



THE ROLE OF THE NATIONAL INDUSTRIAL COURT IN INDUSTRIAL CONFLICTS IN NIGERIA *

Abstract

Industrial conflicts are inevitable in every society, and with the ever expanding and continually complex global society, the need for the establishment of a court to act as an arbiter on issues arising from industrial relations becomes imperative. Inefficient management of industrial conflicts compromises the socio-economic stability of a nation, therefore a mechanism for better resolution of such disputes led to the establishment of National Industrial Court of Nigeria, saddled with the responsibility of adjudicating on civil and criminal matters relating to labour, employment and industrial relations. The Third Alteration to the 1999 Constitution of the Federal Republic of Nigeria ushered significant vicissitudes in the status and powers of the National Industrial Court in the adjudication of labour and industrial matters. This study therefore discussed these veritable roles of the National Industrial Court in industrial conflicts; its prospects and challenges impeding effective and efficient performance of its roles. Recommendations as to the way forward in line with international labour standards and best practices were proffered.

Keywords: National Industrial Court, Industrial relations, Industrial conflicts, Employment, Employees

1. Introduction

Industrial relations is one of the most delicate and complex problems of modern industrial society. The central issue of industrial relations is how to attain and maintain maximum levels of productive efficiency and how to share economic returns. As a result of these differences and conflicting interests that are at play in the organizations, conflicts are abound to arise. The general industrial dispute that characterized the industrial sector and the fear of possible socio-political and economic effect on the nation precipitated the need for specific formal mechanism for settlement of industrial disputes outside the regular court system with their attendant delay in dispute resolution in Nigeria. The recognition of the fact that an unstable environment of industrial relations affects the economic development of a nation, led to the establishment of National Industrial Court of Nigeria to resolve industrial conflicts expeditiously and efficiently to sustain industrial harmony. National Industrial Court is conferred with exclusive jurisdiction for civil causes and matters relating to labour, employment, trade union, industrial relations and other related matters. The court is also conferred with criminal jurisdiction by virtue of the Third Alteration Act¹, as its criminal jurisdiction extends over every matter over which it exercises civil jurisdiction. This noteworthy step marked an unprecedented shift in the legal landscape, paving way for a specialized court to negotiate the complexities of employment and labour matters with precision and fairness². The National Industrial Court however is not free from some factors clogging effective performance to meet with international labour standards and best

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¹ Constitution of the Federal Republic of Nigeria 1999 (Third Alteration Act) 2010.

² J Yakubu, 'The National Industrial Court's Role in Employment and Labour Related Matters', (2023), <https://www.lawpavilion.com>, accessed on 5th November, 2023.



practices. This work discusses these roles of the court as provided under the law, its prospects and the challenges thereof.

2. Conceptual Clarification

2.1 Industrial Relations

Industrial relations can be defined as a set of work place relationships that exists between employers and their employees, which are guided by certain agreed-upon rules that affect the ways employers and employees behave and carry out their functions in a work place. Garner³ defined it to mean all dealings and relationships between an employer and its employees including collective bargaining about issues such as safety and benefits. According to Satyendra⁴, it covers the relationship of employees with the management in the organization. Thus, it is concerned with anticipating, addressing and diffusing work place issues that may interface with an organization's business objectives and also with resolving disputes between labour and management. Onasanya⁵ described industrial relation as the relationship between trade union and the employers in the industry and the intervention of Government in that relationship. Zeb-Obipi⁶ opined that industrial relations can best be described as a set of interactions at the work place mediated upon employment contract and involving work parties and their representatives in job regulation. Industrial relations can therefore be said to be relationship between employees and employers within an organizational setting or environment.

2.2. Industrial Conflict

Industrial/trade dispute is a dispute between employers and workers or between workers and workers that is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person⁷. Industrial conflicts are the result of several social economic, psychological and political factors. It is a common phenomenon when people come together to pursue a common goal. Various authors have defined conflict in different forms and concepts depending on their different perceptions. According to Chand⁸, industrial dispute is defined as a conflict or difference of opinion between management and workers on the terms of employment. In the words of Fujana⁹ modern industrial conflict seem inevitable since the domination of management is to maximize profit, while labour's concern is to secure and maintain highest level of wages with the best conditions of their services. Anioke¹⁰ defined it as a difference or disagreement of opinions, ideals or goals between parties.. Industrial conflict can be described as the

³ B A Garner, *Black's Law Dictionary* (8th edn, USA, St. Paul MN West Publishing Co., 2005) p.791.

⁴ Satyendra, 'Industrial relations' (2014) <http://www.ispatgure.com/industrial_relations> accessed on 10 May 2022.

⁵ S A B Onasanya, 'Effective Personal Management and Industrial Relations', (1999) (Center for Management Development, Lagos) <<https://opac.unilorin.edu.ng/>> accessed on 10 May 2022.

⁶ I. Zeb-Obipi *et al*, 'Industrial Relations Environment and Organizational Resilience: Implications on Nigeria Managers', (2019) *IJSSMR*, Vol.5 No.1, p. 24.

⁷ Trade Disputes Act Cap T8, LFN 2004, S.47.

⁸ S Chand, 'Industrial Disputes, Definition, Forms and Types', <<https://www.yourarticlelibrary.com/industries/industrial-disputes-definition-forms-types/35453>>.accessed on 10 May 2022.

⁹ W Fujana, '*Industrial Relations in Nigeria*' (Longman Ikeja 1997) <<https://www.internationalpolicybrief.org> p.72.accessed on 10 May 2022.

¹⁰ U Anioke, 'Local Government and Conflict in Nigeria', (2002) *Journal of Policy and Development Studies*, Vol. 3, No. 2, p. 45.



breakdown of cordial relationship between labour and management or parties involved in industrial relations.

