

THE ROLE OF THE JUDICIARY IN INDUSTRIAL HARMONY

THE ROLE OF THE JUDICIARY IN INDUSTRIAL HARMONY
BEING COMMENTARY

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BY

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1.0. Introduction

Permit me to start this commentary by expressing my profound appreciation to the Administrator of the National Judicial Institute for the kind invitation extended to me to present a commentary on the topic: "The Role of the Judiciary in Industrial Harmony." I feel highly honoured. There is no doubt that the topic is apt and important considering the current interest generated in judicial, legal and industrial relations circles on the role of the National Industrial Court under the recently promulgated National Industrial Court Act (herein after referred to as NICA, 2006) and the initiatives taken by the apex court to generally fast-track the resolution of cases in all the courts in Nigeria.

The Role of the Judiciary in Industrial Harmony cannot be over-emphasized. Whenever, there is employer/employee relationship, there is bound to be dispute relating to the conditions governing the relationship, which in industrial relation parlance is often referred to as trade on labour dispute.

In resolving these problems, our labour related statutes make several provisions for trade dispute resolution and we do refer to this as trade dispute resolution mechanism.

Under the Trade Disputes Act Cap. T8 Laws of the Federation of Nigeria, 2004 as amended provisions are made for mediation, conciliation and arbitration on trade dispute matters before such matters can be referred to the National Industrial Court for adjudication.

The National Industrial Court hereinafter referred to as (NIC) is one of the Courts recognized under the courts of our land.

The NIC, therefore, is central to the role of the judiciary in ensuring industrial harmony. How the Court plays this role and it complements the role of other Courts in ensuring that industrial harmony is promoted so as to attain economic development and growth.

It is on this note that I will proceed with this paper.

To me, therefore, a paper of this sort is timely, and the forum at which it is to be presented, instructive and commendable. This paper complements the Institute's statutory mandate in encouraging discourse, conducting courses for all categories of judicial officers and their supporting staff and providing continuing education for them. I hope that at the end of my commentary, the overall knowledge of my colleagues on the Role of Judiciary in Industrial Harmony especially with focus on the National Industrial Court will be expanded and improved.

Over the years, the capacity of the NIC to deal with labour or trade disputes in terms of the court's structure and jurisdiction has been the subject of concern and intense debate among all stakeholders in the judiciary, the legal profession, academics, labour/industrial relations practitioners, employers of labour and employees.

In this paper I will endeavour to address, albeit briefly, the issues that have, over time, continued to challenge the capacity of the NIC to tackle labour disputes and the potential of the National Industrial Court Act, 2006 for ensuring that there is a sustained industrial peace and harmony in Nigeria.

This is an opportunity to address this gathering on the issue that is polemic to the practice of industrial relations/labour Law in Nigeria.

I wish to, however, caution that whatever views that I will express in this paper should be seen as my personal views and not the views or decisions of the NIC.

Before I proceed with the subject of the day, please, permit me to comment briefly on the theme of the lecture, that is "THE ROLE OF JUDICIARY IN INDUSTRIAL HARMONY".

Time and space may not allow me to attempt defining the theme of today's paper. However, for the purpose of this paper and in an environment of erudite jurists like this, it becomes imperative to so do. The key words or terminologies in this paper are Role, and Harmony.

Role is define as the function or position that one has or is expected to have in an organization, e.g. the role of a teacher in a

classroom .

Harmony for the purpose of this paper is defined as a state of peaceful existence and agreement. Therefore, the Role of the NIC is to ensure industrial peace throughout the Country.

Having made a brief comment on the theme of this paper, I will now revert to the subject matter at hand. The agents of change in industrial relations are usually trade unions, employers of labour and their organizations, government through legislation and administrative actions and the system of court designed to resolve disputes that may arise among the stakeholders. Specialized courts like labour courts are, therefore, set up to deal with labour/industrial relations or related matters.

Labour or Industrial Courts are being established in several countries because the conventional courts and the system of law they administer which is essentially based on common law principles are ill-suited for the challenges of modern economics and so can no longer adequately and timorously deal with labour related issues.

