as may be prescribed by an Act of the National Assembly,<sup>25</sup> but must not be less than twelve judges.<sup>26</sup>

One striking difference between these provisions is the specification on the numbers of Judges to be appointed. Section 254A (1)(2)(b)<sup>27</sup> leaves the numbers of Judges to be appointed to the discretion of the National Assembly while Section 1(1)(2)(b) of the National Industrial Court Act, 2006 limits the number of judges to the minimum of twelve. These provisions of the National Industrial Court Act 2004 are conflicting, it contains two separate provisions on the numbers of judges to be appointed and by virtue of the supremacy of the Constitution of the Federal Republic Nigeria, and where there is conflict between the two provisions it will be resolved in favour of the 1999 Constitution.<sup>28</sup>

Under the Trade Dispute Act 1976, the president was required to preside over every sitting whether a full court or a three member court. The provision was a clog in the smooth flow of activities of the court. The Court could not sit any time the president was away for any reason. For example the court did not sit for more than one year between 2002 and 2003 when a sitting president died. The limited membership was also an issue. The membership was grossly insufficient for the volume of cases that the court had to handle across the Federation.<sup>29</sup> This issue was however addressed by the National Industrial Court Act, 2006,<sup>30</sup> by the provisions on appointment of both the president of the Court and judges are as contained in the National Industrial Court Act, 2006. There is however one fundamental variation, it is now constitutionally clear that only qualified Legal Practitioner with considerable knowledge and experience in law and practice of industrial relation and employment conditions in Nigeria can be appointed as judges of the Court.

### 3. Jurisdiction of the National Industrial Court

Jurisdiction is the very basis on which any tribunal tries a case; it is the life line of all trials. A trial without jurisdiction is a nullity. The importance of jurisdiction is the reason why it can be raised at any stage of a case, be it at the trial, on appeal to Court of Appeal.<sup>31</sup> Jurisdiction is the extent to which an entity can exercise power or authority over a specific matter in hierarchy or horizontal level.<sup>32</sup> The concept of jurisdiction has been defined as a court's power to decide a case or issue a decree.<sup>33</sup> It is the

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<sup>24</sup> National Industrial Court Act, 2006

<sup>25</sup> CFRN 1999 s254(a)

<sup>26</sup> National Industrial Court Act 2006, s1(1)(2)

<sup>27</sup> National Industrial Court Act 2006

<sup>28</sup> *Attorney General of Abia State v. Attorney General of Federation* (2002)6 NWLR (PT.763)264

<sup>29</sup> Agomo. Chioma. Kanu. *Nigeria Employment and Labour Relations law and Practice* (Concept Publications Limited, Lagos 2011) 226-227

<sup>30</sup> *Ibid*

<sup>31</sup> *Petro Jessica Enterprise Ltd v. Leventis Technical Co. Ltd* (1992) 5 NWLR (pt.244) 675, 693

<sup>32</sup> Atilola et al (n 9) 3

<sup>33</sup> Black's Law Dictionary 867

authority which a court has to decide matters that are litigated before it, or to take cognizance of the matters presented in a formal way for its decision.<sup>34</sup> Jurisdiction is the life-wire to judicial proceedings, hence any provision relating to court's jurisdiction should be free from ambiguity and confusion.<sup>35</sup> Courts have jurisdiction based on the level they are placed in the hierarchy of courts. Jurisdiction of court does not exist in vacuum. For this reason, court's authority or jurisdiction is a product of constitution or other specific statutes. No court of law can assume jurisdiction without being statutorily empowered to do so. The hierarchy of court is entrenched in the 1999 Constitution (as amended) and lower courts cannot adjudicate on matters that are constitutionally reserved for courts of superior records.<sup>36</sup> However, there was constitutional bottleneck that National Industrial Court was not specifically listed in the Constitution.

