



**THE JURISDICTION OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA AND
FINALITY OF ITS JUDGMENTS: WHAT DOES THE LAW SAY?**

Richmond Idaeho



ABSTRACT

Commerce in societies is built on exchanges of goods and services, provided by businesses and corporate organisations (service providers) which support the creation of strong institutions in such societies. Businesses, are driven by people (employers, employees and consumers), and are keys to a society's economic development and sustainability. Thus, it is imperative to understand and provide adequate legal mechanisms for these multi-dynamic relationships including the employer-employee-consumers (clients) relationship, on the one hand, and employer-consumers-society relationship on the other hand, amongst others. It is in this regard that labour and employment law becomes inevitable. It is in this regard, that the National Industrial Court was established to adjudicate on matters of labour and employment.

This paper attempts to make an evaluative juxtaposition of the jurisdiction of the National Industrial Court and the appealability or otherwise of its decisions.

Keywords: Labour, employment, jurisdiction, leave and appeal.

INTRODUCTION

In recent times in Nigeria, there has been significant developments of the law as it relates to labour and employment. Some of these legal developments have created uncertainties regarding the jurisdiction of the National Industrial Court and the finality of its decisions on matters of labour and employment.

There was the controversy as to whether the decisions of the National Industrial Court were final or appealable. There were divergent views on this, with different scholars and practitioners holding opposing positions.

It has been argued on the one hand that only decisions on fundamental rights can be appealed (as of right) from the National Industrial Court to the Court of Appeal, while on the other hand, some others have argued that while agreeing that other decisions of the National Industrial Court can be appealed, but contended that leave to appeal should be obtained from the National Industrial Court.

What then is the position of the law on the issue of appealing the decisions of the National Industrial Court? Are the decisions of the National Industrial Court appealable? Does an appellant require leave of the National Industrial Court to appeal its decision? If not, then which Court has power to grant leave? What are the grounds for appealing the decisions of the National Industrial Court if any, whether



as of right or by leave of Court. These questions will be considered and answered in the course of this paper.

JURISDICTION OF THE NATIONAL INDUSTRIAL COURT TO HEAR AND ENTERTAIN MATTERS OF LABOUR AND EMPLOYMENT

The **Constitution of the Federal Republic of Nigeria (Third Alteration) Act No. 3 of 2011**, which altered/amended the Constitution of the Federal Republic of Nigeria 1999, conferred special and exclusive jurisdiction on the National Industrial Court with respect to labour and employments matters, welfare, wages, benefits and compensation of workers/employees, as well as matters pertaining to industrial relations, irrespective of the industry, economic sector, business enterprise, private or public where an employer-employee relationship exists.

The jurisdiction of the National Industrial Court is copiously and unambiguously provided for in **section 254C(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** which provides, as follows:

“(1) Notwithstanding the provisions of sections 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 matters incidental thereto or connected therewith;

(b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees’ Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any enactment replacing the Acts or Laws;

.....



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

.....

(k) relating to or connected with disputes arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;

.....

(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 relating to labour, employment, workplace, industrial relations or matters connected therewith.”

From the above, the proper forum for a Claimant whose case is entirely based on an employment contract is the National Industrial Court by virtue of **section 254C(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**, quoted above, which vests exclusive jurisdiction for matters arising from employer-employee relations on the National Industrial Court..

Section **254C(1)(a)** of the Constitution, quoted above, is to the effect that the National Industrial Court has exclusive jurisdiction over all matters relating to, or connected with employment. Even where such matters are not employment per se, as long as the claims or issues for determination are *“related to or connected with any labour, employment including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith”*, then the National Industrial Court shall exercise exclusive jurisdiction over those matters. Thus, in **John v. Igbo-Etiti Local Government Area (2013) 7 NWLR (pt. 1352) page 1 at 17 paras. A-B**, the court stated thus:

“Following the enactment of the Constitution (Third Alteration) Act, 2010 which gave exclusive jurisdiction to the National Industrial Court on Labour matters, both the State and Federal High Courts including that of the Federal Capital



Territory, Abuja ceased to have jurisdiction in those matters pending before them.

In view of the above and by virtue of **subparagraph (f) of section 254C(1) of the Constitution**, the National Industrial Court has jurisdiction, to the exclusion of any other court, to determine causes and matters “relating to or connected with unfair labour practice or international best practice in labour, employment and industrial relations matters.” Also, **subparagraph (k) of section 254C(1) of the Constitution (as amended)**, reproduced above, specifically confers on the National Industrial Court, exclusive jurisdiction in respect of causes and matters relating to, or connected with benefits and any other entitlement of any employee.

in addition to the above mentioned exclusive jurisdiction of the National Industrial Court on matters relating to, connected with and arising from local legislation on employment and labour, the National Industrial Court has jurisdiction to entertain matters connected with, relating to and arising from international conventions, treaties and protocols on labour and employment to which Nigeria is a party by virtue of **section 254C(2) of the Constitution**, as amended, which has been reproduced above. Therefore, the National Industrial Court has jurisdiction to hear and determine a claimant’s right of entitlements arising from international conventions, treaty or protocol relating to labour/employment.