Labour issues are pure economic matters which require equitable approach rather than purely legalistic approach. Labour matters play a vital role in the development and growth of any nation. No matter how well endowed a country is in terms of natural resources, this will be of no importance to the country if they are not efficiently tapped. Without labour, these resources and services cannot be harnessed. Labour Courts or Industrial Courts therefore, are often empowered to decide industrial relations issues on application of both equitable and legal principles. For instance, under the common law a demand for higher wages cannot be justiceable except on the basis of what has been contracted or has been prescribed by a statute in Nigeria. Whereas, such issues could be justiceable before the NIC if it is the product of collective bargaining with a valid collective agreement entered into in that regard.

In dealing with this paper, it becomes apposite to carefully examine the provisions of the Trade Disputes Act, Cap. T8 Laws of the Federation of Nigeria, 2004 (hereinafter referred to as TDA) as amended.

2.0 Trade Disputes Resolution Mechanisms Under The TDA

Part 1 of the TDA which is headed: "Procedure for Settling Trade Disputes" was originally meant to regulate trade disputes simpliciter. It consists of sections 1 – 18. Trade Dispute is defined in the Act as "any dispute between employees and workers or 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"

The position of the NIC has always been that the processes enumerated under Sections 1 – 18 of TDA as amended must be followed religiously before the jurisdiction of the Court can be activated. That is why in certain cases the NIC declined to hear intra and inter-union disputes as a Court of first instance³ and has been insisting that the processes enumerated under Part 1 of the TDA be followed. It is however, a pending issue whether under the NIC Act inter and intra – union disputes need to go through the processes of Part 1 of the TDA before the NIC can hear them.

Under Section 3 of the TDA if there is an agreed means for settlement of the disputes 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 . If the dispute is not settled within 14 days of the date on which a mediator is appointed, the dispute shall be reported to the Minister in writing. The Minister here is the Hon. Minister of Employment, Labour and Productivity.

The Minister has power under Section 6 to ensure that the processes enumerated under Section 3 and 4 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 purpose of effecting a settlement of the dispute. If a 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. 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 (hereinafter referred to as "IAP") for settlement within 14 days of receipt of the conciliator's report.

The IAP 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. On receipt of a copy of the award, the Minister shall cause it to be given to the parties or their representatives. The award is then published in the manner deemed fit by the Minister. If there were no objections the award is then confirmed. If notice of objection is given to the Minister, the dispute is then referred to the NIC. This provision of the law has been altered by section 7(4) of NICA, 2006. Under this section the parties have the right to apply directly to the Court. One may therefore ask, are there no conflicts between these provisions of the law? The answer is that section 53 of NICA provides that other provisions of the TDA shall be construed with such modification as may be necessary to bring them into conformity with the provisions of the Act.

The Minister has the power to constitute a board of inquiry under Section 32 and 33 of the TDA. This is another mechanism for the resolution of trade disputes. Under Section 32(1), of the TDA, the board is statutorily expected to only inquire into

the causes and circumstances of the trade dispute in question and report to the Minister. But the role of the Minister in the ultimate resolution of dispute under the above provisions of the TDA is very significant and weighty.

For there to be industrial harmony, the labour/trade disputes resolution mechanism 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 the TDA is to ensure that attempt is made to settle the dispute through the process of mediation, conciliation and arbitration before such matters are referred to NIC in its appellate jurisdiction. Labour or Industrial Courts the world over are known to be specialized courts. The case of Nigeria cannot be an exception being a member of the global village. Labour courts or Industrial Courts have their features and characteristics. The decision of a labour court must be reliable, consistent, dependable, certain or ascertainable. It is when such court has these characteristics or qualities that foreign investors can have confidence in investing in such an economy. In order to guarantee industrial harmony in a given country, the International Labour Organization has been emphasizing on the need to establish and guarantee the existence of specialized courts in their municipal Laws and Constitutions.

We are happy to say that Nigeria is now following this part by enacting the NICA, 2006.

2.1. A brief History of the NIC

It is necessary to give a brief history of the NIC. NIC was established by the Trade Disputes Decree No.7 of 1976, which later became the Trade Disputes Act (TDA) Cap T8 Laws of the Federation of Nigeria, 2004. Section 20 of the said Act provided that:

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 the settlement of trade disputes, the interpretation of collective agreements and matters connected therewith.

Under the TDA, the Court was composed of the President of the Court and four other members who were referred to in the Act as “ordinary members” all of whom were persons of good standing, to the knowledge of the Minister of Labour, well acquainted with employment conditions in Nigeria, and at least one of whom was, to his satisfaction, had a competent knowledge of economic, industry and trade.

