THE NATIONAL INDUSTRIAL COURT AND THE ADJUDICATION OF LABOUR DISPUTES IN NIGERIA: AN AGENDA FOR REFORM

OVC Okene**[*] **and GG Otuturu**[**]

Abstract

The National Industrial Court is a specialized court for the adjudication of labour and employment disputes in Nigeria. It can act as both a trial court and an appellate court in maters referred to it by the Minister of Labour. This paper examines the jurisdiction and powers of the National industrial Court of Nigeria in the resolution of labour disputes under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. It also examines some new concepts in labour dispute adjudication in Nigeria and the non-appealable jurisdiction of the National Industrial Court. It suggests, amongst other things, that a Labour Appeal Court should be established to hear appeals from the National Industrial Court in line with developments in the United Kingdom and South Africa.

Key words: appeals, court, jurisdiction, labour disputes, powers, trade disputes

[*] LLB, LLM, BL, PhD (Essex, UK), FCAI, JP, Professor of Law and Head, Department of Business Law, Faculty of Law, Rivers State University, Port Harcourt, Nigeria; Solicitor and Advocate of the Supreme Court of Nigeria. E-mail: ovcokene@yahoo.com; profovcokene@gmail.com

[**] LL.B, LL.M, B.L, ACIArb (Nigeria), Lecturer, Faculty of Law, Niger Delta University, Wilberforce Island, Nigeria; Solicitor and Advocate of the Supreme Court of Nigeria. E-mail: otuturulaw@yahoo.com; otuturulaw@gmail.cocm

Introduction

The adjudication of disputes is usually the responsibility of the judiciary. With regard to labour disputes, the need to create specialized courts for their adjudication cannot be overemphasized. Such disputes, if not speedily resolved, may cause widespread labour disruptions and economic strangulations.

According to the International Labour Organization Report (1938), the ordinary courts of law are generally slow and expensive, and they lack expertise in labour matters. This explains why the state maintains elaborate mechanisms for the prevention of labour disputes and specialized courts for their adjudication whenever they occur. In Nigeria, the National Industrial Court (NIC) has been established as a specialized court for the adjudication of labour disputes.

This paper examines the jurisdiction and powers of the National Industrial Court in the resolution of labour disputes in Nigeria under the *Constitution of the Federal republic of Nigeria (Third Alteration) Act 2010*. It also examines some new concepts in labour dispute adjudication in Nigeria and the non-appealable jurisdiction of the National Industrial Court. It suggests, amongst other things, that a Labour Appeal Court should be established to hear appeals from the National Industrial Court.

Historical Perspective

Historically, the National Industrial Court was established under Part II of the *Trade Disputes Decree 1976*[1] with respect to the settlement of trade disputes, the interpretation of collective agreements and matters connected therewith.[2] However, the court did not take off till two years later in 1978.[3]

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1 The *Trade Disputes Decree 1976* was later designated as the *Trade Disputes Act, Cap 432, Laws of the Federation of Nigeria 1990,* s. 19

2 See Justice BA Adejumo, "The National Industrial Court: Past, Present and Future" (Paper delivered at the Refresher Course Organized for Judicial

Prior to the establishment of the National Industrial Court, industrial relations law and practice in Nigeria was modelled on the non-interventionist and voluntary model of the British approach.[4] After the Civil War, this approach was abandoned by the military administration for an interventionist model.[5]

In 1992, the *Trade Disputes Act* was amended by the *Trade Disputes (Amendment) Decree 1992* which conferred exclusive jurisdiction on the court to make awards for the purpose of settling trade disputes and to determine questions as to the interpretation of collective agreements, any award made by an arbitration tribunal and the terms of settlement of any trade dispute as recorded in any memorandum.[6]

The *Trade Disputes Act* was further amended by the *National Industrial Court Act 2006* which repealed Part II of the *Trade Disputes Act*. However, the trade dispute resolution processes in Part 1 of the *Trade Disputes Act* are saved under the *National Industrial Court Act 2006*. In particular, the Act provides that "the other provisions of the *Trade Disputes Act* shall be construed with

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Officers of between 3-5 Years Post Appointment by the National Judicial Institute, Abuja, on 24th March 2011)

3 See Justice BA Adejumo, "The National Industrial Court: Past, Present and Future" (Paper delivered at the Refresher Course Organized for Judicial Officers of between 3-5 Years Post Appointment by the National Judicial Institute, Abuja, on 24th March 2011)

4 OVC Okene, "Nigeria's Labour and Industrial Relations Policy: From Voluntarism to Interventionism - Some Reflections" (2012) 4(1) *Port Harcourt Law Journal* 200-247

5 See Justice BB Kanyip, "The National Industrial Court: Yesterday, Today and Tomorrow" <http://nicn.gov.ng/juris.php> accessed 2 August 2016

6 The *Trade Disputes Act 1990* as amended by the *Trade Disputes (Amendment) Decree 1992* was re-designated as the *Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria 2004*.

6 See *Trade Disputes Act 2004*, s. 20

such modifications as may be necessary to bring it into conformity with the provisions of this Act."[7]

The Court is now established under section 254A (1) of the *Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010* with enhanced jurisdiction over disputes relating to labour, industrial relations and matters connected thereto. It differs from the regular courts in that it is not bound by strict rules of legality or formalism. The concern of the court must always be justice and fairness. It can act as both a trial court and an appellate court in maters referred to it by the Minister of Labour.

Typology of Labour Disputes

The term "labour dispute" is not defined in any legislation. However, the term is used to refer to disputes between the parties in a dependent labour relationship concerning terms of employment such as wages, hours, fringe benefits and conditions of work. Such a dispute may be between an employer and an individual employee (that is, an individual labour dispute) or between an employer and a group of workers or their union (that is, a collective labour dispute). Thus, labour disputes may be classified into two broad categories. These are individual labour disputes and collective labour disputes.

Individual labour disputes comprise disputes concerning an individual over his rights, that is, what he thinks he is entitled to as a workman in his workplace.[8] They include disputes arising from or connected with payment or nonpayment of salaries, wages, pensions, gratuities, allowances and other entitlement of individual employees. They also include disputes arising from dismissal,

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[7] *National Industrial Court Act 2006*, s. 53(1)

[8] Abel K. Ubeku, *Industrial Relations in Developing Countries: The Case of Nigeria* (London: MacMillan Press, 1963) 157; see also T. *Fashoyin, Industrial Relations in Nigeria: Developing and Practice* (Ikeja, Longman Nigeria Ltd, 1992) 191.

unfair labour practice, discrimination and sexual harassment at workplace.[9]

Collective labour disputes comprise disputes involving a group, that is, a union. They are concerned mainly with economic matters, except in cases where individual disputes develop into collective disputes. The economic matters that cause collective disputes include wages and salaries, housing allowances and other fringe benefits.[10]

Under the *National Industrial Court Act 2006*, collective labour disputes are known as trade disputes and organizational disputes. The Act defines "trade dispute" as any dispute between employers and employees, including disputes between their respective organizations and federations which is connected with-

(a) The employment or non-employment of any person;
(b) Terms of employment and physical conditions of work of any person;
(c) The conclusion or variation of a collective agreement; and
(d) An alleged dispute.[11]

An *organization* is defined as a trade union or an employer's association. Thus an organizational dispute may be inter-union or intra-union dispute. An *inter-union dispute* is defined as a dispute between trade unions or employers' associations.

