

## **Legal Implications of the Constitution (Third Alteration) Act, 2010 on the Jurisdiction of the National Industrial Court (Nic)**

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**Abstract:** *This paper examines the constitutionality or otherwise of the National Industrial Court Act, 2006 and the jurisdiction of the court to hear and determine labour related disputes. The paper also argued the legal implications of the constitution (Third Alteration) Act on the jurisdiction of the National Industrial Court vis-a-vis that of the High Court (of a State or the Federal Capital Territory, Abuja) in respect of labour and or labour related disputes. The paper brings to light that by virtue of the said constitution's alteration, the National Industrial Court now have and enjoys exclusive jurisdiction over all civil causes and matters relating to or connected with labour and labour related matters, thereby inhibiting the right or free access to justice, as many litigants where National Industrial Court is not sited like Edo State have to travel to the National Industrial Court Akure. The heavy cost of transportation they have to bear should they manage to access the NIC in any of the zones nearest to them, is disincentive to the constitutionally guaranteed right of access to justice. No doubt majority of Nigerians are poor, live in rural community and can hardly afford litigation expenses.*

**Keywords:** *Implications, Constitution and National Industrial court*

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### **I. Introduction**

The National Industrial Court (NIC) is the original creation of the Trade Dispute Decree No. 7 of 1976 (now Act). Constitutional validity was given to it by the amendments of Sections 133, 147, 153 and 165 of the 1963 constitution which unsuspended provisions were then in operation side by side with the Military Decrees in Nigeria<sup>1</sup>. Although, the 1979 and 1999 constitution did not take into consideration these amendments, however, under Section 274 of the 1979 constitution<sup>2</sup>, the Trade Dispute Decree No.7 of 1976 was by operation of that Section deemed to be an existing Act of the National Assembly. Thus, the actual jurisdiction of the NIC vis-a-vis the High Court over labour and labour related matters had been a subject of considerable controversy as evidently demonstrated by the conflicting decisions of our courts on the matter<sup>3</sup>.

This may not be unconnected<sup>4</sup> with the Supreme Court decisions in the cases of *Udoh V. OHMB*<sup>5</sup> and *Savannah Bank Nigeria Ltd & Ors V. Pan Atlantic Shipping and Transport Agencies Ltd*<sup>6</sup>. Whereas in *Udoh's* case it was held that the NIC has jurisdiction to the exclusion of all other courts to hear and determine civil causes and matters that are trade disputes including inter and intra union disputes. Yet much earlier in the case of *Savannah Bank and others*<sup>7</sup>, the same court had held that the High Court of a state is by virtue of Section 236<sup>8</sup> of the 1979 constitution, a court of general and unlimited jurisdiction and therefore have jurisdiction over all civil causes and matters, which includes Trade Disputes.

It is strongly submitted that these contradictory decisions of the apex court on the matter gave the Court of Appeal the option of picking and choosing which position to adopt as between the decisions in dealing with the matter. This is because it is an elementary principle of law that where Court of Appeal is faced with two contradictory decisions of the Supreme Court on the same issue, it is at liberty to adopt any of the decisions in deciding such a like matter before it<sup>9</sup>.

Nevertheless, it is humbly submitted that it is safer to pick and choose the later decision as the former had been over ruled.

Consequently, the different divisions of the Court of Appeal started to adopt any of the position established by the said Supreme Court decisions on any issue on the point. Thus, contradictory decisions on the same point by the Court of Appeal emanating from some of its different decisions became the order of the day. This no doubt produced an unhealthy situation in our legal jurisprudence. It is submitted that it is not unlikely that this fluid state of the law on the issue prompted the Military Regime of General Ibrahim Babangidda to promulgate the Trade Dispute (Amendment) Decree No. 47 of 1992. This Decree expressly clothed the NIC with the status of a superior court of record. It vested the court with powers and jurisdiction to hear and determine Trade Disputes including inter and intra union disputes to the exclusion of all other courts<sup>10</sup>. Therefore, the decision of the Supreme Court in *Udoh v. OHMB*<sup>11</sup> may be rationalized on the basis and strength of this and other Decrees of the Federal Military Government that were in operation at that time. It is now trite that in a Military setting, there Decrees and Edicts are superior and prevails over the unsuspended provisions of the constitution and any other law in force at the time.