Prior to the establishment of the Act in 1976, in particular, prior to 1968, industrial relations law and practice was modelled 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 power to the Minister of Labour to intervene by means of conciliation, formal inquiry and arbitration where negotiation had broken down. It had two notable features which, in fact, might be regarded as drawbacks. 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 ad hoc body, an arbitration panel had to be set up for a particular dispute and once it gave its decisions it became *functus officio*.

The year 1968 witnessed 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 No.21 of 1968 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. The requirement for consent of the parties before the Minister could act was abrogated so that he could resort to these methods without the consent of the parties to the disputes. The 1968 Act created a time table 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.

It is pertinent at this juncture to make some observations on the NIC under the TDA as amended by the Trade Disputes (Amendment) Act 1992 (Decree No.47 of 1992).

First of all, as a product of an interventionist policy in both the economic and labour spheres, the NIC 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 NIC be activated by the disputants themselves without recourse to the Minister of Labour. In the majority of cases, the jurisdiction of the NIC was activated only upon a referral from the Minister of Labour. Indeed, in the words of Rule 13 of the National Industrial Court Rules, cap T8 Laws of the Federation of Nigeria, 2004, a trade dispute “shall be commenced by reference from the Minister”.

The circle of trade disputes resolution mechanisms in Nigeria will be incomplete without going through the role of the NIC. It is therefore, timely and apt at this juncture to briefly state the history of the new NIC Act 2006.

Perhaps, it may be necessary to make it clear that while dealing with the historical background of the Court, we should examine the journey of the Court before its present status.

On my assumption of office as the President of National Industrial Court in May, 2003 the Court organized a 3 day Stakeholders Conference on the way forward for the Court. The theme of the Conference was “Nigerian Industrial Disputes Resolution System: Challenges and Prospects for the National Industrial Court”.

At the Conference, which was chaired by Hon. Justice M.L. Uwais, GCON the then former Chief Justice of Nigeria, between 5th – 7th of November 2003, 13 (thirteen) papers were presented by eminent Nigerians, legal luminaries, and experts in the field of industrial relations and labour law.

The outcome of the Conference led to the passage of the NIC Bill by the National Assembly in June, 2006 which was subsequently assented to by President Olusegun Obasanjo and thus became an Act of the National Assembly. That is, NICA, 2006.

3.0 The Role of the NIC in fostering Industrial Harmony

The NIC has both original and appellate jurisdiction in civil matters but it has no criminal jurisdiction except on matters of enforcement of its judgments in which section 10 of the Act provides that the Court may commit for contempt any person who commits an act that constitutes a contempt of the court.

The jurisdiction of the NIC is governed by Section 7 of NICA, 2006. The section provides that –

(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; and

(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 decisions 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 the 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 or industrial relations shall be a question of fact.

The intendment of the law makers to confer exclusive jurisdiction on the 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.

There are two schools of thought on whether NIC should have exclusive jurisdiction as conferred by Section 7 of NICA, 2006. One of the schools of thought has argued that for the Court to have exclusive jurisdiction is good enough, while the other believes that it is unconstitutional because it runs foul of section 272 of 1999 Constitution which vests the State High Court with powers to handle civil causes and matters.

The second school of thought may be considering the powers of the High Court under 1979 Constitution which gave the High Court unlimited jurisdiction. While the first school of thought argued that under section 272 of 1999 Constitution, the powers of the State High Court are general but limited. This school of thought relied on the case of the Registered Trustees of Conference of Secondary School Tutors v. Commissioner of Education Kogi State and Others where Omage, JCA, held as follows:

“The specific answer therefore as to whether the Trade Disputes Act, Cap. 432 Laws of the Federation 1990 is in conflict with the 1999 Constitution. I answer in the negative to say it is not. The National Industrial Court created by the law contained in the Trade Disputes Act, 1990 takes its root from the powers derived by the legislators who made the law from the Constitution. Each court deals with its different sphere of disputes”.

In *Ekong v. Oside* the Court of Appeal held that the power of the High Court of the Federal Capital Territory, Abuja is like that of a State High Court. That it has no unlimited jurisdiction in civil causes and matters, rather it has general but limited powers under section 272 of 1999 Constitution.