An *intra-union dispute* is defined as a dispute with a trade union or an employer's association. It may be between one faction and another faction of a trade union. It normally arises from the organization and running of a trade union, for example, from

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9 See *Constitution of the Federal Republic of Nigeria* 1999 as *amended by the Constitution of the Federal Republic of Nigeria* (Third Alteration)Act 2010, s.254C (1)(f), (g) and (k).

10 See Ubeku (n8) 159

11 *National Industrial Court Act 2006*, s, 54(1)

leadership tussles which often lead to factions. It may also arise from the interpretation of the constitution or rules of a trade union.

Jurisdiction of the National Industrial Court

The jurisdiction of the National Industrial Court is governed by section 7 of the *National Industrial Court Act 2006* and section 254C(1) of the *Constitution of the Federal Republic of Nigeria 1999* as altered by the *Constitution (Third Alteration) Act 2010*.

Section 7 of the *National Industrial Court Act* which confers jurisdiction on the National Industrial Court did not use the phrase "trade dispute" but used the phrase "labour dispute" which includes both individual labour disputes and collective labour disputes or trade disputes. The section also did not use the terms *inter union dispute* and *intra union dispute* but used the term *organizational dispute* and this includes both *inter union disputes* and *intra union disputes*. Thus section 7 of the Act has enlarged the jurisdiction of the National Industrial Court beyond the traditional head of trade disputes to include individual labour disputes and indeed all employment matters.

Thus in *Moses & ors v. Bishop James Yisa Memorial School Ltd*[12] the National Industrial Court held that in view of the provisions of the law, the national Industrial Court can deal with individuals disputes apart from trade disputes a fortiori, individuals can now access the National Industrial Court on maters which fall within its jurisdiction. In that case, the claimants, who were former employees of the defendants, filed a suit against the defendants in the national Industrial Court Claiming inter alia payment of their gratuity, entitlements, balance of two months' salary which the defendants refused to pay having terminated their employment before the expiration of the here months notice served on them. The defendants filed a preliminary objection challenging the competence of the suit on the ground that the court has no

[12] (2013) 31 NLLR (Pt. 88) 59

jurisdiction over the proceedings, same not being a trade dispute. Dismissing the preliminary objection, the National Industrial Court held that the claim falls within the jurisdiction of the court and that claimants are therefore right in coming to the court for the determination of their matter. Shogbola J (who read the ruling) said:

> The question to be answered now is whether individuals can come to this court with their grievances. It is necessary to state that under the Trade Disputes Act, individuals cannot access this court for adjudication over their grievance, because they are not trade unions. But with the enactment of the NIC Act 2006, individuals now access the court on matters within the purview of section 7 of the Act. They need not belong to any union[13]

The Jurisdiction of the National Industrial Court has been further expanded by section 254C(1) of the *Constitution of the Federal Republic of Niger 1999,* as amended. It is clear from the constitutional provisions that the jurisdiction of the National Industrial Court is subject based,[14] which means that any legal entity that can sue and be sued can approach the court if the grievance in question falls within any of the subject matters over which the court has jurisdiction.

It must be noted that under section 7 of the *National Industrial Court Act 2006,* the word employment was not used. However, under section 254C (1) of the *Constitution of the Federal Republic of Nigeria 1999,* as altered, the word employment was brought in. The constitutional provisions reveal the intention of the legislature to bestow on the National Industrial Court jurisdiction over every

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[13] *Ibid* 81

[14] See *Odusote v. Lagos State Government* (2012) 28 NLLR (Pt. 80) 225, 269 [NIC]

employment/labour issue conceivable under the sun as well as matters incidental thereto.

In *Akinsanya v. Coca-Cola Nigeria Ltd & Ors*[15] the claimant was the Human Resources manager in the employ of the 1st defendant before she was summarily dismissed. She instituted this suit against the defendants in the National Industrial Court to challenge her summary dismissal and claiming inter alia payment of her unpaid expenses and terminal benefits and damages. The question that arose for determination was whether the jurisdiction of the National Industrial Court as contained in section 254C (1) of the *Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act 2010* extends to all cases of private individual contractual employment matters or is limited only to employment matters arising from or connected with trade disputes, collective agreements, labour and industrial relations. The Court held that it has the jurisdiction to hear and determine the claimant's case. Kanyip PJ (who delivered the ruling) said:

> The opening words of section 254C (1) of the 1999 Constitution, as amended, quoted above and the heads of jurisdiction that follow them leave no one, and nothing, in doubt that the National Assembly intended to transfer jurisdiction over all employment matters from the High Courts to the National Industrial Court of Nigeria.[16]

The jurisdiction of the National Industrial Court over trade disputes including *inter union* and *intra union* disputes is mainly appellate jurisdiction. This is clear from the provisions of section 7(3) and (4) of the *National Industrial Court Act 2006*. Section 7(3) provides that the National Assembly may by an Act prescribe that any matter under subsection (l)(a) of this section may go through the process of conciliation or arbitration before such matter is heard

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15 (2012) 28 NLLR (Pt. 79) 72

16 *Ibid* 188; see also *Olaleye v. Afribank Nig. Plc* (2012) 27 NLLR (Pt. 77) 277

by the Court. Section 7(4) provides for appeals to lie from the decisions of an arbitral tribunal to the court as of right in matters of disputes specified in subsection (1)(a) of this section. It is submitted that Section 7(3) and (4) presupposes the trade *Disputes Act 2004* as amended.

In *NUHPSW v. NUFBTE*[17] where the applicant union invoked the original jurisdiction of the NIC by way of originating motion seeking inter alia an interpretation of the jurisdictional scope of the NUHPSW and the NUFBTE as contained in the Third Schedule, Part B of Decree No. 4 of 1996 as to which of them should unionize and collect check off dues of the workers of Mr. Biggs Restaurants owned by UAC Plc. The NIC held that its jurisdiction over inter and intra union disputes is appellate and not original. The Court reasoned that since section 1A of the TDA, as inserted by Decree No. 47 of 1992, bars the commencement of an action relating to a trade dispute, inter or intra union dispute in any court of law, and the NIC is also a court of law, the intention of the framers of Decree No.47 of 1992 must be that inter and intra union dispute should go through the processes of Part I of the TDA given that the processes are not judicial in the strict sense. According to the Court, to hold otherwise will mean that the intention of the legislature is to make the NIC a one-stop court with litigants not having the benefit of appellate hearing except on questions of fundamental right, the only ground presently allowed for appeals to the Court of Appeal from the decisions of the NIC.[18]

In *National Union of Petroleum and Natural Gas Workers v. Maritime Workers' Union of Nigeria*[19] a company, Polmaz Nigeria Ltd, is a stevedoring contractor supplying labour to Chevron Nigeria Ltd and its employees serve as forklift drivers, riggers and crane operators. The staff of polmaz supplied to Chevron Nigeria

