

# A Critique of the Legal Framework for the National Industrial Court of Nigeria and its Impact on the Nigerian Worker

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## Abstract

Employment is synonymous with earning a livelihood, and earning a livelihood gives hope to the living. Right to employment therefore could be said to as fundamental as living. A life without employment may be likened to existing, as opposed to living. This explains why issues of labour and employment is taken by man as a matter of self preservation. The Nigerian Court system does not lay emphasis on specialised courts. The High Courts, and other courts exercise jurisdiction on almost all matters generally. This has resulted in unwarranted pressure on the regular court, such that cases remain on the cause lists for several years, potentially defeating the aim of justice, as justice delayed is justice denied. Also, the level of industrial harmony in any nation directly affect the economic development in such state. All of these impelled the establishment of an industrial court in Nigeria as the first specialised court in the country. Upon the establishment of the National Industrial Court of Nigeria, a number of matters have arisen. The thrust of this paper is to address these issues while assessing the extent to which the court has impacted on the working class.

**Keywords:** National Industrial Court, Industrial, Employment, Labour, Jurisdiction, Arbitration, Conciliation, Trade Dispute, Collective Agreement.

## 1. Introduction

As Nigeria became more industrialised and there was rapid increase in its socio- economic activities, labour laws were enacted to regulate industrial and trade relations to make for the smooth running of the country's economy, basically because trade disputes are inimical to growth and sustainable development. The Labour Act of 1971<sup>1</sup> was enacted to repeal and replace the Labour Code Act of 1958<sup>2</sup> and consolidate the law relating to labour and also provide a comprehensive legislation on conditions of work and employment. Other laws have however been enacted to provide for specific areas of labour that were hitherto not covered by the Labour Act. These Laws include the Trade Union Act, Trade Dispute Act, Pension Reform Act, *etcetera*.

The Trade Dispute Act<sup>3</sup> (TDA) was enacted in 1976 primarily to make provisions for the settlement of trade disputes and other matters ancillary thereto. It established the National Industrial Court (NIC) now National Industrial Court of Nigeria (NICN) to interpret and enforce collective agreements amongst other functions. Since the promulgation of that Act in 1976 till date, there have been profound changes to the status and jurisdiction of the Court, possibly, as a result of the vigorous and vehement criticisms against its legal framework. There was therefore need to give the Court its own legs to make it more effective and able to carry out its functions and also so that Nigeria, like other countries, can have a specialised Court specifically to handle matters related to labour, trade and industrial disputes.

This paper traces the historical journey of the National Industrial Court Nigeria from when it was a creature of an administrative law to being a superior court of record. The thesis of this paper is to examine the legal framework of the court, with a view to identifying those factors that may potentially inhibit workers from taking optimal benefit of the establishment of the Court. A comparative and analytical consideration is given to these identified factors and recommendations proffered to better position the Court to serve and positively impact on the working class, whose rights it was set up to protect and enforce.

## 2. Historical Analysis of the National Industrial Court of Nigeria

Before the establishment of the National Industrial Court, industrial relations law and practices were modelled after the non-interventionist and voluntary model of the British industrial system.<sup>4</sup> The Major features of the

<sup>1</sup> 1971, now Cap L1, Laws of the Federation of Nigeria, 2004.

<sup>2</sup> 1958.

<sup>3</sup> Cap T8, Laws of the Federation of Nigeria, 2004.

<sup>4</sup> **Babatunde Adeniran Adejumo**, "The National Industrial Court of Nigeria: Past, Present and Future" being a Paper Delivered at the Refresher Course Organised for Judicial Officers of between 3 – 5 Years Post Appointment by the National Judicial Institute, Abuja at the Otutu Obaseki Auditorium, National Judicial Institute, Abuja on the 24th March, 2011, available at <http://nicn.gov.ng/nji.php>, accessed on 4/10/2016; and **Babatunde Adeniran Adejumo**, "The Role Of The Judiciary In Industrial Harmony," being Commentary Delivered at 2007 All Nigeria Judges' Conference Organized by The

