

NICN JURISDICTION OVER LABOUR-RELATED FUNDAMENTAL HUMAN RIGHTS DISPUTES: *ONYIRUKA V. A.G. OF ENUGU STATE* EXAMINED

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Abstract: *Section 254c (1) (d) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 has vested the National Industrial Court of Nigeria (NICN) exclusive original civil jurisdiction over matters relating or connected with any disputes over Chapter IV of the Constitution while section 46(1) thereof, empowers any citizen whose right contained in the said Chapter IV that is threatens or has been breached to apply to a High Court within the state for redress. This raises the issue as to whether the NICN has exclusive original civil jurisdiction over disputes pertaining to Chapter IV of the constitution? The Court of Appeal in Mrs. Gloria Lewechi Onyiriuka v. A.G., Enugu has held that the NICN neither has nor exercises exclusive original civil jurisdiction over labour-related fundamental human rights disputes but has concurrent jurisdiction with the State and Federal High Court. Does this decision represent the right position of the law? What is its implication (s) on the exclusive jurisdiction of the NICN? What is its impact on the growth and development of Nigeria's labour jurisprudence?*

Keywords: Fundamental human rights, Jurisdiction, Employer, Employee, NICN

1. Introduction

The National Industrial Court of Nigeria (NICN) is a specialised court established for the sole purpose of settling labour and employment disputes (Bimbo, 2012). Thus, where an employment relationship is created, it creates rights and obligations between the parties with contending interests (Emiola, 2008). From time-to-time, there is bound to be clash of interest resulting to conflict which the NICN adjudicates over. Section 254C (1) (d) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 has vested exclusive original civil jurisdiction in the NICN over matters relating to or connected with any dispute over the interpretation of Chapter IV of the Constitution as it relates to any employment, labour, industrial relations or ancillary matters (Constitution of the Federal Republic of Nigeria, 1999).

It is apposite to note that in Nigeria, the doctrine of judicial precedent is practice. Judicial precedent is a doctrine of law that prescribe that decision of a superior court is binding on inferior courts. In Nigeria, the hierarchy of the Court as prescribed under section 6(6) of the Constitution, from the highest is the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory, Abuja, State High Court, National Industrial Court of Nigeria (are courts of coordinate jurisdiction), the Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the State, the Customary Court of Appeal of the Federal Capital Territory, Abuja, the Customary Court of Appeal of the State, Magistrate/Area Courts (Constitution of the Federal Republic of Nigeria, 1999). The implication of the foregoing is that the decision of the Supreme Court of Nigeria is binding on all the other courts beneath it including the Court of Appeal. In the same vein, the decision of the Court of Appeal is binding on the court beneath it. However, the Federal High Court, the High Court of the Federal Capital Territory, Abuja, State High Court, National Industrial Court of Nigeria are courts of coordinate jurisdiction meaning that they stand on the same judicial pedestal. The decision of one is not binding on the other. The same thing is applicable to the Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the State, the Customary Court of Appeal of the Federal Capital Territory, Abuja, the Customary Court of Appeal of the State. These courts are specialised courts meant to adjudicate over matters statutorily bequeathed to them. The Supreme Court and the Court of Appeal, by virtue of their obvious appellate and supervisory jurisdiction, by function, are policy making courts. In Nigeria, there is only one Supreme Court which is located at the Federal Capital Territory, Abuja while there is also only one Court of Appeal but there are several judicial divisions spread across Nigeria for administrative and adjudicatory convenience (Olushola & Anor. v. Andrew (2021). Also, the Federal High Court and National Industrial Court of Nigeria being federal Courts is one but has several judicial divisions all over Nigeria for administrative convenience as opined by Eyongndi and Ilesanmi (2022). However, the State courts (i.e. State High Court and Magistrate/Area Court), their territorial jurisdiction is limited to the State where they operate.