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17 (2004) 1 NLLR (Pt.2) 286
18 *Ibid* 302
19 (2012) 28 NLLR (Pt. 80) 309

Ltd applied to the appellant for membership of the union is exercise of their right to freedom of association. The respondent resisted the action of the appellant to organize the staff of Polmaz Nigeria Ltd, insisting that the staff of polmaz Nigeria Ltd belonged to the respondent union. The Minister of Labour referred the matter to the Industrial Arbitration Panel, which held that the Maritime Workers Union of Nigeria is the appropriate union to which the Polmaz Nigeria Ltd employees should belong. Dissatisfied with the award, the appellant entered an objection and the dispute was referred to the National Industrial Court by the Minister of Labour for adjudication. The appellant contended that the industrial Arbitration panel has no jurisdiction to enquire into the matter being a dispute dealing with the fundamental right to freedom of association as guaranteed in sections 40 and 46 of the *1999 Constitution*. It was held that the matter before the industrial Arbitration Panel was not a fundamental rights matter but a trade dispute on the jurisdictional scope of the parties. Delivering the judgment of the Court, Kanyip J said:

> An inter-union dispute such as this invokes the conciliation and arbitration jurisdiction provided for in the Trade Disputes Act. It is the Minister of Labour that sets the process of arbitration going by referring disputes to the IAP.[20]

However, the National Industrial Court has original interpretative jurisdiction. Under sections 15(1) and 16(1) of the *Trade Disputes Act*, the Minister or any party to an award or a collective agreement, as the case may be, may make an application to the National Industrial Court for a decision as to the interpretation of the award or any term or provision of the collective agreement.

Section 7(1)(c) of the *National Industrial Court Act 2006* has expanded the original interpretative jurisdiction of the Court. The Court now has original jurisdiction over the determination of any

[20] *Ibid* 344-345

question as to the interpretation of any collective agreement, any labour dispute as may be recorded in any memorandum of settlement, any trade union constitution and any award or judgment of the Court.

The national Industrial Court also has original jurisdiction over strikes relating to the grant of any order to restrain any person or body from taking part in any strike, lockout or any industrial action under section 7(1)(b) as well as the grant of the prerogative orders of mandamus, prohibition, certiorari and injunction under sections 17-19 of the *National Industrial Court Act 2006*.

In *Chukwunweike & Ors v. Olaitan & Ors*[21] the claimants, who are aggrieved members of the 3rd defendant, Association of Senior Civil Servants of Nigeria, commenced this action by an originating summons seeking declarations and injunctions against the continued occupation of office of the president and secretary general of the 3rd defendant. The claimants also alleged that the management and running of the 3rd defendant was contrary to the constitution of the 3rd defendant. In reaction to the originating process, the defendants filed a preliminary objection to the jurisdiction of the National Industrial Court contending that dispute between the parties is an intra union dispute which according to the *Trade Disputes Act* must pass through the processes in Part I of the Act before the National Industrial Court can hear the dispute under its appellate jurisdiction. Dismissing the preliminary objection, the National Industrial Court held that since the claims are for declaratory reliefs, they are such that the processes contained in Part I of the TDA cannot accommodate them. The Court said:

> It is pertinent to state that here that the decisions of this Court on disputes relating to occupation of office/elections in trade unions are organizational disputes the reliefs of which can only be granted by this Court in line with its prerogative writ powers as

[21] (2012) 26 NLLR (Pt. 75) 438

> enshrined in sections 17-19 of the National Industrial Court Act 2006.[22]

However, the National Industrial Court will not allow its interpretative jurisdiction or its jurisdiction over strikes to be used in whatever guise to thwart or circumvent the processes provided for in Part I of the *Trade Disputes Act*. Thus, a litigant cannot come to the court over an issue within its original jurisdiction, such as strike, and then go on to agree on other issues as terms of settlement outside the issue covered in the originating process.

In *Provost, College of Legal Studies, Yola v. Non-Academic Staff Union of Educational and Associated Institutions*[23] the Minister of Labour referred the dispute between the parties to the Industrial Arbitration Panel at which the respondent filed a memorandum contesting the termination of appointments of some of its members by the appellant and prayed that the be reinstated into their previous positions. In reaction, the appellant raised an objection questioning the jurisdiction of the Industrial Arbitration Panel to proceed with the matter before it based on the fact that a similar action involving the interest of the parties on the same subject matter was pending before the National Industrial Court; and thereafter did not partake of the proceedings. The Industrial Arbitration Panel however proceeded to consider the memorandum of the respondent and made an award against the appellant and granted the respondent's prayers. Dissatisfied with the award of the industrial Court, the appellant appealed to the National Industrial Court. The case of the appellant is that during the proceedings at the Industrial Arbitration Panel, a similar action involving the interest of the parties herein and bordering on the same or similar subject matter was pending at the National Industrial Court in Suit No. NIC/ABJ/12/2010 in which the Attorney General of Adamawa State and the Government of Adamawa State invoked the original

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[22] *Ibid* 495 [per Esowe PJ]

[23] (2012) 29 NLLR (Pt.82) 34

jurisdiction of the National Industrial Court seeking amongst other things an order compelling the trade unions operating in the State to call off the strike they embarked upon. This fact was exhibited before the Industrial Arbitration Panel. The parties agreed to terms of settlement, which were filed in court, which subsequently ended the strike action. Amongst the issues in the terms of settlement was t he issue of the compliant by the respondent before the Industrial Arbitration Panel.

One of the issues for determination was whether the issues and parties in Suit No. NIC/AB/12/2010 are the same or similar with the trade dispute referred to the Industrial Arbitration Panel by the Minister of Labour in so much so that when Industrial Arbitration Panel heard and made the award it had no jurisdiction over the matter. It was held that the terms of settlement were issues of trade dispute appropriate only to the processes of Part I of the *Trade Disputes Act*. Accordingly, the National Industrial Court affirmed the award of the Industrial Arbitration Panel and dismissed the appeal. The NIC, per Kanyip J., said: [24]

> The point is that while this Court would have interpretation jurisdiction over the memorandum of settlement, it may not have jurisdiction to enter same as judgement of the Court where the issues covered in the settlement are issues that ought to go through the processes of Part I of the Trade Dispute Act.

