AN APPRAISAL OF THE JURISDICTION AND POWERS OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA

BY

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DECLARATION

I declare that the work in this thesis entitled An appraisal of the Jurisdiction and powers of the National Industrial Court of Nigeria has been carried out by me in the Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other institution.

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CERTIFICATION

This thesis entitled AN APPRAISAL OF THE JURISDICTION AND POWERS OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA by BASHAR ABUBAKAR meets the regulations governing the award of the degree of Master of Laws LL.M of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to my mother, wife and children

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In the name of Allah, the Beneficent, the Merciful.

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ABSTRACT

Generally, jurisdiction is a term of comprehensive import embracing every kind of judicial action. The fundamental nature of jurisdiction of any court is crucial to any adjudicatory process without which anything done will amount to an exercise in futility. It is so important that it can even be raised for the first time before the Supreme Court of Nigeria as a final court of the land. Thus, there is the need for prospective litigants to know the appropriate court to approach in order to seek redress in a competent court concerning labour and employment related matters. The main objective of the thesis is to appraise the jurisdiction and powers of the National Industrial Court of Nigeria under the Trade Dispute Act, National Industrial Court Act and specifically under the Third Alteration Act which amended the Constitution of the Federal Republic of Nigeria 1999. To this end, the study also examined the legal status of part heard causes and matters pending at the various High Courts, after the passage of the Third Alteration Act which came into force on the 4th of March 2011, and the applicable law to such causes and matters and appraise its impact on the settlement of labour disputes. The doctrinal method of research was used to appraise the jurisdiction and powers of the National Industrial Court of Nigeria. Some of the challenges and problems facing the court are man power, infrastructure, inadequate funding and the centralization of the assignment of cases by the President of the court. There is a need to have a National Industrial Court in all the states of the federation with judges empowered and trained in labour law with a view to bringing justice nearer to the people etc. On the whole, the coming into force of the Third Alteration Act 2010 finally settled the controversial jurisdictional problems that have bedeviled the National Industrial Court of Nigeria for a pretty long time. The exclusivity of the National Industrial Court of Nigeria over labour and or employment related matters is so fundamental to prevent what is often referred to as "forum shopping". And in view of the enlarged jurisdiction of the court, there is a need for more funding, provision of infrastructural base throughout the federation, appointment of more judges experienced in the field of labour law, provide sensitization programmes throughout the federation to create awareness to the general populace of the powers and jurisdictions of the repositioned National Industrial Court of Nigerian. Alternative Dispute Resolution mechanism should be adopted as a means of settling labour disputes. All these and more can enhance industrial harmony, peace, productivity towards the settlement of labour disputes in Nigeria

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ABBREVIATIONS

IAP - Industrial Arbitration Panel

JCA - Justice of Court of Appeal

JSC - Justice of the Supreme Court

NLC - Nigerian Labour Congress

NWLR- Nigerian Weekly Law Report

NLLR - Nigerian Labour Law Report

NIC - National Industrial Court

NICN - National Industrial Court of Nigeria

NICA - National Industrial Court Act

NICR - National Industrial Court Rules

TUA - Trade Unions Act

TDA - Trade Disputes Act

TUC - Trade Union Congress

CHAPTER ONE
GENERAL INTRODUCTION

1. Background to the Study

Labour and management relation is for the supply of goods and services at affordable price without disruption in order to industrialize for the creation of wealth. Disputes will hamper such actualization of wealth which is meant for the development sectors of the government. Therefore, disputes have to be settled through the voluntary methods, failing which the compulsory method has to be resorted to in order to industrialize and create wealth for servicing the sectors of the government. Trade and industrial disputes are between labour and management. Government's monetary and fiscal policies also play a significant role in developing the interaction within an organized labour market. The role that Trade Unions play in negotiating disputes between employers and their members is also a key feature of this relationship. The breakdown in negotiation process leads to disputes. Strike actions remain the most easily recognizable breakdown of relationship in labour relations. The effect of strikes are commonly known. The loss of productive hours; attendant difficulties in meeting demand for services within the period, breakdown in communication, law and order as well as major threats to economic development are all known features of strike action.[1]

Inefficient management of Industrial disputes compromises socio-economic stability of countries. In developed economies, therefore, the mechanism for easier resolution of these disputes is often clearly identified. It is probably to replicate international best practices and create a contemporary dispute resolution mechanism that gave impetus to the establishment of the National Industrial Court. [2]

The National Industrial Court of Nigeria was established in 1976,[3] but it actually took off two years later in 1978. It is pertinent to note that prior to the establishment of the National Industrial Court of Nigeria, Industrial relations law and practice was modeled on the non-

[1] Onyearu, A. O. The National Industrial Court: Regulating Dispute Resolution in Labour Relation in Nigeria, retrieved from www.transcampus.org/journals on the 1st of June, 2011 at 10:32 a.m
[2] Ibid.
[3] Section 19(1) Trade Dispute Decree N0. 7 of 1976.

interventionist and voluntary model of the British System.[4] The statutory mechanism for the settlement of trade disputes was found in the Trade Disputes (Arbitration and Enquiry) Act.[5] The Act gave powers to the Minister of Labour and Productivity to intervene by way of conciliation, formal inquiry and arbitration where negotiation had broken down. The major features of the non-interventionist model were that it was totally at the discretion of the parties to determine whether or not they could surrender to the jurisdiction of the minister. Thus, the minister could not compel the parties to accept his intervention, but could appoint a conciliator upon the application of the parties and set up an Arbitral Tribunal by the consent of both parties. In the second place, there was no permanent institution created to handle and settle labour disputes. An adhoc body had to be set up for a particular dispute and once it delivered its decision, it became *functus officio*.[6]

The declaration of hostilities between Biafra and Nigeria in 1966 marked a turning point in the Nigerian approach to settlement of trade disputes. As a result of the hostilities, it became expedient during the state of emergency to make transitional provisions for the settlement of trade disputes arising within the period. Consequently, the Trade Disputes Act[7] 1968 was enacted and it suspended the Trade Disputes (Arbitration and Inquiry) Act of 1958. It, for the first time, gave the minister the power of compulsory intervention in trade disputes while still retaining the additional powers of conciliation, formal inquiry and arbitration. Thus, the requirement for consent of parties before the minister could act was suspended. The 1968 Act also stipulated the time frame within which the minister was to act, starting from the time that the employers and the employees became aware of the existence of a dispute to the time that the minister was notified.[8]

Section 20 of the Trade Disputes Act,[9] provides as follows:

> There shall be a National Industrial Court for Nigeria (on this part of this Act referred to as "the Court") which shall have jurisdiction and powers as are conferred on it by this or any other

[4] Agomo, C.K. Labour Law and Industrial Relations in the International Encyclopedia of Law (Prof. Dr. Blanpained) 2000 at pp.38 – 39.
[5] S.3 Cap. 201, Laws of the Federation of Nigeria and Lagos, 1958.
[6] Adejumo, B.A. The National Industrial Court, Past, Present and Future: A paper delivered at the refresher Course organized for judicial officers between 3 – 5 years post-appointment by the National Judicial Institute, Abuja on the 24th March, 2011.
[7] (Emergency Provisions) Act N0. 21 of 1968
[8] Adejumo, B.A. fn. 6
[9] Cap. T8 Laws of the Federal Republic of Nigeria, 2004

> Act with respect to the settlement of trade disputes, the interpretation of collective agreements and matters connected therewith.

The National Industrial Court was essentially established to adjudicate on all issues emanating from industrial relations and labour market breakdown. It was against the background that the legislative arm of government made provision for the National Industrial Court Act.[10] Section 7(1) of the Act provides that the court shall have and exercise exclusive jurisdiction in civil causes and matters relating to labour, including trade unions and industrial relations, environmental and conditions of work, health, safety and welfare of labour, and matters incidental thereto; and relating to the grant of any order to restrain any person or body from taking part in any strike, lock out or any industrial action or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action;[11] Also the court shall any question relating to the determination of any question as to the interpretation of any collective agreement; any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute; the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement; any trade union constitution and any award or judgment of the court.[12]

Its operational mechanism provide that the President of the National Industrial Court of Nigeria may appoint a single judge to sit and determine interlocutory applications or preliminary matters,[13] and in any other case before the court and also in substantive terms, the sitting panel of judges to hear any of its cases must comprise of not less than three judges.[14]

The president of the National Industrial Court of Nigeria is also empowered to create judicial divisions so that the statutory functions of the court may be administered more effectively. In consequence of this power, National Industrial Court of Nigeria now has judicial divisions sitting in Lagos, Calabar, Kano, Enugu, Ibadan, Maiduguri and Abuja.

[10] N0.1 2006
[11] Section 7(1)(b) of the National Industrial Court Act, 2006
[12] Section 7(1)(c). Ibid
[13] Section 21 (5). Ibid
[14] Section 25. Ibid

To regulate its day-to-day conduct, the president of the National Industrial Court of Nigeria is also empowered to make rules to give effect to statutory obligations imposed by the various regulating legislation.[15]

The challenges and constraint the National Industrial Court of Nigeria has faced have been enormous. It is a court that has suffered non-acceptability from even legal practitioners owing to non-definitive roles and constitutional status in the past which has led to its ineffectiveness in the dispensation of justice. It is against this background that the Constitution of the Federal Republic of Nigeria 1999 was amended to enshrine the establishment and operation of the National Industrial Court in the constitution dealing with judicial powers and related matters as court of superior record amongst courts established for the federation.

Before the amendment of the Constitution of the Federal Republic of Nigeria,[16] prospective litigants engaged in labour, employment and industrial disputes were faced with the problem of uncertainty as to the appropriate court to approach in order to seek redress in relation to trade, trade union disputes or matters connected therewith. The amended constitution[17] unlike the previous legislation has elevated the status of the National Industrial Court of Nigeria to the status of a superior court with enhanced powers and enlarged jurisdiction. The National Industrial Court of Nigeria now has jurisdiction over any civil and criminal dispute on matters which jurisdiction is conferred on the court either by an Act of the National Assembly or the Constitution.

1.1. **Statement of the Problem**

The National Industrial Court of Nigeria is now repositioned with powers to assume expanded jurisdiction on a wide range of issues relating to labour and on employment/industrial related disputes. There is need to examine the repositioned wide jurisdiction vested on the National Industrial Court of Nigeria, which is likely to over burden the special purpose for which the court was initially established. Thus jurisdiction

[15] Section 36. Ibid
[16] The Constitution of the Federal Republic of Nigeria 1999 (as amended) by the Third Alteration Act, 2010 which was assented by the President of the Federal Republic of Nigeria on the 4th of March, 2011.
[17] Ibid.

and powers of the National Industrial Court of Nigeria under the Trade Disputes Act and the National Industrial Court Act 2006, shall also be reviewed with a view to juxtapose same with the amendments contained under the Third Alteration Act, 2010.

There is also the issue of inadequacy of manpower, infrastructure and funding. The National Industrial Court of Nigeria is now saddled with enormous responsibilities which need to appoint more judges experienced in labour law, employment and industrial matters, supporting staff, building of courts and expansion of its infrastructure base with a view to bringing justice nearer to the people. The preparedness or otherwise of such challenges has also been considered. The problems associated with the jurisdiction and powers of the National Industrial Court of Nigeria under the current legal regime in respect of the settlement of labour disputes in Nigeria has also been considered bearing in mind areas of conflict of laws in its operation bearing in mind the provisions of Section 7 and 11 of the National Industrial Court Act and Section 272 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

A litigant is expected to exhaust all the processes of part 1 of the Trade Disputes Act which deals with negotiation, conciliation and Arbitration before activating the interpretation jurisdiction of the National Industrial Court. Does this not whittle down the powers conferred on litigant to approach the court directly to seek redress?

The National Industrial Court of Nigeria is enjoined to incorporate global best practices in labour, employments and industrial relations under the amended constitution. There is a need to point out these impediments that are likely to put a stumbling block towards the actualization of the desired objectives under the current legal regime in view of the level of illiteracy in Nigeria and the lack of knowledge and awareness regarding labour and industrial related matters. The application of the law towards the enhancement and settlement of labour disputes bearing in mind the practice direction that has been introduced to augment the existing rules of court in the administration of justice in Nigeria has also been considered.

1.2. Aim and Objectives of the Research

The main aim of this thesis is to review the Trade Disputes Act, National Industrial Court Act and the Third Alteration Act as it relates to the jurisdiction and powers of the National Industrial Court with a view to identifying the areas of weakness, conflict and improvements made thereon under the current legal regime.

The objectives are to:

(i) examine the jurisdiction and powers of the National Industrial Court of Nigeria.

(ii) examine the powers and jurisdiction of the court in making awards or decisions on the subject matters of industrial conflict.

(iii) establish findings on the role the decision of the court plays in enhancing industrial peace and settlement in Nigeria (prospects, problems and challenges).

(iv) make recommendations on the problems and challenges.

1.3. Justification of the Research

This research is justified on the grounds that jurisdiction and powers of the National Industrial Court of Nigeria under the current legal regime covers a wide range of labour, employment and industrial related matters is relatively new and research on it from time to time is necessary in order to appraise its role in creating industrial harmony for maximum provision of services and goods to the public and thereby strengthening the economy.

Given the fact that the court is repositioned in terms of jurisdiction and powers amongst others, the application of the law on jurisdiction and powers conferred on it is important in order to determine its effectiveness towards the settlement of labour disputes and areas of conflict of laws. Employees and employers, lawyers, legislators, students of law and teachers and the entire public may find it useful as contribution to existing knowledge.

1.4. Scope of the Research

The scope of the research is the National Industrial Court of Nigeria relating to its powers and jurisdiction under the Trade Disputes Act, National Industrial Court Act and the Third Alteration Act. This research also examines the structure of the National Industrial Court of Nigeria, its rules and procedure and relevance to the settlement of disputes.

1.5. Research Methodology

The research methodology adopted for this research work is doctrinal. This means, theorizing without considering the practical consequences. It is called a visualized research, imaginative research, unpractical research, a visionary research or a conceptual research. This is because the materials for the research are available in statutes, Nigerian and Foreign textbooks, journals, cases and by extension the internet. [18] In doctrinal methodology, primary documents such as statutes, case laws of superior courts of record, or recommendations of Tribunals. Secondary materials such as opinion of eminent jurists and scholars expressed in journals, textbooks, magazines etc.

1.6. Literature Review

Jurisdiction is the life wire of any adjudicatory process in Nigeria. It is so fundamental that it can be raised at any stage of any proceedings even *viva voce* for the first time before the Supreme Court.[19]

The National Industrial Court of Nigeria has suffered a lot of setbacks as a result of jurisdictional problems associated with its status as the superior court of record and whether it has exclusive jurisdiction over trade disputes, trade union disputes, employment matters or matters incidental or connected therewith.

This research work serves as a reference for the appraisal of the powers and jurisdiction of the National Industrial Court of Nigeria particularly as it relates to its scope and structure under the Trade Disputes Act, National Industrial Court Act and more importantly the Third Alteration Act which amended the Constitution of the Federal Republic of Nigeria 1999.
The research examined legislation, articles, seminar papers, books, cases, materials from the internet, journals and other printed materials as they relate to the powers and jurisdiction of the National Industrial Court of Nigeria.

[18] Aboki, .Y: Introduction to Legal Research Methodology. A Guide to the writing of Long Essays, Theses, Dissertation and Articles, 2nd Edition, Tamaza Publishing Company Ltd, 2009. p.3
[19] Petrojessica Enterprises Ltd v Leventis Technical Company Ltd, (1996) 5 NWLR (Pt. 244) 657

Oganniyi, in his book,[20] Nigeria Labour and Employment in perspective discussed the jurisdiction of the National Industrial Court of Nigeria and the problems associated with and or related to the issue of its jurisdiction under the Trade Dispute Act.[21] Therefore the issues relating to discrimination or sexual harassment at the workplace, or pertaining to child labour, child abuse, human trafficking, the application of international labour standards or unfair labour practices which have now been introduced in the Third Alteration Act were not discussed in the book. The book did not discuss the powers of the National Industrial Court of Nigeria under the National Industrial Court Act.

Another distinguished writer that has written on the jurisdiction and powers of the National Industrial Court of Nigeria is Uviegbara,[22] The author discussed the jurisdiction of the National Industrial Court of Nigeria under the Trade Disputes (Amendment) Act[23] which has already been repealed. Similarly the judicial authorities cited in buttressing the issue as it relates to the powers and jurisdiction of the National Industrial Court of Nigeria are no longer good judicial precedent in view of the recent pronouncements of the Appellate Courts and the passage of the Third Alteration Act.

Chianu in his book Employment Law[24] discussed the need to apply international best practices in deciding labour related matters in Nigeria but did not discuss the jurisdiction and powers of the National Industrial Court of Nigeria under the Trade Disputes Act, National Industrial Act or even under the current legal regime.

Another author who has written on the Powers and Jurisdiction of the National Industrial Court of Nigeria is Akintunde, [25] The author discussed in brief the jurisdiction of the National Industrial Court of Nigeria under the National Industrial Court Act[26] without examining the areas of conflict with the Constitution of the Federal Republic of Nigeria 1999.

[20] Oganniyi, Nigeria Labour and Employment in perspective. Folio Publishers Limited (2004) pp. 443 – 456
[21] Cap. T.8 LFN, 2004.
[22] Uviegbara, E.E. Labour Law in Nigeria, Maltouse Press Ltd. 2001 pp. 424 – 434
[23] Decree N0. 47, 1992
[24] New System Press Limited (2004) pp. 63 - 65
[25] Nigerian Labour Law, Fourth Edition, Amfitop, Benin City, (2008) pp. 484 – 487.
[26] N0.1 2006.

Samuel,[27] in his book discussed generally about Industrial Relations in Nigeria without specific reference to the jurisdiction of the National Industrial Court under the various legislations.

Aturu[28] and Babalola[29] extensively brought out the practice and procedure of the National Industrial Court with reference to various decided cases bothering on jurisdiction, employment related matters and industrial relations.

Adejumo [30] has written several papers on the role of the National Industrial Court of Nigeria in dispute resolution in Nigeria.

Authors of books have discussed the issue of the jurisdiction of the National Industrial Court of Nigeria under the Trade Disputes Act.[31] Their works did not consider the jurisdiction and powers under the Third Alteration Act[32] which was enacted on the 4th March, 2011. My research focused on the court's decisions before and after it became a creation of the constitutional amendment of 2011.

The constitutionality or otherwise of the Trade Disputes Act and the National Industrial Court Act as it relates to jurisdiction of the National Industrial Court has been discussed in subsequent chapters.

It is interesting to note that there are lists of distinguished authors and scholars that have written extensively on labour and industrial related matters but none have described the powers and jurisdiction of the National Industrial Court of Nigeria under the various legislations vesting the court with such powers and jurisdiction.

1.7. **Organizational Layout**

Chapter One contains the general background of the thesis. It introduces the background of the thesis. It states the statement of the problem, Aim and Objectives, the Scope of the research, literature review, methodology, justification and the organizational layout.

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[27] Samuel H., Industrial Law, (7th Edition) Sir Isaac Pitman & Sons Ltd, London (1967)
[28] Aturu B., Law and Practice of National Industrial Court. (Hebron Publishing Company Ltd) 2013
[29] Babalola O. Case book on Labour and Employment Law (1995 – 2013), Neotico Repertum Inc, Lagos 2014
[30] A lecture delivered at the University of Abuja organized by law Students Association (University of Abuja Chapter) on the 15th – 18th September, 2008.
[31] Cap. T.8 Laws of the Federation of Nigeria 2004
[32] The 1999 Constitution of the Federal Republic of Nigeria (as amended).

Chapter Two contains conceptual clarification, definition of terms and summary of the hierarchical diagram of the Nigerian Courts. Chapter Three contains the history and role of the National Industrial Court, establishment and composition, its importance in Nigeria. The nature of involvement of government in labour disputes and the Trade Disputes Resolution Mechanism under the Trade Disputes Act, 2004 and the National Industrial Court Act.

Chapter Four examined the jurisdiction and powers of the National Industrial Court, status of part heard causes and matters pending in the High Courts after the passage of the Third Alteration Act, 2010, rules and procedure of the National Industrial Court of Nigeria.
Some decided cases of the National Industrial Court, its operations and enforcement of its decisions, the limitations and challenges facing the National Industrial Court of Nigeria were equally examined.

Chapter Five provides the summary and conclusion of the research, findings and recommendations.