non-interventionist model were that it was totally the discretion of the parties to determine whether or not they would surrender to the jurisdiction of the Minister of Labour, who by the provisions of the Trade Disputes (Arbitration and Inquiry) Act,<sup>1</sup> was given powers to intervene by way of conciliation, formal enquiry and arbitration where negotiations between disputing parties are broken down.<sup>2</sup> As it were at that time, the minister could therefore not compel parties to accept his intervention, but he could appoint a conciliator only upon an application of the parties. He could also appoint an arbitrator with the consent of both parties.<sup>3</sup> The voluntary model came under criticism by writers on the premise that it generated more problems in the labour industry than remedied them. Picking holes in the system, Arowosegbe stated:

Often parties resorted to self-helps (strikes and lockouts) or the regular courts to seek redress. This proved unsatisfactory and the industrial relations climate became chaotic and tensed with incessant strikes.<sup>4</sup>

In a bid to stem this unpleasant trend, Emiola posits that Government first experimented with the establishment of an Industrial Arbitration Tribunal (IAT) in 1970.<sup>5</sup> The IAT, which paved way for the NIC, is said to have achieved a lot of success in addressing the waves of industrial unrest in the Nigeria.<sup>6</sup> The successes recorded by the IAT appear to have been the impetus for the establishment of a permanent and more elaborate structure to handle industrial relations disputes subsequently.

All these changed however, at the declaration of hostilities between Nigeria and Biafra in 1968. As a result of the war, it became necessary to make transitional provisions for the settlement of trade disputes arising during this period.<sup>7</sup> The Trade Dispute (Emergency Provisions) Act No. 2, of 1968, was enacted and it suspended the Trade Disputes (Arbitration and Inquiry) Act of 1958. The new Act took away the discretion of parties to disputes and gave the Minister of Labour powers of compulsory intervention in trade disputes while still retaining the additional powers of conciliation, formal inquiry and arbitration.<sup>8</sup>

The NIC was first established under the Trade Dispute Act of 1976 (then Decree 7 of 1976) but actually took off in 1978.<sup>9</sup> The NIC has been noted to be the first specialised court in Nigeria.<sup>10</sup> The then operative constitution (the 1963 Constitution) was amended to accommodate the Court as one of the constitutionally recognised courts. However, at the advent of the 1979 Constitution of the Federal Republic of Nigeria, the Court was neither included among the superior courts nor its powers and jurisdiction defined. Thus a problem was created, thereby making the status, powers and jurisdiction of the Court undefined in relation to the hierarchy of Courts in Nigeria.

This anomaly was ostensibly cured by the promulgation of the Trade Disputes (Amendment) Decree of 1992 which conferred on the Court the status of a superior court of record and gave it the exclusive jurisdiction to entertain industrial disputes including inter-intra Union Disputes.<sup>11</sup> This position remained unchanged until the return to democratic rule in 1999, when the constitutionality of the Decree became an issue.<sup>12</sup>

In a bid to cure the defects of the court, the National Industrial Court Act was passed in 2006. That law took the NIC out of the Trade Dispute Act and gave it a separate enabling law. The Act also confirmed the status of the NIC as a superior court of record with exclusive jurisdiction to entertain industrial disputes and powers of a High Court. However the decisions of the Court of Appeal in the cases of *Kalango v Dokubo*,<sup>13</sup> *Attorney*

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National Judicial Institute at Ladi Kwali Hall of the Abuja Sheraton Hotel And Towers, Abuja, FCT, on 5th - 9th November, 2007, available at <http://www.nicn.gov.ng/1.php>, accessed on 4/10/2016; C.K. Agomo, "Nigeria", in Blanpain (ed), *Labour and Industrial Relations in the International Encyclopedia of Law*, 2000, pp. 38 – 39, cited by Oluwakayo O. Arowosegbe "National Industrial Court and the Quest for Industrial Harmony and Sustainable Economic Growth and Development in Nigeria" (2011) Vol. 5 N0.4, *Labour Law Review*, 7 at p. 8, available at <http://nicn.gov.ng/Archive/NATIONAL%20INDUSTRIAL%20COURT%20AND%20THE%20QUEST%20FOR%20INDUSTRIAL%20HARMONY%20AND%20SUSTAINABLE%20ECONOMIC%20GROWTH%20AND%20DEVELOPMENT%20IN%20NIGERIA.pdf>, accessed November 14, 2016.