Section 46(1) of the Constitution provides that where the right of a citizen is threatened or breached, the victim is entitled to approach a High Court (HC), in the State where the threat or breach has occurred to seek redress (Constitution of the Federal Republic of Nigeria, 1999). The issue arising from the foregoing is whether or not the NICN in the light of sections 254C (1) (d) vis-à-vis 46(1) has and exercises exclusive original civil jurisdiction over labour and employment related fundamental human rights disputes?

Interestingly, this issue came up in *Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State* (2020) wherein the Court of Appeal (CA) held that the jurisdiction of the NICN on labour and employment related fundamental human rights disputes pursuant to section 46(1), is not exclusive but concurrent with that of the State and Federal High Courts. What is the propriety of this decision against the provisions of section 254C (d) (1), 251, 272 and 46(1) of the 1999 Constitution? What is the impact of this decision on the jurisdiction of the NICN? Is this decision in accord with the principle of law that a subsequent provision of a law is superior to an earlier one? Does this decision represent the correction position of the law? These questions, form the crux of this paper. This paper fits into scholarship by evaluating the propriety of the Court of Appeal decision in the case under review against extant provisions of the Constitution of the Federal Republic of Nigeria, 1999 and case law explicating the effect of the jurisdiction on labour and employment adjudication in Nigeria. This paper adopts doctrinal method relying on primary and secondary data including the Constitution of the Federal Republic of Nigeria, 1999, the National Industrial Court Act, 2006, case law, articles in learned journals, standard textbooks on labour and employment law, commentaries, and

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online materials. This data were subjected to content and jurisprudential analysis with findings and conclusion was drawn.

The paper is divided into four parts. Part one contains the introduction. Part two is a synopsis of the history and jurisdiction of the NICN. Part three is an explication of the decision in *Onyiruika Case* and matters arising therefrom. Part four contains the conclusion and recommendations.

2. Historical Development and Jurisdiction of the NICN

Prior to the advent of colonialism, labour relations in pre-colonial Nigeria, was arranged along age grade, family and communal labour wherein the chiefs had the villagers worked in their farms and a man's household, formed his labour force (Roper, 1958). However, Oji and Amucheazi (2015) have opined that the advent of colonialism in Nigeria in the 19th century led to rapid industrialisation of the economy leading to the establishment of British owned businesses and this led to the recognition of the need to establish a framework for dealing with impending workers agitations. This led to the colonial government to put in place a legal framework for the settlement of labour and employment dispute by the promulgation of the 1941 Trade Dispute (Arbitration and Inquiry) Ordinance meant to settle disputes within Lagos and its environs. The application of this Ordinance was limited to Lagos and it had no permanent structure for the settlement of trade/employment disputes that were bound to occur from the introduced wage labour system but it had set up *ad hoc* tribunals for their settlement. One beautiful feature of the Ordinance was that it was patterned after the British non-interventionist model i.e. the government would ordinarily not apprehend a trade/employment dispute unless and until the parties invite it. This feature of the Ordinance has been telegraphically captured by Amucheazi and Abba (2013) as follows:

At this point, industrial relations law and practice in Nigeria were modelled on the non-interventionist and voluntary model of the British system, which was predicated on the consent of the parties to resolve trade disputes through means acceptable to them, with limited intervention by the appropriate minister. The ordinance only empowered the Minister of Labour to intervene by means of conciliation, formal inquiry and arbitration where a negotiation has broken down. In effect, the minister could not compel the parties to accept his/her intervention, but could only appoint a conciliator upon the application of the parties and could only set up an arbitral tribunal by the consent of both parties.