CHAPTER TWO
CONCEPTUAL CLARIFICATIONS

2.1. Definition of Terms

Trade Dispute: means any dispute between employers and workers or between workers and workers which is connected with the employment and non-employment or the terms of employment and physical conditions of work of any person.[33]

Minister: means the Minister of Employment, Labour and Productivity or Minister charged with the responsibility for matters relating to the welfare of labour.[34]

Trade Union: means any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes bring in restraint of trades and whether its purposes do or do not include the provision of benefits for its members.[35]

Collective agreement: means any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between –

(a) an employer, a group of employers or organizations representing workers or the duly appointed representative of anybody of workers, on the one hand; and

(b) one or more trade unions or organization representing workers, or the duly appointed representatives of anybody of workers, on the other hand.[36]

Strike: means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other

[33] Oloruntoba – Oju v. Dopamu (2008) 7 NWLR (Pt. 1095) 1 at 28 D – F; 36 B – C. Also Abdul-Raheem v. Oloruntoba-Oju (2006) 15 NWLR (Pt. 1003) 581 at 626 E – F.
[34] S.54 of the Trade Unions Act, Cap. T.14 Laws of the Federation of Nigeria 2004 and S.48 of the Trade Disputes Act, Cap. T.8 Laws of Federation of Nigeria 2004
[35] S.(1) of the Trade Union Act, Cap. T.14 Laws of Federation of Nigeria 2004
[36] S.48 Trade Disputes Act Laws of Federation of Nigeria 2004

workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work.[37]

Worker: means any employee, that is to say any public officer or any individual (other than a public officer) who has entered into or works under a contract with an employer, whether the constraint is for manual labour, clerical work or otherwise, express or implied, oral or in writing and whether it is a contract of service or of apprenticeship.[38]

Arbitration: is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding. [39] It also means a commercial arbitration whether or not administered by a permanent arbitral institution. [40]

Conciliation: means a settlement of a dispute in an agreeable manner or a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved especially a relatively unstructured method of dispute reconciliation parties in an attempt to help them settle their differences.[41]

Mediation: is a method of non-binding dispute resolution involving a neutral third party who tries to hold the disputing parties reach a mutually agreeable solution.[42]

Industrial Relations: is defined as relation of individual or group of employees and employers for engaging themselves in a way to maximize the productive activities. Industrial relations involve attempts at arriving at solutions between the conflicting objectives and values; between the profit motive and social gain; between discipline and freedom, between authority and industrial democracy; between bargaining and corporation and between conflicting interests of the individual, the group and the community. It is also the study of the laws, conventions and institutions that regulate 'the work place'[43]

Employee's compensation: can be defined as all the rewards earned by employees in return for their labour. This includes: direct financial compensation consisting of pay received in the form of wages, salaries, bonuses and commissions provided at regular and consistent intervals.[44]

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[37] Ibid.
[38] Ibid
[39] Black's Law Dictionary (Ninth Edition) Bryan A. Garner
[40] S.57 of the Arbitration and Conciliation Act, Cap. A.18, Laws of the Federation of Nigeria 2004.
[41] Op. Cit.
[42] Op. cit.
[43] Retrieved from www.nautrihub.com>industrialrelations on the 14/12/2015 at 2:00p.m
[44] Retrieved from www.hrcouncil.ca/hr-toolkit-/defining-compensation on the 14/12/2015 at 2:00p.m

Compensation: is a broad term that defines payments and rewards given to workers in order to persuade them to keep working for a company. Compensation is not just about regular rewards for work done but also attempts made by employers to retain employees. It goes beyond salary and transcends this boundary to include benefits and other inceptives e.g salary, wages and bonus.[45]

International Labour Organization: is the tripartite United Nation agency that brings together governments, employers and workers of its 183 member states in common action to promote decent work throughout the world for strategic objectives:

1. Fundamental principles and rights at work and international labour standards.
2. Employment, sustainable enterprise & income opportunities
3. Social protection
4. Social dialogue & tripartite consultations, gender equality & non-discrimination in employment are mainstreamed in the four pillars.[46]

Industrial Arbitration Panel: is a body established to settle industrial disputes and to give binding decisions on both parties in form of an award. It marks the beginning of judicial processes for resolving industrial disputes and it settles dispute that cannot be handled through mediation and conciliation.[47]

Alternative Dispute Resolution: refers to a variety of processes that help parties resolve dispute without a trial. It is used generally to describe the methods and procedure used in resolving disputes either as alternatives to the traditional dispute resolution mechanism of the court in some cases supplementary to such mechanism. Alternative Disputes Resolution arose largely because the litigation process was and still is unduly expensive in the long run and especially prolonged as a result of judicial technicalities embedded in that method of disputes resolution.[48]

Conflict of Laws: is a set of rules of procedural law which determines the legal system and the law of jurisdiction applying to a given legal dispute. It is an area of law, the subject matter taught to Law Students, and which purport to set out, in a long list of rules how to resolve prevent disputes which include an international or foreign element.[49]

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[45] Retrieved from www.enotes.com/homework-help/what-compensation-employees on the 14/12/2015 at 2:00p.m

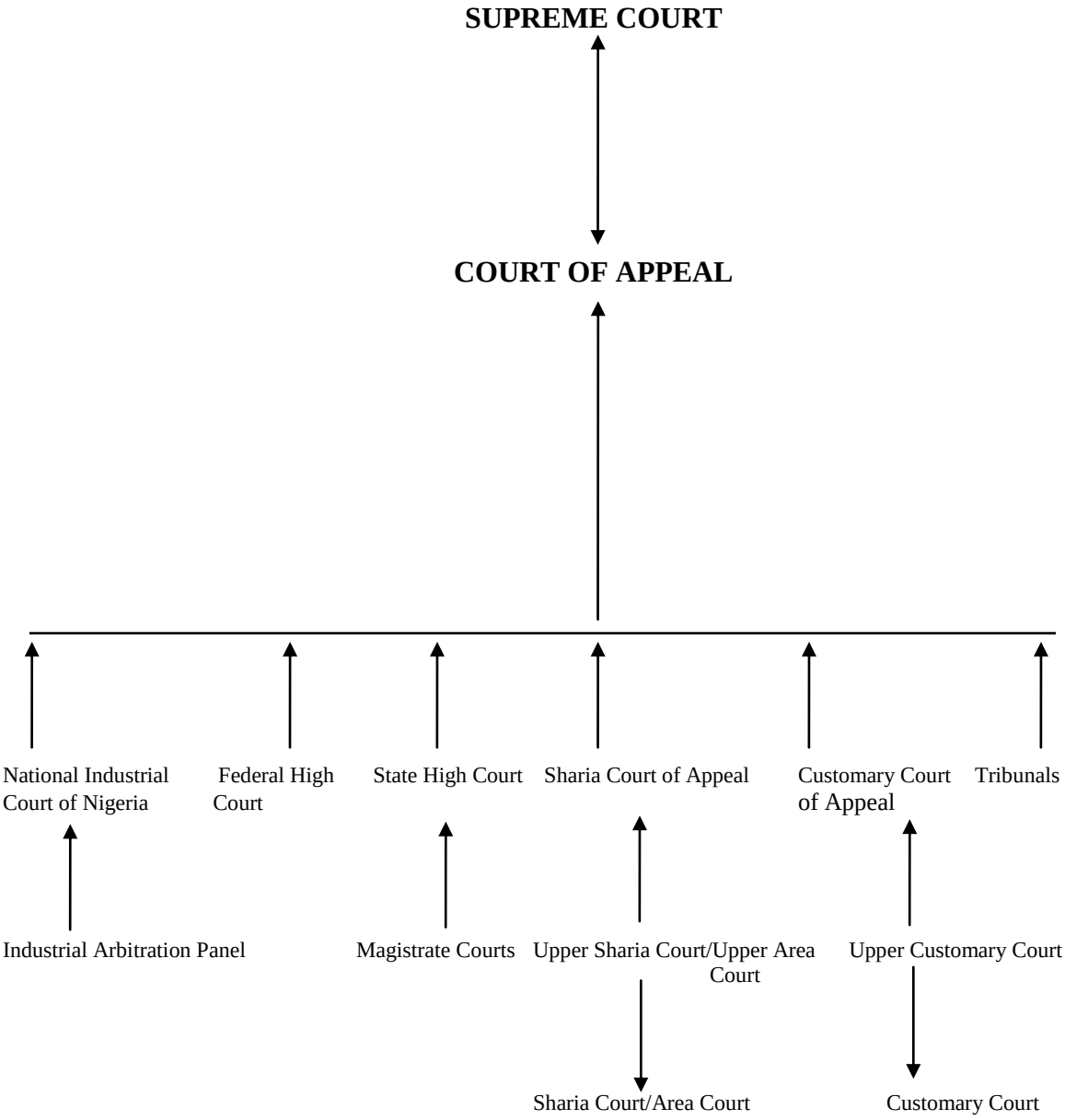
[46] Retrieved from www.unbrussels.org/agencies/ilo on the 14/12/2015 at 2:30p.m

[47] Retrieved from www.grossarchive.com/upload/1416397901.html on the 14/12/2015 at 2:30p.m

[48] Oddiri, E.R. Alternative Dispute Resolution: A paper presented at the Annual Delegates Conference of the Nigerian Bar Association at Lemeridan Hotel, Abuja on the 22-27th August 2004.

[49] Retrieved from www.duhaime.org>legaldictionary>conflictoflaws on the 14/12/2015 at 2:30p.m

2.2. **A Summary of Hierarchical Diagram of the Nigerian Courts.**



CHAPTER THREE

HISTORY AND ROLE OF THE NATIONAL INDUSTRIAL COURT

3.1. Importance of Industrial Court

Labour and Management resort to collective bargaining as the normal process of resolving their disputes for the creation of peace and harmony. However, when the process fails, they could be under pressure to embark on industrial actions such as picketing, strikes, etc. which have great negative consequences for the economy of Nigeria and the environment of industrial relations. It is therefore, not in dispute that the implication of such an unstable environment of industrial relations for the economic development of the country is huge.[50]

It is in recognition of this fact that the National Industrial court was established to settle expeditiously all industrial disputes referred to it by the Minister of Employment, Labour and Productivity and the interpretation of collective agreement entered into by workers and management representatives. The National Industrial Court of Nigeria has been repositioned constitutionally to continue to maintain the highest degree of impartiality in their deliberation and will ensure that cases referred to it are dealt with and disposed off without dispatch.*[51]*

The main object of the industrial court is settlement of labour disputes for attaining social justice and industrial peace between the employers and employees[52] and their trade union and the settlement of any differences or disputes arising from their relationship.

In the Malaysian case of *Hotel Malaya Sdn Bhd. & Anor v National Union of Hotel, Bar & Restaurant Workers & Anor*,[53] Raja Azlan Shah CJM described the function of the Industrial Court as follows *It exercises a quasi judicial function. It gives a full reasoned judgment in the nature of an award. Its functions comprise an investigation of the facts, an analysis of the facts, findings of facts and lastly, the application of the law to those findings.*

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[50] Onuegbu, H.C. TUC calls for Port Harcourt Division of NIC. Retrieved from http:/newsdiaryonline.com/ advocacy.htm.12th Feb. 2010 on the 25/7/2012 at 10:30 a.m

[51] Audi, J.A.M, Judicial Treatment of Labour and Industrial Relation Disputes by the National Industrial Court under the National Industrial Court Act, 2006, ABU, Zaria, Journal of Private & Comparative Law (2010 – 2011), vol.4 & 5, pp. 14.

[52] See the case of Dunlop Estate Bhd v All Malayan Estates Staff Union (1980) 1 MLJ 243 at P. 246 per Moh'd Almi J.

[53] (1980) 2 MLJ 237 at 240.

Similarly, the Court of Appeal[54] held that the National Industrial Court was set up specifically to promote settlement of dispute by conciliation and arbitration and get men back to work. The court also serves a good deal in creating a harmonious industrial environment through the process of arbitration and the decisions of the court (Award) consistent with the Act establishing the court.

3.2. **History of National Industrial Court in Nigeria**.

The National Industrial Court of Nigeria was established by the Trade Disputes Decree No.7 of 1976. Prior to the establishment of the Act in 1976, in particular, prior to 1968, industrial relations law and practice was modeled on the non-interventionist and voluntary model of the British approach. The statutory machinery for the settlement of trade disputes was found in the Trade Disputes (Arbitration and Inquiry) Act. That Act, which was first enacted in 1941, gave the power to the Minister of Labour to intervene by means of conciliation, formal inquiry and arbitration where negotiation had broken down.[55] It had two notable features which, in fact, might be regarded as draw backs. First, it lied in the absolute discretion of the parties to decide whether or not they would avail themselves of the machinery provided. The Minister could not compel them to accept his intervention. Thus, he could only appoint a conciliator upon the application of one of the parties. While he needed the consent of both parties to set up an arbitration tribunal. Secondly, there were no permanent institutions laid down before which the disputing parties could go for the settlement of their labour disputes. Instead, an adhoc body, arbitration panel had to be set up for a particular dispute and once it gave its decision, it became functus officio.[56]

The year 1966 witnessed the beginning of the civil war in Nigeria. It was therefore expedient during the state of emergency to make transitional provisions for the settlement of trade disputes arising within the period. So, the Trade Disputes (Emergency Provisions) Act[57] was enacted. It suspended the Trade Disputes (Arbitration and Inquiry) Act and gave to the Minister of Labour compulsory power of intervention in trade disputes while retaining the usual methods of conciliation, formal inquiry and arbitration.

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[54] Apena v N.U.P.P.P.P. (2003) 8 NWLR (Pt. 822) 426 at 449 G – H.

[55] Adejumo, B.A. The Role of National Industrial Court in Dispute Resolution in Nigeria. A lecture delivered at University of Abuja Organized by law Students Association of Nigeria (University of Abuja Chapter) on the 15th – 18th September, 2008. Pp. 3 - 4

[56] Ibid.

[57] Act N0.21 of 1968

The requirement for consent of the parties before the Minister could act was abrogated so that he could resort to those methods without the consent of the parties to the disputes. The 1968 Act created a timetable from the time that employers and workers became aware that a dispute existed to the time that a dispute was notified to the Minister and, within the discretionary powers conferred on him by the Act, to decide on what sort of action to take.[58] By the 1970s and particularly after the Nigeria Civil War, the non-interventionist and voluntary model of the British approach was abandoned for an interventionist model. This also coincided with the indigenization policy of government where key economic actions were centralized in government.

The National Industrial Court of Nigeria under the TDA as amended by the Trade Disputes (Amendment) Act, 1992[59] encountered some problems which impacted negatively on the ability of the court to effectively perform its duties.

First, as a product of an interventionist policy in both the economic and labour spheres, the National Industrial Court was generally structured in a regimented and compartmentalized labour disputes resolution regime with circumscribed ministerial discretion for instance, only in a few cases could the jurisdiction of the National Industrial Court be activated by the disputants themselves without recourse to the Minister of Labour. In the majority of cases, the jurisdiction of the National Industrial Court was activated only upon referral from the Minister of Labour.[60]

Kanyip, B.B.,[61] summarized the identified shortcomings as follows:

(a) The National Industrial Court was the only court of law in the country where litigants could not on their own volition, except when activating the interpretation jurisdiction of the court, approach the court to ventilate their grievance unless referred to the court by the Minister of Labour.

(b) The requirement of referral other than interpretation, disputes worked in manner that also precluded the court from hearing matters directly even when cases were

[58] Adejumo, B.A. Op. cit p.15

[59] Op. cit p.15.

[60] Ibid.

[61] Kanyip, B.B. National Industrial Court: Yesterday, Today and Tomorrow. Retrieved from *http://www.nationalindustrialcourtofnigeria.com* on the 25/7/2012 at 10:30 a.m

transferred to the NIC by other courts. A number of cases (e.g Incorporated trustees of Independent Petroleum Marketers Association v Alhaji Ali Abdulrahman Himma & 2ors on (Unreported suit N0. FHC/ABJ/CS/313/2004) were transferred to the NIC from especially the Federal High Court, but the NIC had to decline original jurisdiction on the basis that the dispute resolution processes of part 1 of the TDA 1990 had to be followed before the NIC can assume jurisdiction.

(c) By section 19(4) of the TDA 1990, the president of the court must preside over all the sittings of the court. The import of this was that if for any reason the president of the court was otherwise engaged or indisposed, the court as far as sitting is concerned, will go on holiday. The worst case scenario of this fact was when the National Industrial Court of Nigeria lost its president in 2002 due to illness. For almost a year, the court could not sit as no succeeding president was appointed. The court, however started sitting only when the current president was appointed in 2003.

(d) By sections 19 and 25 of the TDA 1990, the NIC was the only court of law with a dual system of appointing those who would adjudicate on matters before it. While the president of the court was appointed by the president of the country on the recommendation of the Federal Judicial Service Commission, the members of the court were appointed by the president of the country on the recommendation of the labour minister. The practical effect of this was the seeming dual control over court by both the Labour Ministry and the National Judicial Council even when the 1999 constitution vested control on the latter.

(e) There was doubt as to the scope of jurisdiction of the NIC. Despite the intendment of Decree 47 of 1992 to bring within the purview of Part 1 of the TDA 1990 and to treat as distinct disputes, inter and intra union disputes, the courts, for instance, held that for the NIC to have jurisdiction in inter and intra union disputes such disputes had to also qualify as trade disputes. This was the holding of the Court of Appeal in Kalango v. Dokubo. The problem with this decision was that it seemed to equate inter and intra union disputes with trade disputes. Not only was this not the case, but it threw spanners into the jurisprudential treatment of the concepts in our labour law regime.

(f) The case of Kalango v Dokubo had the additional problem of insisting that jurisdiction is conferred on a court only by sections labeled ‘jurisdiction’. In

dismissing sections 1A and 19 of the TDA 1990 and in holding an inter or intra-union dispute must qualify as a trade dispute if the NIC is to have jurisdiction, the Court of Appeal justified this, inter alia, the fact that inter and intra union disputes were not reflected in section 20 of the TDA, the section bearing the side note "Jurisdiction of Court".

(g) Kalango v Dokubo had that further problem of reiterating that the NIC cannot grant declaratory and injunctive orders, applying the Supreme Court decision of Western Steel Work Ltd v Iron and Steel Workers Union of Nigeria. The effect of this decision was that even the interpretation of jurisdiction of the NIC was suspect. For how could the court interpret a document without making declaration in the nature of rights emanating from it. In National Union of Civil Engineering Construction, Furniture and Wood Workers v Beton Bau Nigeria Limited and Anor, the NIC distinguished this Court of Appeal and other decision on the matter as not applicable if the question related to the interpretation of jurisdiction of the NIC.

(h) The absence of clarity as to the jurisdiction of the NIC led to what may be turned a dual jurisprudence in the resolution of labour disputes. Here both the High Courts and the NIC were generally held to have concurrent jurisdiction in the resolution of labour disputes. To take an example, at the High Court, collective agreements are only binding in honour except incorporated into the conditions of service of employees, but they are legally binding and held as such at the NIC. The side effect of this was that it encouraged forum shopping by litigants. In any event, the limited territorial jurisdiction of most of the High Courts meant that their decisions were limited to only the geographical space covered by the High Court in question. This was a key factor that weighed in the Court of Appeal when in the case of FGN v Adams Oshiomole, it ruled that the High Court of the Federal Capital Territory, Abuja should not have entertained the matter given its limited territorial jurisdiction. The Court of Appeal then directed that the matter be heard by the Federal High Court, which has a wider territorial jurisdiction governing the whole of the country. The snag here was that but for the fact that the Federal Government was a party in the suit, the issues were essentially labour issues, which ought to have been handled by the NIC for two reasons. First, the NIC has the same national territorial jurisdiction as the Federal High Court. And secondly, the NIC has the advantage of

being a specialized court set up to deal with labour matters, matters that in truth not within the purview of S.251 of the Constitution of the Federal Republic of Nigeria 1999, the jurisdiction section of the Federal High Court.

(1) Section 19(5) of the TDA, 1990 as inserted by Decree 47 of 1992, provided that the NIC shall be a Superior Court of record. Although this provision was then not declared unconstitutional by the court, even in view of S.6 of the Constitution of the Federal Republic of Nigeria 1999, in practice some lawyers disregarded its provision by taking the Federal High Court in a number of cases to judicially review decisions of the NIC. The effect of this was to stall cases and defeat the essence of litigation at the NIC, which is to expeditiously and with less formality decide on matters before the court.

The constitutional hurdles posed by the 1999 constitution and the general defects of the TDA structure meant that the repositioning of the NIC must be at two levels. The constitutional and statutory levels. The case was, therefore, made to all the three arms of the Federal Government on the necessity of remedying the anomalies in the enabling legislation governing the operation of the NIC. The NIC Act, 2006 was the first result in all the efforts put in place to remedy the anomalies that plagued the court and the subsequent passage of the Third Alteration Act, 2010.[62] Cases touching on the jurisdiction and powers of the National Industrial Court of Nigeria in relation to the labour justice delivery system has created wide controversy throughout Nigeria.

Akpabio J.C.A[63] (as he then was) posited that if an ordinary claim of wrongful dismissal is allowed to be turned to a trade dispute, it would open a flood gate of litigation to the industrial court which has no power to grant declaratory reliefs. This position was also taken by the Supreme Court[64] _where Oguntade J.S.C (as he then was) held that to give jurisdiction in all matters relating to disputes in employment matters to the National Industrial Court will clearly overburden a special purpose court which the National Industrial Court was designed to be. In the same vein, Fabiyi J.S.C[65] also held that the jurisdiction of the National Industrial Court in respect of certain specie of cases does not

[62] Ibid.
[63] Sea Truck (Nig) Ltd v Pyne (1995) 6 NWLR (Pt. 400) at 166.
[64] Oloruntoba Oju v Dopamu (2008) 7 NWLR (Pt. 1085) 1 at 30 C – D.
[65] N.U.R.T.W v R.T.E.A.N (2012) 10 NWLR (Pt.1307) 170 pp.192 D – E.

include jurisdiction to make declarations and to order injunctions. The decision of the Supreme Court though delivered on the 27/1/2012 failed to take into account the National Industrial Court Act and the Third Alteration Act which has vested the National Industrial Court with powers to grant declaratory and injunctive reliefs.