The National Industrial Court was the only Court where litigants could not on their own volition, except when activating the interpretative jurisdiction of the court, approach the court to ventilate their grievances unless referred to the court by the Minister of Labour.<sup>37</sup> The referral and other discretionary powers of the Minister of labour over matters relating to the National Industrial Court meant that the influence of the Minister of Labour was overbearing; and this called to question the constitutional principle of separation of powers and hence the rule of law.<sup>38</sup> After the collapse of the second republic, the court faced challenges as to its status and jurisdiction which led to the promulgation of Decree 47 of 1992 which amended the Trade Dispute Act of 1976. The said decree 47 of 1992 gave the court the status of a superior court of record and expanded its exclusive jurisdiction to include the determination of inter and intra union disputes in addition to trade disputes.<sup>39</sup> However, the challenge to court's jurisdiction and status continued but the situation remained until the 1999 constitution came into being. The National Industrial Court is still a court of coordinate jurisdiction with other superior courts of record in its sphere of authority like the Federal High Court, the State High Court and the High Court of Federal Capital Territory, Abuja.<sup>40</sup> However, by virtue of section 254C (1) of the 1999 Constitution (as amended) the National Industrial Court has exclusive jurisdiction which cannot be concurrently exercised or shared among the other High Courts in the same plinth of authority or power. In the case of *Attorney General, Oyo State v. National Labour Congress*<sup>41</sup> the jurisdiction of the National Industrial Court was limited and placed at par with the jurisdiction of the Federal High Court, the State High Court and the High Court of the Federal Capital Territory, Abuja have ceased to have validity in law.<sup>42</sup> The combined effect of section 7 of the National Industrial Court Act, 2006 and section 254C (1) of the Constitution (third alteration) Act, 2010 are that the present jurisdiction of National Industrial Court is exclusive to it and cannot be shared with other courts.<sup>43</sup> However, prior to the enactment of the National Industrial Court Act 2004 and the Constitution (third alteration) Act 2010, there were series of argument on the jurisdiction of the court which stalled the performance of it duty. This led to the filing of many appeals against the decisions of the Court. For instance in the case of *Attorney General of Oyo State v. NLC*<sup>44</sup> the Court of Appeal held that:

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<sup>34</sup> *Drexel Energy & Natural Resources Ltd v. Trans International Bank Ltd* (2008) 12 S.C (Pt II) 240

<sup>35</sup> Fagbemi (n 21) 56

<sup>36</sup> Atilola et al (n 9) 4

<sup>37</sup> Atilola et al (n 9) 7-8

<sup>38</sup> Ibid

<sup>39</sup> Reform submissions on the National industrial Court of Nigeria of the Nigerian Judiciary by Hon Justice Slade.

<sup>40</sup> Fagbemi (n 21) 55

<sup>41</sup> (2003) 8 NWLR (Pt. 821) 35

<sup>42</sup> Fagbemi (n 21) 55

<sup>43</sup> Ibid

<sup>44</sup> (2003) 8 NWLR 1, *Kalango v. Dokubo* (2003) 15 NWLR 32

The conferment of exclusive jurisdiction over trade dispute matter on the National industrial Court under the Trade Disputes Act, is unconstitutional being in conflict with the provisions of section 1(1) (3), 6(6)(b), 251, 272 and 315 of the Constitution of the Federal Republic of Nigeria, 1999. The combined effect of the sections is that the State High Court has concurrent jurisdiction in trade dispute matters with the National Industrial Court or other court established under the Trade disputes Act (as amended). In the instant case the trial court was in error to have declined jurisdiction to adjudicate on the matter

Also in the case of *Ekong v. Oside*<sup>45</sup> the Court of Appeal held that the power of the High Court of the Federal Capital Territory, Abuja is like that of a State High Court. The Court further held that it no longer had unlimited jurisdiction in civil causes and matters, rather it has general but limited powers under section 272 of the 1999 Constitution. In addition the Court of Appeal went further to say that the jurisdiction of the State High Court was limited by the provisions of section 251, 315 and 316 of the 1999 Constitution.<sup>46</sup> In view of the decision in this case and other issues, it became imperative for the National Assembly to create a Court and vest it with exclusive jurisdiction to deal with matters under item 34 of the Second Schedule of the 1999 Constitution which the National Assembly has exclusive constitutional power to legislate upon. The National Assembly attempted to resolve these problems by promulgation of the National Industrial Court Act, 2006 but this piece of legislation faced opposition from virtually all quarters on the ground that its provisions as to the Status and jurisdiction of the court were unconstitutional.<sup>47</sup>