It became imperative to cure the identified inherent shortcomings of the 1941 Ordinance thus, in 1957, the colonial government promulgated another Ordinance known as Trade Disputes (Arbitration and Inquiry) Federal Application Ordinance was promulgated. At this point, the pangs of independence were strong in Nigeria and on 1st day of October, 1960, Nigeria gained political independence from Britain wherein the supervisory power of the British Crown seised and the 1963 Republican Constitution was made. Nigeria was soon submerged in a bloody civil war and after it, there was a great need to reassess the trade/employment disputes resolution framework hence, two decrees were promulgated; the Trade Disputes (Emergency Provisions) Decree (1968), and the Trade Disputes (Emergency Provisions) Amendment Decree, (1969). The Trade Disputes (Emergency Provisions) Amendment Decree prohibited strikes and lock-out and set up a permanent structure for settlement of trade dispute known as the Industrial Arbitration Panel (IAP). Several policies were pursued by the Federal Military Government after post-civil war with various outcomes necessitating further legislative intervention. Thus, promulgated the Trade Disputes Decree No. 7 of 1976 (Akintayo and Eyongndi, 2018). This Decree (which later became the Trade Disputes Act, (TDA), established the National Industrial Court. Section 20 of the TDA provided as follows:

There shall be a National Industrial Court for Nigeria (in this part of this Act referred to as ‘the court’) which shall have such jurisdiction and powers as are conferred on it by this or any other Act with respect to settlement of trade disputes, the interpretation of collective agreements and matter connected there with.

The jurisdiction of the NICN under the Trade Dispute Act as provided under the relevant section gave it exclusive original jurisdiction over trade disputes (Agomo, 2011). Section 20(3) of the TDA provided that no appeal shall lie to anybody or person from the determination of the NICN. Section 20(4) provided that notwithstanding the provisions of subsection (1) or (3), nothing in the section shall prejudice any jurisdiction conferred on the Supreme Court of Nigeria (SCN) in respect of appeals from the decision of the Court of Appeal (CA) on fundamental rights matters pursuant to section 259 or 213 (2) (c) of the 1979 Constitution or any jurisdiction of the High Court under section 42 (now section 46) of the same Constitution. Thus, under the TDA, the NICN had original exclusive and final jurisdiction over labour matters subject to the appellate jurisdictions of the Court of Appeal and Supreme Court jurisdiction on fundamental rights matters as well as that of the High Court pursuant to section 42 of the 1979 Constitution (Agomo, 2011).

When the 1979 Constitution was enacted, pursuant to section 274 thereof, the Trade Dispute Decree which was regarded as an existing law, became Trade Dispute Act (TDA). However, under the 1979 Constitution, the NIC was omitted from the list of Superior Court of Record (SCR). This led to contention on the constitutional status and jurisdiction of the NIC (Akintayo and Eyongndi, 2018). To salvage this, the TDA was amended by the Trade Dispute (Amendment) Decree No. 47 of 1992 which ostensibly elevated the NICN to a Superior Court of Record. Pursuant to its purported elevation to the status of a superior court of record with exclusive jurisdiction in labour matters; the Decree held-sway because under the military, Decrees supersedes the unsuspended part of the Constitution (Agbaje, 2007). This respite did not last long. When the 1999 Constitution was enacted, the omission of the NIC in the list of SCR was repeated as contained in section 6(5) (a)-(k) thereof. Thus, it became acrimonious whether the purported exclusive original jurisdiction of the NIC under the 1992 Decree does not run afoul of the provision of section 251, 275 and 272 of the 1999 Constitution vesting jurisdiction on the Federal High Court, High Court of the Federal Capital Territory, Abuja and State High Court pursuant to Section 1(3) of the Constitution. To address this quagmire, the legislature enacted the National Industrial Court Act, 2006 which elevated the NICN to the status of a SCR with exclusive original civil jurisdiction over labour and employment matters by virtue of sections 11 and 7 thereof. One would have expected that this legislative intervention, would solve the issue permanently but the issue persisted as it was argued and rightly so that, only an Act of constitutional dimension can amend the provision of the Constitution and not a mere Act of the National Assembly as was held in *Kalango & Ors. v Dokubo & Ors.* (2004) Thus, cases purportedly reserved for the NIC, were still being litigated in other courts. In *National Union of Electricity Enterprises v. Bureau of Public Enterprises* (2010) the Supreme Court dispelled the claim that the Trade Disputes (Amendment) Decree 47 of 1992 and by extension, the National Industrial Court Act 2006 has elevated the NICN to the status of a superior court of record (equal in status to the High Courts) without any amendment of section 6(5) of the 1999 Constitution. The Court per Chukwuma-Eneh JSC held that:

It means therefore, that by Decree 47 of 1992 arrogating to the National Industrial Court a Superior Court of record as has been contended by the appellants does not by that token make the said National Industrial Court a Court of Superior record without due regard to amendment of the provisions of Sections 6(3) and (5) of the 1999 Constitution which has listed the only Superior Courts of record recognized and known to the 1999 Constitution and the list does not include the National Industrial Court; until the Constitution is amended, it remains a subordinate court to the High Court.

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The provision of section 11 of the National Industrial Court Act, 2006 which sought to achieve the same result intended under section 20(2) of the Trade Disputes (Amendment) Decree 1992 were also discarded in *Oloruntoba-Oju & Ors v Dopamu & Anor* (2008). It became apparent that only constitutional amendment will enduringly solve the issue. Thus, in 2010, the National Assembly enacted the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. Section 1 of the Act altered section 6(5) of the 1999 Constitution by including the National Industrial Court of Nigeria in the list of SCR in Nigeria and placed it on the same pedestal with the FHC and SHCs. Section 254C (1) expanded the provisions of section 7 of the NIC Act, 2006 and vest exclusive original civil jurisdiction on the NICN over labour and employment disputes. Thus, the Court of Appeal in *Coca-Cola Nigeria Ltd v Akinsaya* (2013) affirmed that the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 has now made the NICN a SCR with exclusive original civil jurisdiction but with concurrent criminal jurisdictions with other high courts. Thus, civil appeals from the NICN lapse with the determination of the Court of Appeal as was held by the Supreme Court in *Skye Bank Plc. v Victor Anaemem Iwu* (2017). By this legislative intervention couple with judicial affirmation, the jurisdiction quandary which the NICN was enmeshed in, has now been permanently resolved.

It should be noted that the issue of jurisdiction of a court is germane because it is intrinsic to adjudication (*Okolo v Union Bank of Nigeria Ltd*, 2004). It is so important that it can be raised at any stage of the proceedings even on appeal at the Supreme Court for the first time (*Ibori v Ogboru*, 2005). Once it is raised, the court must pause from further adjudication and settle it one way or the other (*Ogunmokun v Military Administrator, Osun State*, 1999). The reason is that any adjudicatory exercise, carried out in want of jurisdiction is an exercise in futility (*Mustapha v. Governor of Lagos State*, 1987). Thus, wastage of judicial time and resources is inimical to access to justice and justice administration and must therefore be guarded against. A court has various types of jurisdiction ranges from subject matter, territorial, substantive and procedural jurisdictions (*Nigerian Deposit Insurance Corporation v Central Bank of Nigeria*, 2002). As far as jurisdiction is concerned, it is conferred on a court by the statute that create the court (*Felix Onuora v Kaduna Refining and Petrochemical Co. Ltd.*, 2005). This means that neither the court nor the parties can confer jurisdiction on it that has not been conferred by its enabling statute. The jurisdiction that is not expressly given to a court, is deemed to have been taken away from the court and therefore, cannot be inferred.