Interestingly, the Court of Appeal in the case of N.U.T. Niger State v C.O.S.S.T., Niger State[66] in delivering its judgment took judicial notice of the Third Alteration Act 2010 and transferred the case to the National Industrial Court after allowing the Appeal even though as at the time the cause of action arose, the trial High Court of Niger State had jurisdiction and indeed exercised jurisdiction over the subject matter.

The reasoning of the Court of Appeal is right in view of the amendment of the 1999 Constitution which migrated jurisdiction of the trial High Court to the National Industrial Court.

Adejumo J.[67] has posited that labour/industrial relations is a function of conflicting interests which may remain mere interests or crystallize into rights, depending on what can be agreed on through the process of collective bargaining. So long as an interest has not crystallized into a right, an adjudicative process of court is hardly useful in the resolution of disputes that may arise in that regard. Adjudication deals with rights. And until an interest crystallizes into a right, the National Industrial Court is not the ideal forum to go.

This is in accordance with the principle that industrial disputes are matters for negotiation between parties with a view to reaching an agreement that will be binding and enforceable otherwise unconcluded negotiations do not yield any entitlement for the court to enforce. All of these seek to promote harmonious labour relations within a particular section and the economy as a whole.

The National Industrial Court has always frowned at the practice of using the interpretation jurisdiction of the court to avoid and circumvent the processes of Part 1 of the Trade Disputes Act which deals with negotiation, conciliation and arbitration.[68]

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[66] (2012) 10 NWLR (Pt.1307) 89 pp.111 E – F, 114 A – B.

[67] Unreported Suit N0. NIC/12/2000 between SSAUTHRIAI & Anor v Federal Ministry of Health & Anor delivered on the 30/3/2006

[68] Hotel & Personal Services Senior Staff Association v. Tourist Company of Nigeria. (Unreported) suit. N0. NIC/14/2002 delivered on the 27/10/04

Does this not whittle down the powers conferred on litigants to approach the court directly to seek redress?

Similarly, notwithstanding the clear provisions of *S. 11(1) and (2)* of the National Industrial Court Act,[69] which provides that the Federal High Court, the High Court of a State, the High Court of the Federal Capital Territory, Abuja or any other court shall cease to have jurisdiction in relation to causes and matters not determined or concluded at the expiration of one year after the commencement of the Act,[70] there are legal arguments canvassed by some lawyers particularly in relation to part-heard causes and matters pending before the various High Courts before the passage of the 1999 constitution as amended by the Third Alteration Act that the law applicable to a given matter is that in force at the time the cause of action arose.[71] This position came up for consideration before the Court of Appeal[72] where Ibiyeye J.C.A (as he then was) held as follows:

> The issue to be considered is the operative law or law in the prevailing circumstances of this case. It is a fundamental principle of our law that the right of parties in an issue in litigation are decided on the basis of the substantive organic law in force at the time of the act in question. It is equally trite that the law applicable to a matter is that in force at the time the cause of action arose and not the law when the writ of summons was filed. This is the true state of the law as far as applicable law to an action is concerned.

It is further contended that it is the cardinal principle of our jurisprudence that no law and not even the constitution should be made to have retrospective effect[73] and to that extent causes and matters instituted before the passage of the Third Alteration Act which came into force on the 4/3/2011 shall not be caught up by its provisions because the constitution or any other law of the federation operate prospectively and not retrospectively unless it is expressly provided to be otherwise, such a legislation affects only the rights which came into existence after it has been passed.[74] However there is a distinction between law governing cause of action and the one conferring jurisdiction on court.

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[69] N0.1 2006

[70] Section 11(1) and (2). Ibid.

[71] Unreported suit N0. KDH/KAD/68/2010 between Keystone Bank Ltd v Ghali Ammani, Suit N0.KDH/KAD/1023/2010 between Musa Ajiya v Unity Bank Plc presided over by Hon. Justice M.M. Ladan and suit N0. KDH/KAD/669/2010 Barbedos Ventures Ltd v Alfred Haddad presided over by Hon. Justice B.U. Sukola of the High Court of Justice, Kaduna State.

[72] Adesoye v Gov. Osun State (2005) 16 NWLR (Pt. 950) 1 at 21 H and 22 A – B.

[73] The proviso to S.6 of the Interpretation Act LFN 2004

[74] Section 254D of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The substantive law existing at the time a cause of action arose governs the determination of the action and the rights and obligations of the parties thereto. But it is wrong to state that it is the same law that determines the jurisdiction of the court at the time the jurisdiction is invoked. While the substantive law at the time a cause of action arose governs the determination of the action, the law in force at the time of trial of action based on the cause of action determines the court that is vested with jurisdiction to try the case.[75]

This distinction was vividly expounded by the Supreme Court in the case of Adah v N.Y.S.C.,[76] where Uwaifo J.S.C. (as he then was) observed thus:

> It ought to be understood that the law which supports a cause of action is not necessarily co-extensive with the law which confers jurisdiction on the court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time the action was instituted and heard. The jurisdiction of courts in this country are conferred upon them by the constitution or by statutes as may be permitted by the constitution.
> Thus, when a court is denied jurisdiction at the time a cause of action arose, it cannot assume jurisdiction when action is instituted later in respect of the subject matter even if its jurisdiction to entertain similar matters is then restored. Similarly, when a court had jurisdiction over a subject matter at the time of the cause of action but loses jurisdiction at the time the action is instituted, it cannot entertain such action.

Therefore, a state or Federal High Court may have jurisdiction to entertain a suit at the time the cause of action founded on that suit arose but at the time of the actual trial it is divested of that jurisdiction either by statute or by the constitution as the case may be.

The law in force or existing at a time a cause of action arose is the law applicable for determining the case. This law does not necessarily determine the jurisdiction of the court at the time that jurisdiction is invoked. That is to say, the law in force at the time the cause of action arose governs determination of the suit, while the law in force at the trial based on cause of action determines the court vested with jurisdiction to try the case.[77]

While courts of law frown upon retrospective legislation as they are not best in the development of the rule of law and more particularly the concept of fair hearing, retrospective statutes are not unconstitutional and therefore part of Nigerian jurisprudence.[78]

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[75] Olutola v Unilorin (2004) 18 NWLR (Pt. 905) 416 at 469 – 470 H – D.
[76] (2004) 13 NWLR (Pt. 891) 639 at 648 A – D.
[77] Goldmark (Nig) Ltd v Ibafon Co. Ltd (2012) 10 NWLR (Pt. 1308) 291 at 338 C – D.
[78] Obi-Akejule v Delta State Govt. (2009) 17 NWLR (Pt. 1170) 292 at 306 A – C.

3.3. Establishment and Composition of the National Industrial Court of Nigeria

Establishment of the National Industrial Court

The Trade Disputes Act[79] provides that there shall be a National Industrial Court for Nigeria which shall have such jurisdiction and powers as are conferred on it by the Act or any other Act with respect to the settlement of trade disputes, the interpretation of collective agreements and matters connected therewith.

The National Industrial Court Act[80] also provides for the establishment of the National Industrial Court and states specifically that there is established a court to be known as the National Industrial Court (in this Act referred to as "the court").

A similar provision is also contained under the Third Alteration Act[81] which formalized the inclusion of the National Industrial Court of Nigeria into the 1999 constitution as a Superior Court of record which invariably has finally put to rest the chequered constitutional history of the National Industrial Court.

Composition of the National Industrial Court

The members of the court shall be:

(a) The president of the court; and

(b) Four other members (referred to as ordinary members) of the court all of whom shall be persons of good standing, to the knowledge of the Minister, well acquainted with employment conditions in Nigeria, and at least one of whom shall, to his satisfaction, have a competent knowledge of economics, industry and trade.[82]

Also for the purposes of dealing with any matter which may be referred to it, the court shall, at the discretion of the president of the court, be constituted of either:

(a) All five members; or

(b) The president and two ordinary members.[83]

[79] Section 20 of the Trade Dispute Act LFN 2004
[80] Section 1 of the National Industrial Court Act
[81] Section 254 CC and 254 A of the 1999 Constitution FRN.
[82] Section 3 of the Trade Disputes Act LFN 2004
[83] Section 4 of the National Industrial Court Act, 2006

Similarly, for the purpose of dealing with any matter, the court at the discretion of the president of the court be assisted by assessors appointed in accordance with the Act and any decision of the court in the exercise of its functions shall be taken. In the event of a difference between the members dealing with the case, by the votes of the majority of those members.[84]

Section 1(2) of the National Industrial Court Act provides that the court shall consist of:

(a) The president of the court who shall have overall control and supervision of the administration of the court; and

(b) Not less than twelve judges.

The National Industrial Court Act further provides that the president of the court shall be appointed by the president, on the recommendation of the National Judicial Council, subject to confirmation by the senate. The appointment of a person to the office of a judge of the court shall be made by the president on the recommendation of the National Judicial Council.[85]

On the eligibility for appointment as a president and judge, the National Industrial Court Act provides under S.2(3) and (4) that:

> A person shall not be eligible to hold office of the president of the court unless the person is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.

A person shall not be eligible to hold office of a judge of the court unless:

(a) The person is a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria or;

(b) The person is a graduate of a recognized university of not less than ten years standing and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.

These provisions are crucial to the operations of the National Industrial Court as they seek to guarantee legal and judicial competence of not only the president of the court, but also its other judges.

[84] Section 5 and 6. Ibid

[85] Section 2(1) and (2). Ibid

Similarly, if the office of the president of the court is vacant, or if the person holding the office is for any reason unable to perform the functions of the office, then until a person has been appointed to and assume the functions of that office or until the person holding the office has resumed those functions, the president shall appoint the most senior judge of the court having qualification to be appointed as president of the court.[86]

Such appointment shall cease to have effect after the expiration of three months from the date of such appointment and the president shall not re-appoint a person whose appointment has lapsed except on the recommendation of the National Judicial Council.[87]

The above provisions are also captured under the current Third Alteration Act.[88]

The composition of the court as provided under S.21(4) of National Industrial Court Act is that subject to the provisions of the Act and Rules made pursuant to section 36, the court shall be constituted of not less than three judges provided that the presiding judge shall be a judge appointed under S.2(3) or (4) of the Act. Notwithstanding the provisions of S.21(4), the president may assign a single judge of the court to sit and hear interlocutory applications or preliminary matters in any proceedings brought or pending before the court.

3.4. **The Role of the National Industrial Court**

The establishment of the National Industrial Court of Nigeria has rightly been applauded as a significant development in the Nigerian judicature. It is an indication that the law makers are responding to calls by commercial and private sectors of the economy for reforms in the administration of justice system to meet the challenges of globalization, advancement in technology and movement into specialized courts as it is in democracies all over the world. The provisions of the Act establishing the court have the goal of endowing organized labour with enough power to enable employers and workers to negotiate a wide range of subject in a balanced frame work.[89]

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[86] Section 2(5) of the National Industrial Court Act, 2006
[87] Section 2(6) of the National Industrial Court Act, 2006
[88] The 1999 Constitution. Section 254 (1) – (6).
[89] Adejumo, B.A. The Impact of National Industrial Court in the Administration of Justice in a developing economy like Nigeria Vol. II. Retrieved from www.nationalindustrialcourtofNigeria.com on the 27/7/2012 at 12:42 p.m

The National Industrial Court has both original and appellate jurisdiction in civil matters, and criminal[90] and quasi criminal jurisdiction.[91]

The jurisdiction of the National Industrial Court is governed by S.7 of National Industrial Court Act.[92]

The intendment of the law makers to confer exclusive jurisdiction of NIC is to have a specialized court that will handle matters under item 34 of the Exclusive Legislative list of the constitution which the National Assembly has power to legislate upon. The coming into force of NICA in 2006 vested exclusive jurisdiction on the NIC to entertain such proceedings to the exclusion of any other court, particularly when the matters are labour or employment related.

Before the Third Alteration Act came into effect, it was perceived that the National Industrial Court Act had cured some of the anomalies encountered under the Trade Disputes Amendment Act[93] which ousted the jurisdiction of the courts in trade disputes matters and vested same exclusively in the National Industrial Court. But with the advent of the 1999 constitution which ushered in the civilian regime, the situation has changed. The 1999 constitution is now the Supreme Law in this country and it stands over any other enactments, statutes or law and its provisions cannot be made subject to any other Act.

In fact by virtue of the provisions of section 1(1), (3) of the 1999 constitution any law that is inconsistent with the constitution shall to the extent of its inconsistency be void.[94]

A sober reading of Sections 7 and 11 of National Industrial Court Act would reveal that the jurisdiction of the regular courts in entertaining trade disputes matters was ousted and exclusive jurisdiction vested in NIC. The effect then was that the High Court of a state cannot exercise jurisdiction in Trade Disputes cases as provided for in section 272 of the constitution. S.272 of the 1999 constitution provides as follows:

> (1) Subject to the provision of S.251 and other provisions of this constitution, the High Court of a state shall have jurisdiction to hear and determine any civil proceedings in which the existence or

[90] The Constitution of the Federal Republic of Nigeria, 1999. S.254 (c) (1) (i), (iii).
[91] Ibid Section 10.
[92] N0.1 2006.
[93] Trade Disputes (Amendment Act) of 1992 abolished the Trade Disputes (Emergency Provisions) Act N0.21 of 1968 which specifically ousted the jurisdiction of the High Court in all matters of trade disputes, inter and intra union disputes as prescribed by the Act.
[94] A.G. Abia State v A.G. Federation (2002) 6 NWLR (Pt. 763) pp. 264.

extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a state and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.

When the above provision is construed, it would reveal that except for matters falling within section 251 of the constitution, the High Court of a state has unlimited jurisdiction in all other matters. Therefore, there is nothing in the constitution (then) which ousted the jurisdiction of the High Court of a State from entertaining the matters specified under S.7 of National Industrial Court Act.

The National Industrial Court Act is an existing law and S.315(1) of the 1999 constitution made provision for an existing law. It provides that subject to the provisions of this constitution an existing law shall have effect with such modification as may be necessary to bring it into conformity with the provisions of this constitution.

And by virtue of S.315(3) of the same constitution, the court are vested with powers to declare as void any existing law that is inconsistent with the constitution.

The limitation of the jurisdiction of the High Court shows the conflict between the National Industrial Court Act and section 272 of the 1999 constitution. Even the Trade Disputes Act (as amended) which vested exclusive jurisdiction on the National Industrial Court in trade disputes matters which led to the passage of National Industrial Court Act conflicted with S.272 of the 1999 constitution and was accordingly declared null and void pursuant to section 1(3) of the 1999 constitution in the recent pronouncement of the Court of Appeal.[95]

However, the National Assembly has finally amended the provisions of the 1999 constitution by the passage of the Third Alteration Act to accommodate the NIC as a Superior Court of record with clearly defined roles and functions.[96]

[95] NUT, Niger State v COSST, Niger State (2012) 10 NWLR (Pt. 1307) 89.
[96] Section 254C of the Constitution Federal Republic of Nigeriaa (as amended).

S.243(c) of the Third Alteration Act now has sub-paragraphs (2) & (4) inserted and provide as follows:

> (2) 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.
>
> (4) Without prejudice to the provisions of S.254 C(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.

The provision of sub(2) above clearly confers on the National Industrial Court issues and questions that may arise out f chapter IV of the constitution that relates with matters upon which the National Industrial Court has jurisdiction.

It is pertinent to note that Section 243(4) provides that the decision of the Court of Appeal in any matter arising from the civil jurisdiction of the National Industrial Court shall be final.

It is now settled that the jurisdiction of the National Industrial Court clearly covers all matters connected and incidental to labour, Trade Disputes and industrial relations.
It is pertinent to also note that the National Industrial Court now has exclusive jurisdiction on labour, trade disputes and other ancillary matters that may arise out of same which hitherto had been within the confines of concurrent jurisdiction of the State High Courts and Federal High Court at first instance.

Furthermore, appeals from the criminal causes or matters that arise from any cause or matter of which jurisdiction is conferred on the National Industrial Court shall lie as of right to the Court of Appeal[97] and the decision of a Court of Appeal on issues that arise from any civil jurisdiction of the National Industrial Court shall be final.
The National Industrial Court Act is tailored to enlarge alternative methods of disputes resolution by providing enhanced, timely, cost effective and user friendly access to justice for foreign and domestic investors and all stakeholders in the Nigeria Economy.[98]

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[97] Section 243 of the Constitution Federal Republic of Nigeria 1999 (as amended)
[98] Adejumo, B.A. The Impact of National Industrial Court in the Administration of Justice in a developing economy like Nigeria Vol. II. Retrieved from www.nationalindustrialcourtofNigeria.com on the 27/7/2012 at 12:42 p.m

The National Industrial Court is now in a position to play its role in balancing the diverse economic interests in the labour/industrial relations regime through the resolution of labour and industrial disputes having regards to the Third Alteration Act currently in force throughout Nigeria.

3.5. The Nature of Involvement of Government in Labour Disputes in Nigeria.

From when Nigeria got independence in 1960 till date, the industrial system of the country has been characterized by industrial disputes, crisis and unrest in its entirety. A major feature of the industrial system, be it public or private, has been one of strikes, lock-outs, picketing, sit-downs, work to rule and demonstrations. This situation has made many to describe the relationship of organized labour and government agencies as being that of "cat and mouse".[99]

There are constant disruptions in all spheres of the Nigerian economy, from the educational section to the power sector of the economy which has the potency of affecting other areas like telecommunication, banking/finance, transports, aviation, etc.

Sometime around January, 2012, the strike action embarked upon by the Nigeria Labour Congress and Trade Union Congress to protest against the government's removal of fuel subsidy notwithstanding the interim order of injunction obtained by the Attorney General of the Federation on behalf of the government at the National Industrial Court of Nigeria restraining the Nigeria Labour Congress and Trade Union Congress from embarking on the nationwide strike cast doubt on the effectiveness of the relevant agents of government whose statutory role is to proffer solutions to industrial or labour disputes.

The widely known strikes by the Academic Staff Union of Universities over the failure of government and its agencies to honour an agreement reached in 2001 and further threats in respect of subsequent agreements not honoured by the government. Even under the civilian administration of Chief Olusegun Obansajo, in February, 2002, some members of the Nigeria Police force embarked on a nationwide strike.

[99] Okake, E.O. Government Agents in Nigeria's Industrial Relation System. Retrieved from *www.ajol.info/ journal/jorind,1st June 2011* on the *25/7/2012 at 12:40 p.m*

That strike although quickly brought under control, leaves much to be desired about the agents of resolving industrial unrest in Nigeria, as these police men and women do not have faith in the system hence the strike. The very agency saddled with the responsibility to maintain law and other, were not confident that fellow government agencies could handle their grievances satisfactorily.[100]

The sustenance of any economy largely depends on the production of goods and services which is the backbone of the society and for these to be actualized, there must be labour and management. It is the result of the relationship between management and labour that often leads to conflicting legitimate expectations and interest.

The individual employees do not have the bargaining power to influence government or management decisions in respect of issues relating to their individual rights such as right to work etc. It is against these backgrounds that recognition has provided the opportunity to trade unions to negotiate with government on behalf of their members.

A trade union shall without further assurance on registration be entitled to recognition by the employer and if an employer deliberately fails to recognize any trade union duly registered in accordance with the law shall be guilty of an offence and be liable on summary conviction to a fine of N1,000.[101]

It is the pattern of interaction or relationship between the employer and or management on the one hand, and employee and or trade union on the other hand, including the activities of government in supervising and controlling the industrial relation system that has direct bearing on such issues as productivity, discipline, employment, conditions of service, wage security, safety and so on.[102]

Over the years, government has set up several agencies to assist it in the administration and control of the industrial relation system and labour disputes through the following machineries:

(i) Federal Ministry of Employment, Labour and Productivity.

(ii) The National Labour Advisory Council.

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[100] Okake E.O. Ibid

[101] S.25(1) and (2) of the Trade Unions Act Cap. T.14 LFN 2004.

[102] Okake, E.O. Op.cit p.29

(iii) Industrial Arbitration Panel.

(iv) National Industrial Court.

(v) Boards of Inquiry.

The above represents some of the organs established by government in its efforts to supervise, control and administer government policies on industrial relations in the country. As part of the ongoing economic reform programmes, the Federal Government has equally put in place new Labour Trade Union and workmen's compensation laws that would strengthen the capacity of workers in the emerging economy.

These laws also have the potential of ensuring cordiality in the relationships between labour and employers. These developments are in consonance with good or global best practices in labour and industrial relations. They are made against the background that a workforce where strikes are prevalent and where disputes are not speedily resolved stunts development and breeds chaos, strikes etc.It is clear that a breakdown in the economy due to strikes can adversely affect the nation's economic, social and political fortunes. A strike action can also affect the price of oil and its availability on the international markets. The country may not be able to fulfill its obligations by its inability to effect oil supplies, for instance to other countries. Apart from loss of international reputation, the political, economic and social stability of the country can be threatened.[103]

A situation of great concern in Nigeria is that about 70 percent of all industrial disputes result in industrial action. This can be regarded as failure on the part of relevant government agencies whose statutory role is to proffer solution to industrial disputes.

