

# **EXCLUSIVE AND EXPANSIVE JURISDICTION OF THE NATIONAL INDUSTRIAL COURT: THE CONSTITUTION (THIRD ALTERATION) ACT, 2010 IN FOCUS**

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## **ABSTRACT**

The National Industrial Court established to resolve industrial disputes in Nigeria suffered some setbacks especially in the area of its jurisdiction to entertain matters. The jurisdictional controversies became compounded when the court was yet to be listed as a superior court of record by the 1999 Constitution. By adding the court to the list of superior courts, the Nigerian Constitution (Third Alteration) Act 2010, became a landmark amendment on this vexed legal issue. This work adopting a doctrinal approach, found out that another problem now emanates from the extant law's provision restricting the powers of the Court of Appeal to Fundamental Human Right decision from the National Industrial Court. This raises serious controversies on the powers of the Court of Appeal to hear all appeals from the National Industrial Court. By the Supreme Court decision in a case stated as discussed in this work, there is need for a formal amendment of this provisions. However, the Third Alteration if fully implemented by the various institutions will no doubt ensure a quick dispensation of labour and trade union disputes in Nigeria.

**Keywords:** Industrial disputes, alteration, labour matters

## INTRODUCTION

The economic growth of any nation in the world requires a harmonious relationship between the employers and employees. Employment disputes therefore require a mechanism for quick resolution to create a conducive atmosphere for commerce to flourish. The establishment of the National Industrial Court is one step legally that was aimed at quick administration of labour and trade union disputes. In Nigeria, the machinery for the resolution of industrial dispute dates back to the mid-seventies with the Trade Disputes Decree of 1976 promulgated by the military regime. The Decree gave the National Industrial Court exclusive jurisdiction over labour and labour related matters. Subsequent Constitutional reforms in 1979 and 1999 provided for a superior court of record. These Constitutions gave room for contradictory decisions even by the Apex court<sup>1</sup> on whether the National Industrial Court then can have exclusive jurisdiction over matters that were been handled by the State High Court, as the later been a Constitutional court and court of unlimited jurisdiction. Under the military regime, Decrees suppresses the provisions of the Constitution, thus, the regime of Gen. Ibrahim Badamasi Babangida promulgated the Trade Dispute (Amendment) Decree No. 47 of 1992, which clothed the National Industrial Court with exclusive jurisdiction on labour and labour matters to the exclusion of the other courts. The effect of the Decree could not be felt in a democratic setting when the Constitution is seen as not only the organic law but the grundnorm which provisions supersede the provisions of other laws.

In 2006, the National Industrial Court Act was enacted. The Act re-established the National Industrial Court. It was evident from the express provisions of the Act that it's intendment was not only to make National Industrial Court a superior court of record, it also, like Decree No. 47 of 1992, vested it with all the powers of a High Court including the powers to grant declaratory and injunctive reliefs in deserving cases in the exercise of its jurisdiction to hear and determine all labour and labour related civil causes and matters to the exclusion of all other courts. Unfortunately, this Act was enacted without a corresponding amendment of the provisions of Section 6(3) and (5) of the 1999 Constitution, which specifically listed the superior courts of record in Nigeria. For the purpose of clarity, Section 6(3) and (5) provides thus:

**Section 6(3):**The courts to which this Section relates, established by this constitution for the Federation and for the States shall be the only superior courts of records in Nigeria; and save

as otherwise prescribes by the National Assembly or by the House of Assembly of a state, each court shall all the powers of a superior court of record

**Section 6(5):** This section relates to:

- a. The Supreme Court of Nigeria;
- b. The Court of Appeal;
- c. The Federal High Court;
- d. The High Court of the Federal Capital Territory, Abuja;
- e. The High Court of a State;
- f. The Sharia Court of Appeal of the Federal Capital Territory, Abuja;
- g. The Sharia Court of Appeal of a State;
- h. The Customary Court of Appeal of the Federal capital territory, Abuja;
- i. A Customary Court of Appeal of a State.<sup>ii</sup>

The controversy as regards the jurisdiction of National Industrial Court and other courts created by the constitution as superior courts became glaring in the case of *National Union of Electricity Employees v. Bureau of Public Enterprise*<sup>iii</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>iv</sup> The National Union of Electricity Employees sought to use the strike action to forestall the Bureau of Public Enterprise's statutory duty in privatizing 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>v</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 privatization 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 JSC, 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>vi</sup>

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>vii</sup>*

### **THE CONSTITUTION (THIRD ALTERATION) ACT 2010**

The above scenario led to the amendment of the Constitution as the Constitution (third Alteration) Act 2010. We shall consider the provisions of the amendments. The Act has 14 sections, many subsections and paragraphs. The Act referred to the 2006 Act as the Principal Act. The areas of alteration in the Principal Act are clearly spelt out. We shall look at areas where there are clear provisions in aid of the gaps in the Principal Act. The alteration not only gave the National Industrial Court exclusive jurisdiction over labour, trade unions and related matters but expanded its jurisdiction in other matters.