3. *Onyiruika v. A.G. Enugu State* Explicated

This section of the paper contains a brief fact of the case, outlining the arguments of the parties and the decision of the court as well as matters arising from the decision. Before further adumbration, it is apposite to note that the CA, with regards to appeals from the civil decisions of the NICN, is final hence, the CA is a policy court requiring that its decisions must be caution, judicial and judicious. The brief facts of this case are that the appellant instituted an action against the respondent at the Federal High Court (FHC), Enugu Judicial Division for the enforcement of her fundamental human rights. She was an employee of the Enugu State Government however, her employment was terminated on the ground that she is not from Enugu State. She urged the court to declare that the purported termination of her employment on the basis that she is not from Enugu State was unlawful since as a Nigerian citizen, she is entitled to work in any part of Nigeria. She sought for damages against the respondent for the violation of her right. The response entered appearance and filed a notice of preliminary objection in which they impugn the jurisdiction of the court to adjudicate over the matter as the crux of the appellant's complaint was does not relate to fundamental human rights enforcement but deals principally with employment which is reserved to the exclusive civil jurisdiction of the NICN hence, the trial FHC lacks the jurisdictional competence to entertain

the suit as constituted. After hearing the argument of the parties on the preliminary objection and conclusion of the trial, the trial court in its judgment, held that the appellant ought to have filed her case at the NICN since the principal and ancillary reliefs' falls within the NICN's exclusive original civil jurisdiction hence, the case was struck out. Being with the decision of the trial court, the appellant appealed to the Court of Appeal.

3.1 Parties Argument at the Court of Appeal

The appellant contended that she is a Nigerian citizen hence, entitled to work in any part of the country without discrimination or fear of same thus, her termination was in violation of section 42 of the 1999 Constitution which guarantees her freedom from discrimination. She contended that what determines the jurisdiction of the court is the claim before the court based on *Tukur v. Governor of Gongola State* (1989). Her claim before the court was a declaration that her purported termination was unlawful same being in violation of section 42 of the 1999 Constitution, she never claimed for the conversion of her termination to retirement or payment of any benefit. Thus, her principal relief at the trial court was enforcement of her fundamental rights which the trial court pursuant to section 46(1) of the 1999 Constitution, is competent to adjudicate relying on *UNILORIN v. Oluwadare* (2006).

The Respondent argued that the trial court was right to have declined jurisdiction since the claim of the appellant arose from labour and employment matters which by virtue of section 12(1)(a) and (d) of the National Industrial Court Act 2006 and Section 254C (1) (d) of the 1999 Constitution (Third Alteration) Act, 2010 has reserved matters relating to or connected with any dispute over the interpretation or application of Chapter IV of the Constitution as it relates to any employment and labour. The respondent further argued that the issue of her purported violation of her fundamental right contingent on the termination of her employment from the Enugu State civil service as a Chief Nursing Officer was ancillary to her main claim and as such, could not be litigated through fundamental right enforcement procedure that is initiated via originating motion supported by affidavit evidence save by writ of summons placing reliance on *Borno Radio Television Corporation v. Basil Egbuonu* (1991) also, by virtue of section 254C(1)(d) of the Constitution, the FHC lacks the jurisdiction to entertain the suit. The court was urged to dismiss the appeal for lacking in merit.

3.2 Court's Resolution of the Issue

The court noted that crux and crucible of the appellant's claim before the trial court is anchored on section 42(1) of the 1999 Constitution which is the enforcement of her fundamental right to freedom from discrimination on the ground of her place of birth or ethnicity and none of her reliefs pertains to claim for her salary, pension and gratuity (*Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State*, 2020). The only remote mention of monetary relief is compensation for breach of her right which she sought from the court against the respondent. The court therefore found and held that from the reliefs claimed by the appellant and the facts deposed to in the affidavit in support of the application, I am of the considered and firm opinion that the appellant's main claim is the alleged breach of her fundamental and constitutional right to freedom from discrimination on the basis of birth and ethnicity. Thus, the appellant's claims are squarely and fitly anchored on section 42(1) and (2) of the 1999 Constitution hence, by section 46(1), she is entitled to approach the trial court for redress as she as was held in *Olutola v. University of Ilorin* (2004) and *Jack v. University of Agriculture, Makurdi* (2004). The court therefore held that "I have found that the main claim of the appellant at the court below was for the enforcement of her fundamental rights against discrimination on account of her ethnicity, place of birth. Therefore, the court below possesses the jurisdiction to entertain and determine her application. (*Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State*, 2020)"