The rule is that where the original jurisdiction of the National Industrial Court is activated in terms of the interpretative jurisdiction of the Court or its jurisdiction on issues of strike, a counterclaim cannot be raised where issues that it relates to qualify as trade dispute. Here, the best course of action for the counterclaimant is to declare a trade dispute and exhaust the dispute resolution processes of Part I of the *Trades Disputes Act*

[24] *Ibid* 81

before approaching the Court in its appellate jurisdiction. This means that the processes of mediation, conciliation and arbitration ought to have been exhausted before approaching the National Industrial Court in its appellate jurisdiction.[25]

The *Constitution (Third Alteration) Act 2010* has also given jurisdiction to the National Industrial Court over criminal matters. Section 254C(5) provides that "the National Industrial Court shall have and exercise jurisdiction and powers in criminal matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any Act of the National Assembly or by any other law." For the purposes of exercising its criminal jurisdiction, the provisions of the criminal Cod, Penal Code, Criminal Procedure Act, Criminal Procedure Code or Evidence Act will apply.[26]

Section 254D (1) of the 1999 Constitution, as amended, provides that for the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court. It is clear that section 254C (1)(c) and 254D (1) of the 1999 Constitution, as altered, have overruled the plethora of decisions of the appellate courts on the powers of the National Industrial Court based on the interpretation of sections 1A and 19 of the *Trade Disputes Act* as amended by the *Trade Disputes (Amendment) Degree No. 47 of 1992*.[27]

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[25] *See Nestoil Plc v. National Union of Petroleum and Natural Gas Workers* (2012)29 NLLR (Pt. 82)90, 159; *Eleme Petrochemicals v. Emmanue*l (2009)17 NLLR (Pt. 46) 81; 106

[26] See *Constitution (Third Alteration) Act 2010*, s. 254F(2); see also CK Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Lagos: Concept Publications Ltd 2011) 243

[27] See, for example, *A-G Oyo State v. Nigeria Labour Congress & Ors*(2003)8 NWLR (Pt. 821) 1; *Kalango v. Dokubo*(2004) 1 NLLR (Pt. 1) 180; *Western Steel Works v. Iron & Steel Workers Union of Nigeria* (1987) SC 11, 44 [per Oputa JSC]

In *National Union of Road Transport Workers v. Road Transport Employers Association of Nigeria*[28] the plaintiffs/appellants instituted an action in the Federal High Court claiming inter alia declarations and injunctions restraining the defendants/respondents and/or groups of persons not authorized by law to engage in transportation of passengers and goods by road from operating, interfering and/or disturbing the plaintiffs/appellants and/or their agents, servants or members of the various motor parks in Ekiti State where they are lawfully engaged. The Supreme Court, per Fabiyi JSC, said:

> It is well settled by this court in the case of Western Steel Works Ltd v. Iron Steel Workers Union of Nigeria (supra) that section 15 of the Trade Dispute Act, 1976 conferring jurisdiction on the National Industrial Court in respect of certain species of cases did not include jurisdiction to make declarations and top order injunctions as in this case.[29]

The above decisions no longer represent the law as the National Industrial Court now has all the powers of a High Court and can grant injunctions and make declaratory orders in any causes or matters in respect of which jurisdiction is conferred upon it. The Court also has power to enforce its judgement and may commit for contempt any person or a representative of a trade union or employers' organization who commits any act or an omission which in the opinion of the Court constitutes contempt of the Court.[30]

New Concepts in Labour Dispute Adjudication

It is to be emphasized that the provisions of section 254C(1) (f) and (g) of the *Constitution of the Federal Republic of Nigeria 1999* as

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[28] (2012) 29 NLLR (Pt. 83) 161

[29] *Ibid* 199

[30] See *National Industrial Court Act*, s. 10.

altered have introduced a number of new concepts in labour dispute adjudication in Nigeria. Such concepts include discrimination in employment, unfair labour practice and sexual harassment at workplace.

Freedom from discrimination is one of the freedoms guaranteed under Chapter IV of the 1999 Constitution.[31] However, section 254C (1)(g) of the 1999 Constitution, as altered, does not itemize the heads of the discriminatory treatments that are forbidden at the workplace which makes it wider in scope that Section 42 of the Constitution.[32] The new provision is consistent with international labour standards. It is aimed at promoting equality in employment and occupation, which has been the subject of numerous treaties, Conventions and recommendations.[33]

The basic principles of equality in the workplace are contained in the International Labour Organization *Discrimination (Employment and Occupation) Convention 1958*.[34] It is to be noted that discrimination in employment is one of the core labour standards. The ILO Governing Body has identified eight core conventions as covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour;

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31 See *Constitution of the Federal Republic of Nigeria 1999* (as altered), s.42

32 See *Mbilitem v. Unity Capital Assurance Plc* (2012)26 NLLR (Pt. 73)49 at 61 A-B (Ratio 7) per Adejumo P

33 See, for example, the *International Convention on the Elimination of All Forms of Racial Discrimination* (United Nation, 1965); *The Convention on Elimination of All Forms of Racial Discrimination against Women* (United Nations, 1979); and *the International Convention on the Protection of the Rights of Migrant Workers and their Families* (United Nations, 1990)

34 See ILO Convention No.111 (supplemented by Recommendation No.111) of 1958

and the elimination of discrimination in respect of employment and occupation.[35]

These principles are also covered in the ILO *Declaration on Fundamental Principles and Rights at Work 1998*. In paragraph 2 of the Declaration, the International Labour Conference declares that "all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions."[36]

This Declaration must have influenced the provisions in section 7(8) of the *National Industrial Court Act 2006* and section 254C (1)(f) and (h) of the *Constitution (Third Alteration) Act 2010*, which vest jurisdiction in the National Industrial Court to apply and interpret international labour standards and international best practices in labour. However, it is doubtful if the National Industrial Court can apply any ILO Convention which has not been ratified and enacted into law by the National Assembly in view of section 12(1) of the *Constitution of the Federal Republic of Nigeria 1999* (as altered). In *MHWUN v Minister of Labour & Ors*[37] the Court of Appeal, relying on section 12(1) of the *1999 Constitution* and the decision of the Supreme Court of Nigeria in *Fawehinmi v Abacha*,[38] held that in so far as the ILO Convention has not been

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[35] ILO, *Core Labour Standards Handbook* (Manila: Asian Development Bank, 2006) 21-54

[36] ILO *Declaration on Fundamental Principles and Rights at Work* (Geneva: International Labour Office, 1998) paragraph 2(a). Available at http://www.ilo.org/dyn/declaris/DeclarationWeb.indexPage (accessed 15th October 2014).

[37] (2005) 17 NWLR (Pt. 953) 120

[38] (2000) 6 NWLR (Pt. 660) 228

enacted into law by the National Assembly, it has no force of law and it cannot possibly apply.[39]

The eight conventions covered in these fundamental principles and rights at work are:

(1) Freedom of Association and the Right to Organize Convention, 1948 (No. 87);
(2) Right to Organize and Collective Bargaining Convention, 1949 (No. 98);
(3) Forced Labour Convention, 1930 (No. 29);
(4) Abolition of Forced Labour Convention, 1957 (No. 105);
(5) Minimum Age Convention, 1973 (No. 138);
(6) Worst Forms of Child Labour Convention, 1999 (No. 182);
(7) Equal Remuneration Convention, 1951 (No. 100);
(8) Discrimination (Employment and Occupation) Convention, 1958 (no. 111).[40]

Under the ILO Convention, discrimination includes "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity of treatment in employment or occupation."[41] Nigeria has ratified all core ILO Conventions.[42] These basic principles are

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[39] See generally GG Otuturu, "The Legal Status of ILO Conventions in Nigeria: A Note on MHWUN v Minister of Labour & Ors" (2008) 2(3) *Labour Law Review* 20-30

[40] ILO, *Rules of the Game: A Brief Introduction to International Labour Standards* (Geneva: International Labour Office, 2009) 14-95.

