APPRAISING THE EXPANDED JURISDICTION OF THE NATIONAL INDUSTRIAL COURT UNDER THE 1999 NIGERIAN CONSTITUTION

Abstract
This paper attempts an appraisal of the expanded jurisdiction of the National industrial court of Nigeria in the light of statutory provisions and judicial decisions. From a humble beginning as a Court for the referral of trade disputes that could not be settled by mediation, conciliation or arbitration, the Court has now metamorphosed into a judicial colossus with exclusive jurisdiction over all labour and employment disputes as well as other broader industrial relations causes and matters. The paper found that the constitutionally expanded jurisdiction of the court has received judicial imprimatur in recent times. It also found that additional subject matter which the court had no clear jurisdiction on and others upon which it previously shared concurrent jurisdiction with the regular high courts has now come within the ambit of the exclusive jurisdiction of the Court. It further found that the raging controversy on whether or not the decisions of the court can be challenged at the Court of Appeal judicial authorities. This has produced the effect that appeals are now possible to the Court of Appeal from the decisions of the Court and the Court of Appeal is now the final court with respect to the subject matter jurisdiction of the National Industrial court.

Keywords: Mediation, Conciliation, Arbitration, National Industrial Court, Jurisdiction, Appeals

1. Introduction
The National Industrial Court (NIC) was first a creation of the Trade Dispute. Act.\(^1\) Sections 14, 15,16,17,18 and 20 of the Trade Disputes Act provided for the Minister of Labour referring trade disputes to the Court for resolution. At the inception of the court, it was an inferior court whose orders were enforceable only through the enforcement mechanisms of the regular high courts. The jurisdiction of the court under the Trade Disputes Act was to adjudicate strictly only over ‘Trade Disputes’ and not disputes connected with contracts of private employment. The term ‘trade dispute’ has been given both a liberal and restrictive interpretation.\(^2\) The liberal school views trade disputes as encompassing every kind of labour and employment dispute while the restrictive school is of the opinion that trade disputes are only disputes arising from general industrial and labour relations, to wit, disputes that has to do with an employer and a workers’ collective such as a trade union.. Whether or not the jurisdiction of the National Industrial Court extends to cover every employment


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dispute remains one of the controversies rocking the interpretation of the expanded jurisdiction of the Court.

2. Background to the Expanded Jurisdiction of the National Industrial Court

In 2006, the National Industrial Court Act was enacted to confer jurisdiction on the National Industrial Court over Industrial/labour relations disputes as well as all other forms of employment disputes to the exclusion of all other courts in Nigeria. These provisions made for the NIC’S exclusive jurisdiction were notwithstanding the fact that the state high courts and the high court of the Federal Capital Territory have unlimited jurisdiction over all civil causes and matters by the 1999 Constitution. Besides, the Labour Act also made provisions for courts that should handle certain labour matters. The situation become more confusing when it was realized that the regular High Courts which are vested with unlimited jurisdiction subject to the jurisdiction of the Federal High Court) are listed as superior Courts of records under the constitution while there is no such listing for the National Industrial Court. By virtue of the 2006 Act however, the NIC seized to be a referral court and became a court with original jurisdiction over labour and employment disputes. The Third Alteration Act to the 1999 Nigerian Constitution has now listed the NIC as a superior Court of records under the constitution in Nigeria. Under the 2006 Act, the Court became the final court on all labour and employment disputes. Appeals to the Court of Appeal could be countenanced only in respect of matters connected to the items listed as fundamental rights under the Constitution. The Third Alteration Act has however changed the situation by providing for appeals to the Court of Appeal as of right on matters connected to fundamental rights. It did not stop at that, it extended the right of appeal to all other decisions of the NIC subject however to the leave of the Court of Appeal. The Act did not however state whether such leave should be sought and obtained before the commencement of the Appeal or the leave could be obtained in the cause of the appeal. If the leave is obtainable in the course of the appeal, then the appeal itself and the leave are not separable. This paper examines the current trends in the interpretation of the expanded jurisdiction of the NIC in the light of current judicial decisions.

3 Section 7, National Industrial Court Act, 2007
6 Section 9(2) National Industrial Court Act, 2006.
3. Current Interpretations of the Expanded Jurisdiction of the National Industrial Court
In *Coca Cola Nig. Ltd v Titilayo Akinsanya*, eight notable controversies associated with the jurisdiction of the National Industrial Court arose for determination before the Supreme Court. The first was the extent of the subject matter jurisdiction of the National Industrial Court. It should be recalled that when the NIC was a creation of the Trade Dispute Act, the convergence of its jurisdiction was limited to the determination and resolution of trade disputes. Trade dispute was defined under the Trade Dispute Act as ‘any dispute between employers and workers or between workers and workers connected with employment or non-employment, or any terms of employment and physical conditions of work of any person’. According to the above definition, for a dispute to come within the proper meaning of a trade dispute, it must involve an employer or employers and a group of workers. By implication, disputes over individual contracts of employment were excluded from, the classification of ‘Trade Dispute’ The NIC Act of 2006 appear to have removed this restriction when it conferred on the court exclusive jurisdiction over civil causes and matters relating to labour and industrial relations. Construing the use of the term ‘Labour’ and ‘Industrial relations’ by the act, the lid that restricted the Court’s jurisdiction to trade disputes only was effectively removed. When the Third Alteration Act to the\ 1999 Constitution came on stream, it gave further impetus to the inclusion of disputes arising from private employment contracts to the jurisdiction of the court by providing as follows:

Notwithstanding the provisions of sections 251,257,272 and anything contained in the constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National industrial court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters (a) Relating to or connected with any labour, employment, trade unions, industrial relation and matters arising from the workplace, welfare of labour, employee, worker and matters incidental thereto or connected therewith…

From the inception of the Third Alteration Act, 2010, defining the scope of the subject matter jurisdiction of the NIC to include disputes over private employment contracts became the correct interpretation of the law.

The controversy however came up again in *Cocacola Nig. Ltd v. Titilayo Akinsanya*. The respondent/plaintiff, who was the plaintiff at the trial court was summarily dismissed by the appellant. She was the Human Resources Director of the defendant/appellant. She incurred some costs and

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8(2017) 17NWLR (Pt. 1593) 78 @ 122
9Section 47 Trade Disputes Act, Cap 432, Laws of the Federation of Nigeria, 2004
10Section 254©(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended by the Third Alteration Act, 2010)
expenses in the course of her work and submitted a claim for re-imbursement. The defendants/appellants refused to honour the claim but instead set up an audit committee to investigate her. The audit committee neither invited the plaintiff nor was its report made known to her. She was subsequently summarily dismissed by the appellant. She commenced an action at the National Industrial Court against the defendants/appellants claiming injunctive reliefs, the voiding of her dismissal and also special and general Damages in the sum of ₦150,000,000.00 (One hundred and fifty million naira).

The defendants/appellants filed a preliminary objection to the suit on the ground that the National Industrial Court lacked jurisdiction to entertain suits on private employment matters. The NIC dismissed the application and the defendants appealed to the Court of Appeal, which upheld the decision of The National Industrial Court. The defendants/appellant further appealed to the Supreme Court wherein the plaintiff opposed the appeal on the ground that it was contrary to the provision of section 243(4) of the 1999 Constitution (Third Alteration) Act, No.3 of 2010. The Supreme Court further affirmed the judgment of the NIC and held that private contract of employment disputes were part of the subject matter jurisdiction of the National Industrial Court and that the Court of Appeal was the apex court with respect to appeals from the decisions of the National Industrial Court. By this decision, the law has become settled that private employment matters are part of the subject matter jurisdiction of the National Industrial Court. The Supreme Court also confirmed the Court of Appeal in the same judgment as the final appellate court for the decisions of the National Industrial Court when it upheld the objection of the plaintiff (Mrs. Titilayo Akinsanya) to the further appeal of the defendants/appellants (The Coca-Cola Group) to the Supreme Court. Thus, it also laid to rest the controversy as to whether or not the Court of Appeal is the final court on all matters within the subject matter jurisdiction of the NIC and which has been brought before it for adjudication. It is interesting to note that under the NIC Act of 2006, the NIC was the apex court on all matters within its exclusive jurisdiction except matters bordering on Fundamental human rights guaranteed by Chapter IV of the 1999 Constitution. The court therefore had the jurisdiction as the final court on all labour and employment matters before the enactment of the Third Alteration Act. This has been expressed to be too gargantuan for a court of first instance.\textsuperscript{11} This position has however been altered by the Third Alteration Act to the 1999 Constitution.\textsuperscript{14} The Third Alteration Act to the 1999 Constitution provides as follows:

(2) An appeal shall lie from the decision of National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this


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Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

(3) An Appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal, as may be prescribed by an Act of the National Assembly; Provided that where an Act or Law prescribes that an appeal shall lie from the decisions of the National Court to the court of Appeal, such appeal shall be with the leave of the Court of Appeal.

(5) The National Industrial Court shall have and exercise jurisdiction and power in criminal cases and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this Section or any other Act of the National Assembly or by any other law.

(6) 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.\textsuperscript{12}

It is clear from the foregoing provisions that the National Industrial Court is no longer the final court on labour and employment matters. Thus, where an issue of fundamental rights arises from matters within the subject matter of the jurisdiction of the National Industrial Court, appeal shall lie as of right to the Court of Appeal. Similarly, all decisions of the National Industrial Court made pursuant to its criminal jurisdiction are appealable to the Court of Appeal as of right. The significant shift however lies in Section 243 (3) which allows for appeals to the Court of Appeal with the leave of the Court of Appeal on all other decisions of the National Industrial Court. The implication of this provision is that appeals are now allowed for every decision of the National Industrial Court to the Court of Appeal. This is because in seeking the leave of the Court of Appeal to bring any appeal, the judgment in question as well as the notice and grounds of appeal together with the records of proceeding are transmitted to the Court of Appeal to enable it exercise its discretion to grant or refuse such leave. It is apposite that such an application for leave will only be denied where the records of appeal, and notice and grounds of appeal does not disclose a \textit{prima facie} substance of appeal. It is submitted that where leave is refused by the Court of Appeal, the appeal could as well be said to have failed before it started. In summary, there is now a right of appeal from the decisions of the National Industrial Court to the Court of Appeal on labour and employment matters under the Third Alteration Act to the 1999 Nigerian Constitution. In \textit{Skye Bank PLC, Victor Anaemem Iwu},\textsuperscript{13} the respondent was formerly a staff of AfriBank PLC which later became Skye Bank PLC and finally Mainstream Bank Ltd. Somewhere along the line, he was dismissed for gross misconduct. He filed an action at the National Industrial Court.

