

Non-Appealable Decisions of the National Industrial Court of Nigeria: A Critical Analysis

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Abstract

Dispute and dispute resolution is a standard feature of any workplace. While the mechanism for resolution of such disputes may be by the alternative disputes resolution system or the formal courts system, it is necessary and consistent with national laws and international standards and best practices that such system be open to redress for any aggrieved party to go on appeal. The National Industrial Court by some default of the Nigerian National Assembly was made the court of first and last resort on all civil matters instituted in it except where such matters involve an alleged breach of human rights of the party seeking redress. This development has created a legal conundrum as aggrieved parties are at a cul-de-sac even where the cases were lost due to mere technicalities. This work considers the position in South Africa which has a three tier appeal system on labour matters where labour matters can be appealed from the Labour Court to the Labour Appeal Court and finally to the Supreme Court of Appeal. It finally contends that there is the need to create another level of labour court dubbed the National Industrial Court of Appeal in Nigeria with powers to hear appeal from the National Industrial Court.

Key words: National Industrial Court, National Industrial Court of Appeal, Jurisdiction, Appeal, Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010

Introduction

The general industrial unrest and disharmony that characterized the industrial sector soon after the civil war and the fear of its possible socio-political as well as the economic effect on the nation, among others, precipitated the need for special formal mechanisms for settlement of labour disputes outside the regular court system with their attendant delay in dispute resolution in Nigeria. It was thought that a special system with a court dedicated to handling trade dispute matters would provide an effective and efficient mechanism for handling trade dispute matters (Atilola, 2008). The response to this was the promulgation of the Trade Dispute Decree No. 7 of 1976 which later became the Trade Dispute Act (TDA) 1976 (as amended).¹

The TDA in its part II provides for the establishment of the National Industrial Court (NIC), (Trade Dispute Act, 2004, 20(1)) the aim among others, was to provide for, encourage and promote pacific settlement of labour disputes in place of strife. The NIC was conferred with jurisdiction and power with respect to settlement of trade disputes, the interpretation of collective agreements and matters connected therewith (Trade Dispute Act, 2004, 20(1)). The NIC was the final arbiter in the hierarchy of the institutional mechanisms provided under the TDA for settlement of trade disputes.² Since the establishment of the NIC, it has, to some extent, contributed to the maintenance of industrial peace as well as impacted greatly on industrial relations practice in Nigeria. However, the roles ascribed to the court over the years became fraught with controversies particularly so with its status, powers and jurisdiction in the hierarchy of courts under the Nigerian Legal system³ (Ejere, 2006). These controversies greatly impeded the functionality of the NIC and quick settlement of labour disputes through adjudication in some cases. That is to say the NIC was not regarded as a unit of the judiciary, deserving of a separate Act of the legislature, establishing it and vesting it with powers, but was seen and functioned as a court without technical rules of practice and procedure, given an existence in the Trade Disputes Act, for purpose of resolution of labour and trade disputes (Ogunye, 2004). To solve the inadequacies that hitherto existed and fill the gaps which had previously hindered the smooth working of the NIC and impeded its attaining the primary objective of settlement of labour disputes, the National Industrial Court Act 2006 (NIC Act) was enacted.

The long title of the NIC Act noted that the Act is enacted to provide for the establishment of the NIC as a superior court of record and confer jurisdiction on the court with respect to labour and industrial relations matters. Originally, the NIC was a court of very limited jurisdiction but the NIC Act granted it expanded original and appellate jurisdictions. The jurisdiction of the NIC in civil cases and matters is related to labour, trade unions, and industrial relations; environment and conditions of work, health, safety and welfare of labour; strike, lock-out or industrial action; and interpretation of collective agreements, award of arbitral tribunal, terms of settlement of labour dispute, et cetera (NIC Act 2006, s. 7). It should be noted that with the advent of the NIC Act and NIC Rules, 2007, the NIC is now a court established specially by a statute and its powers and jurisdiction are now properly defined. Decisions of the NIC under the NIC Act, 2006 were final in respect of matters within its jurisdiction. This was not only understandable, but also desirable in a trade dispute resolution system that was more arbitral and meant to promote good labour relations and industrial harmony than it was adversarial and adjudicatory (Ogunye, 2004). Many of the matters adjudicated by the court originated from conciliation and arbitration, under 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 of the IAP is objected to by any of the trade disputants, the matter is further referred to the NIC for a final resolution (Ogunye, 2004) (TDA, ss. 3(2), 5, 7, 8 and 13(2)). This arrangement continued, but had some issues to pick with the 1999 Constitution. This necessitated some constitutional reviews as would be understood from its position under the 1999 Constitution.