[41] See ILO Convention No.111 of 1958, Article 1; see also Valticos, N. *International Labour Law* (Springer Science and Business Media, B.V., 1979) paragraph 242, at p. 106

[42] See Hyginus Chika Onuegbu, "ILO Conventions and the Nigeria Labour Laws" (Paper delivered at the Chevron Branch of PENGASSAN Workshop on Industrial Relations and Career Management, Lagos, 13th November 2014); ITUC, Internationally Recognized Core Labour Standards in Nigeria: Report for the WTO General Council Review of the Trade Policies in Nigeria (Geneva, 28 and 30 June, 2011) <www.ituc-si.org/IMG/pdf/final-

also contained in the *African Charter on Human and Peoples' Rights* which is directly enforceable in Nigeria by virtue of the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act*.[43]

In *Severinsen v. Emerging Markets Telecommunication Service Ltd*[44] the claimant was an expatriate staff of the defendant company. He was employed on 13th March 2009 on a fixed term basis for 2years but his employment was terminated on 19th March 2010. He took out a complaint against the defendant claiming the sum of $99,000 US Dollars being the accrued performance bonus earned prior to the determination of his employment. The defendant filed a statement of defence contending that the claimant was not entitled to any bonus since his contract of employment with the defendant had been brought to an end on 19th March 2010 and, therefore, was no longer subsisting at the time the bonuses for the year 2009 were paid which was a requirement for eligibility for payment. It was found from the evidence of the defendant's witness that the performance bonuses paid to the staff was not because the department the performance indices of the defendant. The National Industrial Court held that the claimant was entitled to the payment of annual performance bonus for the year 2009 on the grounds of the need for an employer to treat employees equally in a workplace. Kanyip PJ (delivering the judgement) said:

> … since according to the defendant's witness the performance bonus is discretionary on the part of the employer, it follows that on grounds of the need for an employer to treat employees equally in

Nigeria_TPR_CLS_2_pdf> accessed 2 August 2016; Genty Kabiru Ishola, "ILO and the International Labour Standards Setting: A Case of Nigeria Labour Acts" (2013) 1(1) *Journal Human Resource Management* 15-20; Peter Obi Okonkwo, "The Concept of International Core Labour Standards" (2010) 4 (1) Labour Law Review 69-85

43 Cap A9, *Law of the Federation of Nigeria, 2004*, Articles 2,5,15 and 19

44 (2012)27 NLLR (Pt. 78) 373

> a workplace, the claimant deserves to be paid bonus for the year 2009.[45]

In *Maiya v. Incorporated Trustees of Clinton Health Access Initiative Nigeria & Ors*[46] the applicant was an employee of the 1st respondent. When she became pregnant, she informed the respondents through her immediate supervisor. The respondent terminated her employment on the same day they were informed of the pregnancy without any prior complaint whatsoever against her. The applicant commenced an action by way of originating summons in the National Industrial Court and sought for declaration that the termination of her employment by the respondents simply because she was pregnant and the subsequent conduct of the respondents constituted a violation of her fundamental rights to human dignity and freedom from discrimination as guaranteed by the *Constitution of the Federal Republic of Nigeria 1999* and the *African Charter on Human and Peoples' Rights*. The applicant also sought general damages, aggravated and exemplary damages jointly and severally against the respondents. Entering judgement for the applicant, the National Industrial Court said:

> The applicant is a woman and her pregnancy has been found to be the reason for her sack by the respondents. Therefore, she has been discriminated against by reason of her being a woman and therefore subjected to disability.[47]

The concept of unfair labour practice has been defined as any practice that does not conform with best practices in labour circles as may be enjoined by local and international experience.[48] It

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45 *Ibid*, at 463-464 H-A (Ratio 28)

46 (2012) 27 NLLR (Pt. 76)110

47 *Ibid*, at 168; see also *Muojekwu v. Ejikeme* (2000) NWLR (Pt. 637) 402 and *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283.

48 See *Mix and Bake Industrial Ltd v. National Union of Food, Beverage and Tobacco Employees* (2004) 1 (Pt. 2) 247 at 282 G per Adejumo P

includes all labour practices that are exploitative, inequitable and unlawful.[49] According to the International Labour Organization, "an unfair labour practice is usually due to the employer's dislike of trade unions or his opposition to the presence of a trade union in his plant."[50] Across the globe, the notion of unfair labor practice has been developed with differing results. Often, however, with legislative backing as is the experience in South Africa, the concept has given rise to an equity-based labour jurisprudence.[51]

It must be emphasized that the jurisdiction of the National Industrial Court is invoked not merely for the enforcement of mere contractual rights but for preventing labour practices regarded as unfair and for restoring industrial peace on the basis of collective bargaining.[52] In *Olaleye v. Afribank Plc & Ors (supra)* the claimant took up a complaint against the defendant praying, inter alia, for a declaration that the defendant's refusal or failure to confirm his employment despite fulfilling the bank's assessment criteria as contained in the Letter of Appointment is exploitative, inequitable and unlawful. The defendants filed a notice of preliminary objection challenging the jurisdiction of the National Industrial Court to hear and determine the matter on the ground that the confirmation or non-confirmation of any member of staff is purely a domestic dispute within the internal jurisdiction of the defendants and as such the claimant's claims are not justifiable. It was held that the Court has jurisdiction to hear and determine the claim of the claimant and, accordingly, the preliminary objection was dismissed. Kanyip J (reading the ruling) said:

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[49] See *Olaleye v. Afribank Plc & Ors* (2012) 27 NLLR (Pt. 77) 277 at 305 per Kanyip J.

[50] ILO *Conciliation in Industrial Dispute - A Practical Guide* (Geneva: ILO 1973) 103

[51] D. du Toit, et al *Labour Relations Law* (Durban: Lexis Nexis Butterworths, 2003) 459-474.

[52] See *Severinsen v. Emerging Markets Telecommunication Service Ltd* (*supra*) at 454 F-H (Ratio 18)

> Section 254C (1) of the 1999 Constitution gives this court jurisdiction over matters relating to or connected with unfair labour practice. The complaint of the claimant is that the refusal or failure of the defendants to confirm him is exploitative, inequitable and unlawful. Since this court has jurisdiction over unfair labour practice, then it has jurisdiction to hear out the compliant of the claimant as to whether the refusal or failure of the defendants to confirm him is exploitative, inequitable and unlawful.[53]

The concept of sexual harassment is a common menace at the workplace. In *Ezaga v. Embechem Ltd*[54] the plaintiff, who was the Personnel Manager of the defendant company, terminated the appointment of a lady in his department. She wrote to the management protesting against her termination and alleging sexual harassment against the Personnel Manager. She copied her union, the National Union of Chemical and Non-Metallic Workers, which took up the matter and called out its members on strike in protest. The company responded by setting up a panel which investigated the allegation of sexual harassment made against the plaintiff at which four ladies, three of whom were married, testified against him. In the meantime, the lady was reinstated and transferred to another department. Based on the report of the panel, the plaintiff was terminated and his action for wrongful termination was dismissed.