The way to improve the industrial relations system in Nigeria is for government to review the roles and functions of the agencies saddled with the responsibility of handling industrial disputes to make them more effective and efficient, the involvement of organized labour in legislation and policies that affect the industrial relation system and recruitment of qualified personnel to handle industrial matters.

[103] Okake E.O. Op. cit p. 29

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3.6. Trade Dispute Resolution Mechanisms under the Trade Disputes Act 2004 and the National Industrial Court Act, 2006.

Part 1 of the Trade Disputes Act[104] (TDA) which is headed "Procedure for settling trade disputes" was originally meant to regulate trade disputes simplicita. It consists of sections 1 – 19. Trade dispute is defined in the Act as any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person.[105]

Globally, the resolution of labour disputes is guided, among others, by this principles; it is better to have a bad decision quickly than a good decision too later. This is a variant of the adage, "Justice delayed is justice denied"[106]

By virtue of S.4 of the TDA, if there is an agreed means for settlement of dispute apart from the Act, the parties to the dispute shall first attempt to settle it by that means. If that attempt fails, the parties shall within seven days of the date on which the dispute arises or is first apprehended meet under a mediator, mutually agreed upon between the parties with a view to an amicable settlement of the dispute.[107]

If the dispute is not settled within seven days of the date on which a mediator is appointed, the dispute shall be reported to the Minister in writing by or on behalf of either of the parties within three days of the end of the seven days and the report shall be in writing and shall record the points on which the parties disagree and describe the steps already taken by the parties to reach a settlement.[108] The Minister here is the Hon. Minister of Employment, Labour and Productivity.

The Minister has powers under Section 7 TDA to ensure that the processes enumerated under Sections 4 and 6 of the TDA have been complied with. If the dispute remains unsettled within the period stipulated by the Minister, he will appoint a conciliator for the

[104] Cap. T.8 Laws of Federation, 2004.
[105] Section 48. Ibid
[106] Kanyip, B.B. Review of the Trade Disputes Act and its application to Trade Disputes Settlement in Nigeria. Retrieved from http://www.nicn.gov.ng/k9/php on the 28/7/12 at 10:32 a.m
[107] Section 4(2) of the Trade Disputes Act, LFN 2004
[108] Section 6(1) and (2) of the Trade Disputes Act, LFN 2004

purpose of effecting a settlement of the dispute. If settlement of the dispute is reached within 7 days of his appointment, the conciliator shall report the fact to the Minister and forward to him a memorandum of the terms of the settlement signed by the representatives of the parties. If a settlement of the dispute is not reached within 7 days of his appointment, the matter is then referred by the minister to the Industrial Arbitration Panel for settlement within 14 days of receipt of the conciliator's report.[109] The chairman of the Industrial Arbitration Panel must then constitute an Arbitration Tribunal consisting of either a single arbitrator (with or without assessors) or more than one arbitrator to hear and determine the matter.[110]

The Arbitration Panel is obliged to make its award within 21 days of its constitution or such longer period as the Minister may in any particular case allow to make its award. This award is, however, not communicated directly to the disputants, but sent to the minister. The Minister may then communicate the award to the parties with a stipulation that within not more than 7 days, either party to the dispute may object to the award. If there is no objection within the 7 days given, the Minister may then confirm the award by publishing in the federal gazette a notice to that effect.[111]

It should be noted that only when the award is confirmed by the Minister that it is binding on the parties. And the power of the NIC to interpret IAP Awards under S.15 of the TDA and S.7 (i) (c) (ii) of the NIC Act applies only to confirm IAP Awards.

The Minister is permitted, however, if he thinks it is desirable not to notify the parties of the award but to refer it back to the IAP for reconsideration[112] Kanyib.[113] observed that how this provision will play out given S.7(5) of the NIC Act is unclear. Section 7(5) of the NIC Act provides that for the purpose of exercising the right of appeal; a party to an Arbitral award shall be entitled to obtain a copy of the records of the arbitral proceedings and the award from the Arbitral Tribunal. This provision is then reinforced by order 3 Rule 5 of the NIC

[109] Section 8(1) – (5).
[110] Section 9.
[111] Section 13 (1) and (2).
[112] Section 13 (3) Ibid.
[113] Kanyip, B.B. The National Industrial Court: Yesterday, Today and Tomorrow. Retrieved from *http://www.nicn.gov.ng/k9/php* on the 25/7/2012 at 11:45 a.m

Rules 2007 which provides that where the claimant complains against an award or decision by an arbitral tribunal, board of inquiry, decision of the Registrar of Trade Unions or any other authority in respect of matters within the jurisdiction of the court, the complaint shall be accompanied by a record of appeal.

A number of questions may be raised here. In the first place, it is now valid that the Minister can sit on an award, refuse to disclose its content, and instead send it back to the IAP for reconsideration? Secondly his right of appeal (but an appeal is functional only if the content of the award is known) or of judicial review over the arbitral award that may not even be known to him given that under section 13(1) (b) of the TDA, the IAP is enjoined not to disclose its award directly to the litigants but only to the Minister of Labour? And lastly, where the Minister refuses to act, can an order of mandamus under S.17 of the NIC Act be issued against him? It must be noted, however, that by sections 53 and 54 (4) of the NIC Act, the TDA is now subject to the NIC Act.

What this means is that section 7(5) would take precedence over any other provision of the TDA including off course section 13. What all these mean is that litigants can as of right now demand for the records of proceedings and other necessary arbitration processes from the IAP in order to prosecute appeals against an IAP Award at the NIC. In other words, the prerogative writs of judicial review may issue compelling the observance of S.7(5) of the NIC Act.[114]

However, where any of the parties objects to the IAP Award, the Minister is expected to refer the dispute to the National Industrial Court whose decision shall be binding[115] except on questions of fundamental rights as contained in chapter IV of the constitution[116] where appeals lie as of right to the Court of Appeal.

Only the parties to an IAP Award should have the right to object to it in order to activate the power of the minister of labour to exercise his duty of referral of the matter to the National Industrial Court. It is therefore wrong for the Minister of labour to refer to the National Industrial Court where it is objected to by a person or body that was not a party to the matter.

[114] Ibid.
[115] Section 14 of the National Industrial Court Act, 2006.
[116] Section 9. Ibid.

Given the continued centrality of the Minister in the dispute resolution processes of part 1 of the Trade Disputes Act, the Minister (or any of the parties involved) is permitted to apply to the National Industrial Court for the interpretation of an Industrial Arbitration Panel's award or National Industrial Court award or a collective agreement. In exercising its powers of interpretation, the National Industrial Court may either hear the parties or, with their prior consent, not hear them in determining the question(s) as to interpretation.[117]

Similarly, where the National Industrial Court has issued an award, strikes and lock outs are prohibited under pains of criminal sanctions.[118] In the same vein, where a dispute is settled either by agreement or acceptance of the IAP award, the dispute is deemed to have ended. Any further dispute involving the same matter (including questions as to the interpretation of an award made by which the original dispute was settled) is to be treated as a different trade dispute.[119]

Another mechanism for resolving trade disputes is the power of the Minister to constitute a board of inquiry.[120] This mechanism is rarely used most probably because of the statutory limitation implicit in its constitution. For instance, the board of inquiry set up by the minister is statutorily expected to only inquire into the causes and circumstances of the trade dispute in question and report thereon to the minister. The statute is silent as to what should be made of the report by either the minister or any other authority.

If such a report is simply filed away, this will be perfectly lawful and valid.[121]

The point to note with these resolution processes of part 1 of the Trade Disputes Act is the high emphasis placed on ministerial discretion. The role of the Minister is profound. For instance, disputants cannot go directly to the IAP except through the instrumentality of the Minister. Even under the new dispensation, the Minister reserves the right to refer matters to the National Industrial Court in a manner that suggests that the jurisdiction of the National Industrial Court cannot be activated except upon such a referral from the Minister. Even the other processes of mediation and conciliation have the imput of the Minister as he appoints the conciliator or must have the outcome reported to him.[122]

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[117] Section 15 and 16 of the Trade Disputes Act, LFN 2004.
[118] Section 18.
[119] Section 18 (3).
[120] Section 33 and 34.
[121] Kanyip, B.B. Op. cit p.32
[122] Op. cit.

The good news though is that given the powers of judicial review which the NIC now has, the Minister can be made accountable for the exercise of his ministerial discretion under the Trade Disputes Act.[123]

For there to be industrial harmony, the labour/trade disputes resolution mechanisms put in place by law must be applied in a manner that will guarantee their certainty, reliability, dependability and consistency. The court should as well endeavour to deliver justice in consonance with these attributes. The process of Trade Disputes Act is to ensure that attempt is made to settle the dispute through the process of mediation, conciliation and tribunal before the matter is referred to National Industrial Court as an Appellant Court.[124]

[123] Section 16 – 19 of the National Industrial Court Act 2006.

[124] Adejumo, B.A. The Impact of National Industrial Court in the Administration of Justice in a developing economy like Nigeria Vol. II. Retrieved from www.nationalindustrialcourtofNigeria.com on the 27/7/2012 at 12:42 p.m.

CHAPTER FOUR
JURISDICTION AND POWERS OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA

4.1. Jurisdiction under the National Industrial Court Act, 2006

Jurisdiction is a term of comprehensive import embracing every kind of judicial action. The term may have different meanings in different contexts. It is the limit imposed on the power of a validly constituted court to hear and determine issues between persons to avail themselves of its process by reference to the subject matter of the issues or to the person between whom the issues are joined or to the kind of relief sought.[125]

Jurisdiction is defined as the power of the court to adjudicate concerning the subject matter in a given case. In other words, jurisdiction defines the range of legal authority, the extent, the precinct, limit of power.[126]

Power on the other hand is the authority to declare what the law is and its constitution, to decide and pronounce a judgment and carry it into effect between two persons and parties who bring a case before the court for a decision. Put in other words, power refers to the ability, the function of the Court.[127]

The distinction between power and jurisdiction is that power refers to the general ability of the court to declare what the law is, while jurisdiction is more specific and relates to the subject matter of the case placed before the court.

It is settled law that jurisdiction is the bedrock or launching pad of any court in its adjudicatory process.[128]

The jurisdiction of the National Industrial Court of Nigeria is essentially governed by section 7 of the National Industrial Court Act. The section provides that:

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[125] Obiuwenbi v C.B.N. (2011) 7 NWLR (Pt. 1247) 465 at 506 C – D.
[126] Nabaruma v Offodile (2004) 13 NWLR (Pt. 891) 599 at 626 A – B.
[127] Ibid.
[128] Osakwe v F.C.E. Asaba (2010) 10 NWLR (Pt. 1201) 1 at 38 E – F.

(1) The court shall have and exercise exclusive jurisdiction in civil causes and matters:
(a) relating to
(i) Labour, including trade unions and industrial relations;
(ii) environment and conditions of work, health, safety and welfare of labour, and matters incidental thereto; and
(b) relating to the grant of any order to restrain any person or body from taking part in any strike, lock out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock out or any industrial action.
(c) relating to the determination of any question as to the interpretation of
(i) any collective agreement
(ii) any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute,
(iii) the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement,
(iv) any trade union constitution, and
(v) any award or judgment of the court
(2) The National Assembly may by an Act confer such additional jurisdiction on the court in respect of such other causes or matters incidental, supplementary or related to those set out in subsection (1) of this section
(3) Notwithstanding anything to the contrary in this Act or any other enactment or law, the National Assembly may by an Act prescribe that any matter under subsection (1) (a) of this section may go through the process of conciliation or arbitration before such matter is heard by the court.
(4) An appeal shall lie from the decision of an arbitral tribunal to the court as of right in matters of disputes specified in subsection (1) (a) of this section.
(5) For the purposes of subsection (4) of this section, a party to an arbitral award shall be entitled to obtain a copy of the records of the arbitral proceedings and the award from arbitral tribunal.
(6) The court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour or industrial relations and what amounts to good or international best practice in labour industrial relations shall be a question of fact.

The jurisdiction of the National Industrial Court can be divided into two namely, Original (where litigants can directly come to the National Industrial Court) and Appellate (where litigants may have to go through the processes of part 1 of the Trade Disputes Act and ending up with a referral of the matter to the National Industrial Court by the Minister of Labour acting pursuant to S.13 of the Trade Disputes Act). However, a referral to the

National Industrial Court by the Minster pursuant to the provision of S.16 of the Trade Disputes Act approximates to the original jurisdiction of the National Industrial Court given that thereby the matter is coming for the first time before the court without the interposition of the processes of mediation, conciliation and arbitration. What all of these suggest is that the original/appellate categorization of the jurisdiction of the National Industrial Court is not watertight and may depend on a case by case analysis.[129]

The interpretation jurisdiction of the National Industrial Court is the clearest example of the original jurisdiction of the court. This interpretation jurisdiction relates to the interpretation of any collective agreement, terms of settlement of any labour or organizational disputes, any award made by an arbitral tribunal in respect of a labour or organizational dispute, any trade union constitution and any award or judgment of the National Industrial Court.[130] The interpretation jurisdiction does not only relate to collective agreements alone but extends to also the interpretation of the binding awards of the IAP or of the National Industrial Court itself where the Minister of labour or any of the parties to the award may apply to the National Industrial Court for a decision on any question as to its interpretation.

To activate the interpretation jurisdiction of the National Industrial Court, for the purpose of interpreting a collective agreement, there must be a sufficient nexus between the applicant and the collective agreement in question. It is not enough that the applicant benefits from the collective agreement without more. To be so entitled, there has to be proof that the beneficiary is a member of the signatory trade union to the collective agreement. Where a trade union may not want to come to court on behalf of its aggrieved members regarding the interpretation of a collective agreement, the said members may apply directly to the National Industrial Court and will be accorded recognition upon proof of membership of the union that signed the collective agreement and the reluctance of the union to approach the court on their behalf. Because a collective agreement cannot be interpreted in vein, the party against whom the interpretation is sought must be shown to be bound by the collective agreement as by being a party to the collective agreement.[131]

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[129] Kanyip, B.B. The National Industrial Court: Yesterday, Today and Tomorrow. Retrieved from *http://www.nicn.gov.ng/k9/php* on the 25/7/2012 at 11:45 a.m

[130] Ibid.

[131] Itodo & 2Ors v Chevron Texaco Nig. Ltd (2005) 2 NLLR (Pt. 5) 200 at 221 - 223.

In conferring jurisdiction on the National Industrial Court, section 7(1) needs to be read subject to section 7(3) which provides that – Notwithstanding anything to the contrary in this Act or any other enactment or law, the National Assembly may by an Act prescribe that any matter under subsection (1) (a) of this section may go through the process of conciliation or arbitration before such matter is heard by the court. The NIC had the opportunity to construe the purport of the word "notwithstanding" introducing section 7(3) of the National Industrial Court Act in *Aupctre v FCDA* and Ors[132] and held as follows:

> ...The word "notwithstanding" in section 7(3) is meant to qualify the jurisdiction granted the NIC until conciliation and arbitration, if provided for, have been done. It is to reinforce this stance of the law that section 7(4) of the NIC Act provides that an appeal shall lie from the decision of an arbitral tribunal to this court as of right in matters of disputes specified in section 7(1) (a) of the NIC Act. In appropriate cases……..the original jurisdiction of this court may by an Act of the National Assembly, be made contingent upon exhausting the processes of conciliation and arbitration. Where this is the case, the position is not that the jurisdiction of the court has been ousted; only that it is contingent upon those processes being exhausted.

The import of this subsection is that matters within the purview of section 7(1) (a), that is, matters in respect of labour, including trade unions and industrial relations; and environment and conditions of work, health, safety and welfare of labour, and matters incidental thereto, which had to go through the processes of part 1 of the Trade Disputes Act will continue to go through those processes even after the passing of the National Industrial Court Act.[133]

The right of appeal in respect of the decisions of an arbitral tribunal granted under S.7(4) of the National Industrial Court Act is strengthened by S.7(5) which provides that a party to an arbitral award shall be entitled to obtain a copy of the records of the arbitral proceedings and the award from the arbitral tribunal. To compliment this, Order 3 Rule 5 of the National Industrial Court Rules provides thus:

> When the claimant complains against an award or decision by the arbitral tribunal, board of inquiry, decision of the Registrar of Trade Unions or any other authority in respect of matters within the jurisdiction of the court, the complaint shall be accompanied by a Record of Appeal, which shall comprise:

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[132] Unreported Suit N0. NIC/17/2006 delivered on 23rd May, 2007.

[133] Kanyip, B.B. The National Industrial Court: Yesterday, Today and Tomorrow. Retrieved from *http://www.nicn.gov.ng/k9/php* on the 25/7/2012 at 11:45 a.m

(a) Certified True Copies of all the processes exchanged by the parties at, or the representations made to the lower tribunal
(b) Certified True Copies of the record of proceedings before the lower tribunal (where applicable);
(c) Certified True Copy of the award or decision of the lower tribunal; and
(d) Appellant's brief or argument.

What these mean is that where a claimant complains against an award or decision of an arbitral tribunal, board of inquiry, decision of the Registrar of Trade Unions or any other authority in respect of matters within the jurisdiction of the court, the complaint shall be accompanied by a Record of Appeal.

It was observed[134] that the novelty in these provisions can only be understood if the antecedents of the dispute resolution processes under part 1 of the Trade Disputes Act are appreciated. Under those processes, the Industrial Arbitration Panel (IAP) is not required to disclose to the disputants the award it makes at the conclusion of hearing. Disclosure can only be the minister of labour who even has the discretion of sending the award back to the IAP for reconsideration. In all of this, the disputants have a limited right regarding the disclosure of the contents of the award. The contents of the award can only be disclosed to them by the Minister of Labour. It was felt that all this did not accord with the norms of justice hence the enactment of Sections 7(4) and (5) of the National Industrial Court Act to qualify these obnoxious antecedents of the Trade Disputes Act.

Similarly by virtue of section 7(6) of National Industrial Court Act, the National Industrial Court is permitted and even enjoined to take into cognizance international best practices in industrial and labour relations in arriving at decisions in cases before the court. What amount to international best practices in a particular instance is a question of fact to be proved by the person urging the court. This provision obviously permits the court to borrow from foreign jurisdiction in tandem with the present global village system. The various conventions of ILO which the member states are enjoined to apply come in handy here. The implication of this is that what the National Industrial Court decides to be interpreted best practices might not be appealed against being a question of fact.[135]

[134] Ibid.

[135] Adejumo, B.A. The Role of National Industrial Court in Dispute Resolution in Nigeria. A lecture delivered at University of Abuja Organized by law Students Association of Nigeria (University of Abuja Chapter) on the 15th – 18th September, 2008.

In the case of *Oyo State Government v Alhaji Bashir Apapa and Ors*,[136] the National Industrial Court in construing section 7(6) of National Industrial Court Act held thus:

> We cannot conclude this judgment without a remark or two on the application of S.7(6) of the NIC Act 2006. The respondent had argued that it is not good international practice to brand all public servants, and teachers specifically, as being on essential services and so cannot embark on strike. S.7(6) cannot be applied in this general and sweeping form. A litigant that seeks to rely on best international practice must be prepared to establish or prove same as what is best practice in industrial relations is a question of fact.

The jurisdiction of the National Industrial Court is not the product of only the National Industrial Court Act. By virtue of S.7(2) of the National Industrial Court Act, the National Assembly has power to confer such additional jurisdiction on the court in respect of such other causes or matters incidental, supplementary or related to those set out in subsection of this section. Thus the National Industrial Court had the additional mandate of determining appeals against refusal or cancellation of registration by the Registrar of Trade Unions to register any trade union.[137]

The National Industrial Court Act has vested the National Industrial Court with certain powers for instance, the court has the power to grant injunctions in all cases in which it appears to be just or convenient so to do, the power to make an order of mandamus (requiring any act to be done), or an order of prohibition (prohibiting any proceedings, cause or matter) or an order of certiorari (removing any proceedings, cause or matter into the National Industrial Court) and also the power to make an order of injunction in lieu of quo warranto by restraining a person who acts in an office in which he is not entitled to act from so acting, and if necessary declare the office to be vacant.[138]

By Section 19 of the National Industrial Court Act, the National Industrial Court may in all other cases and where necessary make any appropriate order, including:

(i) The grant of urgent interim reliefs;

(ii) A declaratory order;

[136] Unreported Suit N0. NIC/36/2007 delivered on 13th July, 2008.
[137] Section 8 of the Trade Unions Act. Cap. T.14 Laws of the Federation, 2004.
[138] Section 16, 17 and 18 of the National Industrial Court Act, 2006.