The National Industrial Court under the 1999 Constitution (as altered)

Prior to the listing of the NIC as a Superior Court of record in Nigeria and the conferring of the jurisdiction on the Court as done under the 1999 Constitution of the Federal Republic of Nigeria (“as altered”: in the Nigerian constitutional jurisprudence, changes effected to the Constitution is called “alteration” and not “amendment”, s.9 of the Constitution), a plethora of arguments among legal practitioners, the bench and academic circles have advocated doing so. The purport of these arguments has been the need to strengthen the court by making clear constitutional provisions establishing the court, its composition and jurisdiction just as is the case with the other superior courts of record in the country like the High Court, Federal High Court, Customary Court of Appeal, Sharia Court of Appeal etcetera (Constitution 1999, s. 254C (1)(a-k)). The aim was to elevate the status of the judgments of the National Industrial Courts to that of other superior courts of record thereby compelling willing abidance and enforceability.

Section 254A of the *Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010* came as the long awaited legislative step in listing the NIC as a superior court of record. The section defined its establishment, composition, appointment of its President and Judges, its jurisdiction, powers, constitution, practice and procedure. This development expanded the jurisdiction of the court, vested it with additional adjudicatory powers,⁴ made its jurisdiction exclusive and shockingly made it a court of first and last resort (making its decisions to be final and not appealable to any court).

Jurisdiction of the National Industrial Court under the 1999 Constitution (as altered)

Section 254C (1-6) of the 1999 Constitution (as altered) provides for the jurisdiction of the NIC. It provides as follows:

“Notwithstanding the provisions of Sections 251,⁵ 257,⁶ 272,⁷ and anything contained in this 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 cases and matters-

- a) relating to 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;
- b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions 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;
- c) relating to or connected with the grant of any order restraining any person from or body from taking part in any strike, lock out, or any industrial action or any conduct in contemplation of or in furtherance of a strike, lock out or any industrial action and matters connected therewith or related thereto;
- d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer’s association or any other matter which the Court has jurisdiction to hear and determine;
- e) relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising there from;
- f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relations matters;
- g) relating to or connected with any dispute arising from discrimination or sexual harassment in the workplace;
- h) relating to, connected with or pertaining to the application or interpretation of international labour standards;
- i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;
- j) relating to the determination of any question as to the interpretation and application of any-
- i) collective agreement, (ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute (iii) award of judgment of the court, (iv) terms of settlement of any trade dispute, (v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement; (vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place; (vii) dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof
- k) relating to or connected with disputes arising from payment of or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or office public holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;
- l) relating to-(i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;(ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and (iii) such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;
- m) relating to or connected with the registration of collective agreement”

Section 254 (2&4) of the 1999 Constitution further provides that

“notwithstanding anything to the contrary in this Constitution, the NIC shall have 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 matters connected therewith; and that the NIC shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by an arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the NIC has the jurisdiction to entertain”.

By the items listed above upon which the court is conferred exclusive jurisdiction, it is clear that the jurisdiction of the court has not only been expanded, but has been amended to include matters other than labour, trade or industrial dispute. Also the court is vested with exclusive jurisdiction in civil matters relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's Compensations Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws. However, despite this expansion and amendment in its jurisdiction, the court cannot still entertain civil matters that may arise in some other labour relationships, such as child labour, child abuse, human trafficking and sexual harassment at the workplace. A reflection on the criminal jurisdiction of the court would shed more light on this.

The Criminal Jurisdiction of the NIC

Section 6(6)(b) of the Constitution has now made the NIC a court of first instance in causes or matters under the court's jurisdiction. Significantly, the *Constitution (Third Alteration) Act, 2010* has given jurisdiction to the NIC to hear criminal matters. Furthermore, such matters, unlike civil matters, are appealable as of right to the Court of Appeal. Sections 254C (5) and (6) provide:

“(5) The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any Act of the National Assembly or by any other Law. (6) Notwithstanding anything to the contrary in this constitution, appeal shall lie from the decision of the National Industrial Court from matters in sub-section 5 of this section to the Court of Appeal”.