The jurisdiction is exclusive in civil causes and matters related or connected with any labour, employment, trade union, industrial relations and matters arising from work place, condition of service, including health, safety, welfare of labour, employee, workers and matters incidental thereto or connected therewith. In civil causes and matters listed above the National Industrial Court does not share jurisdiction with any other court. It is a court of first instance on these matters.

On the expansive jurisdiction of the National Industrial Court by the Constitution (Third alteration) Act 2010, the court affirmed the provisions in the case of *N.U.T Niger State v COSST. Niger State*<sup>viii</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 as enumerated...*

## **CRIMINAL JURISDICTION OF THE NATIONAL INDUSTRIAL COURT**

It is argued that the draftsmen of the Constitution (third alteration) Act 2010 never intended that the National Industrial Court have exclusive criminal jurisdiction of the listed causes and matters. As long as the provision did not state clearly, no inference can be properly drawn on that, than to say that the law intended that the High Court have coordinate jurisdiction with National Industrial Court on criminal matters.

## **FUNDAMENTAL HUMAN RIGHTS MATTERS**

Human rights generally seek to protect and project the inherent dignity of man and place him above other lower animals. Most sovereign states have enshrined these rights in their constitution. There are rights that accrue to man, solely for the mere fact that he is human.<sup>ix</sup>

Fundamental rights are enshrined in the Constitution of the Federal Republic of Nigeria<sup>x</sup> and the African Charter on Human and People's Right (Ratification and Enforcement) Act. The importance attached to fundamental human rights can be seen in the fact that a chapter of the constitution is devoted to fundamental human rights. Stressing the importance of these rights Abiru JCA in the case of Hassan v EFCC<sup>xi</sup>:

*Fundamental Rights are those rights without which neither liberty nor justice would exist. They are freedoms essential to the concept of ordered liberty, inherent in human nature and consequently inalienable. They are rights that belong without presumption or cost of privilege to all human beings. They are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and available (sic) as standards of justification and criticism whether or not they are recognised and implemented by the legal system or officials of a country.*

The third alteration gave the National Industrial Court jurisdiction on matters relating to or connected with any dispute over the interpretation and application of the provisions of chapter IV of the Constitution as it relates to any employment, labour, industrial relations, trade unionism, employers association or any other matter which the court has jurisdiction to hear and determine.

It is noteworthy to emphasise here that the provisions relating to jurisdiction of the National Industrial Court on labour and labour related matters bordering on fundamental human rights requires special procedure for its enforcement. Generally, fundamental human rights are enforced in courts that have jurisdiction by the provisions of the fundamental human rights (Enforcement Rules) Rules 2019. An aggrieved person wishing to enforce the provisions of the National Industrial Court will need to be abreast of the provisions of the National Industrial Court rules of 2016 which came into force in Nigeria on the 5<sup>th</sup> day of January 2017. The rules came to force by the section 254F (i) of the Nigerian Constitution which empowers the President of the National Industrial Court to make rules to regulate the practice and procedure of the National Industrial Court.

## **NATIONAL INDUSTRIAL COURT AS A FINAL COURT**

The Third Alteration Act expressly restricted the jurisdiction of the Court of Appeal to civil matters emanating from the National Industrial Court on Fundamental Human Rights. Section 5(2) provides<sup>xii</sup>: An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental human rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

The above provision raises questions on whether the court of Appeal can hear civil appeals from the decisions of the National Industrial Court on matters outside Fundamental Human Rights. The controversies raised by the above questions can be seen in the divergent views of the same divisions of the Court of Appeal on this matter. In four cases from Ekiti division of the Court of Appeal; *Local Government Service Commission, Ekiti State and Anor v. Jegede*<sup>xiii</sup>; *Local Government Service Commission, Ekiti State and Anor v. Bamisaye*<sup>xiv</sup>; *Local Government Service Commission, Ekiti State and Anor v. Olamiju*<sup>xv</sup> and *Local Government*

Service Commission and Anor v. Asubiojo<sup>xvi</sup> (hereinafter, simply, referred to as the Ekiti LGA cases). It was held that decisions were appealable. On the other hand, two recent decisions of the Lower Court, Coca-Cola Nig Ltd v. Akinsanya<sup>xvii</sup> and Lagos Sheraton Hotels and Towers v. H.P.S.S.A.<sup>xviii</sup>, reasoned per contra, holding that the trial Court's decisions, other than decisions on fundamental rights, and criminal matters, are final.