The appointment of a public trustee for the management of the affairs and finances of a trade union or employer's organization involved in any organizational disputes;
An award of compensation or damages in any circumstance contemplated by the National Industrial Court Act or any of the National Assembly dealing with any matter that the National Industrial Court has jurisdiction to hear; and

An order of compliance with any provision of any Act of the National Assembly dealing with any matter that the National Industrial Court has jurisdiction to hear.
The National Industrial Court also has power to enforce its judgment and accordingly, may commit for contempt any person or a representative of a trade union or employer's organization who commits any act or an omission which in the opinion of the court constitute a contempt of the court.[139]

A panel of judges constituted to hear a case may, at any time or at any stage of the proceedings in any cause or matter before final judgment, either with or without application from any of the parties thereto, transfer such cause or matter before the court to any other penal of judges and no cause or matter shall be struck out by the court merely on the ground that such cause or matter was taken in the court instead of the Federal High Court or the High Court of a State or of the Federal Capital territory Abuja in which it ought to have been brought and the court before whom such cause or matter is brought may cause such cause or matter to be transferred to the appropriate Federal High Court or High Court of a state or of the Federal Capital Territory, Abuja and vice versa.[140]

In the same vein, the panel of judges upon whom a case is assigned subject to the rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the court in all such causes may be heard conveniently in court or chambers respectively and any order made in chambers by the panel of judges except orders as to cost only may upon notice be set aside or discharged by the Panel of judges sitting in court.[141]

[139] Section 10 of the National Industrial Court Act, 2006
[140] Section 24 (1), (2) and (3) of the National Industrial Court Act, 2006.
[141] Section 26 and 27 of the National Industrial Court Act, 2006

4.2 **Under the Third Alteration Act, 2010**

A new dawn came for the National Industrial Court on the 4th of March, 2011 when the President of the Federal Republic of Nigeria assented to the constitution (Third Alternation) bill, 2010 which amended the 1999 constitution to include the NIC in the relevant sections of the Constitution. 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 Nigeria. In addition new sections 254 A – 254 F have been added to the Constitution to accommodate the National Industrial Court of Nigeria. The National Industrial Court of Nigeria is now formalized in the constitution and equates with the High Courts in terms of status, jurisdiction, powers and privileges.

Section 254C of the Third Alteration Act deals with the jurisdiction of the National Industrial Court of Nigeria. It provided as follows:

1. Notwithstanding the provisions of section 251, 257, 272 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 causes 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 matter incidental thereto or connected therewith;

(b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's 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 or body from taking part in any strike, lock out, or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock out or industrial action or any industrial action, or matter 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 the 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 therefrom;

(f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;

(g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;

(h) relating to or 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 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 or 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;

(vii) dispute relating to or connected with any personal matter arising from any free trade zone in the federation or any part thereof;

(k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and

any other entitlement of any employee, worker, political or public office holder a judicial office or any civil or public servant in any part of the federation and maters incidental thereto:

(l) relating to

(i) appeals from the decision of the Registrar of Trade Unions, or matters relating thereto or connected therewith;

(ii) appeals from the decision 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 agreements.

2. Notwithstanding anything to the contrary in this constitution, the National Industrial Court shall have the 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 to labour, employment, workplace, industrial relations or matters connected therewith.

3. The National Industrial Court may establish an Alternative Dispute Resolution centre within the court premises on matters which jurisdiction is conferred on the court by this constitution or any Act or law:

Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of enquiry in respect of any matter that the National Industrial Court has jurisdiction to entertain or any other matter as may be prescribed by an Act of the National Assembly or any law in force in any part of the federation.

4. The National Industrial Court shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission,

administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain.

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 other Act of the National Assembly or by any other law.

6. Notwithstanding anything to the contrary in the constitution, appeal shall lie from the decision of the National Industrial Court from matters in subsection 5 of this section to the Court of Appeal as of right.

Section 245 D(1) provides further thus:

For the purpose of exercising any jurisdiction conferred upon it by this constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court.

Subsection (2) of section 245D provides:

Notwithstanding subsection (1) of this section, the National Assembly may by law, make provision conferring upon the National Industrial Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the court to be more effective in exercising its jurisdiction.

Section 254 E then goes on to provide that:

(1) For the purpose of exercising any jurisdiction conferred upon it by this constitution or any other law, the National Industrial Court shall be duly constituted if it consists of a single judge or not more than three judges as the president of the National Industrial Court may direct.

(2) For the purpose of exercising its criminal jurisdiction. The president of the court may hear and determine or assign a single judge of the court to hear and determine such matter

(3) For the purpose of exercising any jurisdiction conferred upon it by the constitution or any other law, the court may, if it thinks it expedient to do so or in a manner prescribed under any enactment, law or rules of court, call in the aid of one or more assessors especially qualified to try and hear the cause or matter wholly or partly with the assistance of such assessors.

(4) For the purpose of subsection (3) of this section, an assessor shall be a person who is qualified and experienced in his field of specialization and who has been so qualified for a period of not less than ten years.

Similarly Section 243 of the constitution has been altered by inserting inter alia new subsection (2)-(4):

(2) An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on question of fundamental rights as contained in chapter IV of this constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

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

(4) Without prejudice to the provisions of section 254 C(5) of this constitution 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.

In all, the things to note regarding these new provisions[142] are as follows:

The current jurisdiction of the National Industrial Court of Nigeria is much wider than it used to be. Not only has jurisdiction in civil causes and matters been enlarged, the court now can 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.

[142] Kanyip, B.B. Op. cit p 40.

The concept of unfair labour practice is now recognized under our labour laws.

The right of appeal from the decisions of the National Industrial Court of Nigeria to the Court of Appeal from the decisions of the National Industrial Court of Nigeria to the Court of Appeal remains circumscribed. Only in respect of issues of fundamental rights or criminal causes and matters is the appeal as of right. In all other cases, an Act of the National Assembly must first provide for an appeal; even here the appeal is possible only upon the leave of the Court of Appeal. In essence the National Industrial Court of Nigeria cannot grant leave to appeal. This means that the old dispensation when the decision of the National Industrial Court was final and binding is also now the norm.

The National Industrial Court of Nigeria now has jurisdiction over all employment and labour issues including occupational health and safety, employee's compensation. The orthodox view of lawyers that master – servant issues are outside the jurisdictional scope of the National Industrial Court of Nigeria is now no longer tenable.

It does seem that the court can now apply without hindrance international conventions, treaties and protocols that relate to employment/labour issues which are ratified by Nigeria. In this regard, note that the jurisdiction section commences with the words; "Notwithstanding the provisions of Section 251, 257 and 272 and anything contained in this constitution… section 12 of the Constitution of the Federal Republic of Nigeria 1999 in which requires domestication before a treaty or convention can become applicable in the country is certainly covered by the words "anything contained in this constitution" used in the opening paragraph of Section 254C of the constitution. Section 254 C (1) (d) cannot be used as the basis of filing claims under the Fundamental Rights (Enforcement Procedure) Rules.[143]

4.3. The Status of Part Heard Causes and Matters pending in the High Courts after the passage of the Third Alteration Act, 2010.

The post 2011 dispensation in the labour era no doubt ushered in a new dawn for labour, employment and industrial relation matters putting to rest the controversial jurisdictional problems that have bedeviled the court for a pretty long period of time in the past when the

[143] Comrade (Evang.) Olowo Preye Grace v PENGASSAN & 3Ors – Unreported Suit N0. NIC/EN/10/2011 delivered On July, 5, 2011.

High Courts were exercising concurrent jurisdiction with the National Industrial Court of Nigeria depending on the cause of action, composition of parties and reliefs being sought which ultimately will determine the appropriate court to approach. These provided an avenue for litigants to engage in what is often referred to as "Forum Shopping".

However, what is even more challenging now is that having regards to the Third Alteration Act which came into force on the 4th March, 2011, lawyers are now filing preliminary objections in both State and Federal High Courts[144] in relation to part-heard causes and matters that are pending contending that the High Courts have been divested with jurisdiction.

We considered the various pronouncements of our appellate courts on whether a right in existence at the time a new law is passed transferring jurisdiction from one court to another would be lost automatically regardless of the stage of the pending proceedings.

In the case of *Shell Pet. Dev. Co. (Nig.) Ltd v Isaiah*",[145] the Supreme Court held that from the moment when the Decree N0. 107 of 1993 was signed, the jurisdiction of the State High Court with respect to matters connected with or pertaining to mining and minerals, including oil fields, oil mining, geological surveys and natural gas was ousted although the cause of action arose before the promulgation of the said decree.

The reasoning of the apex court is to the effect that where, during the trial of an action, a law is passed taking away the jurisdiction of the court, from that moment jurisdiction effectively ceases. Thus, once the jurisdiction of a court to determine a matter has been ousted, any further hearing in the matter is null and void because any decision it makes amounts to nothing.

The Apex Court was again confronted with the same issue on appeal in the case of *O.H.M.B v Garba*[146] and the court held that a right in existence at the time a new law is passed transferring jurisdiction of one court to another will not be lost unless it affects purely procedural matters. A statute cannot apply retrospectively except when it is made to do so by clear and express terms. Thus, the effect of the words of an amending law or enactment

[144] See Unreported suit No.KDH/KAD/669/2010, Suit No.KDH/KAD/1023/2010 Presided over by Hon. Justice M.M. Ladan & Suit No.KDH/KAD/685/2010, presided over by Hon. Justice B.U. Sukola of the High Court of Justice, Kaduna State

[145] (2001) 11 NWLR (Pt. 723) 168 at 179 G – H.

[146] (2002) 14 NWLR (Pt. 788) 538 at 156 B – D.

is *in futuro* and therefore it could not by necessary implication have the effect of putting a stop to proceedings which had already been validly commenced.

The import of the above reasoning is that except in a matter of procedure only, where a right is in existence at the time of passing of an enactment or amendment of an existing one, the passage of the new law will not deprive a suitor in a pending action of a right which is vested before the making of the new enactment.

In 2004, the Supreme Court[147] further expounded the principles on the determination of law applicable to causes or matters thus:

> The law which supports a cause of action is not necessarily co-extensive with the law which confers jurisdiction on the court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time the action was instituted and heard.

Therefore, when a court is denied jurisdiction at the time a cause of action arose, it cannot assume jurisdiction when action is instituted later in respect of the subject matter even if its jurisdiction to entertain similar matters is then restored. Similarly, when a court had jurisdiction over a subject matter at the time of the cause of action but loses jurisdiction at the time the action is instituted, it cannot entertain such action.[148] What informed the court's decision is that as at the time the action was filed in the Benue State High Court, Decree 107 of 1993 had effectively denied every State High Court jurisdiction to entertain any such suit. On the 17th December, 2004, the Supreme Court[149] also made a similar pronouncement relying in the case of *Adah v NYSC* (Supra) but in a rather different twist.

The Apex Court held that the principle of law that the jurisdiction of a court is determined by the law existing at the time the cause of action before it arose, cannot be invoked to vest jurisdiction in a matter, no amendment of the law can vest jurisdiction in it. The principle can only extend to the purview of jurisdiction if at the same time the court had jurisdiction in the matter. In other words, the principle can only apply if the jurisdiction of the court

[147] Adah v NYSC (2004) 13 NWLR (Pt. 891) 639 at 648 A - C.
[148] Ibid.
[149] Olutola v Unilorin (2004) 18 NWLR (Pt. 905) 416 at 469 – 470 H – D.

coincides with the law in force at the time the cause of action arose which vested the court with jurisdiction. Edozie J.S.C[150] as he then was held as follows:

> It is a misconception to think, as the learned Appellant's counsel in the present appeal has erroneously thought, that it is the same existing law at the time a cause of action accrued that determines the jurisdiction of the court at the time that jurisdiction is invoked. The correct position of the law is that while the existing substantive law at the time a cause of action arose governs the determination of the action, it is the law in force at the time of the trial that determines the court that is vested with the jurisdiction to try the case.

The facts are simple. The appellant, a professor of education at the University of Ilorin was removed from office in 1989. He sued the University. His action was filed on 13/1/93. Trial commenced on 31/3/94. The Supreme Court ruled that the court that had jurisdiction to hear and determine the suit was the Federal High Court. This is because Decree 107 of 1993 came into force on 17/11/93. It divested the State High Court of jurisdiction to hear the case and since trial in the case commenced on 31/3/94 a date after 19/11/93, the current court to hear the case was the Federal High Court.

In 2010, the case of *Osakwe v F.C.E. Asaba*[151] also came before the Supreme Court. In that case, the cause of action arose in 1990 when the appointment of the appellant was terminated. The appellant sought redress at the Delta State High Court, Asaba in 1992. The court commenced trial in the action in 1994. Decree 107 of 1993 became operative in November 1993.

Therefore, the applicable law to the cause of action and that applicable to determine the jurisdiction of the court conspicuously differ by 1994 when the appellant was heard, the State High Court had been divested of jurisdiction.

The case of *Olutola v Unilorin and Osakwe v F.C.E* are similarly in that in both cases the cause of action arose before 17/11/93. At the time the court of action arose, it was the State High Court that had jurisdiction to hear and determine the cases, but when the cases were eventually heard after 17/11/93, jurisdiction of the court to entertain the action had changed. Jurisdiction to hear the action was conferred on the Federal High Court exclusively as at 17/11/93. Trial in both suits commenced in 1994.

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[150] Ibid.
[151] (2010) 10 NWLR (Pt. 1201) 1 at 43 C – G.

It was in the case of *Obiuweubi v C.B.N.*[152] that the Supreme Court finally clarified the seemingly conflicting stand in its previous decisions when it held that it was the case of *S.P.B.C Nig. Ltd v Isaiah (Supra) and O.H.M.B v Garba (Supra)* that are in conflict in that in the former, the court held that proceedings before the State High Court terminates when Decree 107 of 1993 comes into force notwithstanding whether proceedings commenced before the Decree came into force while in the latter, the court held that proceedings commenced in the state High Court shall continue after the Decree came into force in the State High Court.

Rhodes – Vivour J.S.C[153] said:

> For a state High Court to have jurisdiction under Decree 107 of 1993, the cause of action must arise before the 17/11/1993 and the trial must also be in progress before the said date. That is to say all part-heard cases in the State High Court before 17/11/93 can continue after 17/11/993 in the State High Court because Decree N0. 107 of 1993 does not have retrospective operation, and in view of section 6(1) of the Interpretation Act Cap. 192 LFN 1990.

The Supreme Court maintained its position on this issue reiterating that the law in force or existing at the time the action arose is the law applicable for determining the case. This law does not necessarily determine the jurisdiction of the court at the time that jurisdiction is invoked. That is to say the law in force at the time the cause of action arose governs the determination of the suit while the law in force at the time of trial based on the cause of action determines the court vested with jurisdiction to try the case. It is so obvious that cause of action and jurisdiction are not interchangeable.[154]

Section 6(1) of the Interpretation Act[155] provides as follows:

The repeal of an enactment shall not-

(a) revive anything not in force or existing at the time when the repeal takes effect;

(b) affect the previous operation of the enactment or anything duly done or suffered under the enactment;

[152] (2011) 7 NWLR (Pt. 1247) 465 at 506 C – D
[153] Obiuweubi v CBN (2011) 7 NWLR (Pt. 1247) 645 at 506 C – D.
[154] N.N.P.C v Orhiowasele (2013) NWLR (Pt.1371) 211 at 215 – 216 E – A, 217 A – H.
[155] Cap. 123 Laws of the Federation, 2004.

(c) affect any right, privilege, obligation or liability accrued or incurred under the enactment;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment;

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, any of such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed.

The above is in conformity with the most recent pronouncement in the case of *Goldmark (Nig) Ltd v Ibafonso Co. Ltd*[156] where the apex court held that a right in existence at the time a new law is passed transferring jurisdiction in one court to another will not be lost in that Decree N0. 107 of 1993 has no retrospective effect as it was a constitutional amendment which was not declared to take effect retrospectively neither did it contain any abatement provision.

The court went further to hold that it would not affect pending legal proceedings so as to deprive the State High Court jurisdiction to conclude such proceedings. The Supreme Court is the final Court of Appeal in Nigeria. Its decisions are binding on every court in this country.

By the doctrine of *staredecicis,* all courts are bound to follow the decision of the Supreme Court. In the same vein, where there are conflicting decisions of the Supreme court, the most recent should be followed and applied. Therefore all the above mentioned cases are similar and represent the current interpretation of Decree 107 of 1993 same having been decided in 2002, 2004, 2010, 2011 and 2012 respectively as against *S.P.D.C. (Nig) Ltd v Isaiah* decided in 2001.

The Third Alteration Act which came into force on the 4/3/2011 is a substantive law. It has no retrospective operation and so would not affect proceedings that were on going in the High Courts before 4/3/2011. Such cases that were on before 4/3/2011 being the commencement date are to be concluded by the various High Courts, while cases that

[156] (2010) 10 NWLR (Pt. 1308) 291 at 338 C – E.

commenced after 4/3/2011 are to be heard by the National Industrial Court of Nigeria. This is in accordance with the pronouncement of the Court of Appeal[157] where *Ibiyeye JCA* (as he then was) held as follows:

> The constitution (or any law) of the federation is not made to have retrospective effect. The constitution like other statutes operate prospectively and not retrospectively unless it is expressly provided to be otherwise. Such a legislation affects only the rights which came into existence after it has been passed.

There is no provision in the Third Alteration Act to the effect that the law shall have retrospective effect and there is equally no abatement clause ousting the jurisdiction of the High Courts in relation to part-heard causes and matters. Therefore it is erroneous as contained by some lawyers that as from 4/3/2011, the High Courts have been divested of jurisdiction to entertain all labour and employment related matters and same exclusively vested in the National Industrial Court of Nigeria.

What will determine the exclusivity of the National Industrial Court to entertain such part heard causes and matters will depend on the stage of the proceedings pending at the various High Courts. Therefore the cessation of jurisdiction or ouster of same in relation to part heard causes and matters pending in the High Court are limited and not absolute in the sense that proceedings that were ongoing and evidence had been led before the 4/3/2011 can be concluded as if there was no constitutional amendment. But proceedings at pre-trial conference stage are considered preliminary stages since evidence has not been taken. In such a situation, the High Court will no longer have the jurisdiction to entertain such matter having regard to the amendment that came into force before evidence was taken or heard in the pending proceedings.

In the same vein, were documents have been settled before the commencement of trial, like the practice obtainable in most Federal High Courts, such pending proceedings after the amendment of the 1999 constitution by the Third Alteration Act should be transferred to the National Industrial Court.[158] This is because where trial commences or continues in the absence of jurisdiction same will amount to a nullity.

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[157] Adesoye v Gov. Osun State (2005) 16 NWLR (Pt. 950) 1 at 21 H and 22 A – B.

[158] S.24(3) of the National Industrial Court Act. 2006 and the case of John v Igbo – Ekiti L.G.A (2013) 7 NWLR (Pt.1352) 1.

However, all those cases that were filed and commenced after 4/3/2011 in the High Courts should be transferred to the National Industrial Court of Nigeria. This is because as from 4/3/2011, the High Courts no longer have jurisdiction to entertain such causes and matters notwithstanding the provisions of S.11(1) and (2) of National Industrial Court Act which provides that the Federal High Court, the High Court of a State, High Court of the FCT Abuja or any other court shall cease to have jurisdiction in relation to causes and maters not determined or concluded at the expiration of one year after the commencement of the Act. The NIC Act is an existing law which cannot limit the powers of the High Court vested under the Constitution[159].

The passage of the Third Alteration Act has essentially put to rest the controversial jurisdictional problems associated with the establishment of the National Industrial Court of Nigeria and its functional roles. It was clearly not the intendment of the legislature that same should affect part-heard causes and matters related to labour or employment that were on going in the High Courts before the 4/3/2011 being the commencement date of the Act. There is equally no abatement provision or express provision in the said Act specifying that it should operate retrospectively. Therefore, the High Courts can conclude such proceedings. However, all those cases that were filed and commenced after 4/3/2012 in the High Courts should be transferred to the National Industrial Court of Nigeria. This is because as from 4/3/2011, the High Courts no longer possess the requisite jurisdiction to entertain all matters relating to labour, employment or industrial disputes or matters related or connected therewith.

4.4. **Rules and Procedures of the National Industrial Court.**

The primary objective of the administration of justice is to render justice accordingly to law. The National Industrial Court of Nigeria is enjoined under S.13 of the National Industrial Court Act to concurrently ensure the observance of law and the principles of equity in every civil cause or matter commenced or initiated in the court.

The jurisdiction vested in the court shall in so far as practice and procedure are concerned be exercised in the manner provided by the National Industrial Court Act or any other

[159] The 1999 Constitution. S.272 and S.315(1) – (3).

enactment or by such rules or orders as may be made or in the absence of any such provisions, in substantial conformity with the practice and procedure of the court.

The National Industrial Court of Nigeria may regulate its procedure and proceedings as it thinks fit and shall be bound by the Evidence Act but may depart from it in the interest of justice. Pursuant to this provision, the court enacted its rules and procedure[160] governing its proceedings on the 4th August, 2007.