2.3. National Industrial Court of Nigeria

National Industrial Court is a superior court of record charged with the role of adjudicating labour and employment/ industrial disputes in Nigeria. Trade dispute adjudication pre-dates Nigeria's independence, as there were legal instruments in place for regulation of such disputes. Attempts by the colonial government to provide an efficient legal framework for the settlement of trade dispute dates back to 1941, with the promulgation of Trades Disputes (Arbitration and Inquiry) (Lagos) Ordinance of 1941¹¹, which established a statutory mechanism for the settlement of trade disputes. At this point, industrial relations law and practice in Nigeria were modeled on the non-interventionist and voluntary mode of the British system, which was predicated on the consent of the parties to resolve trade disputes through means acceptable to them, with limited intervention by the appropriate minister¹² who is only empowered to intervene by means of conciliation, formal inquiry and arbitration where negotiations had broken down. The voluntary mode came under criticism that it generated more problems in the labour industry than remedying them. Thereafter, a change from this non-interventionist to an interventionist model was effected by an unlikely event in the annals of Nigeria's history-the Nigerian civil war of 1967-1970¹³. This coincided with the indigenization policy of government where key economic activities were centralized in the government. The interventionist model conferred on the Minister of Labour, the power of compulsory intervention in trade disputes, whilst still retaining the additional powers of conciliation, formal inquiry and arbitration. Consequently, the National Industrial Court was established in 1976 and as a product of an interventionist in industrial trade disputes arena, the NIC was structured in a regimented dispute resolution regime under the firm control of the Minister of Labour. The NIC being the first specialized court in Nigeria was established to provide an avenue or forum for a smooth and flexible industrial dispute resolution regime which objectives could not be met by the regular courts. The then operative Constitution (1963 Constitution) was amended to accommodate the court as one of the constitutionally recognized courts¹⁴. However, at the advent of the 1979 Constitution the Court was neither included among the superior courts nor its powers and jurisdiction defined. Thus, this anomaly of undefined status, powers and jurisdiction of National Industrial Court was 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 with the exclusive jurisdiction to entertain industrial disputes. This position remained until the return to democratic rule in 1999, when the constitutionality of the Decree became an issue. Thereafter, it became doubtful whether

¹¹ Trade Dispute (Arbitration as Inquiry) (Lagos) Ordinance, 1941 and Trade Dispute (Arbitration and Inquiry) (Federal Application) Ordinance 1957. However, because of some defects in them shortened their life span and new legislation were enacted; Trade Dispute (Emergency Provision) Decree of 1968 and Trade Dispute (Emergency Provision) (Amendment) (Decree No. 2) of 1969.

¹² C K Agomo, 'Nigeria in Labour Law and Industrial Relations in the international encyclopedia of law' (Prof. Dr. Blanpain edn.2000) p. 38-39.

¹³ O D Amucheazi and P U Abba, 'The National Industrial Court of Nigeria: Law, Practice and Procedure', 2nd edn, (Ibadan: Kraft Books Ltd, 2019) p. 23.

¹⁴ A O Talabi, 'Judicial Absolutism; Propriety of the National Industrial Court as the First and Final Court in Labour and other related matters in Nigeria', *Journal of Law, Policy and Globalization*, (2015) Lagos) Vol. 42, p. 70-80.



National Industrial Court was a court of superior record under the 1979 Constitution since the court was not specifically listed in the Constitution. This dilemma was resolved in 1992¹⁵ but the problem nonetheless resurfaced under the 1999 Constitution wherein the Constitution did not provide for the establishment of the National Industrial Court as a superior court of record in the Country¹⁶. The constitutional hurdles posed by the 1999 Constitution and the general defects of the Trades Disputes Act structure meant that the repositioning of the National Industrial Court must be at constitutional and statutory level. Thus, this led to the enactment of National Industrial Court Act of 2006 and this marked a turning point for the National Industrial Court and ensured its development as a court charged with the important duty of adjudicating labour and industrial disputes in the country¹⁷. Thereby taking the National Industrial Court out of the Trade Disputes Act and establishing it as a superior court of record with its own enabling statute¹⁸. However, the Supreme Court in *National Union of Electricity Employees and 1 or v Bureau of Public Enterprises*¹⁹ held that the National Industrial Court is a subordinate court and that only a constitutional amendment could restore the court to a superior status, which it enjoyed under the Decree. The purported exclusive jurisdiction conferred on the court by National Industrial Court Act was declared unconstitutional, as the best it could possess was concurrent jurisdiction over trade disputes matters with the Federal and State High Courts. The Supreme Court decision in NUEE dealt a huge blow on the status and operations of the court. Rather than sound death knell for the effectiveness of the National Industrial Court, this decision acted as a catalyst for a fundamental review of the legal basis of the National Industrial Court by the legislature. This resulted in the amendment of the 1999 Constitution through Third Alteration Act 2010 and by this amendment, the issue of legality and constitutionality of National Industrial Court as a superior court of record as well as a court with equivalent powers of High court was laid to rest. It also significantly expanded the jurisdiction and powers of the National Industrial Court beyond those stipulated under the Trade Disputes Act 1976 and National Industrial Court Act 2006. The National Industrial Court is tailored to enlarge alternative methods of dispute resolution by providing enhanced, timely, cost-effective and user-friendly access to justice for foreign and domestic investors and all stakeholders in the Nigerian economy. It is now in a position to play its role in balancing the diverse economic interests in industrial relations regime through the resolution of industrial disputes having regards to the Third Alteration Act currently in force in Nigeria²⁰.

¹⁵ Trade Dispute (Amendment) Decree No. 47 of 1992.

¹⁶ Ibid p.71.