The Court went further to say that the jurisdiction of the High Court is limited by the provisions of the Constitution particularly sections 251, 315 and 316. Under section 315 of 1999 Constitution, the TDA Cap. 423 of LFN 1990 was protected, while the Court itself was protected under section 316. In view of the fact that the TDA (as Amended) is protected by sections 315 and 316 of the 1999 Constitution, notwithstanding the provision of sections 240-246, it stands to reason that it is the intendment of the framers of the 1999 Constitution to leave the NIC standing as a Court of final arbiter with its jurisdiction to deal speedily and expeditiously with labour matters vital to the overall economic interest of the country.

It was all these that the National Assembly took into consideration at the Public Hearing before exercising its powers under section 4(2) of the 1999 Constitution to enact NICA, 2006.

In view of the decision in *Ekong v. Oside* (Supra) it therefore, becomes imperative for the National Assembly to create a Court and vest it with exclusive jurisdiction to deal with matters under item 34 which the National Assembly has Constitutional exclusive legislative powers to legislate upon.

Section 7(1) spells out the jurisdiction of the NIC. In addition to this, the Act as we have noted above in Section 7(2) of NICA, 2006 provides that 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 Section 7(1)

Section 21 of NICA states that the Court shall have and exercise jurisdiction throughout the federation, for that purpose the whole area of the federation shall be divided into such Judicial Divisions as the President of the Court shall deem fit to make.

At the moment the court contemplates eight judicial divisions which would be:

Lagos

Ibadan,

Abuja

Kano

Enugu

Jos

Calabar

Maiduguri

For now, the court has its presence in Lagos, Abuja, Enugu and Kano.

By virtue of the provisions of Section 7(3) alternative dispute resolution mechanisms can be activated and applied in the determination of labour disputes

in Nigeria. This is primarily to avoid delays that may be occasioned by resort to strenuous and unending litigations. In the case of *Amadi v. NNPC* a worker challenged his suspension and subsequent dismissal from work and it took 13 years to resolve the question of jurisdiction with an order by the Supreme Court that the case be remitted to the High Court and be tried all over by another judge. This cannot be tenable in an ideal industrial relations situation because, labour matters being economic matters are very sensitive and may spell doom for the Industrial harmony required at the work place and the nation if not speedily resolved. The intendment of the legislature in enacting Section 7(3) was to encourage quasi judicial settlement of labour disputes by bodies mentioned in Part 1 of the TDA (Supra) before approaching the Court in its appellate jurisdiction. It is in furtherance of Section 20 of NICA, 2006 that in exercising its jurisdiction over any proceedings, the Court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

Section 7(4) provides that an appeal shall lie from the decisions of an arbitral tribunal to the Court as of right in matters of disputes specified in subsection (1) (a) of Section 7. Such matters as affected by this provision must have passed through the necessary preliminary stages at the arbitral tribunal before being eligible for consideration by the NIC. The Court may order a rehearing and determination of the matter on such terms as the court may think just; or order judgment to be entered for any party; or make a final or other order on such terms as the court may think fit to ensure the determination on the merits of the matter in dispute between the parties. By the wide and exclusive jurisdiction conferred on the NIC, the problems notified under the decisions of the Court of Appeal in the cases of *Kalango v. Dokunbo* and *Attorney-General of Oyo State v. NLC* among others appear to have been removed.

The Act further provides that the Court shall, in exercising its jurisdiction or any of the powers conferred upon it 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 relations shall be a question of fact. A similar provision can be found in the Industrial Relations Law of Trinidad and Tobago. The main advantage of Section 7(6) is that it permits the NIC to be part of the global world of industrial relations law and practice where the experience of other jurisdictions can be brought to bear in the determination of labour disputes.

3.1 Appeal

One of the sections of NICA, 2006 which has become debatable and controversial among eminent legal luminaries is section 9(1) of NICA, 2006.

Some legal luminaries are of the view that section 9 (1) is unconstitutional because it precludes appeal from the NIC to the Court of Appeal contrary to the provision of section 240 of the 1999 Constitution which is on the Appellate jurisdiction of the Court of Appeal.

To drive home this point it is necessary to reproduce section 240 of the 1999 Constitution thus:

Section 240 provides:-

Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of a State, Customary Court of Appeal of a State and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly.