Thus, the Supreme Court was to that extent right in holding that the NIC by the operation of the Trade Disputes (Amendment) Decree No. 47 enjoys exclusive jurisdiction over Trade Dispute or labour or labour related civil causes and matters. Whereas other later decisions such as Attorney General of Oyo State V. Nigeria Labour Congress, Oyo State & 4 others which apparently follows the Supreme Court's decision in Savannah Bank of Nigeria Ltd case on the jurisdiction of the High Court of a State, took the position rightly in our view that a democratic dispensation, the Supreme law and indeed the organic law or ground norm is the constitution and therefore its provisions overrides and prevails over any inconsistent provision of any other law (Decrees and Edicts inclusive)<sup>12</sup>.

However, as could be seen from the decisions<sup>13</sup> of the court, the position of the law on the point was far from been settled.

### **THE NATIONAL INDUSTRIAL COURT ACT, 2006**

In 2006, the NIC Act was enacted. The Act re-established the NIC. It is evident from the express provisions of the Act that it's intendment was not only to make NIC 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 others courts<sup>14</sup>.

Unfortunately, this Act was enacted without a corresponding amendment of the very important 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 record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the power 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) A 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"*.

Thus, not unexpectedly, the relevant provisions of the Act<sup>15</sup> was greeted with severe criticism by academic writers which we respectfully aligned ourselves with<sup>16</sup>, to the effect that the said provision of the Act is in conflict with and indeed does serious violence to the provisions of Sections 1(1), 1(3), 4(8), 6, 249, 252, 270 and 272 of the 1999 Constitution and that consequently, by virtue of the provisions of Section 1(3) of the Constitution, those provisions of the Act are null and void to the extent of their inconsistencies with the provisions of the constitution<sup>17</sup>.

It was further argued then and rightly in our view, that in the absence of a corresponding amendment of the appropriate Sections of the 1999 Constitution, the concurrent jurisdiction which the State High Courts enjoys with the NIC in respect of civil causes and matters relating or pertaining to labour and labour related matters was preserved. This inevitable conclusion was upheld by the Supreme Court recently in the case of NUEE V. B.P.E<sup>18</sup>.

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

The above was the position of the law on the point until the enactment of the Constitution (Third Alteration) Act 2010, which came into force with effect from the 4<sup>th</sup> day of March, 2011.

The Act amended the relevant provisions of the constitution<sup>19</sup>. By the alteration or amendment, the NIC is made a direct creation of the Constitution, as one of those courts listed under Section 6(5) of the Constitution<sup>20</sup> and under Section 254A(1) which provides to the effect that: *"There shall be a National Industrial Court of Nigeria"*.

For the first time, the Alteration Act, effectively confer on the NIC the status of a superior Court of record with all the powers of a High Court<sup>21</sup>. It also for the first time, confer on the NIC exclusive jurisdiction to hear and determine civil causes and matters relating to labour and matters connected therewith.

All these were accomplished by the valid amendment of Section 6(5) as stated above and the consequential amendments of Sections 84(4), 240, 243, 254, 287(3), 289, 292(4), 295, 316, 318 and paragraphs 12, 13, 20 and 21 of the Third and Seventh Schedules of the Constitution to reflect the proper nomenclature – “President and Judges”, as the case may be of the NIC.

It is pertinent to note that apart from listing the NIC as one of the courts established by and under the constitution for the Federation, it went on to state the composition of the Court to include the President and such number of judges as maybe prescribed by an Act of the National Assembly including the procedure, qualification and criteria for their appointment. For the court to be properly constituted, Section 254<sup>22</sup> stipulates that in exercising any jurisdiction conferred upon it by the constitution or any other law, the NIC shall be duly constituted if it consists of a single Judge or not more than three Judges as the President of the Court may direct.