\textsuperscript{12}Section 243(2)(3) and Section 254C(5)(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended by the Third Alteration Act, 2010)

\textsuperscript{13}(2017) 16NWLR (Pt, 1590) 24 @ 105-106
Court claiming arrears of salary and allowances owed him and other sundry benefits. The respondent filed an objection to the competence of the suit on grounds that parties were improperly constituted. The National Industrial Court overruled the defendant/applicant in that the National Industrial Court was not to be burdened by technicalities. The defendant appealed to the Court of Appeal while the plaintiff respondent contended that the appeal was incompetent on grounds that an appeal does not lie from the decisions of the National Industrial Court to the Court of Appeal on labour and employment matters. Before the court of appeal could deliver its ruling on the competence of the appeal, the appellant sought and obtained the leave of the Court of Appeal for a case stated to the Supreme Court. Three questions were raised for determination at the Supreme Court, to wit,

1. Whether the Court of Appeal has the jurisdiction to hear and determine appeals arising from the decisions of the National Industrial Court.
2. Whether there was any constitutional provision that divested the Court of Appeal the power to hear and determine appeal from the National Industrial Court.
3. Whether the power of the court of appeal to hear appeals arising from the decisions of the National Industrial Court was limited only to that connected with fundamental human rights.

The Supreme Court applied the provisions of the section 243(3) of the 1999 constitution (Third alteration act), 2010, and held that the Court of Appeal had jurisdiction to hear and entertain appeals from the National Industrial Court and that there was no constitutional provision divesting the Court of Appeal the power to entertain such appeals. It further held that appeals to the Court of Appeal from decisions of the National Industrial Court were not limited to matters of fundamental rights only.

4. Conclusion and Recommendations
It is safe to conclude that the National Industrial Court has come a long way from its days as an inferior referral court for the resolution of trade disputes that could not be resolved at the stages of mediation, conciliation and arbitration. It is now a superior court of records with jurisdiction guaranteed by the 1999 Constitution (as amended). The jurisdiction of the court has expanded from trade disputes to all kinds of labour and employment matters as well as industrial relations. Furthermore, this expanded subject matters jurisdiction is to be exercised to the exclusion of all other courts in Nigeria. Consequently, the regular high courts have been divested of the power to adjudicate over disputes arising from contracts of employment whether in the private or public sector. Adjudication of such disputes is now within the exclusive jurisdiction of the National Industrial Court. The law is now also settled that appeals lie from the decisions of the National Industrial Court either as of right or by leave to the Court of Appeal. Similarly, the Court of Appeal is now firmly established as the apex court in labour and employment matters and all other disputes that fall within the jurisdiction of the National Industrial Court. For the purpose of exercising any jurisdiction conferred
upon it by the constitution or any other law, the National Industrial Court shall have all the powers of a high court and can even confer on itself additional powers beyond that of a regular high court to be more effective in the exercise of its jurisdiction. This means that the court is imbued with inherent powers to punish for contempt and can invoke all available common law and statutory writs for the enforcement of its orders. Finally, the court is now composed of only legal practitioners as the judges of the court and unlike the situation under the NIC Act of 2006 where nonprofessionals could be members of the panels of the court; a single judge can now competently preside over all the matters brought before the court. This is however subject to the direction of the president of the court.\textsuperscript{14}

In view of the expanded jurisdiction of the court, it is recommended that each state, of the federation should have a minimum of three judicial divisions of the National Industrial Court to ensure ease of access by citizens.

Second, environmental disputes should be included in the jurisdiction of the court to ensure cost effectiveness and as a way of decongesting the regular high courts. There should be a circumscription of the time allowed for appealing against the decisions of the Court to the Court of Appeal. This is in view of the enormous social and economic costs associated with trade disputes, labour, and employment squabbles. Finally, the court must ensure sustenance of its simplicity of procedure even in the face of an expanded subject matter jurisdiction. Exclusion of the application of the technical rules of evidence and other technicalities such as the court held in the case of Skye Bank Plc v Iwu should remain the order of the day in the court. This will ensure that hopeless and hapless workers and other vulnerable persons retain ease of access to the court.

\textsuperscript{14} Section 254(E)(1) CFRN,1999,(Third Alteration Act)