4.4.1. Institution and Trial of Suits

An originating process in respect of a matter in which the court has jurisdiction shall be filed in any registry of the court nearest to where the Defendant or Respondent resides or has presence or in which the defendant or respondent carries on business and where there are several defendants or respondents who reside or carry on business in different judicial divisions subject to any order or direction of the Court as the most convenient arrangement for trial of the suit.[161]

Where any suit is commenced in the wrong Judicial Division, it may be tried in that Division unless the president of the court otherwise directs. Similarly whenever any matter is filed in any division of the court, the registrar shall refer the matter to the president of the court for assignment to a judge of the court or a panel of judges as he or she may deem fit. The president of the court may direct a judge of the court to assign any case and the president of the court may preside or assign a judge appointed to preside over such cause or matter.[162]

4.4.2 Mode of Commencement of Action

Any action for determination by the court shall be commenced by way of complaint which shall be filed and sealed. The complaint shall be in form 1 with such modifications and variations as circumstances may require. The complaint shall state specifically the relief or reliefs claimed either singly or in the alternative and it shall not be necessary to ask for

[160] National Industrial Court Rules 2007 which came into force on the 1st day of August, 2007 pursuant to the exercise of the powers of the President of the National Industrial Court (Babatunde Adeniran Adejumo) under section 36 of the National Industrial Court Act, 2006.

[161] Order 2 Rules 1 and 2 of the National Industrial Court Rules 2007.

[162] Order 3 Rule 3 – 6. Ibid

general or other relief which may be given as the court may think just. A claimant may alter, modify or extend the claim without any amendment of the endorsement on the complaint provided that the claimant may not completely change the cause of action endorsed on the complaint without amending it.

The complaint shall be accompanied by:

(i) A statement of facts establishing the cause of action;

(ii) Copies of every document to be relied on at the trial;

(iii) List of witnesses to be called. [163]

Where the claimant complains against an award or decision by an arbitral tribunal, board of inquiry, decision of the Registrar of Trade Unions or any other authority in respect of matters within the jurisdiction of the court, the complaint shall be accompanied by a Record of Appeal, which shall comprise:

(a) Certified true copies of all the processes exchanged by the parties at, or the representation made to the lower tribunal;

(b) Certified true copies of the record of proceedings before the lower tribunal (where applicable)

(c) Certified true copy of the award or decision of the lower tribunal; and

(d) Appellant's Brief of Argument.

An originating process shall not be altered after it is sealed except upon application to the court. The Registrar shall indicate the date and time of presentation for filing on every originating process presented and shall arrange for service thereof to be effected on the other parties. The party filing the originating process shall leave at the Registry sufficient number of copies thereof together with all the accompanying documents for service on the Defendant(s) or Respondent(s).The originating process shall not be accepted for filing by the Registry where a claimant fails to comply with the prescribed mode or form of commencement of action under the rules of court.[164]

However, where any matter is transferred to the court by the Federal High Court, or the High Court of a state or of the Federal Capital Territory pursuant to the provision of subsection 24(3) of the Act or similar provision in the statute establishing the said court, the

[163] Order 3 Rules 1 – 3 of the National Industrial Court Rules 2007
[164] Order 3 Rule 4 of the National Industrial Court Rules 2007

case file shall be accepted in the appropriate Registry of the court and referred to the president of the court for assignment. Upon the assignment of such a transferred case, the Registrar shall issue hearing notices to all the parties to participate in the proceedings.[165]

4.4.3 Endorsement of claim and filing of Originating Process

Every originating process shall be printed on opaque A4 paper of good quality and shall contain the claim, the relief or remedy sought with the full names and address of the claimant or Appellant and where a claimant sues a defendant or several defendants are sued in a representative capacity, the originating process shall state that capacity.[166]

The originating process shall also state the amount claimed where the claim is for debt or liquidated demand only and shall further state that the defendant may pay the amount with costs to the claimant or the claimants legal practitioner within the time allowed for appearance and that upon payment the proceedings shall terminate.[167]

A claimant or the legal practitioner through whom the claimant sues shall on presenting any originating process for filing and sealing, leave with the Registrar as many copies of the process as there are defendants or respondents to be served and one copy for endorsement of service on each defendant or respondent. Each copy shall be signed by the claimant where he or she is suing in person or the legal practitioner and shall be certified after verification by the Registrar as being a true copy of the original process filed. The registrar shall after sealing an originating process, file it and note on it the date of filing and the number of copies supplied by a claimant or his or her legal practitioner for service on the Defendants. The Registrar shall then make an entry of the filing in the cause book and identify the action with a suit number the comprise abbreviation of the judicial division, a chronological number and the year of filing.[168]

The Registrar shall promptly arrange for service of a copy of the originating process and accompanying document on each defendant or respondent. But where the originating process does not state an address for service, it shall not be accepted and where such an address is illusory, fictitious or misleading, the court may on the application of the defendant set aside the process.[169]

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[165] Order 9(1) and 9(2).
[166] Order 4 Rules 1 and 2.
[167] Order 4 Rule 3.
[168] Order 6 Rules 1 – 3 of the National Industrial Court Rules 2007.
[169] Order 6 Rules 4 and 5.

4.4.4 **Mode of Entry of Appearance and Defence**

Any defendant or respondent as the case may be served with an originating process shall, within the days stipulated therein or no day is stipulated within 14 days of the service of the originating process, file a Memorandum of Appearance in the Registry of the court. The Memorandum of Appearance shall be signed by the party served or the legal practitioner representing the party which shall contain a full and sufficient address for service. Where any defendant or respondent fails or omits to file a Memorandum of Appearance, then delivery of any document or subsequent processes in relation to the matter at the address shown in the originating process shall be deemed to be good and proper service.[170]

A defendant served with a complaint and the accompanying documents and intends to defend and/or counter-claim in the action shall not later than 14 days or any other time prescribed for defence in the complaint, file:

(a) A statement of defence and counter-claim (if any)

(b) List of witnesses

(c) Copies of documents to be relied upon at the trial.

In the same vein, where a party is served with a Notice of Appeal or a Notice of Cross Appeal together with the Record of Appeal and other accompanying documents and intends to contest the Appeal or Cross Appeal, such a party shall not later than 14 days or any other time prescribed for response, file a Respondent's Brief of Argument or Cross – Respondent's Brief of Argument as the case may be.[171]

At any time before the hearing of a matter or any party to proceedings may file a declaration in writing that such party does not wish to be present in person or represented by a legal practitioner on the hearing of the matter. A copy of such declaration shall be served on every other party who has filed a Memorandum of Appearance and thereupon the matter shall be dealt with as if the party had appeared.[172]

Where a defendant or respondent fails to file a Memorandum of Appearance within the stipulated time, or fails to file appropriate processes in defence of the action within the

[170] Order 8 Rule 1 and 2 of the National Industrial Court Rules 2007.
[171] Order 9 Rule 1 and 2.
[172] Order 8 Rule 4.

prescribed time, and also fails to file a declaration of intention not to defend the action, the court may proceed to hear the matter and give judgment. However such a judgment may be set aside where the defendant or respondent during the hearing or within a reasonable time after the conclusion of hearing and judgment applies to the court giving satisfactory measures and also demonstrates readiness to defend the action. In such a circumstance, the court in its absolute discretion may set aside any judgment given in default of appearance or defence and allow the defendant or respondent to appear and defend the matter on its merit on such terms as to costs or otherwise.[173]

No application to set aside any judgment or rehear any matter shall be made or entertained after the expiration of 30 days from the date of the judgment sought to be set aside.[174]

4.4.5 **Summary Judgment Procedure**

An application for summary judgment is made by a claimant to the court supported with an affidavit stating the grounds for the reliefs shall be filed along with the originating process. The said application shall be accompanied with the statement of facts, exhibits to be relied upon and a written brief and a party served with such an application and accompanying processes shall not later than the time prescribed for defence file the following processes:

(a) a statement of defence

(b) document to be used in the defence; and

(c) a written brief in reply to the application for summary judgment.[175]

Where it appears to the court that a defendant or party has no defence to an application for summary judgment the court may thereupon enter judgment for the claimant. But where it appears to the court that a party has a good defence and ought to be permitted to defend the claim, such a party may be granted leave to defend.[176]

Similarly, where it appears to the court that the Defendant or respondent has a good defence to part of the claim, the court may thereupon enter judgment for that part of the claim to which there is no defence and grant leave to defend that part to which there is a defence.

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[173] Order 8 Rules 5 (1) and (2) of the National Industrial Court Rules 2007.
[174] Order 8 Rule 6.
[175] Order 10 Rules 1 and 4.
[176] Rules 5(1) and (2) of the National Industrial Court Rules 2007.

In the same vein, where there are several Defendants or Respondents and it appears to the court that any of the Defendants or Respondents has a good defence and ought to be permitted to defend the claim, and other defendants or respondents have no good defence and ought not to be permitted to defend, the former may be permitted to defend. The court shall then enter judgment against the latter.[177]

Each of the parties to the application for summary judgment where the Claimant/Applicant or Defendant/Respondent shall be at liberty to advance before the court oral submission to expatiate the party's written brief for not more than 20 minutes.[178]

4.4.6 Motions and other Interlocutory Applications

An application before the court shall be made by motion supported by affidavit or by notice and shall state under what rule of law the application is brought which shall be served within 5 days of filing. The respondent or other party served with such an application and intends to oppose same shall within 7 days of service file a counter affidavit. Where a counter affidavit is served on the applicant, the applicant may file further affidavit within 7 days of service.[179]

Every motion shall be on notice to the other party except where an application ex-parte is required or permitted under any statute or the rules of the court. No application shall be made ex-parte unless the Applicant files with it a motion on notice in respect of the application.[180]

An order for injunction made upon an application ex-parte shall abate after 7 days except the court subsequently otherwise directs in the interest of justice or to prevent an irreparable or serious mischief. Every notice to enforce an arbitral award shall state the ground of the application and where any such motion is founded on evidence by affidavit, a copy of it shall be served with the notice of motion. The party relying on an award on applying for its enforcement shall supply a duly certified copy of the award which is also enforceable in the same manner as a judgment or order of court but with the leave of the court.[181]

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[177] Order 10 Rules 5(6) and 6.
[178] Order 10 Rule 7.
[179] Order 11 Rule 1(1) - (3) of the National Industrial Court Rules 2007.
[180] Order 11 Rules 2(1) and 2.
[181] Order 11 Rules 2(3), 3(1) – (3).

There must be at least three clear days between the service of all processes in respect of a motion and the day named in the notice for hearing of the motion unless the court grants leave to the contrary. Where on the hearing of the motion or other application the court is of the opinion that any person to whom notice has not been given ought to have had such notice, the court may either strike out the motion or application or adjourn the hearing in order that such notice may be given upon such terms if any as the court may deem fit.[182]

The hearing of any motion or application may from time to time be adjourned upon such terms as the court shall deem fit; provided that application for adjournment at the request of a party shall not be made more than twice. The court shall equally take all reasonable steps to ensure that notice of the application for interim order has been served on the respondent before making an interlocutory order under the rules of court.[183]

4.4.7 **Proceedings at Trial.**

Where a cause on the weekly cause list has been called for hearing and neither the claimant or defendant appears, the court may strike out the cause or matter unless it sees good reason to the contrary. Also where a cause is called for hearing and the claimant appears but defendant or respondent and/or his counsel does not appear and no good cause for their absence, the claimant may prove the claim in so for as the burden of proof lies upon him or her. Similarly, where a claimant does not appear on a day fixed for hearing, the defendant may be entitled to judgment striking out the action where no reasons or good cause is shown excusing his absence or that of his counsel. But if the defendant has a counter claim, he or she may proceed to prove such counter claim.[184]

A party to the proceedings before the court who fails to comply with an order or direction of the court may be barred from taking any further part in those proceedings until he or she has complied with such direction or order.

The order of proceedings at the trial is that a party on whom the burden of proof lies by the nature of the issues or questions between the parties shall begin, documentary evidence shall be put in and may be read or taken as read by consent. A party shall close his case on

[182] Order 11 Rule 1(4) and (5).
[183] Order 11 Rule 6 and 8 of the National Industrial Court Rules 2007.
[184] Order 19 Rules 1 – 3.

completion of evidence even though either party may make oral application to have the case closed. The right of close is also exercisable by the court suo moto where it considers that either party has failed to conclude his or her case within a reasonable time.[185] The court has powers to order any person to appear before it as a witness for the purpose of producing any document suo moto or upon an application by any party. When the party beginning has concluded his or her evidence, the court shall ask the other party if the party intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within 21 days after close of evidence file a written address. The other party shall equally file his or her own address within 21 days after service.

The written address shall be printed on white opaque A4 size paper of good quality and set out in paragraphs numbered serially and shall entertain:

(i) The claim on which the address is based

(ii) A brief statement of the facts with reference to the exhibit tendered at the trial.

(iii) The issues arising from the evidence

(iv) A succinct statement of argument on each issue incorporating the authorities referred together with full citation of the authorities.[186]

All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all authorities referred to shall be submitted with the address. Where any Unreported Judgment is relied upon the Certified True Copy shall be submitted along with the written address. Each party shall file five copies of the written address in court and serve a copy thereof on every other party. Oral argument of not more than twenty minutes shall be allowed to each party.[187]

4.4.8 **Effect of Non-Compliance with the Rules of Court**

Failure to comply with any of the provisions of the rules of court may be treated as an irregularity and the court may give any direction as it thinks fit. An application to set aside for irregularity any step taken in the course of any proceedings, may be allowed where it is made within a reasonable time and before the party applying has taken any fresh steps after becoming aware of the irregularity.

[185] Order 19 Rules 9 and 10.
[186] Order 11 Rule 13 and Order 20 Rules 1 and 2.
[187] Order 20 Rules 3 – 5 of the National Industrial Court Rules 2007.

The court may also direct departure from the rules where the interest of justice so requires.[188]

4.4.9 Judgment and Orders

The court shall, after the conclusion of trial, deliver its judgment in open court and shall direct the judgment to be entered but where after the conclusion of trial, the court reserves judgment, parties to the suit shall be served with notice to attend the court on the day fixed for judgment. Any judgment pronounced by the court shall be dated on the date such judgment is pronounced and shall take effect from that date unless the court otherwise orders. Similarly, where an order is made directing that a judgment be entered upon an application for judgment, the judgment shall, unless the court otherwise orders, be dated as of the day on which the order is made and shall take effect from that date.[189]

The court at the time of delivering the judgment or making the order may direct the time within which payment is to be made or other act is to be done and may order interest at a rate not less than 10 percent per annum to be paid upon any judgment.

Every judgment or order made in any cause or matter requiring any person to do any act shall state the time within which the act is to be done.[190]

Where an order has been made not embodying any special terms or including any special directions, but simply enlarging time for taking any proceeding or during any act or giving leave:

(a) for the issue of any court process other than a writ of attachment;

(b) for the amendment of any court process;

(c) for the filing of any process or document; or

(d) for any act to be done by any officer of the court including legal practitioners.

It shall not be necessary to draw up such order unless the court otherwise directs but the production of a note or memorandum of such order signed by the president of the court or the presiding judge shall be sufficient authority for the enlargement of time, amendment, filing or other acts.

[188] Order 5 Rules 1 – 3.
[189] Order 21 Rules 1 – 3 of the National Industrial Court Rules 2007.
[190] Order 21 Rules 4 and 5.

An order shall be sealed and signed by the president of the court or the presiding judge or where the court is constituted by a single judge, by the judge by whom it is made.[191]

4.5. Operations of the National Industrial Court and its impact on the National Economy

The National Industrial Court of Nigeria combines the rule of law applicable in conventional law courts with flexibility, expediency, reliability and affordability often associated with specialized courts. The judges of the court have considerable knowledge and experience in the law and practice of industrial relations and employment in Nigeria. This is in accordance with the Act establishing the court.

In all civil matters, the National Industrial Court of Nigeria is bound by the Evidence Act. In exercising its criminal jurisdiction, the court applies the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code and the Evidence Act in the determination of Criminal Matters brought before it.

The practice and procedure before the court is regulated by the constitution of the Federal Republic Nigeria 1999 (as amended), the National Industrial Court Act, 2006 (NICA), the National Industrial Court Rules, 2007 and the Trade Disputes Act (TDA) (as amended).The Practice Direction of the National Industrial Court of Nigeria 2012 which came into force on the 1st July, 2012.

This has certainly given a new outlook to the court in the dispensation of justice. The practice direction has further strengthened the rules of court which serves as a guide in the adjudicatory process of resolution of labour and industrial related disputes. The concept of front loading which is also a new innovation in our civil procedure rules has been fortified for speedy adjudication of labour and or industrial disputes which by their nature ought to be determined expeditiously without unnecessary delay.

Before the passage of the National Industrial Court Act 2006, the position of the law particularly as it relates to the applicability of "International Labour Standard is that such convention, protocols, etc in so far as it has not been enacted into law by the National Assembly, it has no force of law in Nigeria.[192]

[191] Order 21 Rules 8 and 9.
[192] Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

Under the current legal regime i.e. from 2006, the National Industrial Court is enjoined to have regard to international best practice in labour or industrial relations in discharging its mandate under the law establishing it. Section 7(6) of the National Industrial Court Act provides as follows:

> The court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour or industrial relations and what amounts to good or international best practice in labour or industrial relation shall be a question of fact.

The National Industrial Court have had course to pronounce on the above quoted provision in the case of *Oyo State Government v Alhaji Bashir Apapa & ors*,[193] were it held that a party seeking to rely on best international practice must be prepared to establish or prove same as what is best international practice in industrial relations is a question of fact.

The problem however, is that where the international best practice is the product of an ILO convention (including recommendation or codes of practice), can the National Industrial Court of Nigeria take account of it even if there is evidence that Nigeria did not ratify the convention? Or even where the convention has been ratified, can the National Industrial Court have regard of same when adjudicating? In other words, does Section 7(6) of the National Industrial Court Act meet the domestication requirement of Section 12(1) of the 1999 constitution? Kanyip,[194] is of the opinion that Section 7(6) meets the said domestication requirement and to hold otherwise means that the very basis of the National Industrial Court of Nigeria and all that the dispute resolution structure under part 1 of the TDA represents will collapse.

There is also the doctrine of "unfair termination". Over the years, the common law rule that an employer can terminate an employment relationship with reason or for no reason at all. The employer need not show any motive or give reason for the termination which has received judicial blessing in plethora of authorities from our appellate courts in Nigeria.

The point to note for present purposes is that the rule that permits an employer to terminate for no reason at all is a common law rule which has worked grave injustice in most

[193] (Unreported) suit N0. NIC/36/2007 delivered on the 13/7/2008

[194] Kanyip, B.B. Current issues in labour dispute resolution. Retrieved from *http://www.nicn.gov.ng/k2/phd*. on the 28/7/2012 at 11:32 a.m

circumstances. This has necessitated the international labour community, relying on equitable principles, to relax the said rule.

The issue for consideration in Nigeria, therefore is that given the global relaxation of the said rule, should Nigeria not also toe the line especially given the fact that studies such as ILO have shown that relaxation increases productivity? This point becomes mere pungent when we note that Section 7(6) of the NIC Act, for instance, permits the NIC to take account of best international practice in labour/industrial relations when adjudicating.

In any event National Industrial Court of Nigeria is mandated to administer law and equity concurrently and where there is conflict between the two, the rules of equity shall prevail.[195] Another critical point is on the issue of non-enforceability of collective agreements which has been held by several judicial pronouncements to be gentleman's agreement and so are binding in honour only. That they are extra-legal documents totally devoid of sanctions, a product of trade unionists' pressure not intended to or capable of giving individual employees a right to litigate over an alleged breach of their terms as may be convinced by them to have affected their interest; nor are they meant to supplant or even supplement the employees contract of service.

The problem is whether this position of the law will still be maintained in the same way having regard to the clear provisions of the National Industrial Court Act. Kanyip, [196] observed critically that Section 7(1)(c)(i) of the National Industrial Court Act grants the National Industrial Court the jurisdiction to interpret collective agreements amongst other documents. Section 54(1) of the same Act then goes on to define a trade dispute to include any dispute between employers and employees, including disputes between their respective organizations and federations which is connected with the conclusion or variation of a collective agreement. The question to be asked is why the law would go to this length if the desire is not that collective agreements should be binding and enforceable. Of what use is the power of the court to interpret or enquire into matters relating to the conclusion and variation of collective agreements, if the desire is not that they should thereby be binding.

[195] S.13 and 15 of the National Industrial Court Act, 2006.
[196] Kanyip, B.B. Current Issues in Labour Dispute Resolution. Retrieved from *http://www.nicn.gov.ng/k2/phd*. on the 28/7/2012 at 11:32 a.m

These common law principle that collective agreements are binding in honour only cannot stand in the face of the provision of Sections 7(1)(c)(i),b, 15 and 54(1) of the National Industrial Court Act 2006.

The world of industrial relations relies heavily on the collective bargaining process through which collective agreements are negotiated and agreed upon. It is often a process that entails financial costs, not to talk of the time expended on it. To throw all of this over board on the simple common law expedient that the outcome (collective agreement) is binding in honour only, or only when specifically incorporated into the employment contract, portends great danger to industrial peace and harmony at the work place.