Other provisions of the Constitution (as altered) on the criminal jurisdiction of the NIC are paragraphs (g) and (i) of Section 254C (1) by which the criminal jurisdiction is extended to matters: “(g) relating to or connected with any 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”. A close examination of section 254 C (1) shows an effort by the National Assembly of Nigeria to itemize those matters which are civil over which the NIC has jurisdiction. It is therefore submitted that the inclusion of paragraphs (g) and (i) is an aberration as these are clearly criminal matters lumped up under civil matters. It is important for jurisdiction to be clear and unambiguous. The Supreme Court has held in *Peter Obi v. INEC [2007] All FWLR 1116 @ 1194, paras G – H* that “the jurisdiction of a court or a tribunal ought to be conferred in a very clear and unambiguous language which does not admit of any controversy. The jurisdiction of a court or tribunal is not something you employ a searchlight to discover. It ought to be plain for all to see”. It is therefore strongly recommended that the criminal jurisdiction of the court should be clearly separated from the criminal one through separate sub-headings.

Powers of the National Industrial Court of Nigeria

The *1999 Constitution (Third Alteration) Act, 2010* confers on the National Industrial Court all powers of a High Court (Constitution 1999, s. 254D). Accordingly, the Court is empowered-

- To confirm a judgment, an award or order made by the Court, tribunal or body mentioned in the matter before it;
- To vary a judgment, an award or order made by the Court, tribunal or body mentioned therein;
- To set aside a judgment, an award or order made by the Court, tribunal or body mentioned therein;
- To order a rehearing and determination on such terms as it thinks just;
- To order judgment to be entered for any party;
- To make a final order or other order on such terms as it may think fit to ensure the determination on the merits of the matter in dispute between the parties;
- To make an order of mandamus requiring any act to be done
- To make an order of prohibition prohibiting any proceedings cause or matter; and
- To make an order of certiorari removing any proceedings, cause or matter into the Court for any purpose.
- To grant urgent interim reliefs;
- To make a declaratory order;
- To appoint a public trustee for the management of the affairs and finances of a trade union or employees' organization involved in any organizational disputes;

- To make appropriate order for an award of compensation or damages in any circumstance contemplated by the NIC Act, 2006 or any Act of the National Assembly dealing with any matter that the Court has jurisdiction to hear ; and
- To make an order of compliance with any provision of any Act of the National Assembly dealing with any matter that the Court has jurisdiction to hear.

Notwithstanding the above, the National Assembly may by law, make provisions conferring upon the National Industrial Court powers additional to those already conferred above as may appear necessary or desirable for enabling the Court to be more effective in exercising its jurisdiction (Constitution 1999 254D(2)).

Proceedings of the Court

Like the conventional courts, the court applies the rule of law, as applicable, combined with flexibility, expediency, reliability and affordability. The Judges of the court must have considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria (NIC Website, n.d.). Procedurally, the *Evidence Act* applies to its civil matters. For its criminal matters, the *Criminal Code*, the *Penal Code*, the *Administration of the Criminal Justice Act, 2015* (which repealed the Criminal Procedure Act, Criminal Procedure Code) and the *Evidence Act* bind its proceedings. Essentially, the proceedings of the court are generally regulated by the *Constitution of the Federal Republic of Nigeria 1999* (as altered); the *National Industrial Court Act, 2006*; the *National Industrial Court Rules, 2007*; and, the *Trades Disputes Act, 1990* (as amended) (NIC Website, n.d.).

The provisions of the *1999 Constitution (Third Alteration) Act, 2010* also recognizes other media for resolving disputes that are connected with labour matters, employment and industrial relations such as mediation, conciliation, arbitration and dialogue. It is expected that litigation will be a last option; to be resorted to only after all reasonable avenues have failed. Perhaps to achieve this, the *Third Alteration Act* further provides for the establishment of an Alternative Dispute Resolution Centre within the premises of the Court. The ADR Centre offers various alternative means of resolving disputes on matters over which the court has jurisdiction (Constitution 1999, s. 254C (3)). Resorting to ADR is however not a condition precedent for the court to entertain any case. Rather, by operation of the law, the Court has jurisdiction over any civil and criminal dispute on matters which jurisdiction is conferred on the Court. As such, any dispute could be referred to or filed with the Court irrespective of the previous attempts at resolution (NIC Website, n.d.).

Appellate Jurisdiction of the NIC

Before the *Third Alteration Act*, which defined the boundaries of appeals from the decisions of the NIC, section 9 of the NIC Act, 2006, had made provisions regarding right of appeals from NIC's decisions as follows:

“(1) Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and subsection (2) of this Section, no appeal shall lie from the decisions of the court to the Court of Appeal or any other court except as may be prescribed by this Act or any other Act of the National Assembly.