More significantly, Section 254(c)(1) and (2) (like Section 251 dealing on matters over which the Federal High Court have exclusive jurisdiction) provided extensively for such labour or labour related civil causes or matters that is within the ambit of the Court’s jurisdiction. This also includes exclusive jurisdiction and power to deal with any matter connected with or pertaining to the application of any international Convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith, notwithstanding anything to the contrary in the Constitution by virtue of the provisions of Section 254(c) (2) thereto.

Furthermore, in other to unequivocally established its exclusive jurisdiction over such matters, Section 254(c)(1) provides inter alia:

*Notwithstanding the provisions of Section 251, 257, 272<sup>23</sup> and anything contained in this constitution and addition to such other jurisdiction as maybe 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 cases and matters”.*

The Section then went on under its paragraph 254(c)(1)(a) to (m) and subsection 2 to prescribe such causes or matters that are relating to or connected with labour, employment, Trade unions, Industrial relations and matters arising from work place, condition of service including health, safety, welfare of labour, employee, worker and matters incidental or connected therewith including matters arising or connected with Factories Act, Trade Dispute Act, Trade Union Act, Labour Act, Employee’s Compensation Act or any other Act or Law relating to labour, Industrial relations and matters connected therewith etc<sup>24</sup>.

It is abundantly obvious from the provision of Section 254(c) (1) and (2) that the Draftsmen intended the NIC to have jurisdiction over every conceivable civil matters or causes connected or related to labour or incidental thereto to the exclusion of all other Courts.

However, much as extensive as its jurisdiction over labour disputes may appear, it is nonetheless a court of limited jurisdiction. Its’ jurisdiction is circumscribed and limited only to those matters stated under Section 254(c) (1) and (2) in the exercise of its civil jurisdiction. Therefore, any exercise of its civil jurisdiction outside the matters stated therein will be ultra vires its powers. So that although it is a superior court of record and by law nothing shall be intended to be out of its jurisdiction; but every of such other matter specifically appearing to be so<sup>25</sup>. In this case what is expressly stated excludes those not so stated<sup>26</sup>.

Therefore, it is submitted that without prejudice to the provision of Section 254(c), the High Court, a court of general jurisdiction in virtue of the provisions of Section 272, still retain and enjoy equal or concurrent jurisdiction with the NIC in respect of criminal causes or matters connected with or pertaining to those civil causes and matters contained in Section 254(c) (1) and (2). It is strongly suggested that this conclusion is inevitable from the proper construction of the combined effect of Section 254(c) (1) and (2) on the one hand and subsection (5) of the same Section on the other of the said constitution as amended.

It is submitted further that if the Draftsmen had intended the NIC to have exclusive jurisdiction over such criminal matters, it would have unequivocally stated so clearly and specifically, by couching the provisions of Section 254 (c) (5) in the way and manner it couched Section 254(c)(1). The word “exclusive” is deliberately omitted in Section 254(c)(5) by the Draftsmen. In the circumstances, the only reasonable inference to be drawn from it’s omission in the subsection is that the Draftsmen intended the High Court to continue to have and enjoy equal or concurrent jurisdiction with the NIC over such criminal causes and matters connected with those civil causes or matters contained in Section 254(c)(1) and (2)<sup>27</sup>. Thus, since the High Court’s jurisdiction over such criminal causes or matters is not expressly excluded, nor does it appear to be so by implication, the court will continue to enjoy co-ordinate or concurrent jurisdiction with NIC over such criminal causes and matters<sup>28</sup>.

Furthermore, it is submitted that it is only the Constitution itself that can take away or abrogate the general jurisdiction it vested in the High Court<sup>29</sup>. This can only be done by an express provision in the Constitution to that effect, which is not the case in this instance.

It is therefore suggested that to deprive the High Court of concurrent jurisdiction which it enjoy with the NIC over such criminal causes or matters, the Constitution should further be amended in such a way that

“exclusive” jurisdiction to hear and determine such criminal causes or matters is expressly and specifically conferred on the NIC.