<sup>1</sup> Cap 202 Laws of the Federation of Nigeria, 1958.

<sup>2</sup> Adejumo, "The National Industrial Court of Nigeria: The Past, Present and Future," *op cit*.

<sup>3</sup> *Ibid*.

<sup>4</sup> Arowosegbe, *ibid*, at p. 9.

<sup>5</sup> Akintunde Emiola, *Nigeria Labour Law*, (Publishing) Limited, Ogbomoso, Nigeria, 2000 p. 358.

<sup>6</sup> Arowosegbe, *op cit*.

<sup>7</sup> *Ibid*.

<sup>8</sup> *Ibid*

<sup>9</sup> *ibid*

<sup>10</sup> Arowosegbe, *op cit*.

<sup>11</sup> *Ibid*.

<sup>12</sup> *Ibid*.

<sup>13</sup> (2003) 15 WRN 32.

*General of Oyo State v Nigerian Labour Congress, Oyo State Chapter*<sup>1</sup> and *Bureau of Public Enterprise v National Union of Electricity Employees*<sup>2</sup> and that of the Supreme Court in *National Union of Electricity Employees and Anor. v Bureau of Public Enterprise*,<sup>3</sup> declared the provisions of the NIC Act 2006 on the status, powers and jurisdiction of the NIC null and void in view of the provisions of the 1999 Constitution of the Federal Republic of Nigeria. In the latter case, the Supreme Court held to the effect that the NIC was an inferior court to the High Court and that only a constitutional amendment including the NIC in section 6 of the 1999 Constitution could restore it to a superior status which it enjoyed under Decree 47 of 1992. The effect of the above judicial position was that although the NIC was one of the courts in Nigeria, it was anything but one of the superior courts of record.

It was in reaction to this Supreme Court's decision that the National Assembly amended the relevant sections of the 1999 Constitution in what is known as the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, which laid to rest the controversies surrounding the establishment and composition of the NIC, its status, judges, powers and jurisdiction to enable it play its envisaged roles as it created a new court called National Industrial Court of Nigeria (NICN) and replacing the National Industrial Court. Specifically, section 6 of the 1999 Constitution was altered to include the NICN among the superior courts listed in subsection (5) of that section and consequently other relevant sections of the Constitution were altered to put the NICN and its judges on the same footing and as a court of coordinate jurisdiction with the Federal High Court. By the alteration, the court was conferred with all the powers of a High Court in the exercise of its jurisdiction.

The NICN has been conferred with exclusive jurisdiction over all causes and matters related or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith.<sup>4</sup>

Section 254D(1) of the Constitution further provides to the effect that for the purpose of exercising any jurisdiction conferred upon it by the 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. The Third Alteration Act therefore, tend to give the NICN very wide and elaborate powers but has, at the same time, unwittingly foisted on the Nigerian' working class hardships that may end up frustrating their rights in seeking reliefs at the Court.

### 3. Criticisms of the Jurisdictional Powers of the NICN

Despite the ostensibly wide civil jurisdiction conferred on the court, the enabling statutes<sup>5</sup> of the NICN appear to have left some lacunae in respect of some areas of labour law. This is the thesis of this paper.

Collective agreements are very important to industrial relations, and indeed, are a veritable source of labour law that regulates a number of relationships within the labour and industrial circles.<sup>6</sup> The Trade Dispute Act of 1976 requires parties to a collective agreement for settlement of a trade dispute to deposit at least 3 copies of the agreement with the minister of labour.<sup>7</sup> As disputes usually arise from non- implementation and interpretation of collective agreements, the jurisdiction of the NICN has always from its inception in 1976 included the adjudication of these disputes. These provisions were maintained in the Trade Dispute Act, the NIC Act of 2006 and the Third Alteration Act of 2010. The cumulative effect of these provisions is that the court has jurisdiction over the determination of any question as to the registration, interpretation and application of any collective agreement. Specifically, section 6 of the Third Alteration Act confers on the NICN exclusive jurisdiction to entertain civil causes and matters relating to or connected with the regulation of any collective agreement. However, one may be at a lost as to the authority charged with the responsibility of registering collective agreements in Nigeria, there is no clarity as to the authority responsible for the registration of collective agreements.