¹⁷ O D Amucheazi and P U Abba, *The National Industrial Court of Nigeria: Law, Practice and Procedure*, 2nd edn, (Ibadan: Kraft Books Ltd, 2019) p.23.

¹⁸ National Industrial Court Act 2006, S. 53 (1).

¹⁹ *NUEE v BEE (2010) 7NWLR (pt.1194) p. 538.*

²⁰ A O Talabi, 'Judicial Absolutism; Propriety of the National Industrial Court as the First and Final Court in Labour and other related matters in Nigeria', *Journal of Law, Policy and Globalization*, (2015) Lagos) Vol. 42, p. 70-80.



3. The Legal Framework for the Regulation of the Roles NICN in Industrial Matters

3.1. Constitution of the Federal Republic of Nigeria, 1999(As amended)

The 1999 Constitution of Nigeria is the fundamental and supreme law of Nigeria. The machinery for the adjudication of industrial disputes in Nigeria originated from the 1999 constitution, as amended by the Third Alteration Act. 2010. It is the highest law in Nigeria, and it is the foundation on which every other law in Nigeria rests. The constitution is the embodiment of rule of law and the foundation of rule of law²¹. Its provisions are supreme and have a binding force on all authorities and persons throughout the Federal republic of Nigeria²². If any other law is inconsistent with the provisions of the constitution, the constitution shall prevail and that other law shall be void to the extent of its inconsistency²³. It is the source and origin of National Industrial Court of Nigeria. There is constitutional provision expressly providing for the creation of National Industrial Court of Nigeria and it is empowered to adjudicate trade disputes, labour practices, matters related to the Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's compensation Act and appeals from the Industrial Arbitrational law. The Constitution makes provision for National Industrial Court of Nigeria as it provides that "there shall be a National Industrial Court of Nigeria"²⁴.

The constitution also provides that "the National Industrial Court shall consist of President of the National Industrial Court and such number of judges of the National Industrial Court as may be prescribed by an Act of the National Assembly"²⁵. The fountain of judicial powers in the constitution²⁶ states that the judicial powers vested in the superior courts under the section shall extend, notwithstanding anything to the contrary in the constitution, to all intent powers and sanctions of a court of law²⁷. The constitution affirmed the status of the National Industrial Court amongst the list of superior courts of records²⁸. Judicial powers or authority are exercisable in Nigeria only by the courts, which are either created by the constitution or created under authority of the constitution.

The National Industrial Court is empowered by the constitution to have all the powers of a High Court²⁹ and the National Assembly may, by law, make provisions conferring on the court additional powers to these conferred by the constitution, as this may appear necessary for enabling the court to be more effective in exercising its jurisdictions³⁰. The National Industrial Court is empowered amongst others³¹ to confirm a judgment, an award or order made by a court, tribunal or body mentioned in the matter before it, to vary a judgment, to order a re-hearing and determination on such terms as it thinks just, to order judgment to be entered for any party etc. The 1999 Constitution as amended further enhanced the power, jurisdiction, procedures and practice of the National Industrial Court

²¹ E Malami, *'The Nigerian Constitutional Law'* (3rdedn, Lagos: Princeton Publishing Co. 2012), P. 157-158.

²² The Constitution of the Federal Republic of Nigeria, 1999 (as amended) S. 1 (1).

²³ *Ibid* S. 51 (3).

²⁴ The Constitution of the Federal Republic of Nigeria, 1999, S. 254 A (1).

²⁵ *Ibid* S. 254 A (2).

²⁶ *Ibid* S. 6 (A).

²⁷ O D Amucheazi and P U. Abba, *'The National Industrial Court of Nigeria: Law, Practice and Procedure'* (2nd edn, Ibadan: Kraft Books Ltd, 2019) p.52.

²⁸ The Constitution of the Federal Republic of Nigeria, (n.4), S. 6.

²⁹ *Ibid*, S. 254 D (1).

³⁰ O D Amucheazi and P.U. Abba *'The National Industrial Court of Nigeria: Law, Practice and Procedure'*, (2nd edn, Ibadan: Kraft Books Ltd, 2019) pg 52.

³¹ The Constitution of the Federal Republic of Nigeria (n.4), S. 254 D (2).



and established it as a superior court of record. By the amendment, the issue of a legality and constitutionality of the National Industrial Court as a superior court of record was laid to rest. The National Industrial court has both civil and criminal jurisdictions. The civil jurisdiction of National Industrial Court is expressly provided for in Section 254 C of the constitution. The provision clearly stipulates that the jurisdiction of the court over matters listed there under shall be to the exclusion of any other court and shall extend to all areas of conceivable labour and employment disputes³². Section 254 C (5) confers criminal jurisdiction on the National Industrial Court. It provides that the National Industrial Court shall have and exercise jurisdiction and power 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 other Act of the National Assembly or by any other law. Therefore, the criminal jurisdiction of the National Industrial Court extends over every matter over which it exercises civil jurisdiction.

3.2. Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act³³, which came into force in March 2011 amended the 1999 Constitution of the Federal Republic of Nigeria to include National Industrial Court in the relevant sections of the Constitution. The National Industrial Court is now formalized in the Constitution as the changes brought by the alteration has a great role to play in re-shaping and developing the labour sector in Nigeria. In general, sections 6, 84 (4), 240, 243, 287 (3), 289, 292, 294 (4), 316, 318, the Third Schedule, the Seventh Schedule to the Constitution have all been altered to include the new National Industrial Court of Nigeria³⁴. In addition, new sections 254A-254F have been introduced to the Constitution to accommodate National Industrial Court to reaffirm and reinforce the status and the jurisdiction of the court as contained in the National Industrial Court Act³⁵.