Where there is an agreement between parties, it takes a life of its own and it creates right and obligation which the court can interpret and apply as a collective agreement or terms of settlement of a trade dispute or as a memorandum of settlement of an employment dispute as the case may be.[197]

4.6. Enforcement of the Decisions of the National Industrial Court

The word "Decision" means any determination of the court and includes judgment, ruling, decree, order, conviction, sentence or recommendation.[198]

Every decision of the National Industrial Court of Nigeria shall be in writing and where there is a difference between the judges dealing with the case, by the majority of the judges. The NICN for the purpose of delivering its decision, judgment or ruling shall be deemed to have been duly constituted if at least one judge of the panel sits for that purpose.[199]

The National Industrial Court of Nigeria has the inherent powers to enforce its judgment and may accordingly commit for contempt any person or a representative of a trade union or employers or organization who commits any act or omission which in the opinion of the court constitutes a contempt of court.[200] In accordance with the provisions of order 29 of the Rules of court. In the same vein, S.14 of the NIC Act provides as follows:

> The court shall, in the exercise of the jurisdiction vested in it by or under this Act in every cause or matter, have power to grant, either absolutely or

[197] Section 254(c) (j) (i), (iv) and (v) of the 1999 Constitution (as amended) and Unreported suit No. NICN/LA/275/2012 delivered on 19/12/12
[198] Order (1) Rule 3 of the National Industrial Court Rules, 2007
[199] Section 28(1) – (3) of the National Industrial Court Act, 2006
[200] Section 10 of the National Industrial Rules, 2007

> in such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by the court so that, as far as possible, all matters in disputes between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters avoided.

The National Industrial Court of Nigeria in a recent pronouncement was privileged to give effect to its judgment/decision pursuant to an application brought by the judgment creditor in the case of *Mrs. Dayo Duluro v Nigerian Institute of Public Relations*.[201] The issue that gave rise to the application for enforcement of the judgment of the NIC delivered on the 14/4/2012 was the failure of the judgment debtor to comply with the following declarations and orders made in favour of the judgment creditor and against the judgment debtor as follows:

i. The letter of indefinite suspension from duty dated 1st May 2009 written by the defendant to the claimant is in accordance with the provisions of Article 21(10) of the NIPR staff manual and conditions of service for NIPR secretariat staff.

ii. The contract of service of the claimant with the defendant is subsisting and unbroken until it is lawfully brought to an end by either party in accordance with the claimant's terms and conditions of service.

iii. It is hereby ordered that the disciplinary committee be constituted immediately and proceedings be commenced to determine the culpability or otherwise of the claimant. This should be conducted within 30 days from the date of this judgment.

iv. It is hereby ordered that the claimant be paid her full salary for the month of May 2008, her full salary for the month of April 2009 and her half salary from the month of May 2009 till the disciplinary proceedings is concluded.

v. It is hereby ordered that the claimant be paid her acting allowance for 5 years having functioned as Acting Registrar of the defendant institute for that period.

[201] Unreported suit N0. NIC/LA/23/2009 delivered on the 22/5/2012.

It was the failure of the defendant/judgment debtor to comply with the above terms of the judgment that gave rise to the application to enforce same.

The court held that the indefinite suspension of the applicant/judgment creditor conveyed to her in the letter dated 1st May 2009 and signed by the president & chairman, governing council of the Nigerian Institute of Public Relations is hereby set-aside as disciplinary proceedings did not commence and was not concluded within the 30 days stipulated in the judgment of the court. There shall be no further disciplinary action against her by the council and management of the Nigerian Institute of Public Relations. She is reinstated to her previous substantive position with effect from 1st May 2009 immediately and is to be paid the arrears of her full salary and allowances from that date within 14 days from the date of the judgment. She is also to enjoy all the benefits associated with that office and should be granted access to the premises of the Nigerian Institute of Public Relations and into her office without any let and hindrance by the committee and management.

On the whole, it is quite clear from its conduct and attitude that the Respondent/judgment debtor, Nigerian Institute of Public Relations (NIPR), its governing council and management have shown an unwillingness to obey the judgment and orders of the National Industrial Court highlighted above and have displayed a lack of regard and respect for the rule of law which prompted the claimant/judgment creditor to file an application to enforce the judgment of the court delivered on the 14th/4/2011.

The National Industrial Court held further that it shall whenever the need arises, act appropriately to protect and preserve its integrity, authority and the rule of law.

It is clear from the pertinent provisions of the National Industrial Court Act and the Rules of Court, the judgment or decisions of the National Industrial Court of Nigeria are binding in nature and must be obeyed accordingly failure of which the court may act appropriately with a view to protecting its integrity and powers to ensure the enforcement of its decision delivered and in addition to sanctioning any contemnor who fails to obey or comply with the decision or judgment of the court.

Since the inception of the National Industrial Court, it has adjudicated upon over 267 cases within the period of 1978-2013 on a wide range of subject matters which has been disposed of and several others still pending.[202] Some of the notable decided cases before 2006 are:

1. *Person Running the Affairs of the Defunct Western Textiles Industries Company Limited & 1 Or v National Union of Textile Garment and Tailoring Workers of Nigeria.*[203] The issue that came up for determination was whether the court was *functus officio* as at 15th May, 1981 when it invited all the parties to agree and reconcile the list of workers at Ado – Ekiti factory as at 12/1/1977. The court held overruling the objection of the 1st and 2nd Appellants that although the 1979 constitution is supreme, but the National Industrial Court has special function to perform, in the settlement of trade disputes. In order to carry out its functions, it is given special powers to conduct its own proceedings and to open or re-open any issues at will in the interest of justice. The provisions relieve the court of the rigid rules of addresses, presentation and admission of evidence, order of addresses and closure of addresses which operate in the normal court, S. 258(1) of the 1979 constitution (now S. 294 of the 1999 constitution) which enjoins all courts to give decision not later than three month after the conclusion of evidence and final addresses does not deprive the National Industrial Court of its inherent right to call for any additional facts or production of evidence so as to deal justly with the issues involved in a trade dispute.

The court held further that notwithstanding anything said to the contrary in S. 258 of the 1979 constitution (S. 294 of the 1999 constitution), the National Industrial Court retains all the powers given to it by its enabling Act. The court therefore, has the power under section S.6(6) (A) of the constitution to re-open a case and to call for fresh evidence or to order counsel to re-address the court because of the special powers conferred on it by the relevant provisions of the TDA 1976. Section 6(6) (A) of the 1999 constitution is a complete answer to section 258 of the same constitution as far as the court is concerned.

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[202] Cases of the National Industrial Court of Nigeria *Retrieved from* *http://www.nationalindustrialcourtofnigeria.com on the 7/7/2012* at 10:50 a.m

[203](1981) DJNIC at 81

In dealing with the question of when time starts to run against a court for the delivery of a decision, a distinction must be drawn between the normal courts and the National Industrial Court. In normal courts, there is a duty to receive evidence formally, and to conclude the reception of evidence formally, and matters concerning the reception of evidence are bound by strict laws of evidence. The question for address by counsel in normal courts is a highly technical matter governed by rigid rules. Furthermore, once addresses have closed, parties are not allowed to introduce new evidence. The provision of the National Industrial Court is however different. Rules of evidence are relaxed, and there is no rigidity as to addresses of counsel.

This is in consonance with the provisions of section 12(2)(a) and (b) of the NIC Act 2006. Consequently, evidence and addresses are not formally concluded so as to preclude the court from calling fresh evidence or taking for further addresses if the interest of justice would be better served by so doing. It is therefore, clear, that time does not begin to run against the National Industrial Court because evidence is not concluded formally nor addresses concluded formally.

2. Another example of the decisions of the National Industrial Court is the case of *Management of Rutam Motors Limited v National Union of Shop and Distributive Employees*.[204] The two issues that came up for consideration before the court are as follows:

   (i) Whether a contributory pension scheme is a matter for negotiation between the two parties in an industrial organization that is the employer and workers.
   (ii) Whether the junior staff contributory pension scheme was negotiated by the parties or was introduced at the instance of the Appellant.

The facts leading to the dispute before the court was consequent upon an objection by the Appellant to the award of the Industrial Arbitration Panel (IAP). The terms of reference of the dispute to the court, as well as to the Industrial Arbitration Panel, read thus, "Abolition of the negotiated junior staff pension scheme". The Appellant had unilaterally abolished the contributory pension scheme that was operating in favour of its junior staff.

[204] (1986) DJNIC at 177

The IAP in its award declared the purported abolition of the junior staff pension scheme being operated by the Appellant ineffective and directed that a review of the scheme be negotiated between the Appellant and the Respondent.

The court held that by its nomenclature, a contributory pension scheme presupposes that the employer and the workers make certain regular monthly contribution to the fund on the basis of pre-determined percentages of the basic salaries of the workers who are members of the fund. Membership in such a scheme may be voluntary or mandatory. These two issues are matters in which are best determined by voluntary collective bargaining. It is inconceivable that one party to the scheme should arrogate to itself the power and duty to determine the level of percentage contributions by the parties concerned, and to decide also the nature of membership of the scheme voluntary or mandatory. It is apparent that such an authoritarian posture by one party to the scheme is bound to be resisted by the other party, thus precipitating disharmony and industrial unrest within the industrial setting.

Pension and gratuity are matters for negotiation. Thus, in the interest of industrial harmony, parties should negotiate on pension and gratuity.[205] The court went further and held thus:

> Where a negotiated pension scheme between workers union and their employer had been implemented for some years, its provisions would become implied terms of the individual contracts of employment of the workers who had joined the scheme. The terms of the agreement relating to pension would thus become rights vested in, and accruing to each worker concerned. Any variation of such a negotiated agreement, whatever might be the compelling circumstances, must be proceeded by proper negotiation between the two parties to the agreement.

3. There is also the case of *National Union of Hotels and Personal Services Worker and National Union of Food, Beverages and Tobacco Employees & 1or*.[206] In that case, the Applicant and the 1st Respondent are trade unions registered and recognized by law in Nigeria. The 2nd Respondent is a company registered in Nigeria.

[205] National Union of Chemical and Non-metallic workers of Nigeria and Lever Brothers of Nigeria Limited (1980 – 1981) NIC LR 90.
[206] (2004) DJNIC at 482

The Applicant applied to the National Industrial Court to interpret the jurisdictional scope of the two unions, the Applicant and the 1st Respondent as contained in the third schedule, part B of decree 4 of 1996 as to which of them should unionize and collect check-off dues of the workers in Mr. Biggs restaurant owned by UAC Nigeria PLC, the 2nd Respondent.

The 1st Respondent filed a notice of preliminary objection urging the court to strike out the matter on the grounds that the subject matter was an inter-union dispute, which could only be proceeded with upon reference from the appropriate authority, and secondly that the jurisdiction of the court to entertain the matter was strictly appellate, not original.

The court held that the statute establishing a court determine for the court what jurisdiction it has and how far that jurisdiction goes. Thereafter, a court must look at the cause of action before it to see if it comes within its jurisdiction.

4. *Similarly, in the case of Benjamin Itodo and 68ors v Chevron Texaco Nigeria.*[207] The Applicants applied by way of originating summons for the interpretation of a collective agreement dated August 1, 2007 between the Respondent (Chevron Texaco Nigeria) and the branch of the National Union of Petroleum and Natural Gas Workers (NUPENG).

The Respondent raised a preliminary objection to the originating summons on the grounds that the court had no jurisdiction to entertain the action, and that the Applicants had no cause or reasonable cause of action.

The court identified two issues for determination namely:

1. Whether the National Industrial Court has jurisdiction to hear the matter at hand.
2. Whether the Applicants disclosed a cause or reasonable cause of action as to activate the jurisdiction of the National Industrial Court to interpret a collective agreement.

The court in upholding the preliminary objection held that the interpretation jurisdiction of the National Industrial Court is regulated by sections 15 and 20 of the TDA. Whereas section 20(1)(b)(1) appears to be a general provision as to the power to interprete collective agreement. Section 15(1) is specific in insisting that it is the Minister of Labour or any party

[207] (2004) DJNIC at 499

to the collective agreement that can apply to the court to interpret a collective agreement. In other words, there has to be a *nexus* between the party in court and the collective agreement sought to be interpreted. If the intention is that any beneficiary of a collective agreement or any person with an interest in it can apply for its interpretation, the Act would have used the words "interested party". Merely benefiting from a collective agreement does not entitle one to apply for its interpretation in the court, without more. To be so entitled, there has to be proof that the beneficiary is a member of the signatory organization (union or association) to the collective agreement. While it is true that it is not in all cases that a union or association may want to come to court on behalf of its members, the aggrieved workers would still need to show membership of the said union or association and the reluctance of the union or association to come to court for the court to accord them recognition, and hence a hearing. The Applicants in the instant case did not show sufficient *nexus* with the collective agreement to activate the interpretation jurisdiction of the court.

On the doctrine of incorporation by reference in relation to interpretation jurisdiction of the National Industrial Court, the court held further that the doctrine of incorporation by reference is essentially a contract principle, which allows parties and the courts to look to more than one document for the determination of all the terms and conditions of a given contractual arrangement. Thus, the letter of employment of an employee may by reference incorporate whatever may be agreed to in a collective agreement as part of the conditions of service of the employee in question. While this is valid and legal, it does not without more, entitle the employee to come to the National Industrial Court under Sections 15 and 20 of the TDA and ask for the interpretation of the collective agreement. The employee must mould his case on the right(s) infringed and use the trade dispute resolution processes of part 1 of the TDA, if infact he comes within that process. This is because the interpretation jurisdiction of the court under Sections 15 and 20 of the TDA cannot and should not be used to adjudicate substantive trial issues.

It is instructive to note that the above cases were decided before 2006 when the TDA was largely the substantive law in operation at the material time.

5. In 2006, the National Industrial Court in the case of *Senior Staff Association of University Teaching Hospitals, Research Institutions and Associated Institutions*

(SSAUTHRIAI) and Anors v Federal Ministry of Health and Anor,[208] was called upon to determine whether the court is the ideal forum to resolve disputes arising from mere interests of parties and to decree parity of treatment from workers within a particular section in the absence of an instrument.

The facts are simple. The office of Establishment and Management Services issued a circular dated 31 January, 1996 with Ref. N0. CND. 25/S.4T/135 (circular 1 of 1996). In the course of implementation of the circular, a trade dispute arose which was then referred to the Industrial Arbitration panel by the Honourable Minister of Labour. The award of the IAP was objected to by the Appellants, hence the present referral to the National Industrial Court.

The circular made detailed provisions as to the rates of allowances in respect of call duty allowances, hazard allowances, inducement allowances, journal and learned societies allowances, and teaching allowances. In all of these allowances, what was payable to medical/dental practitioners (doctors) was higher than what was payable to other categories of health employees.

The Appellants disagreed with the disparity in treatment and hence their action at the IAP. The Appellants demanded withdrawal of circular 1 or for harmonization of circular 1 by removing all the discriminating components and applying same uniformly across the board. Adejumo B.A.[209], directing the parties to go back for negotiation held thus:

> Labour/industrial relations is a function of conflicting interests which may remain mere interests or crystallize into rights, depending on what can be agreed on through the process of collective bargaining. So long as an interest has not crystallized into a right, an adjudicative process of court is hardly useful in the resolution of disputes that may arise in that regard. Adjudication deals with rights. And until an interest crystallizes into a right, the court is not the ideal forum to go.

It was further held that the demand for parity within a particular Union is 'perfectly' understandable and accords with the principle of equal work, equal pay enunciated by even the International Labour Organization (ILO). However, unless there is an instruction (a law, circular or collective agreement) that entrenches parity of treatment within particular section as an entitlement, it is not for the court to decree it.

[208] (Unreported) Suit N0. NIC/12/2000 delivered on the 30/3/2006
[209] Ibid

It is worthy of note that the parity sought by the Applicants in the above mentioned case for present purposes is not within the same union, but among different unions. There must be an enforceable agreement reached between parties to enable the court to enforce otherwise unconcluded negotiations do not yield any entitlement for the court to enforce. This is in accordance with the principle that industrial disputes are matters for negotiation between parties with a view to reaching an agreement that will be binding and enforceable in order to promote harmonious labour relations within the sector and the economy as a whole.

6. Similarly, in the case of *Senior Staff Association of Nigerian Universities v Federal Government of Nigeria*[210] the issues that came up for determination pursuant to a referral instruction from the Minister of Labour and Productivity dated 14/10/2004 are whether the Respondent (FRN) breached the August 2001 Agreement particularly in relation to the non-implementation of some of the provisions of the agreement and the issue of parity and relativity ratio within the University System. Secondly whether the Appellant is entitled to wages for the period of the strike embarked on. In respect of the first issue, Kanyip,[211] had this to say:

> A litigant without more, cannot build a case on the right of another. The litigant must build the case on his/her own right. The Appellant in this matter cannot hinge its case on the right of ASUU. A 22% pay rise was promised to all the unions in the University System which the respondent met. The respondent went on, for reason best known to it, to increase the salary of members of ASUU beyond the 22% rise without a corresponding increase for other unions. This cannot without more, be the basis for the claim of an entitlement by the Appellant. Nowhere in the August 2001 agreement is it provided that the claims of the appellant would be contingent upon whatever ASUU gets from the Federal Government. Letters, such as, that by Prof. Ayo Banjo (Exhibit 4) were tendered by the Appellant to show that parity should be applied as a rule. But we must state that Exhibit 4 does not confer an entitlement on the Appellant which the court will enforce. What confers entitlements on the Appellant is the collective agreement of August, 2001, Exhibit 1, and this document does not make parity an entitlement.

[210] (Unreported) Suit N0. NIC/8/2004 delivered on the 8/5/2007
[211] Ibid

The court affirmed the findings of the IAP in its award that clearly brought out the differences in terms of work demands and expectations within the university system which justified a differential wage package between academic and administrative staff.

On the second issue as to whether the Appellants are entitled to wages for the period of strike that it embarked on, the court held that a strike, whether legal or not, fall squarely within the ambit of section 42(1) (a) of the TDA for which the strikers are disentitled from wages and other benefits envisaged by the section and same accords with ILO jurisprudence on the matter.
The court held further that given the self executory nature of Section 42 (1) (a) of the TDA, it is perfectly lawful for an employer to choose to dispense with the 'no work, no pay' rule. In other words, strike pay is lawful if an employer chooses to pay same and not to penalize the strikers in any other way for the strike.

In the same vein, it is lawful for workers to agree with their employer that wages will be paid and no other detriment suffered even when strike actions are embarked on.
All of these seek to promote the principle of harmonious labour relations upon which the ILO jurisprudence on the issue of strike pay as a subject matter of discussion between the parties to determine the scope of negotiable issues. The court's intervention comes into play where an enforceable entitlement can be shown to exist in an instrument often referred to as collective agreement.

In 2011 after the passage of the Third Alteration Act, the NIC was confronted with a case[212] in relation to the termination of employment of a citizen of Nigeria simply because she was pregnant. The court held in interpreting the provisions of Sections 34(1) (a), 42 and 254 C(i) (d) – (f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 2, 5, 15 and 19 of the African Charter that the duty of the court to prevent a breach of the provisions of the fundamental rights section of the Constitution of the Federal Republic of Nigeria 1999 is heightened by the Nigerian obligations to the comity of nations which also forbids such practices. The court assessed the compensation payable to the

[212] Mrs. Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 3Ors, (Unreported) Suit N0. NIC/ABJ/13/2011 delivered on the 21/12/2011

Applicant to be one year of her full gross pay which is ₦5,579,670 having regard to the clear breach of the Applicant's Fundamental Right.

This case is a landmark achievement for the court to have risen to the task of ensuring that the clear provisions of the 1999 constitution (as amended) particularly in relation to gender discrimination at the place of work which is a new innovation has been enforced in accordance with international best practices.

7. Similarly, in the case of *Senior Staff Association of Universities v Academic Staff Union of Research Institution & 2ors*[213], the Court via an originating summons dated 21/5/2008 was called upon to determine whether the registration of the 1st Defendant as a separate trade union is legal and hence valid. The argument of the claimant is that the 1st Defendant ought not to have been registered by the 2nd Defendant (Registrar of Trade Unions) as a separate and distinct trade union, after having had her interest and rights guaranteed and protected by an existing trade union (SSAUTHRIAI). The court held thus:

> The basis for the jurisdiction and eligibility of membership of a trade union is as contained in the registering of Trade Unions, Government N0. 92 Official Gazette of the Federal Republic of Nigeria N0.6 of 8 February, 1978. By that instrument and the succeeding instruments, which all culminated in the Trade Unions Act, as amended, there is a deliberate policy of ensuring that the academic section is stratified into unions along specified lines. National Union of Teachers (NUT) for teaching staff in primary and secondary school: Non Academic Staff Union of Education and Associated Institution (NASU) for all non-academic workers employed in public and privately owned education, research and associated institutions including universities teaching hospital except professional, administrative, medical and para-medical staff; Academic Staff Union of Universities (ASUU) for academic staff of universities; and Senior Association of Universities, Teaching Hospital, Research Institutes and Associated Institutions (SSAUTHRIAI), the claimant in the present case, for senior non-academic staff of the institutions there listed. The registrar of Trade Union has satisfied himself that the 1st Defendant ought to be covered by ASUU but was not so covered.

[213] (Unreported) Suit N0. NIC/34/2008 delivered on the 3/10/2011

The case was therefore dismissed because the court was satisfied that the Registrar of Trade Unions and the Minister of Labour and Productivity have indicated that it was expedient to register the Academic Staff Union of Research Institutions as a separate and distinct union having regard to the fact that the jurisdictional scope of the claimant (SSAUTHRIAI) does not cover the Academic Staff Union of Research Institutes.