Considering the importance of collective agreements in industrial relations, and in line with the provisions of the Third Alteration Act, which allows the enlargement of the jurisdiction of the NIC by an Act of the National Assembly, it appears desirable to amend the NIC Act 2006 to provide for the compulsory registration of collective agreements with the registry of the court. This will give sanctity to collective agreements. It is suggested that such agreements can also be entered by the courts as consent judgement thus making them binding and enforceable by either of the parties to the dispute. Where this becomes the norm,

<sup>1</sup> (2003) 8 NWLR I.

<sup>2</sup> (2003) 13 NWLR Pt. 837 p. 382.

<sup>3</sup> (2010) 7 NWLR Pt. 1194 p. 538 (SC).

<sup>4</sup> Section 254 (c) (1) of the Third Alteration Act, 2010.

<sup>5</sup> Particularly, the Constitution of the Federal Republic of Nigeria, 1999; and the National Industrial Court Act, 2006.

<sup>6</sup> J. Ogunye, "National Industrial Court and Judicial Absolutism in Nigeria," *Premium Times* (Abuja 14<sup>th</sup> February 2014) Available at <http://www.premiumtimesng.com/opinion/155780-national-industrial-court-and-judicial-absolutism-in-nigeria-jiti-ogunye.html>, accessed October 7, 2016.

<sup>7</sup> S. 2(1) Trade Dispute Act.

parties will be more amenable to respecting the terms of the agreement and implementing same.

In respect of pensions, the Third Alteration Act confers exclusive jurisdiction on the NICN in civil causes and matters relating to, connected with and arising from the Factories Act, Trade Dispute Act, Trade Union Act, Labour Act, Employees Compensation Act or any other Act or law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or laws<sup>1</sup>. Interestingly, the Pension Reform Act<sup>2</sup> is not mentioned among the Statutes listed in the provisions. The place of pension in employment and industrial relations is important as matters relating to pension and gratuity involving employees or ex-employees are central to employment or industrial relations.

The Pension Reform Act of 2004 had conferred jurisdiction to entertain, both civil and criminal causes and matters arising out of pension on the Federal High Court. This may have been because there was doubt and or uncertainty as to the legal status, powers and jurisdiction of the NIC as at when the Pension Act was enacted. However, after the NICN was repositioned and freed from all legal entanglements, the Pension Reforms Act of 2014 was amended to confer jurisdiction on the NICN to entertain both civil and criminal cases arising from the Act, especially in the face of the provisions of Section 6 of the Third Alteration Act which expressly include pension as one of the areas wherein the NICN could adjudicate upon.

Before the advent of the NIC Act 2006, the NICN was established in and its powers and jurisdiction were defined by the Trade Dispute Act. In other words the NICN before now was not regarded as a unit of the judiciary deserving of a separate Act of the legislature, establishing and vesting it with powers but as a court without technical rules of practice and procedure, given an existence in the TDA for the resolution of labour and trade disputes.

Many of the matters adjudicated by the court originated from conciliations and arbitrations within the TDA, where, after the failure of conciliation, a trade dispute is referred to the Industrial Arbitration Panel (IAP) by the minister of labour and if the award by the IAP is objected to by any of the trade disputants, the matter is further referred to the NIC for final resolution.<sup>3</sup> This procedure appears really clumsy, as disputants would have to go through conciliation and arbitration, and then the IAP before accessing the NIC.

By the provisions of the Third Alteration Act, the court's jurisdiction has been inordinately expanded even acquiring adjudicatory powers over more subjects, some of which does not relate to labour and industrial relations.<sup>4</sup> In fact, it has been said that the court has, by an inexcusable lapse of legislative judgment been made, with little exception, a court of first and final resort, that is to say, a court whose decision and awards cannot be appealed.<sup>5</sup> Thus, save cases in which decision are appealable, the Court's decisions and awards are not subject to review or reconsideration by a higher judicial authority. This reinforces the same provisions under the NIC Act<sup>6</sup> which provides that the decisions of the court were not appealable to the Court of Appeal except in regard to questions of fundamental rights as contained in Chapter IV of the Constitution.