(2) An appeal from the decision of the Court shall lie only as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria”.

In addition therefore, section 243(2) and (3) of the *Third Alteration Act* provides as follows:

1. An Appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.
2. 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 Industrial Court to the Court of Appeal, such Appeal shall be with the leave of the Court of Appeal.

1. Without prejudice to the provisions of Section 254C (5) of this Act, the decision of the Court of Appeal in respect of any Appeal arising from any civil jurisdiction of the National Industrial Court shall be final.

Notably, section 243(2 and 3) of the Constitution is a rehash of Section 9 (1 and 2) of the *NIC Act, 2006*. Therefore, it is clear that the NIC wields fearsome powers which can only be challenged in limited cases. By this, the court can be compared with the character of a military tribunal.

Thus, if a worker is sacked by his employer or if any of his constitutional, employment or labour rights is breached, his recourse for redress must be to the NIC.

However, contrary the general expectation of any litigant, the NIC shall not only be his court of first recourse, but the last, except such a worker is able to allege a breach of any of his constitutionally guaranteed fundamental rights, either by his employer before initiating an action in court or by the NIC, itself, in the course of considering and adjudicating the worker's suit (Ogunye, 2004). Unfortunately however, there is a huge volume of case law on labour and employment actions where the appeal court and the apex court turned down attempts to raise issues of alleged breach of fundamental human rights especially as it relates to issue of fair hearing in employment and labour matters as strong enough to justify entertaining the appeal for breach of fundamental rights. The National Assembly may therefore need to make further law, pursuant to its powers under section 254D (2), to expand the scope of the right of appeal from the decisions of the NIC. The criminal jurisdiction of the NIC is defined by section 254 C (5) of the Constitution. By the combination of section 254C (5 and 6), an appeal shall lie, as of right, from the decision of the NIC from criminal causes and matters arising from any cause or matter in which jurisdiction is conferred on the NIC to the Court of Appeal. But, unlike the civil proceedings, criminal appeals emanating from the decisions of the Court can continue up to the Supreme Court. This is because the appeal to the Court of Appeal has not been made final in that regard.

At another level, any person or body, who, being an interested or necessary party that is affected by a judgment of the NIC, but was not joined as such in the suit, cannot, as the law currently stands, exercise a right of appeal against the judgment of the court, with which he or she may be dissatisfied, as an "applicant/ interested party/appellant". However, under section 243 (a) of the Constitution, an interested party has the right to appeal against a judgment of the High Court of a State, High Court of the Federal Capital Territory (FCT), Abuja or the Federal High Court even though the interested party was not a party to the suit against which he seeks to appeal so long as his interest is involved or affected by the judgment of the court. However, it seems this right of appeal of an interested party does not extend to the judgments of the NIC.

The right of appeal against the decision of a court or tribunal is a constitutional right in Nigeria as well as an internationally recognized right in judicial proceedings. There is no court of first instance in Nigeria whose decision cannot be appealed except the Supreme Court while exercising its original jurisdiction under section 232 of the Constitution. Its decisions on appeals are also final and not appealable (Constitution 1999, s. 240). The National Assembly may enact laws to regulate labour, trade disputes, industrial relations, national minimum wage,⁸ et cetera. However, it appears that the National Assembly and the Houses of Assembly of the states in the "federation" have exceeded the powers as envisioned by item 34 of the Exclusive Legislative List in the Constitution in amending the Constitution to consolidate cases of employment of any kind in the NIC, as 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.

In other words, we believe that due consideration should have been given to the federal character of the country so that employees of the state and those of the federal government should be treated separately. Hence, there ought to be the Industrial Courts of States and the National Industrial Court respectively just like we have State High Courts and Federal High Courts (the National Industrial Court may better be called in this regard "Federal Industrial Court"). It thus follows that the constitutional alteration is seriously flawed and fundamentally violates the principle of Federalism, as characteristic of Nigeria. Therefore, in the absence of the Industrial Court of the states or of the Federal Capital Territory, it is a legislative misjudgment for the High Courts and the Federal High Court to have been divested of jurisdiction in employment matters and same vested in the National Industrial Court. In 1993, when the jurisdiction of the Federal High Court was extended by the Constitution (Suspension and Modification) Decree (107) of 1993, to consolidate all actions against the Federal Government or any of its agencies in the Federal High Court,⁹ the matters which were brought under the jurisdictional coverage of the Federal High Court were matters in the exclusive legislative sphere of the Federal Government. However, matters which are not in the legislative domain of the Federal Government, let alone being in the exclusive legislative list, have now been consolidated under the jurisdiction of the NIC, a part of the federal judiciary, thereby robbing the states part of their judicial powers (Ogunye, 2004). Nigeria may have lessons to learn from South Africa in reforming its court system on labour matters.