The Third Alteration Act constitutes a watershed in the history of the National Industrial Court, in that it ushered in a number of radical innovations on the structure, powers, status and jurisdiction of the court³⁶. It incorporated the establishment of the National Industrial Court, its composition and powers like other superior courts of record into the provision of the Constitution. The Act widened the hitherto narrow and specialized jurisdiction of the court to new areas like issuing injunctions and exclusive jurisdiction over employment matters in all labour strata and this has been acknowledged by the Supreme court³⁷ and by virtue of Section 5 of National Industrial Act, the court tends towards equitable labour practices than common law rules on labour practices (such as vindictive unfair and unjust dismissal) in exercise of their equitable jurisdiction.

³² O.D. Amucheazi and P.U. Abba, (n.10), p. 26.

³³ The Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.

³⁴ B B Kanyip, *National Industrial Court Jurisdiction: "How Narrow is Narrow"?*, (Lagos; Hybrid Consult, 2021) p. 68.

³⁵ B A Adejumo, (2014) 'The Constitution Third Alteration Act 2010: Feminism, Gender, Implication, Prospect and Challenges for the Nigerian Woman', a paper delivered at the National Executive Council Seminar of the Federation of International Women Lawyers (FIDA) at the Main Hall of the University of Nigeria, Enugu.

³⁶ B Atilola, 'National Industrial Court of Nigeria and Exclusive Jurisdiction on Labour, Trade Union and Related Matters under the Third Alteration Act', *Nigerian Journal of Labour Law Review*, (2012) Vol. VI, No.2, p.1.

³⁷ *S.C.C Nig Ltd v Yusuf Sedi* (2013) 1 NWLR (Pt. 1335), *Echelunkwo John O v Igbo Etiti L.G.A* (2013) 7 NWLR (Pt. 1352).



The effects of the Third Alteration include the conferment of wider jurisdiction on National Industrial Court, the introduction and recognition of the concept of unfair labour practices, unhindered application of international best practices which include international conventions, treaties and protocols that relate to labour or employment issues which are ratified by Nigeria. The Third Alteration Act to the 1999 Constitution has indeed opened a new vista in terms of labour jurisprudence. The very essence of the National Industrial Court as a labour court to adjudicate on labour issues must be noted and applied whenever the need arises³⁸. The current jurisdiction of the National Industrial Court is much wider than it used to be. Not only has jurisdiction in civil causes and matters been enlarged, the court can now entertain criminal causes and matters so long as they relate to issues pertaining to the civil causes and matters that the court has jurisdiction to hear and determine.

3.3. Trade Disputes Act, 2004

The Trade Disputes Act was promulgated to manage and regulate trade disputes matters in Nigeria. The primary objective of the Trade Dispute Act was to make provisions for the settlement of Trade Disputes and other matters ancillary thereto. The National Industrial Court was first established under the Trade Disputes Act of 1976 (then Decree 7 of 1976)³⁹ under the operative constitution (the 1963 constitution), which was amended to accommodate the National Industrial Court as one of the constitutionally recognized courts. However, at the advent of the 1979 constitution, the National Industrial Court was neither included among the superior courts nor its powers and jurisdiction defined in relation to the hierarchy of the courts in Nigeria. This anomaly was cured by the promulgation of the Trade Disputes (Amendment) Decree of 1992⁴⁰ which conferred on the Court. The status of a superior court of record and gave it the exclusive jurisdiction to entertain industries disputes. The problem nonetheless resurfaced under the 1999 Constitution wherein there was no provision for the establishment of the National Industrial Court as a superior court of records. Therefore, the challenge to the court's jurisdiction and status continues. The constitutional hurdles posed by the 1999 Constitution and the general defects of the Trade Disputes Act structure meant that the repositioning of the National Industrial Court must be at statutory and constitutional levels. This resulted in the amendment of 1999 constitution through the Alteration Act. All these were to be regulated and resolved in Trade Disputes Act, which was amended and further reviewed, amended and updated by the Trade Dispute Act 2004⁴¹.

3.4. National Industrial Court Act 2006

The National Industrial Court Act 2006, which came into force on 14th June 2006, specifically repealed part II of the Trade Disputes Act with the establishment and powers of the National Industrial Court thereby taking the court out of the Trade Disputes Act. The Act came to solve the inadequacies that existed in the Trade Disputes Act and fill in the gaps that had hindered the smooth working of the National Industrial Court and impeded its attaining the primary objectives. National Industrial Court Act was enacted to provide for

³⁸ *Mr Kurt Severinsen v Emerging Markets Telecommunication Services Ltd (2012) 27 NLRR (Pt. 78) 374 NIC.*

³⁹ Trade Dispute Decree No 7 of 1976, S. 19(1).

⁴⁰ Trade Disputes (Amendment) Decree of 1992 Cap 432, Laws of Federation of Nigeria 1990.

⁴¹ Trade Disputes Act Cap T8, LFN 2004, S. 4 (1).



the establishment of the National Industrial Court as a superior court of record⁴² and confer jurisdiction on the court with respect to labour and industrial relations matter. Section 1 of the National Industrial Court Act re-established the National Industrial Court while section 7 confers on the court exclusive jurisdiction on civil causes and matters relating to labour, including trade union and industrial relations, environment as conditions of work, health, safety and welfare of labour. These provisions were reinforced and strengthened by the amended Constitution (Third Alteration Act).