This lapse in legislative function has a profound effect on the working class especially those who seek redress in the court's hallowed chambers. Once a judge of the NICN hands down a decision, it would appear that any employee who is dissatisfied with the judgment of the NICN has no recourse to have such decision reviewed and reconsidered by way of an appeal to an appellate court. Thus, were a decision is arrived at "erroneously," the dissatisfied litigant seem to have only one option, that is, he must abide by the decision.

By virtue of section 243 (2) and (3) of the Third Alteration Act, appeals can lie as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of the Constitution<sup>7</sup> as it relates to matters upon which the NICN has jurisdiction, whilst subsection (3) of the section provides to the effect that an appeal shall only lie from the decision of the NICN to the Court of Appeal as may be prescribed by an Act of the National Assembly. This implies that the right of appeal only lies subject to the national legislature enacting legislation to that effect.<sup>8</sup> Till date however, the National Assembly does not appear to have exercised the power

<sup>1</sup> Section 6.

<sup>2</sup> Pension Reforms Act, 2014 which repealed the Pension Reform Act No. 2 of 2004.

<sup>3</sup> Sections 5, 6, 7, 8 and 9 of the Trade Dispute Act.

<sup>4</sup> Subsection 7 relating to disputes arising from discrimination or sexual harassment and subsection 8 relating child abuse and human trafficking.

<sup>5</sup> S. Fagbemi, "Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis" (2014) 28 *Journal of Law, Policy and Globalization* available at <http://www.isteng/journals/index/php/JLPG/article/viewfile/14988/15226>, accessed on October 7, 2016.

<sup>6</sup> Section 9 (1) and (2) NIC Act, 2006.

<sup>7</sup> Emmanuel E. Okon, and Etefia E. Ekanem, "Protection of Human Rights in Nigeria: Legal, Constitutional and Democratic Issues" *International Journal of Law and Legal Jurisprudence Studies*, ISSN: 2348-8212, vol. 2 Issue 7 (Dec. 7, 2015) pp.1 – 16, available (online) at <http://ijlljs.in/wp-content/uploads/2015/12/1.pdf>, or <http://www.ieduresearch.com/protection-of-human-rights-in-nigeria-legal-constitutional-and-democratic-issues/>, accessed November 18, 2016.

<sup>8</sup> Adetayo Oluwafemi Talabi, "Judicial Absolutism: Propriety of the National Industrial Court as the First and Final Court in Labour and Other Related Matters in Nigeria" (2015) *Journal of Law, Policy and Globalization*, Vol.42, pp.70-80, available at: [www.iiste.org](http://www.iiste.org), accessed November 17, 2016.

conferred on it by subsection (3) enacting any legislation widening the right of appeal from the decision of the NICN beyond its current scope.

Even the right of appeal on questions of fundamental rights is limited as the case law on labour and employment actions is replete with decisions of the appellate courts turning down attempts to raise issues of alleged breach of fundamental human rights especially in employment that lacks statutory flavour.<sup>1</sup> This to a large extent constitutes a clog on the right of the Nigerian working class.

Also, the lack of clarity as to this position has given rise to conflicting judgments of the Court of Appeal in this regard. In the case of *Lagos Sheraton Hotels and Towers v Hotel and Personal Services Senior Staff Association*<sup>2</sup> where the respondent, a trade association had sued the appellant and obtained relief from the NICN sitting in Lagos, against the appellant on behalf of its members of the association whose employment had been terminated. The hotel filed an appeal to the Lagos Division of the Court of Appeal for leave to appeal against the decision, but the court unanimously dismissed the application for leave and held that the right of appeal against NIC decisions lies as of right only if it relates to fundamental rights and criminal matters. The court held further that an appeal relating to other matters prescribed by statutes will only lie by leave; further, until a statute is enacted which provides otherwise, no appeal can lie against NIC decisions, except in the circumstances provided by the Constitution.