The National Industrial Court has exclusive jurisdiction in civil causes and matters related or connected with any labour, employment, trade union, industrial relations and matters arising from work place, the condition of service including health, safety, welfare of labour, employee, workers and matter incidental thereto or connected therewith. However, there is an improvement in the jurisdiction of the National Industrial Court due to the amendment of the Constitution. Section 254C (1),(2) of the 1999 Constitution (third alteration) Act 2010 makes provision for the jurisdiction of the National Industrial Court.

Also Section 7(1) of the National Industrial Court Act, 2006 provides that:

- 7(1) the Court shall have and exercise exclusive jurisdiction in civil causes and matters-
- a. relating to –
    - i. labour, including trade union and industrial relations: and
    - ii. environment and conditions of work, health, safety and welfare of labour and matters incidental thereof and
  - b. relating to the grant of any order to restrain any person or body from taking part in any strike lock- out or any industrial action, or any conduct in contemplation or in furtherance of strike lock-out or any industrial action:
  - c. relating to the determination of any question as to the interpretation of-
    - i. any collective agreement
    - ii. any award made by an arbitral tribunal in respect of labour dispute or an organisational dispute

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<sup>45</sup> (2004) All FWLR 562

<sup>46</sup>Reform submissions on the National Industrial Court of Nigeria of the Nigerian Judiciary by Hon. Justice Slade

<sup>47</sup> Ibid

- iii. the term of settlement of any labour dispute, organisational dispute as may be recorded in any memorandum of settlement,
- iv. any trade union constitution, and
- v. any award or judgment of the Court

By virtue of the provisions above, the National Industrial Court is conferred with exclusive and original jurisdiction as far as labour and industrial dispute is concerned. However, the first basic issue is noted in the first paragraph of section 254C (1) which state that National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters. Based on this paragraph, one may think National Industrial Court has jurisdiction to adjudicate only civil causes and matter connected to or related to labour and industrial disputes but it is important to note that it also has jurisdiction on criminal causes and matters arising from workplace or related matters.<sup>48</sup> It is important to note that the exclusive jurisdiction conferred on the National Industrial Court by virtue of the provision of the 1999 Constitution (third alteration) Act, 2010 was affirmed in the case of *N.U.T., Niger State v. COSST, Niger State*<sup>49</sup> where the court held that:

Section 254C of the 1999 Constitution as amended by the Third Alteration Act, 2010 expanded the jurisdiction of the National Industrial Court by vesting it with exclusive jurisdiction over all labour and employment matters. In the instant case, by virtue of the new provision, the trial court's jurisdiction completely migrated to the National Industrial Court, which forthwith has exclusive jurisdiction in all matters has enumerated ...