Powers of the National Industrial Court

Section 254D (1) of the 1999 Constitution, as amended, provides that for the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the

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53 *Supra*, at 305

54 (1979) 7-9 CCHCJ 56

powers of a High Court. It is clear that section 254C (1)(c) and 254D (1) of the 1999 Constitution, as altered, have overrule the plethora of decisions of the appellate courts on the powers of the National Industrial Court based on the interpretation of sections 1A and 19 of the *Trade Disputes Act* as amended by the *Trade Disputes (Amendment) Degree No. 47 of 1992*.

In *A-G of Oyo State v. Nigeria Labour Congress & Ors*[55] where the plaintiff/appellant sought inter alia a declaration that no trade dispute known to law has been declared by the defendants and on order of mandatory injunction directed at the defendants jointly and severally to return to work immediately. The Oyo State High Court, Ibadan, struck out the case on the ground that it lacked jurisdiction to entertain same being a trade dispute. The Court of Appeal allowed the appeal and remitted the case back to the lower court for hearing on the ground that the jurisdiction of the National Industrial Court does not include making declarations and injunctive orders over which only the State High Court has jurisdiction.

Also in *Kalango v. Dokubo*[56] the plaintiffs/respondents sought a number of reliefs from the Rivers State High Court Including a declaration that the refusal by the defendants to conduct elections for new executive officers of the National Union of Road Transport Workers (NURTW) is wrongful and ultra vires the constitution of the union, and an order of perpetual injunction restraining the defendants from controlling, managing, directing or howsoever interfering with the affairs of the union or parading themselves as the executive offices of the union. The defendants filed a motion praying for an order striking out the suit for want of jurisdiction by virtue of the *Trade Disputes (Amendment) Decree No. 47 of 1992*. The trial judge dismissed the application, holding that his court has jurisdiction to entertain the action. The defendants, being

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[55] (2003)8 NWLR (Pt. 821) 1; see also *Western Steel Works v. Iron & Steel Workers Union of Nigeria* (1987) SC 11 at 44 per Oputa JSC

[56] (2004) 1 NLLR (Pt. 1) 180

dissatisfied with the ruling, appealed to the Court of Appeal. Learned counsel for the respondents drew attention of the Court to the view of Oputa JSC in *Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria (supra)* that the jurisdiction of the National Industrial Court did not include jurisdiction to make declarations and to order injunctions. Dismissing the appeal, Ikongbeh, JCA said:

> I am of the view that, even the promulgation of the section 1A of the Act, the (National Industrial Court) still lacks the competence to make declarations and order injunction of the type sought by the plaintiffs/respondents in the instant case. It can only make awards and determine questions as to the interpretation of the three types of documents specified. All other things that are neither ancillary nor incidental to the specified jurisdiction and powers would be clearly outside its jurisdiction and powers. In the circumstance, I think the view of Oputa JSC in Western Steel Works case, referred to earlier, is still valid today as it was when the learned justices of the Supreme Court expressed it in February 1987 and still represents the law.[57]

Finally, in *National Union of Road Transport Workers v. Road Transport Employers Association of Nigeria*[58] the plaintiffs/appellants instituted an action in the Federal High Court claiming inter alia declarations and injunctions restraining the defendants/respondents and/or groups of persons not authorized by law to engage in transportation of passengers and goods by road from operating, interfering and/or disturbing the plaintiffs/appellants and/or their agents, servants or members of the various motor parks in Ekiti State where they are lawfully engaged. The Supreme Court, per Fabiyi JSC, said:

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[57] *Ibid*, at 211 per Ikongbeh, JCA

[58] (2012) 29 NLLR (Pt. 83) 161

> It is well settled by this court in the case of Western Steel Works Ltd v. Iron Steel Workers Union of Nigeria (supra) that section 15 of the Trade Dispute Act, 1976 conferring jurisdiction on the National Industrial Court in respect of certain species of cases did not include jurisdiction to make declarations and top order injunctions as in this case.[59]

The above decisions no longer represent the law as the National Industrial Court now has all the powers of a High Court and can grant injunctions and make declaratory orders in any causes or matters in respect of which jurisdiction is conferred upon it.

It should be noted that the spate of injunctive orders by the various High Courts became a source of worry to the Government. To avoid injunctive orders which could unleash a mishap, the Government wanted the cases filed by the trade unions to go before a serene atmosphere at the National Industrial Court where injunctive orders would not freely fly in the sky like kites. Thus the mischief aimed at by the *Trade Disputes (Amendment) Act 1992* was to avoid the proliferation of trade union cases in several High Court and to ensure that litigation in the National Industrial Court only.[60]

The National Industrial Court has power to enforce its judgement and may commit for contempt any person or a representative of a trade union or employers' organization who commits any act or an omission which in the opinion of the Court constitutes contempt f the Court.[61]

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[59] *Ibid*, at 199

[60] See *Madu v. National Union of Pensioners* (2001) 16 NWLR (Pt.739) 346 at 361-362 per Fabiyi, JSC; *Udoh v. Orthopaedic Hospital Management Board* (1993) 7 NWLR (Pt. 304) 139 at 149 per Karibi-Whyte, JSC; *Ekong v. Oside* (2005) 9 NWLR (Pt. 929)102 at 114 per Muhammad JCA.

[61] See *National Industrial Court Act*, s. 10.

Appeals from the National Industrial Court

The National Industrial Court is the final court of appeal in all labour disputes including inter and intra union disputes, and no appeal lies from the decisions of the Court to the Court of Appeal or any other Court except as may be prescribed by the *National Industrial Court Act* or any other Act of the National Assembly.[62] For now, an appeal from the decision of the Court shall lie only as of right to the Court of Appeal only on questions of fundamental right as contained in Chapter IV of the *1999 Constitution*, as altered.[63]

These provisions are re-emphasized in section 243(2) of the *Constitution (Third Alteration) Act 2010*, which provides that "An appeal shall lie form the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of the Constitution as it relates to matters upon which the National Industrial Court has jurisdiction."

Thus, in *Bank of Industry Ltd v. National Union of Banks, Insurance and financial Institutions Employees*[64] the claimant filed an appeal against the decision of the National Industrial Court. In reaction to the appeal, the defendant filed a preliminary objection, whereupon the claimant filed a notice of withdrawal of appeal consequent upon which the appeal was dismissed with cost. Thereafter, the claimant came back to the National Industrial Court praying the court to review its judgement on the ground that his client was not given a fair hearing in the main suit. Dismissing the suit, the Court said:

> When counsel to the claimant appealed against the decision of this court to the Court of Appeal, he had to withdraw that action because the issue of fundamental rights (particularly fair hearing)

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62 *Ibid*, s. 9(1)
63 *Ibid*, s. 9(2)
64 (2012) 26 NLLR (Pt. 73) 78

> was not an issue, for only on this ground would the Court of Appeal have the jurisdiction to hear an appeal.[65]

Section 243(2) of the *Constitution (Third Alteration) Act 2010*, further provides that the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.