However, in *Local Government Service Commission Ekiti State v Bamisaye*,<sup>3</sup> the respondent filed a suit against the appellant and the court ruled in his favour. The appellant then filed an application at the Court of Appeal, Ekiti for an order granting leave to appeal. The court of appeal allowed the application for leave and held that section 9 of the NIC Act did not conflict with the Constitution. The court based its decision on the premise that neither the NIC Act nor the Constitution provide for the NIC to be the final court in respect of any matter before it. The court held further that while the law provides for appeals on questions of fundamental rights to come to the Court of Appeal as of right, no provision excludes a right of appeal on other NIC decisions with leave. Thus, since neither the Constitution nor the NIC Act expressly provide for the NIC to be a final court in any matter before it, the NIC should under no circumstances exercise the act of finality in a matter before it. The court concluded that a court of law can only be made a final court by the express provisions of the statute creating it or by another relevant law. Unfortunately however, the Supreme Court will not have the opportunity to clarify on the above provisions as the Act expressly provides that all appeals of NIC decisions end at the Court of Appeal. The above cases have provided important jurisprudence in this area of Nigerian law and underscores the urgent need for the National Assembly to enact a law to amend the Constitution in order to confer appellate jurisdiction on the Court of Appeal over the decisions of the NICN, as it has done for the other courts of coordinate jurisdiction with the NIC.

It must be noted that the position in South Africa is remarkably different from Nigeria. There, there is the Labour Court,<sup>4</sup> vested with the jurisdiction to hear labour matters. The Labour Court is of coordinate jurisdiction with the High Court with jurisdiction to adjudicate on matters relating to labour disputes.<sup>5</sup> The Court has jurisdiction to the exclusion of other courts over cases arising from the Labour Relations Act, 1995,<sup>6</sup> the Basic Conditions of Employment Act, 1997,<sup>7</sup> the Employment Equity Act, 1998,<sup>8</sup> and the Unemployment Insurance Act, 2001, and this so observed in *Wannenburg v Madamu Technologies (Pty)*.<sup>9</sup> Appeals from Labour Court go to the Labour Appeal Court. The judgments of the Labour Appeal Court are final at this stage and not open to further appeal.<sup>10</sup> However, where the matter involves a constitutional issue, appeal may further lie to the Supreme Court of Appeal and then to the Constitutional Court which is the apex court in South Africa.<sup>11</sup> It is reasoned that Nigeria can borrow a leave from South Africa for appeals on labour matters to lie to the Court of Appeal and for the decision of the Court of Appeal to be final, except one that bothers on constitutional issue, which appeal may further lie to the Supreme Court.

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<sup>1</sup> *Ibid.*

<sup>2</sup> (2014) 9 CLRN pg. 61.

<sup>3</sup> (2013) LPELR 20407 (CA).

<sup>4</sup> The Labour Court was established by the Labour Relations Act, 1995 of South Africa.

<sup>5</sup> Abdulfatai Aperua-Yusuf, Daud Momodu, and Abdullahi Saliu Ishola, "Non-Appealable Decisions of the National Industrial Court of Nigeria: A Critical Analysis", *American International Journal of Contemporary Research*, Vol. 5, No. 6; December 2015, 156, at p. 162, available at: [http://www.aijernet.com/journals/Vol\\_5\\_No\\_6\\_December\\_2015/21.pdf](http://www.aijernet.com/journals/Vol_5_No_6_December_2015/21.pdf), accessed November 17, 2016.

<sup>6</sup> Labour Relations Act, 1995 of South Africa deals with collective bargaining, trade unions, strikes and lockouts, unfair dismissal and unfair labour practices.

<sup>7</sup> The Act which deals with work in hours, leave and remuneration.

<sup>8</sup> which deals with discrimination and affirmative action.