Labour Matters in South Africa

In South Africa, the Labour Court, which was established by the Labour Relations Act, 1995, is the Court vested with the jurisdiction to hear labour matters. The Court has the same status as a High Court with jurisdiction to adjudicate on matters relating to labour disputes. It has been observed in *Wannenburg v Madamu Technologies (Pty) Ltd* (AR87/2012) [2012] ZAKZPHC 35 (13 June 2012), that the Court has exclusive jurisdiction over cases arising from the Labour Relations Act, 1995, which deals with collective bargaining, trade unions, strikes and lockouts, unfair dismissal and unfair labour practices; the Basic Conditions of Employment Act, 1997, which deals with work in hours, leave and remuneration; the Employment Equity Act, 1998, which deals with discrimination and affirmative action; and the Unemployment Insurance Act, 2001. Like Nigeria, these matters are removed from the jurisdiction of the ordinary High Courts and vested in the Labour Courts to the exclusion of all other Courts.

Appellate Jurisdiction on Labour Matters in South Africa

Appeals touching on labour matters are entertained at the Labour Appeal Court. The Labour Appeal Court has the jurisdiction to hear appeals on matters arising from the Labour Court. The judgments of the Court are final at this stage and not open to further appeal. But when a constitutional issue is involved, an appeal may be made to the Supreme Court of Appeal and ultimately to the Constitutional Court. Accordingly, the Supreme Court of Appeal has jurisdiction to hear appeals from the Labour Appeal Court on issues that relate to constitutional matters. Its decisions are not final as they can also be further appealed to the Constitutional Court which is the apex court in South Africa.

Need for NIC Judgments to be Appealable

The removal of the right to appeal from the decisions of the NIC on labour matters substantially takes Nigeria back to the legal systems of continental Europe where defendants were not provided with an effective means of challenging their conviction (Marshall, 2011).¹⁰ At the broadest levels of generality, appeals are concerned with the correction of errors. Mechanisms for error correction are an important feature of developed legal systems. “Developed legal systems make provision for correcting error. Error—in the sense of good faith differences of opinion about finding the facts or about formulating or applying rules of law—is expected as a regular occurrence” (Langbein, Lerner and Smith, 2009). Hence, errors are inevitabilities and rooms for correcting them must be kept wide open. An important purpose that appeals serve is to protect against miscarriage of justice. For a myriad of potential reasons, at trial, the NIC may arrive at erroneous judgments. These may include misleading, irrelevant, prejudicial or fabricated evidence. Appeals provide a forum for an aggrieved judgment debtor in such cases to seek redress.

Furthermore, appeals ensure a better decision making system as judges know that their decisions can be reversed. Agreeably, a rationale behind the removal of right of appeal from the judgments of the NIC is to discourage unnecessary elongation of cases on matters bordering on employment which will spell ineffable doom for the national economy in the face of mounting unemployment problems (Blankson, 2012). However, the need for expeditious dispensation of cases should not defeat the need for a legal system that effectively guarantees the right of an aggrieved party to proper judicial audience by way of appeal. The recognition of the right of appeal in South Africa with respect to labour matters is therefore plausible and quite consistent with the international standards. The three tier levels of appeal in South Africa meets the Structural requirements of the right to a fair trial under Article 14(5) of the *International Covenant on Civil and Political Rights (ICCPR)*. Notably, this position is largely obtainable in many countries of the world, including Malaysia, Antigua and Barbuda, Australia, etc.

Recommendations

It is therefore recommended that the National Assembly goes back to review the *Constitution (Third Alteration) Act, 2010* by deleting section 243(3) which makes decisions from the NIC in respect of civil matters final or reviewing the said section to allow appeals from the NIC to lie to the Court of Appeal. In other words, rather than stipulating that “an appeal shall only lie from the decisions of the National Industrial Court to the Court of Appeal as may be stipulated by an Act of the National Assembly”, section 243 (3) should be reframed to allow appeals to lie to the decisions of the NIC to the Court of Appeal. The proviso should also be reviewed for such appeals to lie without leave of the court. It may however be reasonable for the decisions of the Court of Appeal to be made final in that regard as already stipulated in section 243 (4) of the Constitution.