Another, indirect implication of the exclusive jurisdiction conferred on the NIC in respect of such specified civil causes and matters is that it had abridged or whittled down considerably the right of access to NIC by prospective litigants in such matters. This is because, presently, the number of NIC in Nigeria, (a country with population figure of over a hundred and fifty million people) are very few and grossly inadequate to serve the entire citizenry, compared to the High Court (whether of the State or the Federal Capital Territory) which is found almost in all the 774 Local Government Areas/Area Councils in Nigeria.

There is no doubt that due to the number of the High Courts in Nigeria, it is easily more accessible to would be litigants and it was easy in the past, when the High Court still enjoyed concurrent jurisdiction with NIC in respect of such civil cause and matters in issue, to approach such courts for redress. Presently, the NIC only exists in some zones it is not in existence even in all the State capitals. Therefore, the distance of the NIC from the would be litigants who may be resident in any of the remote part of the country, e.g. Primary School Teachers (members of NUT), members of the Local Government Branches of the National Union of Road Transport Workers (NURTW) etc in such far away localities, are no doubt under a disability or are inhibited from accessing the NIC due to its far distance from them. Of course, the heavy cost of transportation they have to bear should they manage to access the NIC in any of the zones nearest to them, is another disincentive to the constitutionally<sup>30</sup> guaranteed right of access to justice. Yet, majority of Nigerians are poor, live in rural communities and can hardly afford such litigation expenses.

Thus, although, the Alteration Act, had achieved its aim of making NIC a specialized court for adjudication on labour matters or matters incidental to it to the exclusion of all other courts, the limited number of the NIC in Nigeria had however thrown up another challenge, namely how accessible is the NIC to the common man in Nigeria? As shown above, because of its limited number, it is not easily accessible to would be litigants for the reasons pointed out above. It is therefore suggested that to overcome this challenges, more NIC should be established in Nigeria.

## II. Conclusion

It is safe to conclude by saying that the NIC now enjoy complete exclusive jurisdiction over labour and labour related civil causes and matters specified under Section 254(1) and (2) of the constitution as amended, but still share concurrent jurisdiction with the High Courts in respect of criminal causes and matters connected or relating to such labour causes or matters<sup>31</sup>. That because of the limited number of NIC which is bound to constitute an inhibition to the right access to justice, it is desirable that more of it be established in at least all the States of the Federation (for a start) for easy accessibility.