<sup>9</sup> (AR87/2012) [2012] ZAKZPHC 35 (13 June 2012),

<sup>10</sup> Aperua-Yusuf, Momodu, and Ishola, *op cit.*

<sup>11</sup> *Ibid.*

Another lacuna which seems to exist as it relates to the NICN is that any person or body that is affected by a judgment of the NICN, being an interested or necessary party, but was not made a party to the suit wherein judgment was obtained, cannot as the law stands currently, exercise a right of appeal against the judgment of this court, with which he or she may be dissatisfied as an Applicant/ interested party/ Appellant.<sup>1</sup> This is in contrast to the provisions of section 243 of the Constitution which guarantees an interested party the right of appeal against a judgment of a High Court or the Federal High Court which affects his interest even though he was not a party to the suit in which judgment was delivered.<sup>2</sup>

It has been expressed, and rightly too, that the right of appeal from the decision of a court or tribunal is not only a constitutional right in Nigeria, but also an international recognised right in judicial proceedings.<sup>3</sup> Apart from the Supreme Court of Nigeria, there is no other court of first instance in Nigeria exercising its original jurisdiction under section 232 of the Constitution, which decisions are final and not appealable, not even a court martial or tribunals including election tribunals.<sup>4</sup>

From the foregoing, it is clear that while the establishment of a specialised court in the name of the National Industrial Court of Nigeria has greatly enhanced the status of the Nigerian working class, the establishment of the court has no doubt raised a number of fundamental issues. These issues, which remained unsettled, to a large extent have in themselves constituted an infraction of the fundamental right of the worker, thereby calling for some legislative intervention to ensure that whatever unintended hardship the establishment of the NICN has caused on the working class in Nigeria is ameliorated.

#### 4. Recommendations

From the foregoing therefore, the following recommendations are made:

- a. The National Assembly should, under section 240 of the Constitution guarantee therein the right to appeal all judgments of the NICN to the Court of Appeal or in the alternative, establish a National Industrial Court of Appeal like the Sharia and Customary Court of Appeal.
- b. It has already been argued that the exclusive jurisdiction of the NICN should be amended<sup>5</sup>. This is because the jurisdiction now vested on the NICN is in excess of item 34 on the Exclusive Legislative List<sup>6</sup> of the Constitution i.e. Labour ( including Trade Unions), dispute relations, conditions, safety and welfare of labour, industrial disputes, prescribing a National minimum wage for the Federation or any part thereof, and industrial arbitrations.

It is obvious from the above, that there is nothing therein that can serve as a foundation for amending the constitution to vest exclusive powers in the NICN to function as “the judicial alpha and omega”<sup>7</sup> in ordinary cases of employment in the private and public sector, involving individuals across Nigeria, not to talk of child trafficking, child labour *etcetera*.

Ogunye further reasons, and persuasively too, that the National Assembly may have acted in error to have amended the constitution to consolidate all cases of employment in the NICN, which is part and parcel of the Federal judiciary, regardless of whether or not the employer or employee suing or being sued is an agency or agent of the Federal Government. He views the amendment as a major violation of the Federalist principle practiced in Nigeria as this act has robbed the states of their judiciary powers. He opines that the 1999 constitution and its haphazard and ill- concerned alterations must make way to a people – made, truly Federal Constitution of Nigeria, voted on and adopted by the people in a referendum, within the framework of a Sovereign National Conference.<sup>8</sup>

- c. A close look at the first paragraph of Section 254 C of the Third Alteration Act will reveal a fundamental error by the National Assembly as it states that ‘National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court on civil causes and matters’. Interpreting this provision literally, it would appear that the NICN is conferred with jurisdiction only in civil matters and causes in or related to labour and industrial disputes. This is clearly not the intension of the law makers as a closer look at the main provisions of the section also reveals that the NICN has jurisdiction over criminal causes and matters arising from the workplace or matters related thereto.

As jurisdiction is the live wire to judicial proceedings, it has been posited that it is unethical for the law makers to lump together civil and criminal jurisdiction of the NICN without giving any clear demarcation. Section 245c (1) (a) (b) (c) (d) (e) (f) (h) (j) (k) and (m) of the constitution contain the

<sup>1</sup> Fagbemi, *op cit*.

<sup>2</sup> *Ibid*.

<sup>3</sup> *ibid*.