It is equally worthy of note that no combination of workers or employees shall be registered of a trade union save with the approval of the Minister on his being satisfied that it is expedient to register the union either by regrouping existing trade unions, registering a new trade union or otherwise howsoever, but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.[214]

The issue of the National minimum wage also became an issue in 2012 before the National Industrial Court. It must be noted that the court has exclusive jurisdiction over civil causes and matters relating to or connected with any dispute arising from national minimum wage for the federation or any party thereof and matters connected therewith or arising therefrom.[215]

8. In the case of *Attorney General, Osun State v Nigeria Labour Congress (Osun State Council) & Ors,*[216] the issues that came up for determination are:
    1) Whether the National Minimum Wage Act was intended to increase the salary of workers generally with N18,000 being the benchmark on which to erect a new salary structure or whether only a category of workers are intended to benefit from the minimum wage.
    2) Whether the Defendants can embark on a strike action in the circumstances of the case.

In determining the first issue and in a bid to apply international best practices, the court was persuaded by the study of the duo of *Hansjorg Herr and Milka Kazandziska*[217] who opined that statutory minimum wages are not a substitute for wage bargaining. The main purpose of

[214] See S.3 and item 45 of part C of the Third Schedule to the Trade Unions Act LFN, 2004
[215] Section 254 (c) (1) (e) of the 1999 Constitution (as amended)
[216] (Unreported) Suit N0. NICN/LA/275/2012 delivered on 19/12/2012.
[217] Principles of Minimum Wage Policy – Economics, Institutions and Recommendations (International Labour Organization: Generva), 2011.

minimum wages is to set a floor for wages in the whole economy. Unions can and whenever possible should increase the wages of the lowest paid above the minimum wage especially in some developing countries where minimum wage negotiations in tripartite bodies have become a substitute for wage bargaining.

The court held that there is nothing fundamentally wrong with the National Minimum Wage Act, 2004 as amended in delimiting the scope of workers that it applies to. The National Minimum Wage Act only sets out the minimum benchmark of wages that those it defined as entitled beneficiaries cannot be made to earn anything lower but does not foreclose an increase over and above the minimum benchmark.

On the second issue, the court held that the manner in which the requirement of Section 31(6) of the Trade Unions Act as amended, are provided for suggests that all of them must be met before the right to strike can arise. The non-satisfaction of any of them necessarily means that the right to strike has not arisen and so cannot be exercised. Since there is no evidence that the requirements have been met, the threatened strike action of the Defendants cannot be legal and valid.

All to these clearly reflects the giant strides taken by the court in giving full effect to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) particularly in relations to the innovations contained therein. For instance, the issue of the national minimum wage, discrimination on grounds of sex at the workplace, the application of international best practices etc.

9. Another interesting case that was decided in 2013 is the case of *Surveyor (Dr.) J.G Adesina & 6ors v The Governing Council of Rufus Giwa Polytechnic, Owo*[218], wherein the claimants filed an action claiming, amongst other, ancillary reliefs for a declaration that their purported retirement on the ground of age before attaining the mandatory retirement age of 65 years contained in the Federal Government Public Service Rules (PSR 02081-0) 2008 edition, regulation governing service contained in the staff manual of Rufus Giwa Polytechnic, and Federal Ministry of Education circular Ref. N0. DHE/POLY. 53/C.2/IV/57 is unlawful, invalid and of no effect whatsoever.

[218] (Unreported) Suit N0. NICN/LA/116/2012 delivered on the 27/2/2013 by Hon. Justice J.T Agbadu Fashim

The court held that retirement age for Academic Staff of Tertiary Institution is an issue of law. The Claimants did not place before the court any legislation at the time they were retired which provides for retirement age at 65 years. Instead, what the claimants placed before the court are circulars which enjoins polytechnics in the country to stay action in academic staff who have already attained 60 years of age pending the enactment of an enabling legislation to that effect. The circulars do not have the force of law and so not binding.

The retirement age of the claimants which was hitherto fixed by law can only be amended by law and not by circulars and that is what exactly the retirement age of staff of polytechnic and college of Education (Harmonization) Act 2012 was promulgated to address. It is clearly in evidence that the claimants were retired before the coming into effect of the Act when they attained the age of 60 years and above. Consequently, the claimants are not entitled to benefit from a law enacted after their retirement which did not have them in contemplation especially because the law was not made to apply retrospectively.

All of the above cited cases clearly demonstrates the fact that the National Industrial Court is now repositioned to entertain disputes of which jurisdiction has been conferred on the court by either the Constitution or the Act of National Assembly on a wide range of subject matters which were hitherto not within the powers and jurisdiction of the court to entertain. It has no doubt given a new outlook and approach in the determination of labour and industrial related matters in Nigeria.

4.7. **Limitations and Challenges of the National Industrial Court of Nigeria**

The word 'Limitation' is synonymous with the word restriction. It is defined as a boundary or defining line, the extent of power sought or authority.[219] While the word 'Challenge' is defined as a difficult task that tests somebody's ability and skill.[220]

The jurisdiction and powers of the National Industrial Court of Nigeria under the current legal regime is perhaps the widest and most elaborate jurisdiction conferred on any court under the 1999 constitution of the Federal Republic of Nigeria (as amended).

[219] Gardner B.A. Black's Law Dictionary, Ninth Edition, West Publishing Co. Dallas, Texas USA 2009, P. 1012
[220] Wehmeier .S. Oxford Advanced Learner's Dictionary of current English, Oxford Press, Oxford, 2005 P. 231

The mode and manner the jurisdictional powers of the National Industrial Court of Nigeria has been couched under the present legal dispensation has no doubt created innovations to tackle the perceived problems associated with the National Industrial Court Act, 2006 in order to ensure that any industrial relations and related matters and matters incidental thereto are brought together under the same roof thereby eliminating backlog of cases with a view to achieving economic, industrial growth and harmony by the speedy resolution of employment and labour disputes in Nigeria thereby eliminating forum shopping having regard to the certainty of the law.

Certainly, the 1999 constitution (as amended) by the third alteration will not only impact positively on labour law jurisprudence, but in no small measure, expand the horizon of labour law practice in Nigeria notable of which are:

i. The current jurisdiction of the National Industrial Court of Nigeria is much wider than it used to be. Not only has jurisdiction in civil causes and matters been enlarged, the court now can entertain criminal causes and matters that the court has jurisdiction to hear and determine and the constitutional mandate for the settlement of disputes through the framework of Alternative Disputes Resolution as enshrined under Section 254 (c) (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

ii. The concept of unfair labour practice is now recognized under our labour laws in section 254(c) (1) (f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and disputes arising from National minimum wage for the Federation or any part thereof.

iii. The right of appeal from the decisions of the National Industrial Court of Nigeria to the court of appeal is circumscribed. Only in respect of issues of fundamental rights or criminal causes and matters is the appeal as of right. In all other cases, an Act of the National Assembly must first provide for an appeal; even then, the appeal is only possible upon the leave of the Court of Appeal. In essence, the National Industrial Court of Nigeria cannot grant leave to appeal.

iv. The National Industrial Court of Nigeria now has jurisdiction over all employment and labour issues including occupational health and safety, employees' compensation etc under Section 254 (c) (1) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

v. The NIC has jurisdiction in relation to acts connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act etc under section 254 (c) (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

vi. There is greater latitude now for the court to apply 'international best practice' when adjudicating labour/employment disputes, matters relating to disputes arising from discrimination or sexual harassment at workplace, application or interpretation of international labour standard, matters related to or connected to child labour, child abuse, human trafficking under Section 254 (c) (1) (g) (h) and (i) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

viii. The National Industrial Court of Nigeria can now apply without hindrance international conventions, treaties and protocols that relate to employment/labour issues which are ratified by Nigeria.

ix. Section 254(C)(1)(D) of the 1999 constitution (as amended) cannot be used as the basis for filing claims under the fundamental rights (Enforcement Procedure) Rules.[221]

The National Industrial Court Act and now Third Alteration to the Constitution of the Federal Republic of Nigeria 1999 (as amended) have made giant strides in shaping the way in which labour disputes would be resolved in the country. The limits of the law are yet to be known but a good deal will be expected in terms of judicial interpretation of the respective provisions of the Act and the constitution particularly from our appellate courts. The way for the resolution of labour disputes in the country has now been fully charted; what all the practitioners make of it remain the critical issue. A good deal of learning on the new dispensation is absolutely necessary if the desired results are to be achieved. The test for all practitioners is how to utilize the new provisions in advancing the cause of justice and fair play under the current legal regime.[222] Beautiful as the prospects might be having regards to the new National Industrial Court of Nigeria under this dispensation, there are some challenges which may be a stumbling block to the actualization of the desired objectives and results.

[221] Comrade (Evang) Olowo Preye Grace v PENGASSAN & 3ors. Unreported suit N0. NIC/EN/10/2011 delivered on the 5th July, 2011.

[222] Kanyip, B.B; The National Industrial Court of Nigeria: The Future of Employment/Labour Disputes Resolution. Retrieved from http://*www.nicn.gov.ng/k7.php* on 25/7/2010 at 9:30 a.m

First, there is a risk involved in transplanting legal regimes, institutions or policies. Without any doubt, legal transplant is a veritable means to develop and or re-engineer the society. But such a venture must be done mindful of the possibility of discrepancies in social, political, economic and cultural underpinnings in both the transferring and recipient countries. Thus, legal, transplant must be done 'in context'. In essence, the new trend in labour relations currently experienced under the current legal regime though commendable will certainly have challenges in gaining acceptability and applicability within the Nigeria setting.

Secondly, it is worth noting that the generality of our people are not accustomed to resolving disputes through the medium of litigation. The cost of litigation may be too expensive for the ordinary worker to bear. There is also the possibility of a backlash on an employee who challenges the conduct of the employer or more 'powerful' employee. In the circumstances, glaring acts of discrimination, abuse or unfairness may go unchallenged even though the National Industrial Court of Nigeria has been empowered to establish an alternative dispute resolution centre to handle cases and matters over which the court has been given jurisdiction to address some of the misgivings expressed above.[223] Hence, the acrimonies associated with litigation as a means of settling disputes might be minimized through the adoption of ADR mechanisms by the National Industrial Court of Nigeria.

Thirdly, National Industrial Court of Nigeria is a fledging court initially established as a special purpose court which the Constitution of the Federal Republic of Nigeria 1999 (as amended) by the Third Alteration Act 2010 has now placed enormous responsibilities. There are challenges relating to man power, infrastructure and funding. The courts need to appoint more judges experienced and learned in labour law and supporting staff, build more courts and expand its infrastructural base with a view to bringing justice nearer to the people. The court also requires more funding to be able to cope with the new daunting but surmountable challenges.[224]

[223] Section 254 C(3) of the 1999 constitution (as amended)

[224] Adejumo, B.A. The Constitution (Third Alteration) Act 2010: Feminism, Gender Implication, prospects and challenges for the Nigeria woman. A paper delivered at the National Executive Council Seminar of the Federation of the International Women Lawyers (FIDA) at the main Hall of the University of Nigeria, Enugu Campus, Enugu on the 8th of June, 2011.

The President of the National Industrial Court of Nigeria, Babatunde Adeniran Adejumo in the exercise of the powers conferred on him under Section 254F of the constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 36 of the National Industrial Court Act, 2006 has issued Practice Directions,[225] to complement the existing rules of court and further review the existing fees payable for the recovery of specific sum in Appendix 1(1) to National Industrial Court Rules, 2007.

These has no doubt settled the issue of non-filing of written statement on oath along with the originating complaint and processes intended to be filed by a Defendant. The requirement of filing written address in support of an originating summons has now been made mandatory which was hitherto ordered by the Court after exchange of relevant processes by the parties involved. Also a time frame has now been made for filing and serving of applications/motions both in support and in opposition thereto.

These have no doubt filled in some of the gaps created by the National Industrial Court Rules 2007 which was hitherto creating confusion in the administration of justice in the National Industrial Court of Nigeria.

[225] National Industrial Court of Nigeria Practice Direction 2012 which commenced on the 1st July, 2012 issued by the president of the National Industrial Court of Nigeria (Babatunde Adeniran Adejumo) pursuant to powers conferred on him by section 254 F of the 1999 Constitution (as amended), by the Third Alteration Act, 2010 and section 36 of the National Industrial Court Act, 2006.

CHAPTER FIVE
SUMMARY AND CONCLUSION

5.0. Introduction

This chapter concludes the research work with a summary, findings and recommendations given below on how the National Industrial Court of Nigeria can perform effectively having regard to its enlarged powers and jurisdiction under the current legal regime.

In conclusion, it is worth noting the following:
First, the status of the National Industrial Court of Nigeria as a Superior Court of record has been put to rest in view of the amendment of the Constitution of the Federal Republic of Nigeria 1999 by the Third Alteration Act, 2010 which has equally vested the court with enlarged powers and enhanced jurisdiction on a wide range of matters relating to labour and or industrial disputes.

Secondly, the controversy surrounding the status of pending matters at both the State and Federal High Courts that were exercising concurrent jurisdiction with the National Industrial Court of Nigeria has been taken care of by Section 24 (3) of the National Industrial Court Act, 2006 being an Act of the National Assembly that has not been repealed by the Third Alteration Act, 2010. The stage of such pending proceedings will determine whether same will be concluded at the High Courts or transferred to the National Industrial Court of Nigeria.

Thirdly, the adjudicatory process of the National Industrial Court from inception under the Trade Disputes Act, National Industrial Court Act and finally the Third Alteration Act has clearly demonstrated some improvements in the adjudicatory process. The problem of inadequacies in the National Industrial Court Rules has been cured by the practice direction 2012.

On the whole, it can be said that the passage of the Third Alteration Act, 2010 which amended the Constitution of the Federal Republic of Nigeria 1999 has given a new outlook to the industrialization process in Nigeria.

The various conflicts associated with the status of the courts and its jurisdictional scope has been put to rest. The success or otherwise of all of these innovations will depend on the sensitization of the public and practitioners as well and review of the laws from time to time to be in tune with modern day practice of labour law and practice.

5.1. **Summary**

The topic of the research, "An appraisal of the Jurisdiction and Powers of the National Industrial Court of Nigeria, was necessitated by the controversial jurisdictional problems associated with the establishment of the National Industrial Court of Nigeria and its functional roles towards the settlement of labour disputes.

The study delved into the importance of the National Industrial Court of Nigeria in the expeditious settlement of all industrial disputes referred to it by the Minister of Labour and productivity, the interpretation of collective agreement entered into between management and workers representatives, promotion of the settlement of disputes by negotiation, conciliation, arbitration with a view to getting men back to work. The history of the National Industrial Court, its establishment and composition and its role in the settlement of labour disputes under the Trade Disputes Act and the National Industrial Court Act and its areas of conflict with the provision of Sections 257 and 272 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) were equally examined with the nature of involvement of Government in labour disputes.

The jurisdiction and powers of the National Industrial Court of Nigeria under the current legal regime was examined. The status of part-heard causes and matters pending in the High Courts after the passage of the Third Alteration Act 2010 and the Rules, Procedures and operations of the National Industrial Court of Nigeria were also examined.

Some landmark decided cases of the National Industrial Court of Nigeria towards the settlement of labour disputes bearing in mind its jurisdictional powers under the various laws establishing the court, the impact of such decided cases on the national economy, the enforcement of the decisions, the limitations and challenges of the National Industrial Court of Nigeria were also examined.

5.2. Findings

The National Industrial Court of Nigeria has now been elevated to the status of a superior court of record with enhanced powers and enlarged jurisdiction on labour and employment related matters with the passage of the Third Alteration Act 2010 which amended the Constitution of the Federal Republic of Nigeria 1999 thereby putting to rest the controversial jurisdictional problems associated with the establishment of the National Industrial Court of Nigeria and its functional roles.

It was further revealed that the cases that were pending in the various High Courts (State and Federal) which were hitherto exercising concurrent jurisdiction with the National Industrial Court of Nigeria in relation to labour and or employment matters would not cease automatically in view of the fact that there is no abatement provision or express provision in the Third Alteration Act 2010 to that effect. There is equally no provision specifying that the Third Alteration Act should operate retrospectively.

The Trade Disputes Act 2004 is still operative as same has not been abolished by the Third Alteration Act. Therefore all the processes of negotiation, conciliation and arbitration under part 1 of the Trade Disputes Act are still contingent upon exercise of the jurisdiction of the National Industrial Court of Nigeria with regard to Trade Disputes.

The jurisdiction of the National Industrial Court of Nigeria under the Constitution of the Federal Republic of Nigeria 1999 (as amended) has rendered Section 7 of the National Industrial Court Act 2006 inoperative. In fact, there is a conflict between Section 7 of the National Industrial Court Act 2006 and Section 272 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) because an Act of the National Assembly cannot override or whittle down the powers of a court created under Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

There are innovations introduced by the Third Alteration Act that are new in Nigerian Labour Law and Practice which have over burdened the National Industrial Court of Nigeria with so much powers but lacks the infrastructural base and manpower to cope with such enormous responsibilities. For instance, the power to assign cases filed at the National Industrial Court of Nigeria has been centralized. It is only the president of the court that can

assign any matter to a particular judge or panel of judges. The power to delegate under Order 2 Rule 5 is at the discretion of the president of the court because the operative word used therein is "may".

The research further revealed that the current approach by National Industrial Court in the settlement or resolution of labour disputes bearing in mind the limitations and challenges faced by the court in its adjudicatory process both at the statutory level (Trade Disputes Act and National Industrial Court Act) and Constitutional level (Third Alteration Act). Some of these problems have been identified and analyzed with a view to making recommendations that will help in the promotion and settlement of labour disputes in Nigeria.

5.3. **Recommendations**

In the light of the issues raised and discovered in the cause of this research, the following recommendations will be made towards the actualization of the desired objectives of the National Industrial Court of Nigeria that is now saddled with enormous responsibilities having regard to its expanded jurisdiction and enhanced powers under the current legal regime.

5.3.1. All those labour and employment related cases that were filed and hearing commenced in the High Court (Federal and State) before the 4/3/2011 being the commencement date of the Constitution of the Federal Republic of Nigeria 1999 (as amended) by the Third Alteration Act, 2010 should be concluded in the respective High Courts as though there was no constitutional amendment in view of Section 6(1) of the Interpretation Act Cap.I 23 Laws of the Federation, 2004.

5.3.2. All those cases that are labour and employment related filed and commenced after 4/3/2011 in the High Courts (State and Federal) should be transferred to the National Industrial Court of Nigeria in compliance with Section 24(3) of the National Industrial Court Act, 2006. This is because as from 4/3/2011, the High Courts no longer possess the requisite jurisdiction to entertain all matters relating to labour, employment, industrial disputes or matters related or connected therewith. Similarly, cases that were filed in the High Courts (Federal and state)

before the 4/3/2011 and hearing did not commence before the 4/3/2011 being the commencement date of the Third Alteration Act, should also be transferred to the National Industrial Court of Nigeria vested with exclusive jurisdiction over such subject matters.

5.3.3. Section 11(1) and (2) of the National Industrial Court Act, 2006 being a substantive legislation that has not been abrogated or repealed by the Third Alteration Act 2010 should be amended to be in conformity with Sections 251, 257 and 272 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This is because the Act limited the jurisdictional powers of the State and Federal High Courts and pegged a time frame for the conclusion of pending causes and matters to a period of one year after its commencement.

5.3.4. The National Industrial Court of Nigeria requires increased and adequate funding in view of its wide powers and jurisdiction under the current legal dispensation. There should be a judicial division of National Industrial Court in all the 36 states within the federation for easy accessibility and affordability to litigants who are desirous of seeking redress in the court having divested the Federal and State High Courts that are closer to the people with jurisdiction over labour and employment related matters. This will reduce the hardship experienced by people in the states that do not have a division of the National Industrial Court. This will further enhance a better justice delivery system that is cost effective.

5.3.5. The powers of the President of the National Industrial Court to delegate the assignment of cases should be mandated to the presiding judge of every judicial division of the National Industrial Court of Nigeria rather than at the discretion of the President of the court. Therefore Order 2 Rule 5 of the National Industrial Court Rules 2007 should be amended to reflect that the President of the court shall direct a presiding judge of any judicial division of the court to assign any case specified therein in order to aid the speedy dispensation of justice.

5.3.6. There should be periodic sensitization programs throughout the federation to create awareness to the general public of the powers and jurisdiction of the repositioned National Industrial Court of Nigeria through seminars, workshops, conferences, etc., in view of the level of illiteracy in Nigeria and lack of knowledge and awareness regarding labour and

industrial related matters. This will enable people to know that the court now has powers to tackle problems of child labour/trafficking, discrimination and inequality of sexes etc., which are also new innovations in line with global best practices in labour, employment and industrial relations. The alternative dispute resolution mechanisms should be adopted as a means of settling labour disputes in view of the fact that the National Industrial Court of Nigeria has now been empowered to establish an alternative dispute resolution center to handle cases or matters over which the court is vested with jurisdiction to handle.

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