3.5. National Industrial Court (Civil Procedure) Rules 2017

The National Industrial Court of Nigeria (Civil Procedure) Rules were issued by the president of the National Industrial Court of Nigeria pursuant to the powers conferred on him by section 254 (f) (i) of the constitution (as amended) and section 36 of the National Industrial Court Act 2006. The 2017 Rules revoked the 2007 National Industrial Rules and the 2012 Practice Direction⁴³. The substance of the 2017 Rules is the regulation of practice and procedure of the National Industrial Court of Nigeria. The objective and intention of the Rules⁴⁴ are to establish an enduring, equitable, just, fair, speedy and efficient fast-track case management system for all civil matters within the jurisdiction of the court and promote the socio-economic importance of the jurisdiction of the National Industrial Court among other things. The Rules makes provision for facilitating the integration of Alternative Dispute Resolution (ADR) into the adjudicating mechanism, expanding and providing easier and fair access to justice for all classes of parties promoting reconciliation and encouraging and facilitating amicable settlement of disputes⁴⁵. It also provided for a system for speedy dispensation of justice and fast tracking of court's proceedings. The 2017 Rules is a landmark achievement in the development of the National Industrial Court of Nigeria as the dominant judicial forum for labour and employment disputes adjudication. The Rules restructured the practice and procedure of the court and introduced innovative, expansive, ambitious and detailed provisions on the various practice and procedure issues before the court, covering most of the loopholes evident from the application of the 2017 Rules and minimizing the recourse to the Rules of the regular High Court's to fill up lacunas in the procedures before the court⁴⁶.

4. The Role of National Industrial Court in Resolution of Industrial Matters in Nigeria

National Industrial Court is a specialized court set up to deal with labour or industrial related matters. The Act establishing the National Industrial Court of Nigeria instituted it as a specialized court whose jurisdiction is solely and judiciously to the exclusion of all other courts, on matters relating to or connected therewith⁴⁷. The court has both original and appellate jurisdiction. Therefore, the major role of National Industrial Court is to promote,

⁴² National Industrial Court Act 2006, S. 1(3) (a).

⁴³ The National Industrial Court (Civil Procedures) Rules 2017, Order 1 rule 1.

⁴⁴ The National Industrial Court (Civil Procedures) Rules 2017, Order 1 Rule 4 (1).

⁴⁵ The National Industrial Court (Civil Procedures) Rules 2017, Order 1 Rule 5 (a) (b) (c) (d) (e) and (f).

⁴⁶ O D Amucheazi and P U Abba 'The National Industrial Court of Nigeria: Law, Practice and Procedure', 2nd edn, (Ibadan: Kraft Books Ltd, 2019) p.23.

⁴⁷ S Aderibigbe, 'Labour Dispute Resolutions in Nigeria', https://www.academia.edu/9259/18/labour_Dispute_Resolution_in_Nigeria accessed on 20th August, 2023



sustain harmony and to regulate the relations between employers and their employees; between the trade unions and employer organizations; and resolve disputes arising from these relations. The court goes about mediating the boundaries of rights and obligations of employers and employees in accordance with equity, good conscience and the substantive merits of the disputes. Its primary objective therefore is to attain social justice by upholding fair work practices⁴⁸, to provide a platform for people to inequitably express their labour grievances as to achieve equal opportunity in employment relations and to ensure industrial peace and justice in the Nigerian economy through timely adjudication of labour disputes. Without the instrumentality of the National Industrial Court, the labour sector will lack any form of control, which can result in paralysis of the Nigerian economy. The court has thus been put in place as an instrument of the state to ensure stability in the labour sector. The relevance of the National Industrial Court of Nigeria in the Nigerian polity cannot be undermined as its existence has averted serious industrial crises in the country⁴⁹. Workers recognize that they have an avenue to air their grievances, which is quite a welcome development. National Industrial Court was established to provide a timely and an efficient mechanism for resolution of industrial disputes. The court has not only played advisory and adjudicatory roles but also interpreting awards, status, judgment and rulings.

Notably, the role of the National Industrial Court of Nigeria is enjoying all sorts of transition as this is predicated on the fact that the law continues its metamorphosis as a result of the dynamic nature of the workforce resulting from social, economic and technological changes. The Regular courts and the system of law they administer is essentially based on common law principles which are ill-suited for the challenges of modern industrial/labour relations and so can no longer adequately and timeously deal with labour related issues. The court emphasized the exclusive jurisdiction of the National Industrial Court to hear and determine matters bordering on employment and labour-related issues⁵⁰.

National Industrial Court contributes to the aims of the social development sector by resolving labour disputes and facilitates social dialogue by defining and adjudicating the rights and obligations of the tripartite players- government, employers and employees. It serves as the umpire between the labour unions and the Federal government. The harmony of labour has been truncated by incessant strike action resulting from compensation system, remuneration to autonomy, conditions of service, leadership and supremacy. This has brought untold hardship and economic losses to the organizations and groups involved in industrial disputes. The Academic Staff Union of Universities (ASUU) of Nigeria for example has over the years waged a running and protracted battle with successive Nigerian government through strike options, over federal government's lackadaisical attitude to the development of education with its insincerity of purpose in negotiations and non-implementation of collective agreements. In 2021 ASUU embarked on national strike that lasted up to a year on the grounds that the 2009 FG-ASUU agreement and revitalization of universities has not been fulfilled as earlier promised. These government acts have prompted

⁴⁸ I O Ukonu and G A Emerole, 'The Role of National Industrial Court in Sustaining Harmony in Nigeria Health Sector: A Case of University of Abuja Teaching Hospital', (2016) *Canadian Centre of Science and Education JMS* vol. 6 No. 1.

⁴⁹ O A Ovreime and I Ajabor, 'The Role of the National Industrial Court in the Promotion of Industrial Harmony in Nigeria' *IJBLR*, (2019), Vol 7, No. 1, pp. 77-82.

⁵⁰ *First Bank v Anwana* (2016) LPELR-41247(CA).



disruptions in the academic calendar of tertiary institutions nationwide, with a gradual but steady decline in the standards of education.