Alternatively, the National Assembly may create a National Industrial Court of Appeal (NICA) like the Sharia Court of Appeal or the Customary Court of Appeal and vests it with exclusive jurisdiction to hear appeals arising from the NIC. The creation of the NICA will not only enable labour matters and causes to be handled expeditiously and by experts, but the aggrieved parties would also be accorded adequate opportunities to seek redress against perceived wrong decisions of the NIC. With such an arrangement, the desired access to justice and structural requirements of the right to a fair trial of the international standard would be well safeguarded. If the NICA option is therefore adopted, it is further recommended that decisions of the NICA should finally lie to the Court of Appeal by leave (similar to the present arrangement in section 243 (4)) to guarantee a three-level adjudicatory process. At this stage, the appeal should be final.

It is submitted that while the current expansion and exclusivity of the jurisdiction of the NIC is welcome, it is important as a matter of constitutional right for litigants to be afforded a chance to appeal the decisions of the NIC. No court in Nigeria is a Court of first and final hearing, except the Supreme Court in its special original jurisdiction in disputes involving Federal v. State; or State v. State; or National Assembly v. State House of Assembly; etc (Constitution 1999, s. 232(1)).¹¹ This is strange to the culture and practice of the Nigerian judicial system. It is obvious from item 34 on the Exclusive Legislative List of the Second Schedule to the Constitution (as altered) that there is nothing therein that can serve as a foundation for amending the Constitution to vest exclusive powers in the NIC to function as the first and final arbiter in ordinary cases of employment in the private and public sectors, involving individuals (and not trade unions or workers' associations) across Nigeria, not to talk of child trafficking, child labour et cetera.

Conclusion

This work has critically examined the new structure of the National Industrial Court (NIC) in Nigeria under the *Constitution (Third Alteration) Act, 2010* as regards the finality of its decisions on civil matters and causes. The work pointed out some legal problems created by section 243(3) and argued that the removal of the right of appeal by that section has done more harms than good. It comparatively considers the position in South Africa which operates a three tier appeal system in its labour matters and advocates that a National Industrial Court of Appeal (NICA) be created in Nigeria which will entertain appeals from the National Industrial Court. If this option is however not adopted, then section 243 (3) needs to be reviewed to allow appeals from decisions of the NIC to go to the Court of Appeal without leave, while the decision of the Court of Appeal remains final as already stipulated in section 243 (4). Either of this would be more in accord with the rule of law and constitutionally guaranteed right of access to justice of the aggrieved parties as well as with the international best standards.

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- ¹ Chapter 432 Laws of the Federation of Nigeria (LFN) 1990 was amended by the Trade Dispute (Amendment) Decree No. 47 all of which are now contained in the Trade Dispute Act Cap T8 LFN 2004.
- ² This provision was first introduced into the TDA by Decree No 47 of 1992. The position of the Decree as at that time could be understood since it was a military era when military decrees were deemed superior to the Constitution.
- ³ The High Court's Jurisdiction to Hear and Determine Inter or Intra Union Disputes is not completely ousted by the Trade Disputes Act as amended and the 2006 National Industrial Court Act.
- ⁴ Some items under the jurisdiction of the NIC in the 1999 Constitution (as amended) are not labour and industrial relations connected.
- ⁵ Which defines the jurisdiction of the Federal High Court.
- ⁶ On the jurisdiction of the High Court of the Federal Capital Territory.
- ⁷ On the jurisdiction of the High Court of a State.
- ⁸ As they have done in enacting the Labour Act, Factories Act, Trade Unions Act, Trade Disputes Act, Wages Board and Industrial Council Act, National Minimum Wage Act, and Workmen Compensation Act, for example.
- ⁹ This expansion was absorbed into the 1999 Constitution under section 251. The section spells out those matters over which the Federal High Court has exclusive jurisdiction.
- ¹⁰ In 1894 in *McKane v. Durston* 153 US 684 (1894), the Supreme Court of the USA in a unanimous judgment concluded that no matter how grave the offense, a criminal defendant has no constitutional right to appeal.
- ¹¹ In very limited cases such as cases between State v. State or State v. Federal Government of Nigeria, the Supreme Court is the Court of first hearing where the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.