If the decision of the National Industrial Court is final on matters outside Fundamental Human Rights, the implications are grave, Justice Irikefe JSC in RABIU v KANO STATE<sup>xix</sup> voiced out his grievances on the likelihood of injustice where a matter has to begin and end in a particular court. The erudite justice of the Supreme Court reasoned:

*I would shudder to think that the framers of our present Constitution would have intended, by one fell-swoop, to deny a prosecutor [read, litigant] the right to appeal against an acquittal [read, judgment of a trial Court] on any ground. To my mind, a greater invitation to chaos and or instability there cannot be. It seems to me that, if this were the intention of our law makers, it would be impossible to stem or dam the tide of mischief that would thereby arise. In short, all that a misguided or mischievous bench of first instance need do, is to go to sleep while evidence is being given in a criminal case [read, in a matter] and, at the end thereof, to pronounce the magical words – 'I acquit...' [read, judgment for the plaintiff] and there the matter would rest. This could also be an invitation to corruption at its worst. Indeed, a surer way to discredit the entire judicial process may be difficult to find; and when this happens, the alternative is a total and complete breakdown of law and order. The possibility that a decision by an inferior Court may be scrutinised on appeal by a higher Court, at the instance of an aggrieved party, ... is, by itself a safe-guard against injustice, by acting as it were, as a curb against capriciousness or arbitrariness.*

It is against this background that the Supreme Court in SKYE BANK PLC v VICTOR ANAEMEM IWU<sup>xx</sup> in a case stated considered the provisions of the Constitution (third Alteration) Act, 2010 on the National Industrial Court as a final court. In that case at the National Industrial Court, Lagos Division, respondent, on February 2, 2012, took out an action against the now extinct bank, namely, Afri Bank Nigeria Plc. His claims were inter alia, for wrongful termination of employment; unpaid accrued salaries and other benefits, allegedly due to him in the course of his employment in the said bank. There was change of nomenclature



from Afri Bank Nigeria Plc to Mainstream Bank Ltd and Skye Bank Plc. Mainstream Bank, as successor-in-title to Afri Bank Nigeria Plc, bore the weight of the forensic contest.

Pleadings were filed and exchanged, as dictated by the Rules of the trial Court. Thereafter, precisely, on July 10, 2012, the said bank, that is, Mainstream Bank Ltd, by Notice of Preliminary Objection, entreated the trial Court to determine the matter in limine on the ground of want of jurisdiction as according to the tenor of the objection, the action was predicated on employer and employee relationship.

The trial court, [Coram Obaseki-Osaghae, J], in its Ruling, dismissed the said objection, finding in favour of the trial Court's jurisdiction to hear and determine the matter. Aggrieved by that ruling, the applicant/bank approached the Lower Court through its Notice and Grounds of Appeal of November 19, 2012. Upon the adoption of the written addresses, the Lower Court, duly adjourned for its Ruling: a Ruling which was put in abeyance since the appellant, on September 24, 2014, beseeched it to state a case for Supreme Court's opinion on the said constitutional issues. On the powers of the Court of Appeal to hear appeals from the National Industrial Court outside Fundamental Human Rights. The Supreme Court reasoned thus:

*In all, then on a holistic interpretation of Section 240 and 243 (1) of the 1999 Constitution, appeal lie from the trial Court to the Lower Court, that is, all decisions of the trial Court are appealable to the Lower Court: as of right in criminal matters, [Section 254C(5) and (6)], and Fundamental rights cases. [Section 243 (2)]; and with the leave of the Lower Court, in all other civil matters where the trial Court has exercised its jurisdiction, Sections 240 read conjunctively with Section 243 (1) and (4).*

*The answers to the questions posed to this Court in this case stated, therefore, are (a) the Lower Court, that is the Court of Appeal has the jurisdiction, to the exclusion of any other Court in Nigeria, to hear and determine all appeals arising from the decisions of the trial Court, that is, the National Industrial Court; (b) no constitutional provisions expressly divested the said Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the trial Court, the National Industrial Court and (c) as a corollary, the jurisdiction of the Court to hear and determine civil appeals from the decisions of the National Industrial Court is not limited, only, to fundamental rights matters. These shall be the opinions of this Court to*

*be transmitted to the Court of Appeal, Lagos Division, for its guidance in determining the appeal before it.*

The Supreme Court by the above decision has tempered with the issue of National Industrial Court as a final court on matters outside fundamental human rights.