<sup>4</sup> S. 240 of the Constitution.

<sup>5</sup> Fagbemi, *op cit*.

<sup>6</sup> Second Scheduled Part 1 1999 Constitution.

<sup>7</sup> Ogunye, *op cit*.

<sup>8</sup> *Ibid*.

civil jurisdiction of the court whilst paragraphs (g) and (l) contain the criminal jurisdiction of the court. It has been suggested and this writer equally agrees that the jurisdiction of the Court should be demarcated under separate headings to be free from ambiguity and confusion.<sup>1</sup>

Despite its many shortcomings, the Third Alteration Act do contain novel and commendable provisions. In section 254 C (3) and (4) the NICN is permitted to establish an alternative dispute resolution centre within the court premises on matters in which jurisdiction is conferred on the court and to entertain any application for the enforcement of the arbitral award from arbitral tribunals, commissions of inquiry and administrative bodies. These provisions are indeed noble as it will help in decongesting the courts' docket and also help in the quick, amicable and effective resolution of industrial and labour disputes in a friendly environment devoid of power plays and cumbersomeness of litigation.

- d. It is reasoned that until the legislature intervenes by streamlining the laws for workers in Nigeria to take absolute benefit of the establishment of the NICN, judicial activism may be resorted to ensure that constitutionally guaranteed rights of workers are not lost to the letters of legislation. This calls for judicial bravery, and the exhibition of the bold spirit by judges,<sup>2</sup> particularly, those of the appellate courts, in making pronouncements that bother on rights of workers..

## 5. Conclusion

As have been noted, labour disputes have staggering effects on both the social and economic life of a nation resulting in low productivity, unemployment, waste of human resources etc. It therefore became expedient for countries to come up with dispute resolution mechanisms for an expeditious and effective resolution of labour and industrial disputes. The establishment of the NICN by the Nigerian Government was in response to this need and despite its teething problems from inception, has evolved over the years to be almost at par with other countries in relation to the resolution of labour and industrial disputes.

This paper has examined the legal framework of the NICN from its inception to the 2010 amendment of the constitution which consolidated and reinforced the court as a superior court of record with exclusive jurisdiction over labour and industrial matters. This paper has also painstakingly highlighted the grey areas in its enabling statutes which are incompatible and beyond the assigned status of the court as a court of first instance in all areas of its sphere of authority and powers.

The paper has also made several recommendations which include that the decisions of the NICN should be made appealable to the Court of Appeal or in the alternative a National Industrial court of Appeal should be established. The point has also been made that where the matter involves a constitutional issue, appeal should lie to the Supreme Court. The paper also recommends that the provisions in the extant laws relating to labour and industrial relations be amended in the interest of justice and to bring the operation of the NICN in tandem with international labour standards.

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<sup>2</sup> On need for judicial activism in Nigeria, see generally, Etefia E. Ekanem, "Effectiveness of Customary Law as a Pre-Requisite for Law Reform in Nigeria" (2010) vol. 1 *Uniujo Journal of Commercial and Property Law*, pp. 57-77; Etefia E. Ekanem and Mojisola Eseyin, "No Longer at Ease: The Contract-Based Liability Posture of the Nigerian Law toward Consumers of Hospitality Services" *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* Volume 20, Issue 9, Ver. VI (Sep. 2015) pp. 10-19 e-ISSN: 2279-0837, p-ISSN: 2279-0845, available at <http://iosrjournals.org/iosr-jhss/papers/Vol20-issue9/Version-6/C020961019.pdf>, accessed November 17, 2016; and Etefia E. Ekanem, "Institutional Framework for Consumer Protection in Nigeria: An Analysis" (2011) vol. 2, No. 1 *International Journal of Advanced Legal Studies and Governance*, pp. 33-48, available at [http://www.icidr.org/ijalsg\\_vol2no1\\_april%202011/Institutional%20Framework%20for%20Consumer%20Protection%20in%20Nigeria.pdf](http://www.icidr.org/ijalsg_vol2no1_april%202011/Institutional%20Framework%20for%20Consumer%20Protection%20in%20Nigeria.pdf), accessed November 17, 2016.

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