RIGHT OF APPEAL

Does an aggrieved party in a civil suit have a right of appeal? Where does the right lie in respect of the decisions of the national industrial court?

As a starting point, the objective of the **National Industrial Court Act, Laws of the Federation of Nigeria 2006 (“the Act”)**, is to specify instances when appeals can lie from the National Industrial Court to the Court of Appeal.

Section 9 of the National Industrial Court Act, provides as follows:

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

(2) An appeal from the decision of the Court shall lie only as of right to the Court of Appeal only on questions of



fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999.”

The provisions of the Act are to the effect that no appeal shall lie to the Court of Appeal or any other court except as may be prescribed by the Act itself or any other Act of the National Assembly. Another instance where the decision of the National Industrial Court can be challenged is where the decision is on any matter arising from questions of Fundamental Rights as contained in the Constitution. An appeal on this ground, is as of right. That being specifically stated, it would imply that unless it is also stated in any legislation made by the National Assembly that an appeal shall lie from the National Industrial Court to the Court of Appeal as of right, such other appeals allowed by such Acts would then only be by leave.

Presently, there are no provisions in the Act for a right of appeal other than those already mentioned, and there is, yet, no Act of the National Assembly which has made provisions for the appeal of any decisions of the National Industrial Court.

The Act is a specialised Act relating to the National Industrial Court and the amendment to the Constitution does not adversely affect the provisions of section 9 of the Act, but seem to have qualified same. Also, the provisions of section 9 of the Act were made subject to the Constitution. The Constitution being the grundnorm, its provision would thus prevail over that of section 9 of the Act.

For clarity we reproduce **section 243(2) and (3) of the Constitution of the Federal Republic of Nigeria 1999**, as amended 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.

(3) An Appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may 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 leave of the Court of Appeal.

Therefore, the Constitution as amended, contemplates a Law or an Act that makes provisions for appeals from the National Industrial Court to the Court of Appeal [same as section 9(1) of the Act], and which can only be by leave (unless it is made



to be as of right in such Act), and also on questions of fundamental right [same as section 9(2) of the Act]¹. The implication of this is that the ONLY situation where an appeal can lie to the Court of Appeal is as may be prescribed by an Act of the National Assembly. In the absence of such law, an appeal can only lie to the Court of Appeal from the National Industrial Court, only on questions of fundamental rights, which is as of right.

There is no law or Act empowering the National Industrial Court to grant leave to appeal as required by the Constitution. Such leave must be sought from, and given by the Court of Appeal by virtue of the proviso to section 243(3) of the Constitution (as amended), and not the National Industrial Court, as the Court is not so empowered. This is further buttressed by the fact that section 9 of the NIC Act is subject to the provisions of the Constitution, and the Constitution has itself provided for the manner in which appeals can lie from the National Industrial Court to the Court of Appeal.

The law establishing the National Industrial Court Act, is subject to the provisions of the Constitution (as amended) and the said Constitution has expressly vested the power to grant leave to appeal decisions of National Industrial Court to the Court of Appeal on the Court of Appeal itself. Since there is no law of the National Assembly prescribing that an appeal shall lie from the National Industrial Court to the Court of Appeal, will this therefore suppose that no appeal can lie to the Court of Appeal except on questions of fundamental rights alone? The answer to this question has been the subject of controversy among legal practitioners and the academia.

The writer's view, based on the combined effect of **sections 243(2) and (3) and 240 of the Constitution**, is that all issues from the National Industrial Court are appealable. Howbeit, apart from matters on fundamental rights which are appealable as of right, all other issues are appealable only with leave of the Court of Appeal.

The conflict on this point has been further intensified by the conflicting decisions of the Court of Appeal on this point. On 13th and 15th February 2013, the Court of Appeal sitting at Ado-Ekiti Division decided four cases to wit: **Local Government Service Commission, Ekiti State & Anor. v. M. A. Jegede (2013) LPELR-21131**; **Local Government Service Commission, Ekiti State & Anor. v. M. K. Bamisaye (2013) LPELR-20407**; **Local Government Service Commission, Ekiti State & Anor. v. Francis Oluyemi Olamiju (2013) LPELR-20409**; and **Local Government Service Commission, Ekiti State & Anor. v. G. O. Asubiojo (2013) LPELR-20403**. In all four cases, the Court held that applicants may appeal with leave of the Court of Appeal

¹ Criminal appeals from the National Industrial Court to the Court of Appeal are as of right and final appeals lie to the Supreme Court. However, in civil appeals, final appeals lie to the Court of Appeal.



on all other matters besides matters of fundamental right which is as of right. The decision of the Court of Appeal, Ado-Ekiti Division on these cases is to the effect that the National Industrial Court is not a final court and that the decisions of the National Industrial Court are appealable to the Court of Appeal, whether as of right or with leave of the Court of Appeal.