It is trite that the express mention of "civil jurisdiction" excludes criminal jurisdiction. Thus, section 254C (6) provides that "Notwithstanding anything to the contrary in this Constitution, appeal shall lie from the decision of the National Industrial Court from matters in subsection 5 of this section to the Court of appeal as of right." The implication is that, unlike civil appeals, criminal appeals emanating from the decisions of the National Industrial Court can continue to the Supreme Court. This is because an appeal to the Court of Appeal in criminal matters has not been made final.[66]

The Position in the United Kingdom and South Africa

In the United Kingdom, the Employment Tribunal has exclusive jurisdiction over unfair dismissal claims, discrimination claims, equal pay claims, statutory redundancy claims and contractual claims.[67] There are time limits for bringing claims before the Employment Tribunal.[68] Under the *Employment Act 2002*, employees are prohibited from bringing most of types of employment claim unless they have first tried to use the employer's internal grievance procedure.

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65 *Ibid* 92

66 Abdulfatai Aperua-Yusuf *et al*, "Non-Appealable Decisions of the National Industrial Court of Nigeria: A Critical Analysis" (2015) 5(6) *American Journal of Contemporary Research* 156-164 at 161

67 See Daniel Barnett and Henry Scrope, *Employment Law Handbook* (2ed, London: The Law Society 2004) 327-332

68 See *Employment Act 2002 (Dispute Resolution) Regulations*

Appeals lie from the decisions of the Employment Tribunal to the Employment Appeal Tribunal[69] only on points of law. Thus, an appeal from a decision of the Employment Tribunal can only succeed if the employment tribunal has misdirected itself in law, or entertained the wrong issue, or proceeded on a misappropriation of the evidence, or taken matters into account which were irrelevant to the decision, or reached a decision which no reasonable tribunal, properly directing itself in law, could have arrived at.[70]

In *Neale v Hereford and Worcester County Council*[71] Lord Justice May stated that the Employment Appeal Tribunal should not interfere with the decision of the employment tribunals except when they erred on a point of law. Thus, the task of the Employment Appeal Tribunal is to hear appeals only on points of law.[72] Appeals lie from the decisions of the Employment Appeal Tribunal to the Court of Appeal.[73] In Scotland, appeals lie from the decisions of the Employment Appeal Tribunal to the Court of Session. From the Court of Appeal or the Court of Session, appeals lie to the House of Lords in the usual way.[74]

In South Africa, the Labour Court has exclusive jurisdiction in respect of all matters which the to be determined by it[75] especially over cases arising from the *Labour Relations At 1995*, which deals with collective bargaining, trade unions, strikes and lockouts, unfair dismissal and unfair labour practices; the *Basic Conditions of Employment Act 1997*, which deals with working hours, leave and remuneration; the *Employment Equity Act 1998*, which deals

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69 The Employment Appeal Tribunal is the successor to the National Industrial Relations Court (NIRC).

70 NM Selwyn, *Employment Law* (12ed, London: Butterworths 2002) 467

71 (1986) IRLR 168 CA

72 See *Spook Erection Ltd v Thackeray* (1984) IRLR 116

73 Simeon Honeyball, *Honeyball and Bower's Textbook on Employment Law* (10ed, London: Oxford University Press 2008) 18

74 Simeon Honeyball, "Employment Law and the Appellate Committee of the House of Lords" (2005) 24 *Civil Justice Quarterly* 364

75 *Labour Relations Act 1995* (hereinafter simply referred to as LRA), s. 157(1)

with discrimination and affirmative action; and *Unemployment Insurance Act 2001*.[76]

The Labour Court also has concurrent jurisdiction with the High Court in respect of any alleged violation of any fundamental right entrenched in the Constitution by the state in its capacity as employer.[77] The Labour Court is a court of law with the same status as the High Court in relation to matters under its jurisdiction.[78]

Collective labour disputes are subjected to conciliation, mediation and arbitration by the Commission for Conciliation, Meditation and Arbitration (CCMA), accredited bargaining councils and accredited private agencies.[79] The Labour Court may refuse to adjudicate on any dispute if no attempt has been made to resolve it through conciliation except when the dispute is before the court on appeal or review.[80]

The Labour Court has limited appellate jurisdiction. It has jurisdiction to hear appeals from the decisions of the Registrar of Labour Relations.[81] It also has jurisdiction to hear appeals from the decisions of the Chief Inspector of Occupational Health and Safety.[82]

The Labour Court does not hear appeals from the arbitration awards of the Commission for Conciliation, Mediation and Arbitration (CCMA), accredited bargaining councils and accredited private agencies. However, a party who alleges defect in procedure

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[76] See *Womenburg v. Madamu Technologies (Pty) Ltd* (AR87/2012) (2012) ZAKZPHC 35 (13 June 2012).

[77] LRA, s. 157(2)

[78] *Ibid*, s. 151

[79] LRA, s. 127

[80] *Ibid*, s. 157(4)

[81] *Ibid*, s. 111

[82] *Occupational Health and Safety Act 1993*, s. 35(3)

may apply to the Labour Court for review.[83] The Act provides that a "defect" means that:

(a) The commissioner committed a misconduct with respect to the duties of a commissioner or arbitrator;
(b) The arbitrator committed gross irregularity in the conduct of the arbitration proceedings;
(c) The commissioner exceeded is power as arbitrator; or
(d) The award has been improperly obtained.[84]

If the parties to a trade dispute submit their dispute to the CCMA for arbitration within the framework of the *Labour Relations Act*, the provisions of the *Arbitration Act 1965* are excluded.[85] The provisions of the *Arbitration Act* only apply to written arbitration agreements.[86] In any arbitration conducted under the *Arbitration Act*, the award is final and is not subject to appeal.[87] A party may apply to the High Court for an arbitration award to be made an order of the High Court.[88] A party who is dissatisfied with an arbitration award may, however, apply to the High Court for review.[89]

Appeals from the Labour Court are heard by the Labour appeal Court. The judgements of the Labour Appeal Court are final on labour matters except constitutional issues are involved in which case the appeal will further be heard by the Supreme Court of Appeal and finally by the Constitutional Court, which is the final court of appeal on constitutional matters.[90]

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83 LRA, s. 145(1)
84 *Ibid*, s. 154(2)
85 See generally Van Jaarsveld and Van Eck, *Principles of Labour Law* (Durban: Butterworths 1998) 371
86 *Arbitration Act 1965*, s. 1
87 *Ibid*, s. 28
88 *Ibid*, s. 31(1)
89 *Ibid*, s. 33
90 Selwyn (n45) 162

Agenda for Reform

There is an urgent need for reform of the industrial judicial system in Nigeria in line with developments in other jurisdictions. The reform should start with a return to the non-interventionist and voluntary system of industrial relations law and practice. Nigeria inherited the present interventionist system of industrial relations from the military regime of General Murtala Mohammed and General Olusegun Obasanjo.[91] This is the time for Nigeria to sever ties with militarism.