## **ILL TREATMENT OF WORKERS AND EMPLOYEES**

The third alteration is detailed on matters relating to ill treatment of workers and employees such as discrimination, sexual harassment, human trafficking, child labour, child abuse and matters connected thereto. Section 254 (g) and (i) provides

(g) relating to or connected with and dispute arising from discrimination or sexual harassment at workplace;

(i) Connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;

The aforementioned vices are common place in recent times. It is important that the issues are now provided for in the jurisdiction of the National Industrial Court. It will enhance the speedy administration of the vices from work place in a special court such as the National Industrial Court.

## **CONVENTION, TREATY AND PROTOCOL ON LABOUR MATTERS**

Nigeria had ratified several conventions, treaties and protocols on labour and related matters. By the third alteration, it is now constitutionally provided for that an aggrieved person can seek the application of any of such international instruments in favour of labour matters,<sup>xxi</sup> before the National Industrial Court. The essence is to ensure the speedy administration of such matters.

## **ESTABLISHMENT OF ADR CENTRE**

As part of the expansive jurisdiction, the National Industrial Court may establish the National Industrial Court Alternative Dispute Resolution Centre within the Court premises on matters which jurisdiction is conferred on the court.

## **SUPERVISORY JURISDICTION OVER ARBITRAL TRIBUNAL OR COMMISSION**

The NATIONAL INDUSTRIAL COURT by the third alteration is empowered to have supervisory jurisdiction over an arbitral tribunal or commission, administrative body or board of inquiry in respect of any matter that the National Industrial Court has jurisdiction.

## **CONCLUSION**

The Constitution (third alteration) Act, 2010 is a step in the right direction as it settles many controversies around the operation of the National Industrial Court. Specifics issues on jurisdiction, appointment of judges for the court, supervisory powers over arbitration and allied matters no doubt will enhance quick resolution of disputes between employers and employees. There is however an urgent need for the spread of the court in the States and Local Government in Nigeria. Legal practitioners and staff of the court will require detailed understanding of the Act for effective service delivery. It is gratifying that while the Third alteration limits the appeals from National Industrial Court to the Court of Appeals only to Fundamental Human Rights issues. The Apex Court, the Supreme Court interpreting the powers of the Court of Appeal to entertain all appeals from the National Industrial Court have altered this position as highlighted in the case of *SKYE BANK PLC v VICTOR ANAEMEM IWU* (supra). Subsequent amendment of the Constitution will require this position reversed.

## REFERENCES

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- <sup>i</sup> See the case of UDOH v OHMB (1987), NWLR (Pt.49) 112 and Savannah Bank & Ors v Pann Atlantic Shipping and Transport Agencies Ltd.
- <sup>ii</sup> Ejere, O.D, and Akhabue, D.A, Legal Implications of the Constitution (Third Alteration) Act, 2010 on the Jurisdiction of the National Industrial Court (NIC)
- <sup>iii</sup> (2010) 7 NWLR (Pt. 1194) 538 at 575 paras. C-F, Chukwumah – Eneh, J.S.C
- <sup>iv</sup> O. Coker ‘Clarifying the Jurisdiction of the National Industrial Court’ 2011 <http://www.internationallawoffice.com> accessed 10 June 2016
- <sup>v</sup> *ibid*
- <sup>vi</sup> *National Union of Electricity Employees v. Bureau of Public Enterprise* (2010) 7 NWLR (Pt1194)538 @575 para C-F
- <sup>vii</sup> *Ibid*
- <sup>viii</sup> (2012) 10 NWLR (Pt 1307) 89 at 111, para. E-F, 112-113 para. B-E
- <sup>ix</sup> C. D. Ogbе, *Enforcement of Fundamental Rights in Nigeria*, 2017, Chudanog Publishers Ltd. P1
- <sup>x</sup> *The Constitution of the Federal Republic of Nigeria*, 1999.
- <sup>xi</sup> (2014), NWLR (Pt. 1389) 607 C.A
- <sup>xii</sup> *Constitution of the Federal Republic of Nigeria (Third Alteration) Act*, 2010.
- <sup>xiii</sup> (2013) LPELR-21131 (CA)
- <sup>xiv</sup> (2013) LPELR-20407 (CA)
- <sup>xv</sup> (2013) LPELR-20409 (CA)
- <sup>xvi</sup> (2013) LPELR-20403 (CA)
- <sup>xvii</sup> (2013) 18 NWLR (Pt. 1386) 225
- <sup>xviii</sup> (2014) 114 NWLR (Pt. 1426) 45
- <sup>xix</sup> (1980) N.S.C.C 299
- <sup>xx</sup> (2017) LPELR-42595 (SC)
- <sup>xxi</sup> See Section 254 (2) of the *Constitution of the Federal Republic of Nigeria*, 1999