However, later in the same year, on 4th July 2013, the Lagos Division of the Court of Appeal in **Coco-Cola (Nig.) Limited vs. Akinsanya (2013) 18 NWLR (Pt. 1386) 225** held that until the National Assembly passes a law granting applicants right of appeal with leave, that right does not exist. In essence, the effect of the decision of the Court of Appeal, Lagos Division is that the right of appeal from decisions of the National Industrial Court to the Court of Appeal is limited to decisions of the National Industrial Court relating to fundamental rights only.

The uncertainty of this position was finally recently, put to rest by the Full Court of the Supreme Court in the landmark case of **Skye Bank Plc v. Victor Anaemem Iwu - SC.885/2014 - (2017) LPELR - 42595 (SC)**². This suit was in respect of the case stated from the Court of Appeal for the decision of the Supreme Court. The issues before the Supreme Court were: (1) whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) has the jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria? (2) whether there exists any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria? and (3) whether the Court of Appeal's jurisdiction to hear civil appeals from the decision of the National Industrial Court of Nigeria is limited to only questions of fundamental rights?

The Supreme Court in resolving these 3 (three) issues had no difficulty in unanimously answering the 1st issue in the affirmative, to the effect that the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) has the jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria. On the 2nd issue by a decision of 6-1 the Supreme Court answered the question in the negative to the effect that there is no constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria. And finally, on the 3rd issue, the Apex Court answered the question in the negative, the effect of which is that the Court of Appeal's jurisdiction to hear civil appeals from the decision of the National Industrial Court of Nigeria is not limited to only questions of fundamental rights.

² This decision was delivered on 30th June 2017 by the Full Court of the Supreme Court presided over by Hon. Justice Mary Peter-Odili



A similar decision was also reached by the Supreme Court in the case of **Coca-Cola v. Akinsanya SC/542/2013**.

In the **Skye Bank Plc v. Victor Anaemem Iwu's** case, the following statements of the Supreme Court are apt. In the words of Nweze, JSC, the Court held:

“I find and hold that, on a harmonious construction of Sections 240, 242(1), 243(1)(a) and 243(4) of the 1999 Constitution, a litigant who is aggrieved by a decision of the trial court [National Industrial Court] in other civil matters, can exercise a right of appeal with the leave of the Court of Appeal. The only innovation in this regard is that it makes the Court of Appeal the final court with respect to such appeal; Section 243(4).” At page 61.

“In all, on a holistic interpretation of Section 240 and 243(1) of the 1999 Constitution, appeal lies from the trial court [National Industrial Court] to the Court of Appeal, that is, all decisions of the trial court are appealable to the Court of Appeal as of right in criminal matters [Section 254C(5) and (6)], and fundamental rights cases, [Section 243(2)]; and with the leave of the Court of Appeal, in all other civil matters where the trial court has exercised its jurisdiction, Sections 240 read conjunctively with Section 243(1) and (4).” At page 66.

“The answers to the questions posed to this court in this case stated are: (a) the Court of Appeal has the jurisdiction, to the exclusion of any other court in Nigeria, to hear and determine all appeals arising from the decisions of the National Industrial Court; (b) no constitutional provisions expressly divested the said Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court, and (c) as a corollary, the jurisdiction of the Court of Appeal to hear and determine civil appeals from the decisions of the National Industrial Court is not limited only to fundamental rights matters.” At pages 66-67.

The Court went further to state as follows, per Mary Peter-Odili, JSC

“[T]he appellate jurisdiction of the Court of Appeal is not foreclosed within matters only related to fundamental rights, rather, the appeals from the National Industrial Court all can go on appeal to the Court of Appeal as of right in the case of



fundamental rights but by leave of the appellate Court when the matter is in relation to other circumstances.” At page 104.

In the words of Kudirat Kekere-Ekun, the Court said:

“[H]aving been granted the status of a superior court and having regard to the hierarchy of courts as exists in our constitutional arrangement, the National Industrial Court must fall in line with other courts of coordinate jurisdiction. There is nothing in Sections 240, 241 or 242 of the 1999 Constitution that suggests that decisions of any of the courts referred to in Section 240 shall be final. Section 240 has clearly given a right of appeal from decisions of all the courts subordinate to the Court of Appeal and this includes the National Industrial Court. If that right is to be curtailed in any way, the Constitution must expressly say so. It would be absurd in my view to interpret Section 243(3) of the Constitution as restricting the right of appeal from decisions of the National Industrial Court to questions of fundamental rights alone. To construe the provision to mean that the decisions of the court in any civil proceeding are unappealable would place the court at par with the Supreme Court, which is the only court in the land whose decisions cannot be appealed against irrespective of the subject matter. That cannot be the intention of the Legislature.” Pages 176-178.

CONCLUSION

In the light of the above, it is clear that the National Industrial Court has jurisdiction, to the exclusion of any other court, over labour and employment matters. The National Industrial Court’s decisions arising from questions of fundamental rights and criminal issues are appealable to the Court of Appeal as of right, while other issues can be appealed to the Court of Appeal, but with leave of the Court of Appeal.

In sum, the decision of the National Industrial Court is not final as to think otherwise is to elevate the National Industrial Court to the status of the Supreme Court which is not the intention of the legislature.