## References

- [1] Eme Wurogji et al op cit. Footnote 23 at P.28.
- [2] See Section 315 of the 1999 Constitution which is similar to Section 274 of the 1979 Constitution in all intents and purpose.
- [3] For Example see the cases of NURTW V. Ogodo (1998) 2 NWLR (PT.537) 189; Kalango & Ors V. Dokubo & Ors (2003) 15 WLR 32, Attorney General of Oyo state V. Nigeria Labour Congress, Oyo State & Ors (2003) 8 NWLR (PT. 82) 1; and Ekong V. Oside (2004) 6 FR 82 amongst others, where the Court of Appeal, in one breath held that the NIC enjoys exclusive jurisdiction in respect of civil causes and matters that are Trade Disputes and in another breath held that High Court of a State being a court with general jurisdiction has concurrent jurisdiction with the NIC in respect of such matters.
- [4] Ejere O.D., “Further Reflections on the Constitutionality of the NIC, Act 2006” op cit. (1992) 7 NWLR (PT. 304) 138
- [5] (1987) 1 NWLR (PT.49) 112. See also Western Steel Work V. Iron Steel Workers Union (1987) 1 NWLR (PT. 49) 284. Ibid e.g. Western Steel Works case.
- [6] Now Section 272 of the 1999 Constitution, except that the word “unlimited” in Section 236 of the 1979 Constitution is omitted in Section 272 of the 1999 constitution.
- [7] See University of Ilorin V. Adediran (2007) 6 NWLR (PT. 1031) 498.
- [8] This is by virtue of the combined effect of Section 2, 5(2) and 20 of the said Decree. Supra footnote 5 See Section 1 (3) of the 1999 Constitution as amended.
- [9] NURTW V. Ogodo Kalango & Ors V. Dokubo & Ors. Attorney General of Oyo State V. Nigeria Labour Congress, Oyo State & 4 ors, Ekong V. Oside to mention a few (all Supra note 4).
- [10] This is by the combined effect of Sections 1(3), 7(1) and 11 of the Act.
- [11] i.e. Sections 1(3), 7(1) and 11 op cit.
- [12] Agbaje, F. Legal and Constitutional Anatomy of the New Industrial Court Act (2006) NJLIR Vol.1 No.1 (2007) P.73-78; Obiozor, C.A. Settlement of Trade Dispute in Nigeria-Reflections on Section 1 (3) (A) of the National Industrial Court Act, 2006, NJLIR Vol. 4 No. 3 (2010) P. 69-78; Eme Worugji et al, The NIC Act (2006) and the Jurisdictional Conflict in Adjudicatory Settlement of Labour Disputes in Nigeria: An unresolved issue. NJLIR Vol.1 No.2 (2007) P. 25-42; Uche, O., Why NIC does not have exclusive jurisdiction over labour matters, Guardian, Tuesday, April 17, 2007; Ejere O.D. “High Court’s jurisdiction to hear and determine inter or intra union Dispute is not completely ousted by the Trade Dispute Act as amended and the 2006 NIC Act” in NJLIR Vo..2, April 2007, P.56-72.
- [13] A.G. of Abia State V. A.G. of the Federation (2002) 6 NWLR (PT. 736) 264. See also A.G. of Oyo State V. Nigeria Labour Congress Oyo State & 4 ors cited supra.
- [14] (2010) 7 NWLR (PT.1194) 538. Although, this case was prosecuted and defended under the law as it was before the 2006 Act, it is humbly submitted that the conclusion reached would not have been otherwise, had it been heard and determined under the 2006

Act. This is because the relevant provisions of the 2006 Act could not validly oust the jurisdiction of the State High Courts in respect of Trade Disputes; as those provisions were inconsistent with the provisions of the Constitution and in such circumstances, the constitution prevails.

- [15] “The Principal Act”, which is the constitution of the Federal Republic of Nigeria, Cap C.23, Laws of the Federation, 2004.
- [16] See Section 2 of the said Alteration Act, where a new paragraph (cc)” was inserted into Section 6(5) and NIC listed against it.
- [17] See Section 6(3) and (5) of the Constitution as amended.
- [18] See Section 254A (2) and 254(B).
- [19] There are the provisions conferring jurisdiction on the Federal High Court, High Court of the Federal Capital Territory, Abuja and the High Court of a State respectively and the matters over which they can exercise jurisdiction.
- [20] See Section 254 (c) (1) and (2) for detail of such labour or labour related causes or matters over which the NIC now enjoys exclusive jurisdiction.
- [21] See Oputa JSC’s observation in *Oloba V. Akereja* (1988) 3 NWLR (PT.84) 508 at 527, where he stated inter alia “Nothing shall be intended to be out of the jurisdiction of a Superior Court, but that which specifically appear to be so.
- [22] This is an elementary principle of interpretation of laws.
- [23] The High Court (whether of the State or Federal Capital Territory, Abuja) had always have generation jurisdiction over all civil and criminal causes and matters within their territorial jurisdiction except where the Constitution provides to the contrary. See Section 272 of the 1999 Constitution.
- [24] See *Oloba V. Akereja* op cit (footnote 25). See also *Mobil V. LSEPA* (2003) 1 MJSC 112 ratio at 116.
- [25] See Per Ayoola JSC in *Adisa V. Oyinwola* (2000) FWLR (PT.8) 1349.
- [26] See section 36 of the 1999 Constitution.
- [27] See Section 272 read in conjunction with Section 254(c) (1) & (2) & (5) of the Constitution as amended).