In light of this, the National Industrial Court is constitutionally saddled with the supreme jurisdictional authority to adjudicate on industrial disputes and ensure that peaceful industrial relations are maintained. The central role of the National Industrial Court as an institution of social justice is to promote and protect labour rights, social and economic rights as enshrined in the Constitution. The court plays a positive role to promote and protect International Labour Law standards and best practices in labour and industrial relations. It is empowered to apply international best practice by virtue of Section 7(6) of the National Industrial Act⁵¹ and Section 254C(1) (f) and (h) and (2) of the 1999 Constitution, and have relied on these sections to recognize that employers cannot terminate an employment relationship without adducing any valid reason for such termination.

Apparently, the National Industrial Court is the appropriate arbiter as far as industrial relations is concerned. The court in denouncing practices that are unfair in the workplace per His Lordship Hon. Justice Arowosegbe put it in *Dr Awkadijwe Fredrick Ikenna v Dr Olusegun Olaopa & 2 Ors*⁵², that the National Industrial Court “has the sacred duty to prevent unfair labour practice”. Though neither the Constitution nor any enactment defines unfair labour practice, it must however, be noted that while the notion relates more to employees, there is nothing in principle that says that employees cannot act unfairly in the workplace⁵³. It is pertinent to state that the role of National Industrial Court in sustaining harmony cannot be overemphasized, as industrial harmony is requisite to economic growth, development and industrial advancement in any economy. The National Industrial Court⁵⁴ is now in a position to play its role in balancing the diverse economic interests in labour/industrial relations regime through the resolution of industrial disputes efficiently having regards to the Third Alteration Act currently in force throughout Nigeria.

5. Prospects of the National Industrial Court in Promoting Industrial Harmony in Nigeria

The National Industrial Court of Nigeria has undoubtedly been an improvement to the Nigerian court system and industrial relations. The Third Alteration Act to the 1999 Constitution resolved the constitutional status and jurisdiction of the NICN as a superior court of record and established it as an exclusive judicial body for the resolution of all labour, employment and industrial relations in Nigeria. Not only has it diffused the caseload on the High court, it has also imbibed new and progressive innovations of the judicial system of the country. The 2017 National Industrial Court Rules is also a reflection of the expanded jurisdiction of the National Industrial Court as provided by the Constitution (Third Alteration) Act. The major innovations of the court include:

⁵¹ National Industrial Act of 2006.

⁵² Unreported Suit No. NICN/EN/26/2019, the judgment of which was delivered on 27 February 2020.

⁵³ B B Kanyip, Keynote Speech at the NECA National Labour Adjudication Forum under the Theme “Labour Adjudication in Nigeria: The Present and the Future”, which held on 1st February 2023, Lagos.

⁵⁴ P Green and H U Obi-Obiorah, ‘The Role of the National Industrial Court in Maintaining Industrial Harmony in Nigeria’, *NAUJCL*, pp. 132-143.



Expansion of the Jurisdictional Scope of the National Industrial Court of Nigeria: The jurisdictional scope of the National Industrial Court was expanded beyond simple labour and employment disputes by Section 254C(1) of the Constitution to include ancillary matters like child abuse, human trafficking, personnel matters arising from free trade zones and discrimination or sexual harassment in the workplace. Although these matters are incidents of labour and employment disputes, the express inclusion of the items in the jurisdictional coverage of the National Industrial Court helped to cure the restrictive scope of the jurisdiction on the National Industrial Court, which was often subjected to conflicting interpretation as to its precise scope⁵⁵.

Fast-Track Procedure: Provisions were made to ensure speedy dispensation and settlement of cases emanating from the National Industrial Court. The 2017 National Industrial Court Rules introduced designated fast-track systems for labour matters on national interests (strike by essential services, salaries and emoluments of deceased employee) by placing certain matters on the fast-track lane of the court.

Criminal Jurisdiction of the National Industrial Court: This is one of the notable innovations by the Constitution (Third Alteration) Act, which confers criminal jurisdiction on the National Industrial Court arising from any cause or matter over which the court has civil jurisdiction, serving to further strengthen the judicial powers of the court over matters brought before it.

Development of a Distinct Labour Jurisprudence: The Third Alteration Act effected the gradual but steady development of a distinct labour jurisprudence by the National Industrial Court and departure from the general civil jurisprudence of the Nigerian legal system. Most of the technical principles of common law forming part of Nigerian jurisprudence in labour and employment matters have gradually been eroded, altered and restructured by the National Industrial Court.

Institutionalization of Alternative Dispute Resolution: The introduction of Alternative Dispute Resolution (ADR) into National Industrial Court's practice and procedure to handle amicable resolution of labour and employment disputes outside of the conventional litigious arena of courtroom is a significant development in labour law jurisprudence. The Constitution empowered the National Industrial Court to establish an ADR Centre and adoption of ADR mechanisms in the settlement of matters at the court.

Justiciability and Enforceability of ILO Conventions: Section 254C (2) of the Constitution (Third Alteration) Act restructured the dualist legal order operating in Nigeria with regard to enforceability of international conventions ratified by Nigeria⁵⁶. Presently, the National Industrial Court of Nigeria is empowered to apply ILO conventions ratified by Nigeria in matters before it, whether or not such conventions have been passed into law by the National Assembly. This constitutional provision on application of ratified conventions by the National Industrial Court, which in effect empowers the court to deviate from general civil jurisprudence on labour law matters in favour of international best practices as codified in

⁵⁵ O D Amucheazi and P U Abba, *'The National Industrial Court of Nigeria: Law, Practice and Procedure'*, 2nd edn, (Ibadan: Kraft Books Ltd, 2019) p.287

⁵⁶ O D Amucheazi and P U Abba, *'The National Industrial Court of Nigeria: Law, Practice and Procedure'*, (2nd edn, Ibadan: Kraft Books Ltd, 2019) p.287.