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By the above position taken by the Court of Appeal, what is meant is that labour related fundamental rights disputes can be resolved in any of the high courts, the NICN does not have nor exercises exclusive original civil jurisdiction over them. This decision in our firm view, is *per incuriam* as a community reading of sections 254C (1) (d), of the 1999 Constitution, section 87 of the National Industrial Court Act, 2006, section 251, 272 of the 1999 Constitution. It should be noted that, prior to 2010, the State High Court (SHC), Federal High Court (FHC) and High Court of the Federal Capital Territory, Abuja had and exercised concurrent jurisdiction over section 46 of the 1999 Constitution with regards to enforcement of fundamental human rights unlike under the 1979 Constitution where under the SHC had unlimited jurisdiction. Section 272 like 251 bequeaths jurisdiction on the SHC and the FHC subject to the provisions of the constitution meaning that their jurisdictions are circumscribed. In *Tukur v. Governor of Gongola State* (1989) the Supreme Court noted that the FHC jurisdiction over fundamental human rights enforcement pursuant to 42(1) of the 1979 (now 46(1) of the 1999 CFRN), is limited to matters expressly mentioned in its exclusive jurisdiction while that of the SHC is expansive with a larger latitude and aptitude yet, their jurisdictional status with regards to the subject is concurrent. This concurrent jurisdiction status noted by the Supreme Court unsettled the issue rather than settling it as litigants were thrust into the confusion of determining the appropriate court to litigate (Falana, 2010). Respite came with the Fundamental Enforcement Rules, 2009 defining court to mean both FHC and SHC but the attitude of the court has been to have matters under the exclusive jurisdiction of the FHC litigated there except not doing so is necessary and expedient (*Gaul Ihenacho & Ors. v. Nigeria Police Force & Ors.*, 2017).

In *Habu v. NUT* (2005) where the check-off dues were deducted from the Appellants' salaries who had stopped being members of the Respondent. Their action at the Taraba State High Court for breach of their fundamental right of freedom of association (which includes disassociation) was struck out based on sections the provisions of 47 of the Trade Disputes Act, 2004 and 5(3) of the Labour Act, 2004. Their appeal to the Court of Appeal was allowed on the basis that section 46 of the 1999 Constitution bestows concurrent jurisdiction on the SHC and FHC to determine fundamental right enforcement case. the position of the Court of Appeal here represents the law as at the time the case was determined which is prior to the enactment of the 1999 Constitution (Third Alteration) Act, 2010 which by then, the NICN had no exclusive original civil jurisdiction, in fact, as at then, the constitutionality of the NIC was challenged (*National Union of Road Transport Workers v. Ogbodo*, 1998). However, this is no longer the position (Akeredolu and Eyongndi, 2019). Section 234 of the Third Alteration Act, 2010 has elevated the NICN to the status of the FHC and SHC bestowing on it the status of a Superior Court of Record with exclusive original civil jurisdiction under section 254C (Eyongndi and Onu, 2019).

In fact, section 254C (d) (1) is explicit enough. Due to its germane nature, we take the liberty to reproduce it *verbatim ad literatim* thus, the NICN shall have jurisdiction on matters relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the court has jurisdiction to hear and determine. Regarding the jurisdiction of the FHC and SHC, both sections 251(1) and 272(1) provides that their jurisdiction is "subject to the provisions of this Constitution." However, Section 254C (1) of the Third Alteration Act, 2010 which provides for the exclusive jurisdiction of the NICN is phrased thus "notwithstanding the provisions of sections 251, 257, 272 and anything 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 court in civil causes and matters." The implication of this is that, the jurisdiction of the Federal High Court, High