It is on this note that the emerging judicial trend of recognising and affirming the exclusivity of the jurisdiction constitutionally conferred on the National industrial Court has become of remarkable significance.<sup>50</sup> However, one of the conflicting issues despite the enactment of the 1999 Constitution confirming the exclusive jurisdiction of National industrial Court is section 254C (1) (d) of the Constitution (as amended) provides that the National Industrial Court shall have exclusive jurisdiction in matters relating to or connected with any dispute over interpretation and application of the provision of Chapter IV of the Constitution as it relate to any employment, labour, industrial relations, trade unionism, employer's association, or any other matter which the court has jurisdiction to hear and determine. On the other hand, Chapter IV of the Constitution which is entitled 'Fundamental Right' contains provisions on fundamental rights guaranteed in the Constitution. Chapter IV of the Constitution guarantees right to life(section 33), dignity of human person (section 34), personal liberty (section 35), fair hearing (section 36), private and family life (section 37), freedom of thought, conscience and religion (section 38), freedom of expression and the press (section 39), peaceful assembly and association (section 40), freedom of movement (section 41), freedom from discrimination (section 42), and to acquire and own immovable property anywhere in Nigeria (section 43). Chapter IV of the Constitution also makes provision relating to compulsory acquisition of property and restriction on derogation from fundamental rights (section 44). Of particular note is section 46 of the Constitution, the last section of Chapter IV, which provides, inter alia, that any person who alleges that any of the provisions of the chapter has been, is being or likely to be contravened in relation to the person may apply to a High Court in that State for redress.<sup>51</sup>

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<sup>48</sup> Fagbemi (n 21) 56

<sup>49</sup> (2012) 10 NWLR (Pt 1307) 89 at 111, para. E-F, 112-113 para. B-E

<sup>50</sup> B.A Adejumo *The Relevance of the National industrial Court of Nigeria in the Scheme of things in Contemporary Nigeria: what is the Future for Litigation and Advocacy in the Court?* (2014) <http://www.nicn.gov.ng.pdf> accessed 10 June 2016

<sup>51</sup> Edigue (n 2) 15-16



Apart from the provisions of section 254C (1),<sup>52</sup> which confers exclusive jurisdiction on the National Industrial Court in civil causes and matters, there are few other innovations introduced in section 254C of the Constitution (third alteration) Act, 2010, which has far reaching effect on the jurisdiction of National Industrial Court. Such provisions include section 254C (2) which provide thus:

Notwithstanding anything to the contrary in this constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

With the provision, it is observed that National Industrial Court now has jurisdiction relating to application of nay international convention relating to labour, employment, workplace and industrial relations which has being ratified by Nigeria. This provision further gives momentum to the National Industrial Court to promote and protect international labour standards and best practices in labour and industrial relations.<sup>53</sup> The constitution and convention of the International Labour Organisation is binding on Nigeria because Nigeria has ratified it.<sup>54</sup>

It is however clear that what is intended by Chapter IV of the Constitution, especially section 46 thereof, is to confer a special jurisdiction on the High Courts in respect of fundamental rights matters. Although, the amendment of the 1999 constitution did not alter this aspect of the Constitution, a general reading of Section 46 and Section 254C(1)(d) of the Constitution suggests that where there is any dispute as to the interpretation or application of Chapter IV or where any allegation of contravention has to do with employment, labour, industrial relation, trade unionism, employer's association or any other matter which the National Industrial Court has jurisdiction to hear and determine, the National Industrial Court will have exclusive jurisdiction to hear and determine such dispute.<sup>55</sup>

#### **4. Appeals from the National Industrial Court**

The National Industrial Court is a Court of first and last instance with respect to matters under its jurisdiction except fundamental right matters. The right of appeal against the decision of a court or tribunal is a constitutional right in Nigeria as well as an internationally recognised right in judicial proceedings. There is no court of first instance whose decision cannot be appealed against except the Supreme Court while exercising its original jurisdiction under Section 232 of the 1999 Constitution. Its decisions on appeals are final and cannot be appealed against.<sup>56</sup> For instance the decision of the court, except where contrary provisions are made, is not subject to review by a higher judicial authority.<sup>57</sup> This has however being unfair to litigant looking at the court as his last hope.

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<sup>52</sup> Constitution (Third Alteration) Act, 2010

<sup>53</sup> Ibid

<sup>54</sup> However, Nigeria has not ratified all the conventions of the International Labour Organisation. S. E. Mbah and C.C. Ikemefuna. 'Core Conventions of the international labour organisation: Implications for Nigerian Labour Law' (2011)(2)(2) *International Journal of Business Administration* 130 <http://www.sciedu.ca/ijba> accessed 28 October, 2016.