ILO conventions that Nigeria has ratified. The NICN apply good or international best labour practices in adjudicating on matters before it⁵⁷.

Industrial Harmony: The National Industrial Court's role of promoting industrial harmony is achieved whereby the court resolves industrial disputes between employers and their employees; trade unions and employer organizations by mediating the boundaries of rights and obligations of employers and employees in accordance with equity, good conscience and the substantive merits of the disputes. Industrial harmony is requisite to economic growth, development and industrial advancement in any economy.

Economic Growth and Development: National Industrial Court resolution of employment matters will promote inclusive and sustainable economic growth, full and productive employment and sustained development of our economy.

6. Challenges of the National Industrial Court of Nigeria

The setting up of National Industrial Court constitutionally as a superior court of record with enhanced powers and enlarged jurisdiction on labour and employment related matters contributed to the maintenance of industrial peace as well as impacted greatly on industrial relations practice in Nigeria. In spite of the prospects and powers of the National Industrial Court to ensuring a quick and effective determination of labour and employment disputes in Nigeria, there are challenges impeding the court's effective and effective disposition of cases before the court. Some of these identified challenges are:

- a) **Corruption** - This is a vice that has eaten into the judiciary and which can render lack of public trust in not just the National Industrial Court but in courts generally. Corruption in the system has engendered non-adherence to the rule of law and generated public distrust in judicial system in Nigeria.
- b) **Inadequate court spread:** The National Industrial Courts are located in few of the states in Nigeria. The inadequate judicial divisions of the court available to handle labour and employment disputes arising in different parts of the country impacts negatively on industrial relations, as they are not sufficient to satisfy the number of people who are in need of judicial intervention on labour matters. Although considerable efforts have been made to expand the reach of the NICN to all parts of the country, there are only sixteen judicial divisions of the court to cover the thirty-six states in the federation, which falls short of the required number of divisions for a court saddled with the responsibility of resolving labour disputes throughout the federation⁵⁸.
- c) **Shortage of Administrative Manpower:** There is also shortage of administrative manpower for the National Industrial Court of Nigeria in the various judicial divisions, which hamper effective administration of the various courts. Although new judges were recently appointed to the National Industrial Court⁵⁹, the total number of judges in the court still falls below that required to handle the deluge of cases coming before the court in view of its expanded jurisdiction under the

⁵⁷ *Oyo State Government v Alhaji Bashir Apapa & Ors (2008) 11 NLLR (pt.29) p. 228.*

⁵⁸ Ten new judges of the NICN were sworn in on 15th July 2013 and nineteen new judges were sworn in on 14th July 2017, raising the number of judges of the NICN from twenty to thirty-nine only.

⁵⁹ O D Amucheazi and P U Abba, (n. 5), p. 293.



- amended Constitution. The shortage of judicial officers in the court may have adverse effect by overburdening the current judges of the court.
- d) Lack of Adequate Knowledge of National Industrial Court's Practice and Procedure: There is a lack of knowledge concerning the unique practices and procedures of the National Industrial Court on the part of lawyers representing parties before the court⁶⁰. Most of the times, lawyers rely on practices and procedures applicable in the regular courts in instituting National Industrial Court claims which often results in delaying cases and triumph of technical justice before the court, and this constitute a setback to the fast-tracking of delivery justice by the National Industrial Court.
 - e) Lack of Public Awareness: Most workers in Nigeria, obviously are not even aware of the existence, functions and importance of NIC and its role to provide a timely and efficient mechanism for resolution of industrial disputes.
 - f) Limiting how far certain Appeals against NIC judgment may go: NICN Judgments may be appealed against, however, some appeals from the judgment of the NICN can never rise above the level of the Court of Appeal by virtue of Section 243 (4) of the amended Constitution.

7. What is obtainable in South Africa

At the dawn of the new democratic government in 1994, South Africa underwent series of changes to free itself of the apartheid laws and enact new laws in line with the Constitution of the Republic of South Africa 1996⁶¹. Labour courts as specialized courts were established under the Labour Relations Act No. 66 enacted by the South African Parliament in 1995⁶². The Act provides for the establishment of the labour court as an open court with jurisdiction in all provinces of South Africa. The Labour court handles labour or industrial disputes arising from the relationship between employer, employee and trade union⁶³. The court is presided over by a Judge President, a Deputy Judge President and as many judges as the President may consider necessary⁶⁴. In order to qualify for appointment as a judge of the labour court, a person must either be a judge of the high court or a legal practitioner who has knowledge, experience and expertise in labour law⁶⁵. One of the objectives of the Labour Relations Act is to ensure that all types of labour disputes will be addressed and resolved expeditiously. It has exclusive jurisdiction in respect of all matters that in terms of the Act are to be determined by the labour court but does not have jurisdiction to adjudicate an unresolved dispute if the Act requires the dispute to be resolved through arbitration⁶⁶. Labour courts exist side by side with the traditional courts. The Labour courts have exclusive

⁶⁰ See Appendix X1 for the Judicial Divisions of the court. Note that in addition to the 16 judicial divisions, there are also 16 Registries of the court to cover other states of the Federation.

⁶¹ Constitution of the Republic of South Africa, No. 108 of 1996.

⁶² The Act has been amended severally by the Labour Relations Act as amended by Labour Relations Amendment Act No. 42 of 1996 Proclamation, No. 66 of 1996 Labour Relations Amendment Act No.127 of 1998 as well as the Labour Relations Amendment Act, No. 12 of 2002.

⁶³ <https://en.m.wikipedia.org/> accessed on 9th September 2023.