Court of the Federal Capital Territory, Abuja and State High Court are circumscribed by the exclusive original civil jurisdiction of the NICN judging by the opening phraseology of section 254C (1). In fact, the exclusivity of the jurisdiction of the FHC under section 251(1) is subject to the provision of the constitution which includes section 254C (1). Aside this, where there are two contradictory provisions in a statute, the position of the law is that the subsequent provision, is by implication, a repeal of the earlier. Thus, section 254C (1) which is later in time because it was made with sections 46(1), 251(1), 275(1) and 272(1) in mind, is superior. Thus, the decision of the court in the case under review that labour related fundamental human rights disputes is not within the exclusive original civil jurisdiction of the NICN pursuant to section 46(1), with due respect, is untenable as it was reached *per incuriam*. Judging from the phraseology of section 254C(1), it can safely and rightly be argued that the draftsmen had intended that any cause of action, irrespective of the nature of the claim, once it arises from, is pertaining to or is related to labour and employment disputes or ancillary matters, the NICN should and has exclusive original civil jurisdiction. Thus, section 46(1) cannot be validly relied upon to impugn or sequester the exclusive jurisdiction of the NICN by donating concurrent jurisdiction over such matters reserved for the NICN to the FHC or SHC.

In fact, the challenge inherent in the position taken by the Court of Appeal is that, such labour related human rights disputes litigated in courts other than the NICN cannot terminate at the Court of Appeal but further appeal would lie to the Supreme Court contrary to the decision of the Supreme Court in *Skye Bank Plc. v. Victor Anaemem Iwu* (2017) wherein the court held that pursuant to section 243 of the Third Alteration Act, civil appeals from the NICN to the Court of Appeal terminate with the determination of the Court of Appeal. Thus, this decision has created in somewhat split category of labour appeals to wit: appeals that terminate at the Court of Appeal and Appeals that goes up to the Supreme Court. This decision is not *in tandem* with the established cannon of statutory interpretation that clear and unambiguous provisions of a statute, should be given their ordinary grammatical meaning except if doing so would promote or support absurdity (*Olofu v. Itodo*, 2010). The provision of the Constitution that provides the exclusive jurisdiction of the NICN, is clear and unambiguous and is incapable of leading to absurdity hence, the court ought to have given them their ordinary grammatical meaning. Even if the court had adopted the mischief rule of statutory interpretation in interpreting section 254C(1) vis-à-vis sections 46(1) and 251(1) of the 1999 Constitution, the irresistible and logical conclusion would be that, the draftsmen had intended that labour related fundamental human rights matters hitherto legislated at the FHC and SHC, be now litigated at the NICN. The hallowed and noble duty of a judge is to declare the law on a subject and not to make the law which is reserved for the legislature. What the Court of Appeal did in the decision under review, is to judicially rewrite or legislate which in this instant, is beyond the ambit of its legislative powers and functions.

Consequent on this, one would have expected that the learned trial court, pursuant to section 22 of the FHC Act, which empowers it to transfer matters wrongly instituted in it, ought to have transferred the matter to the NICN instead of striking it out when it rightly found and held that it lacked jurisdiction over it. However, having opt for the option of appeal, in view of the clear provisions of section 254C (1) of the Constitution, the CA should have upheld the exclusivity of the NICN jurisdiction over the dispute as rightly recognised by the FHC and assumed jurisdiction over the dispute like a court of first instance pursuant to section 15 of the Court of Appeal Act. It is admitted that the court must be poised to do substantial justice however, this should not be done in a way and manner that undermines the legitimate of the judiciary and usurpation of the duty and powers of the legislature particularly in view of constitutional entrenched separation of powers in Nigeria (Constitution of the Federal Republic of Nigeria, 1999).