The process of activating the appellate jurisdiction of the National Industrial Court in respect of trade disputes by reference from the Minister of Labour should be abolished. The awards of the Industrial Arbitration Panel should be communicated to the parties directly and any aggrieved party should be given a right of appeal to the National Industrial Court without any reference from the Minister of Labour. Only persons involved in essential services should be compelled to refer their disputes to the Minister of Labour for conciliation and arbitration.

The ground of appeal from the decisions of the National Industrial Court should be expanded to include any ground of law. This will enable the appellate court to correct errors of law made by the National Industrial Court. This is because the judges that sit in the National Industrial Court are human beings and, as such, they are prone to errors. To have such errors, especially an error in law, to be uncorrected is to lay the foundation of our industrial judicial system on wrong precedents.

There should be a special Labour Appeal Court to hear appeals from the decisions of the National Industrial Court only on grounds of law. The purpose of an appeal, as stated earlier, is to correct

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[91] The *Trade Disputes Act 1976* which introduced compulsory arbitration in Nigeria was first promulgated as the *Trade Disputes Decree 1976* by the military administration of General Murtala Mohammed and General Olusegun Obasanjo.

errors on the face of the record. The establishment of a Labour Appeal Court will give the litigants the benefit of a higher court looking at the decisions of the National Industrial Court with a view to correcting any manifest error. The decisions of the Labour Appeal Court should be final except on fundamental rights enshrined in Chapter IV of the *Constitution* (as altered) in which case appeals should lie up to the Supreme Court.

The establishment of the National Industrial Court ADR Centre is an unnecessary duplication of the alternative dispute resolution processes under Part I of the *Trade Disputes Act*. For the National Industrial Court ADR Centre to be effective, the entire *Trade Disputes Act* should be repealed and provisions should be made in the *National Industrial Court Act* to the allow parties to a trade dispute the option of referring their dispute to the National Industrial Court ADR Centre as "walk ins" or to any private ADR Centre for resolution. This will not stop the National Industrial Court from referring a trade dispute before it to its ADR Centre especially where there is no evidence that the parties have made any attempt to resolve their dispute through conciliation, mediation or arbitration. If the parties choose to settle their disputes by conciliation or mediation, an aggrieved party could appeal against the decision of the conciliator or mediator to the National Industrial Court. If the parties choose to settle their disputes by arbitration, the decision of the arbitrator should be final. However, an aggrieved party could apply to the National Industrial Court for review on ground of defect in the procedure or award.[92]

The criminal jurisdiction of the National Industrial Court should be clearly spelt out. In this regard, the National Industrial Court should be vested with criminal jurisdiction in respect of child labour, child

[92] This is a variation of the system in South Africa where arbitration awards are final but, in the case of an arbitration award by the CCMA, an aggrieved party can apply to the Labour Court for review on ground of defect in the procedure or award.

abuse, human trafficking and other offences arising from any law relating to labour and industrial relations.[93]

The requirements for the appointment of Judges of the National Industrial Court should be streamlined. Section 2(4)(b) and the proviso to section 1(2)(b) of the *National Industrial Court Act 2006* provide that one-third of the Judges of the National Industrial Court should be persons who are graduates of a recognized university of not less than 10 years and who are knowledgeable in the law and practice of industrial relations and employment conditions in Nigeria. These provisions invariably allow the appointment of persons who are not legal practitioners but who are knowledgeable in the law and practice of industrial relations and conditions of employment in Nigeria as Judges of the National Industrial Court. It is clear that section 2(4)(b) and the proviso to section 1(2)(b) of the *National Industrial Court Act 2006* are inconsistent with the provisions of section 254B (4) of the *Constitution (Third Alteration) Act 2010* which clearly provides that a person shall not be eligible to the hold office of a Judge of the National Industrial Court unless he is a legal practitioner in Nigeria and has been so qualified to qualified for a period of not more than ten years and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.

Section 254B (4) of the *Constitution (Third Alteration) Act 2010* is consistent with the position in other jurisdictions. For example, under the South African *Labour Relations Act 1995*, the President of the Labour Court is appointed from Judges of the High Court, who are knowledgeable, experienced and have expertise in labour law.[94] The Judges of the Labour Court must also be knowledgeable, experienced and have expertise in labour law, and are appointed

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[93] This could be achieved by isolating section 254C (1)(i) of the *Constitution (Third Alteration) Act 2010* as criminal jurisdiction of the National Industrial Court and adding the phrase "and any offence arising from any law relating to labour and industrial relations."

[94] *Labour Relations Act 1995*, s. 153(2).

from Judges of the High Court and persons who are legal practitioners.[95]

As there may not be any occasion for the appellate courts to declare these provisions void by virtue of section 1(3) of the Constitution, as altered, in view of the limited scope of appeals on labour matters, the National Assembly should amend the *National Industrial Court Act 2006* by deleting section 2(4)(b) and the proviso to section 1(2)(b) of the Act to bring its provisions in conformity with the provisions of section 254B (4) of the *Constitution (Third Alteration) Act 2010*. This will justify the ranking of the Judges of the National Industrial Court with the Judges of the Federal High Court and the High Court of the Federal Capital Territory, Abuja.

Conclusion

The *National Industrial Court Act 2006* and the *Constitution (Third Alteration) Act 2010* have expanded the jurisdiction of the National Industrial Court beyond the traditional head of trade disputes. The National Industrial Court now has exclusive jurisdiction over individual labour disputes apart from trade disputes. *A fortiori*, individual employees now have access to the National Industrial Court for the adjudication of their grievances. They need not be trade unions.[96]

The exclusive jurisdiction conferred on the National Industrial Court over all labor disputes will not lead to congestion and slow pace of adjudication as the Court now has Judicial Divisions across the Country.[97] In the same vein, neither the Act nor the Constitution (as altered) limits the number of Judges to be appointed for the Court. The Act merely provides that the Court shall consist of not less than twelve Judges. Accordingly, the

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95 *Ibid*, s.153(6)

96 See *Moses & Ors v. Bishop James Yisa Memorial School Ltd (supra)* 81

97 *National Industrial Court Act 2006*, s. 21(1)

number of Judges may be progressively increased as may be necessary to man the various divisions that may be created from time to time.

The *National Industrial Court Act 2006* and the *Constitution (Third Alteration) Act 2010* have further removed all the controversies over the status, jurisdiction and powers of the National Industrial Court. It is now settled that the National Industrial Court is a superior court of record and has all the powers of a High court.[98] It has power to grant declarations, injunctions and other prerogative orders.[99] It also has power to enforce its judgements and orders and may, accordingly, commit any person for contempt of court.[100]

In sum, the intendment of the *Constitution (Third Alteration) Act 2010* was to create a specialized superior court of record that would expeditiously resolve employment, labour and industrial relations disputes, thereby creating harmonious industrial relations.[101]

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[98] *Ibid*, s.1(3)

[99] *Ibid*, ss.16-19

[100] *Ibid*, s. 7(1); see also *Constitution of the Federal Republic of Nigeria 1999* as amended, s.254C (1).

[101] Elizabeth A. Oji and Offornze D. Amucheazi, *Employment and Labour Law in Nigeria* (Lagos: Mbeyi & Associates (Nig.) Ltd 2015) 285