⁶⁴ The judges are appointed by the President of South Africa, acting on the advice of the National Economic Development and Labour Council and Judicial Service Commission after consultation with the Minister of Justice.

⁶⁵ Constitution of the Republic of South Africa No. 108 of 1996, Section 153 (6).

⁶⁶ A O Talabi, 'Judicial Absolutism: Propriety of the National Industrial Court as the First and Final Court in Labour and other Related Matters in Nigeria', (2015) JLPG Vol. 42, p. 78.



jurisdiction over all matters reserved for it under the Act, whilst the High court of South Africa still retain concurrent jurisdiction with the labour court in respect of certain issues like breach of contract, constitutional issues etc. Therefore the Labour court has the same status as a High court with jurisdiction to adjudicate on matters relating to labour disputes. The jurisdiction of Labour court is laid down in the Act⁶⁷. It has been observed⁶⁸ that Labour court has exclusive jurisdiction over cases arising from the Act that deals with collective bargaining, trade unions, strikes and lockouts, unfair dismissal and unfair labour practices. Then, it was held that Section 157 (1) of the Act ousts the jurisdiction of the South African High Court in respect of matters that are to be determined by the Labour court⁶⁹. Later in *Fredericks & others v MEC for Education and Training, Eastern Cape & others*⁷⁰, the labour courts and high courts were held to have concurrent jurisdiction in adjudication of labour matters.

The Labour court is a court of first instance and its decisions are subject to appeal to the Labour Appeal Court⁷¹. The Labour Appeal Court is the final court in respect of appeals emanating from the judgments and orders made by the Labour Court in respect of matters within its exclusive jurisdiction⁷². The Labour Appeal Court has a status similar to the Supreme Court of Appeal, and hears appeals from the Labour Court. There is no further appeal except on constitutional matters, in which case appeals may be heard by the Supreme Court of Appeal and the Constitutional Court⁷³ (as there is a constitutional right to fair labour practices, such appeals are not uncommon).

Court structures differ from jurisdiction to jurisdiction as determined by their respective constitutions and other applicable statutes. The nature of court structure adopted by a particular jurisdiction is usually determined by its legal system. While some jurisdictions operate strictly specialized court structures like Germany where there are specialized courts that run through the entire hierarchy of courts with the constitutional court at the apex of the judiciary, some jurisdictions like the United States of America operate Courts with general jurisdictions from lower cadres right up to the Supreme Court. However, Nigeria and South Africa operate a hybrid system of having both specialized courts and courts of general jurisdiction at both the lower and upper cadre right up to the apex court. Nigeria has basically courts of general jurisdiction with few specialized courts. South Africa has both courts of general jurisdiction and special jurisdiction but is more tilted towards the system of specialized courts by having a good number of specialized courts and a separate Constitutional Court at the apex. Nigeria can borrow a leaf from South African Jurisdiction by establishing Labour Appeal Court to handle appeals from the National Industrial Court to facilitate its resolution of employment matters in Nigeria and prevent over-long stay of labour matters in the court.

⁶⁷ Labour Relations Act, No. 66 of 1995, Section 157, the Basic Conditions of Employment Act 75 of 1997 which deals with working hours, leave and remuneration, the Employment Equity Act 55 of 1998 which deals with discrimination and affirmative action and the Unemployment Insurance Act, 2001.

⁶⁸ *Wannerburg v Madamu Technologies (Pty) Ltd [AR87/2012] (2012) ZAKZPHC. 35.*

⁶⁹ *Mondi Paper (A division of Mondi Ltd) v Printing Wood and Allied Workers Union & others (1987) 18 ILJ 84 (D). (2002) 2 BLLR 119 [C].*

⁷¹ Labour Relations Act, No. 66 of 1995, S. 167.

⁷² Labour Relations Act, No. 66 of 1995, S. 183.

⁷³ A O Talabi, 'Judicial Absolutism: Propriety of the National Industrial Court as the First and Final Court in Labour and other Related Matters in Nigeria', (2015) JLPG Vol. 42, p. 78.



8. Conclusion and Recommendations

National Industrial Court has been repositioned by law to enhance industrial harmony as it is empowered to apply international conventions, treaties and protocols that relate to labour disputes and thrive within the enabling environment. The court is also empowered to have expansion of its jurisdictional scope; fast-track procedures; criminal jurisdiction on matters where it has civil jurisdiction; development of a distinct labour jurisprudence; institution of Alternative Dispute Resolution etc . Consequently, the court plays a significant role in resolving labour disputes across the country and this has imbibed new and progressive innovations to the judicial system, all to the ultimate advancement of the administration of justice in the country. Despite these innovations, issues such as corruption; inadequate court spread; shortage of court personnels, lack of public awareness of the existence and roles of the court; limitation of Appeals; lack of legal framework for addressing some labour practices, among others clog the wheel of the National Industrial Court to effective and speedy resolution of labour disputes in Nigeria. Industrial relations practice in Nigeria has not been able to represent the management of institutionalized relationships in the social system to promote harmonious industrial coexistence between principal actors, (government and labour unions).

The work recommends that Government as employers of labour, should adopt principles and ethos of collective bargaining and always explore alternative dispute resolution mechanisms in industrial conflict.

Adequate facilities and personnel should be made available by appropriate authorities to enable the NIC function effectively and efficiently.

Legislation on some labour practices, such as Unfair Dismissal in work spaces is recommended. Nigeria can borrow a leaf from South African Jurisdiction by establishing, Labour Appeal Court to handle appeals from the National Industrial Court to facilitate its resolution of employment matters in Nigeria and thereby prevent long stay of labour matters in the court. Reformation of our labour laws to address inadequacies to meet with international standards and best practices is advocated.