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In this instant case, the Court of Appeal seems to be oblivious of the persistent brazen discrimination and deprivation that women are exposed to in Nigeria. Females are discriminated simply on the basis of their sex in many respects. In most parts of Eastern Nigeria, females are disentitled from inheriting immovable properties as noted by Eyongndi, Opara, Oladele, Agbu and Ajayi (2024). In terms of political participation, females are manoeuvred out of political offices and their participation in comparison to their male counterparts, is insignificant. Females faces worse forms of employment discrimination and exploitation (Ejike Maduka v. Microsoft Nigeria Ltd. & 3 Ors., 2014). There is even in existence customary and statutory discrimination against females in Nigeria. Thus, it is important that any court adjudicating over a case of discrimination against a woman, takes cognisance of the checked discrimination that females have and are exposed to in Nigeria and protect them.

4. Conclusion and Recommendations

Extrapolating from the analysis above, it is trite that the NICN has evolved through a boisterous sojourn amidst gargantuan jurisdictional debacle to attain the enviable status of a superior court of record under the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act, 2010. This experience is linked to the court's conspicuous omission in both the 1979 and 1999 Constitution which led to debates on its constitutionality with both the Court of Appeal and Supreme Court affirming its unconstitutionality until the CFRN, 1999 was amended wherein the NICN is now listed amongst the courts mentioned in section 6(5) of the CFRN, 1999 (Third Alteration) Act, 2010. The paper found that the NICN has and exercises exclusive original civil jurisdiction over labour and employment matters to the exclusion of the FHC and SHC by virtue of section 254C of the CFRN, 1999 (Third Alteration) Act, 2010. Despite the foregoing, the Court of Appeal in *Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State* (2020) held that the NICN does not have exclusive original civil jurisdiction over labour-related fundamental human rights disputes but concurrent with the SHC and FHC pursuant section 46(1) thereof notwithstanding that the dispute arose from labour and employment relationship. Going by the clear provisions of section 254C (1) (d) of the CFRN, 1999 (Third Alteration Act) Act, 2010, with respect, the decision of the Court of Appeal was reached *per incuriam* as it is not in consonance with the clear and unambiguous provision of the Constitution. The effect of this decision on the jurisdiction of the NICN and labour and employment adjudication in Nigeria generally is worrisome particularly when the historical development and challenges which have trailed the court are considered. The decision is capable of unsettling the mandate of the NICN as it unjustifiably restrict the jurisdiction of the NICN and makes nugatory the legislative effort at fortifying the jurisdiction of the NICN. The rationale for creating a specialised court for the adjudication of labour and employment matters is to ensure speedy resolution of these categories of disputes bearing in mind their potential to snowball into cataclysmic dimension in the event that they are not speedily resolve which is not achievable through the regular courts because they are already overlaid by other cause of actions constitutionally assigned to them. The Court of Appeal's failure to understand and affirm this rationale risk having labour and employment disputes lingered in the regular courts with the potential of conflagration attendant of such delay. Thus, labour is one of the factors of production and unarguably, the most important as without it, there cannot be production. It forms the substratum of the economy upon which other factors rest. Disputes arising from labour and employment, needs expeditious settlement which is now being threatened by the decision of the Court of Appeal that fundamental labour-related human rights disputes are not within the exclusive original civil jurisdiction of the NICN. Hence, it is clear that the decision of the Court of Appeal in this case is a sequestration of the exclusive jurisdiction of the NICN which rather, should be jealously guarded against. This is imperative

when it is considered that the duty of the court is to declare the law as it is laid down by the legislature especially when doing so will not lead to absurdity.

Based on the foregoing, it is recommended that while the judgment subsists, where the Court of Appeal has the opportunity, it should reverse itself as the decision aside having been reached *per incuriam*, is not a good law. Also, trial courts (FHC, SHC and NICN) although bound by the decisions of the Court of Appeal, should not engage in slavish word worship but should engage in distinguishing and not follow the decision because of the apparent inherent flaw in the decision.

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