<sup>55</sup> Edigie (n 2) 15-16

<sup>56</sup> A.A Yusuf, D. Momodu. D, Ishola. A. B Non-Appealable Decision of the National Industrial Court of Nigeria: A Critical Analysis (2015)(5)(6) *American International Journal of Contemporary Research*. 160. <http://www.aijcnnet.com> accessed 10 June 2016

<sup>57</sup> Fagbemi (n 21) 57

Despite the fact that the National industrial Court possess appellate jurisdiction, its decision, save in respect of criminal causes and matters are not subject to appeal. For instance Section 254C (6)<sup>58</sup> provides that: Notwithstanding anything to the contrary in this constitution, appeal shall lie from the decision of the National industrial Court from matters in sub- section 5 of this section to the court of Appeal as of right. Sub- section 5 referred to in section 254C (6) provides as follows: ‘The National Industrial Court shall have and exercise jurisdiction and power in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by section or any Act of the National Assembly or by any other law.’

By virtue of the above provisions, litigants or workers have right of appeal from the decision of the National Industrial Court to the Court of Appeal only in criminal matters. However, the 1999 Constitution (third alteration) Act, 2010 is silent as to whether Court of Appeal is the last resort in criminal matters. Litigants also have right of appeal from the decision of the National Industrial Court to the Court of Appeal on fundamental right cases. Section 243(2)<sup>59</sup> provides that: (2) Appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental right as contained in Chapter IV of this constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

From the provision above, appeal shall lie as of right from the National Industrial Court on fundamental right matters as contained in Chapter IV of the 1999 Constitution. Litigants would have a right of appeal when there fundamental right has been breached by their employer or the National Industrial Court unfortunately, there are case laws on labour and employment actions where the Court of Appeal and the Supreme Court turned down attempts to raise issues of alleged breach of fundamental human rights especially as it relates to issue of fair hearing in employment and labour matters are strong enough to justify entertaining the appeal for breach of fundamental rights. The National Assembly may need to make further law, pursuant to its power under section 254D (2) of the 1999 Constitution (third alteration) Act, 2010, to expand the scope of the right of Appeal from the decisions of the National Industrial Court.<sup>60</sup>

Also Section 243(a) provides that: ‘Any right of appeal to the Court of Appeal from the decision of Federal High Court or High Court conferred by this constitution shall be-

- a. exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court of the State or the Court of Appeal at the instance of any other person having an interest in the matter, and the case of criminal proceedings at the instance of an accused person or subject to the provisions of this constitution and any powers...

From the provision above it clear that any person or body, who is an interested or a necessary party affected by a judgment of the National Industrial Court, but not joined as a party in the suit, cannot exercise a right of appeal against the judgment of the court, when he is dissatisfied with the decision or judgment of the National Industrial Court. This provision is however contrary to the provisions of section 243(a) of the 1999 Constitution which gives an interested party a right of appeal against the judgment of the High Court of a State, High Court of the Federal Capital Territory (FCT), Abuja or the Federal High Court even though the party was not a party to the suit against which he seeks to appeal provided his interested is affected by the judgment of the court. The constitution however did not

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<sup>58</sup> Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010

<sup>59</sup> Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010

<sup>60</sup> Yusuf et al (55) 161

include the National Industrial Court in the list of courts where interested parties can appeal against the decision or judgment of the court notwithstanding that such party was a party to the suit.

### 5. Conclusion and Recommendations

Disputes often exist in human relationships; employer-employee relationship is not an exception. As a result of this the National Industrial Court was established under the Trade Dispute Decree in 1976 to provide a unique forum for the resolution of dispute between employer-employee and other related matters. Under the 1976 Act, the National Industrial Court had exclusive jurisdiction over trade disputes, awards, determination of question as to the interpretation of any collective agreement, interpreting an award made by an arbitral tribunal or by itself under Part I of Act<sup>61</sup> and the terms of settlement of any trade dispute by a conciliator as provided in section 8.<sup>62</sup> The award of Court on any matter must be made within thirty days from the day of hearing.<sup>63</sup> The constitution in force when the Trade Disputes Act 1976 was established was the 1963 Constitution and there was no problem relating to the status of the court because the 1963 Constitution was amended to give constitutional backing to the court, but section 6 of the 1979 Constitution which conferred judicial powers of the federation on the court expressly stated that the only superior court of record in Nigeria were the ones listed in the section. National Industrial Court was not one of them.