From the above, it is clear and evident that NIC was not listed as one of the Courts from which appeal will lie to the Court of Appeal. This could not have been an oversight on the part of the National Assembly, since the National Industrial Court was in existence at the time the 1999 Constitution was enacted. We view this state of affairs rather as a deliberate effort to correct the ugly situation in Amadi's case (Supra) among others.

It therefore, becomes necessary to examine the provisions of section 246(2) which provides that "the National Assembly may confer additional jurisdiction upon the Court of Appeal to hear and determine appeals from any decision of any other court of law or tribunal established by the National Assembly".

In enacting the provisions of section 9(2) of NICA the National Assembly invoked its powers under section 4(2) of the 1999 Constitution i.e. power to make law for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List, and Section 246(2) of 1999 Constitution to confer additional jurisdiction on the Court of Appeal.

However, in doing this the National Assembly by virtue of section 9(2) of NIC has conferred the Court of Appeal with jurisdiction to hear appeal from NIC only on questions of fundamental rights as contained in Chapter IV of the 1999 Constitution of Nigeria.

The Constitution itself protected the provisions of the TDA. See sections 315 and 316 of the 1999 Constitution. As stated earlier, the totality of these two sections is to explicitly secure the finality of NIC in matters of which jurisdiction has been conferred upon it. If the framers of the Constitution wanted it otherwise, they would have so legislated in their wisdom.

It is necessary to emphasize that, the intentment of the framers of 1999 Constitution to have NIC as a final court to speedily and expeditiously deal with labour matters which are economic matters.

Another contentious issue under the NICA, 2006 is the word "exclusive jurisdiction" as contained in section 7 of NICA, 2006 which precludes other Courts from hearing labour/industrial relations matters. As lofty as this argument is, a careful examination of section 272 of 1999 Constitution will reveal otherwise.

With due respect and utmost sense of responsibility the power conferred on the High Court under section 272 is general but limited. General in the sense that it has power to hear all civil causes and matters and limited by virtue of sections 251, 315 and 316 which I have examined earlier in this paper. The powers of the High Court are also general but limited by virtue of the fact that each High Court has a limited territorial jurisdiction. In labour matter which is a general matter, High Court decisions in a State can only be registered in another jurisdiction before it will be binding and enforceable under the Sheriff and Civil process Act Vol. 14 Cap S6 Laws of Federation of Nigeria 2004.

Another reason for giving NIC exclusive jurisdiction is that Industrial matters or trade disputes matters should not be allowed to be left for forum shopping. One of the mischiefs the National Assembly took into consideration was the enforcement of the judgment of the High Courts. The High Court in state A cannot enforce its decision on labour matters in state B without first registering same there. This is not without its attendant problems. Processes like stay of execution or application to set aside the judgment obtained in state A will commence in state B which did not participate in the hearing and determination of the case between the parties. The ruling on such a matter in state B could negate the entire judgment of state A that heard the matter, took evidence and gave its decision. At the end of the day a worse case scenario of having 36 or more different/conflicting decisions from the various High Courts of the states on the same set of facts cannot be ruled out. This does not give room to the obedience to the rule of law as litigants from different parts of the country will be at liberty to pick

and choose which judgment to obey and which not to obey based on some set of facts.

The above scenario informed the National Assembly's decision to vest the NIC with exclusive jurisdiction nationwide to deal with labour/industrial relations matters to avoid forum shopping and make judgments of the Court reliable, dependable, ascertainable, consistent and easy to comply with and engender the observance of the rule of law.

Recently, when there was a strike over the increase in the prices of petroleum products, various actions were filed in different State High Courts, with conflicting decisions. This made the issue to be more problematic.

For instance in the case of *FGN v. Oshioh mole* (2004), the High Court of the Federal Capital Territory, Abuja held in the matter that Nigeria Labour Congress has the powers to call workers out on strike. The Court of Appeal in its judgment, ruled that the High Court of the Federal Capital Territory, Abuja lacked jurisdiction to entertain the matter being matters under item 34 of the Exclusive List of the Constitution i.e. labour/trade disputes. The Court of Appeal referred the matter to the Federal High Court for determination. The Federal High Court relying on Section 251 of 1999 Constitution ruled that even though its jurisdiction excluded trade dispute/labour matters it would hear the matter based on other grounds.