This unfortunate omission created a loop hole which parties exploited to challenge the jurisdiction of the National Industrial Court and thereby hampered its effectiveness. This defect was cured by the enactment of the Trade Disputes (amendment) Decree, 1992 which expressly made National Industrial Court a superior court of record<sup>64</sup>. It extended the jurisdiction of the court by removing all inter and intra union disputes from the regular courts and brought them within the exclusive jurisdiction of the National Industrial Court.<sup>65</sup> However the development did not achieve its intended purpose because of the view by lawyers, scholars and jurists that only the constitution can reposition the National Industrial Court. The constitutionality of the National Industrial Court was raised in the case of *Kalango v. Dokubo*<sup>66</sup>, *A. G Oyo State v. Nigerian Labour Congress*<sup>67</sup> and *Bureau of Public Enterprise v. National Union of Electricity employees*.<sup>68</sup>

With the enactment of the National Industrial Court Act, 2006, section 53(1) of the National Industrial Court Act, 2006 repealed part II of the Trade Dispute Act 1976 and where there is any inconsistency in the provision of the Trade Dispute Act, and the National Industrial Court Act, 2006, it will be resolved in favour of the National Industrial Court Act, 2006.<sup>69</sup> Also only matters on fundamental rights are subject to appeal at the Court of Appeal while the National Industrial Court is the first and last resort in respect of other labour disputes and other related matters. However, the status of the National Industrial Court which has generated much debates and criticisms has been confirmed by the 1999 Constitution (third alteration) Act, 2010. The need for the promotion of effective institutional mechanisms for the settlement of labour and industrial dispute as tools for the maintenance of

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<sup>61</sup> Trade disputes Act, 1976

<sup>62</sup> Ibid

<sup>63</sup> Agomo ( n 28) 226-227

Trade Disputes Act, 1976, s19(2)

<sup>65</sup> Agomo (28) 226-227

<sup>66</sup> (2003) 15 WRN 32

<sup>67</sup> (2003)8 NWLR 1

<sup>68</sup> Ibid

<sup>69</sup> Agomo (n 28) 226-227

harmonious relations between employers and employees cannot be overemphasized.<sup>70</sup> The following recommendations may be valuable:

- Amendment of Section 243(a) and 243(b)(2) of the 1999 Constitution to confer right of appeal from the decision of the National Industrial Court to the Court of Appeal, this is important in the administration of justice and to create opportunity for the decision of the National Industrial Court to be checked and/or corrected where there is error. Where the decision of the National Industrial Court is subject to appeal, the Justices of the Court of Appeal would be able to examine and correct the error in the judgment delivered by only one judge which might not be error free. This is in conformity with the proverb that says *'two heads are better than one'*. Appeals from the judgment of the National Industrial Court to the Court of Appeal should not be limited to only fundamental right matters and interested parties should be allowed to appeal against the decision of the National Industrial Court. This will also prevent miscarriage of justice.
- The provision of section 254C (1) is inconsistent with the principles of federalism in operation in Nigeria. For instance, all matters relating to labour, employment, pension payment, trade dispute, trade union matters and industrial matters across the country both in public and private sector have been subsumed under the jurisdiction of the National Industrial Court, the implication of this is that no State High Court can adjudicate these matters even where the disputes involve state workers and their governments or cases between private sectors and their workers.<sup>71</sup> Therefore Federal Industrial Court and State Industrial Court should be established.

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<sup>70</sup> Fagbemi (no 6) 1335

<sup>71</sup> Fagbemi (n 21) 57