With these conflicting decisions, it became clear that there is a lacuna in the law as to which Court will have exclusive jurisdiction over trade disputes under item 34 of the Exclusive Legislative List. Going by the decision of the Court of Appeal that the High Court has no jurisdiction, it therefore, became imperative for the National Assembly to find solution to this problem in consonance with the provisions of section 4(2) of the 1999 Constitution i.e. powers to make laws for peace, order and good governance of the federation or any part thereof.

The above scenario informed the National Assembly to vest the NIC with exclusive and National territorial jurisdiction to hear and determine labour/industrial relations matters.

In doing so, the legislature provided in section 1(3)(b) that the Court shall have all the powers of a High Court.

What are the powers of the High Court? See sections 17-19 of NICA, 2006.

Section 10 - power to enforce its judgment.

Section 16 - power to grant injunctions.

Section 17 - power to make order of mandamus, prohibition and certiorari

Section 18 - power to grant injunction in lieu of quo warranto;

Section 19 - power to grant

- (a). urgent interim relief,
- (b). a declaratory order,
- (c). appointment of public trustee,
- (d). to award compensation or damages e.t.c

The new NIC is now a specialized Court with powers to:

- (a). determine matters not vested in the High Court;
- (b). to solve the problems of labour,
- (c). to look into matters from the IAP as an appellate Court.
- (d). it now provides confidence in the foreign investors to invest in our economy since they are now aware that the law of industrial relations in Nigeria is now certain, definite, ascertainable and reliable.
- (e). with this the clamour for the obedience of rule of law will be prominent.

Furthermore, it is in the recognition of the jurisdiction and powers of the NIC that it is provided in section 24 that:

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 transfer such cause or matter before the court to any other panel of Judges.

To save the life of cases that are part heard that stand the risk of being dismissed or struck out for being statute-barred, Section 24(2) NICA, 2006 provides that no cause or matter shall be struck out by the Court merely because such cases were filed before the NIC instead of the Federal High Court or other High Courts in which they ought to have been filed at the first instance. I am happy to report that pursuant to this provision and that of subsection (3) the Federal High Court has in similar vein caused such matters filed before it to be transferred to the NIC.

It is instructive to observe here that these provisions and the Rules of Court made pursuant thereto have saved the lives of very sensitive cases. Superior Courts of record that do not have these rules are enjoined to initiate practice directions that will ensure that cases are mentioned, heard and determined on their merits, transferred to the appropriate Courts, where necessary, and not struck out on mere technicalities of having been inappropriately filed.

4.0 CONCLUSION

In recap, the commentator of this paper has attempted to state the trade disputes resolution mechanisms put in place in

Nigeria by the TDA (as amended by the TDA of 1992) and the new National Industrial Court Act of 2006. The commentator has also endeavoured to state or espouse the role of the judiciary in ensuring industrial harmony in Nigeria through judicious appraisal of the relevant laws, rules of court in the consideration of various labour matters before the Court. This comment on the National Industrial Court Act 2006 particularly has brought out the relevance, importance and sensitive impact of the Act on the Nigerian economy through judicial pronouncements that ensure industrial harmony. I sincerely thank the Administrator of the NJI for allowing me to make some comment on the topic under discussion. I appreciate the role of all the Directors and staff of the NJI at this forum.

My Lords, learned brother Judges, legal luminaries here present, I thank you all for your kind attention.

Oxford Advanced Learner Dictionary 6th Edition pg. 1021

Ibid at p. 543

Section 37(1)(b)

Section 3 (2) TDA

Section 5 (1), (2) TDA

Section 8 (1) TDA

Section 4 (1), (2) TDA

Section 13 (1) TDA

See Chioma Kanu Agomo – “Nigeria”, in Labour Law and Industrial Relations in the International Encyclopedia of Law (Prof. Dr. Blanpain – ed), 2000 at pp. 38 - 39

See Section 3, Cap 201, Laws of the Federation of Nigeria and Lagos, 1958.

Section 4(2), Trade Disputes (Arbitration and Enquiry Act) 1958.

See Sections 2- 7

(2006) ALL FWLR part 229, p.1549 at 1562

(2004) ALL FWLR 562

Section 7(2) NICA, 2006

(2000) 5 WRN 47

Section 8, of NICA 2006

(2003) 15 NWLR 32

(2003) 8 NWLR 1

Section 7 (6) NICA 2006

See Section 10 of the Industrial Relations Act Chapter 88:01 Laws of Trinidad and Tobago

(2004) INLLR (pt. 2) 326 at 339.