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**APPRAISAL OF THE JURISDICTIONAL REGIME OF THE
NATIONAL INDUSTRIAL COURT OF NIGERIA* ♣****Abstract**

The National Industrial Court is a specialized court created for the specific purpose of settling trade disputes and interpreting employment related documents to ensure industrial harmony. Its jurisdiction right from inception under the Trade Disputes Decree No 7 of 1976 has been fraught with contentions. This paper appraises the jurisdictional journey of the NIC from 1976 to the Third Alteration to the 1999 Constitution and contends that the Third Alteration to the 1999 Constitution has ultimately laid to rest the hitherto jurisdictional controversy.

1. Jurisdiction and the Need for a Specialized Court

Jurisdiction means the substantive and procedural competence of a court to entertain a case and exercise judicial powers. It is extrinsic and intrinsic to adjudication¹. It cannot be inferred or imagined but statutory. Hence, Constitution, Acts, Decrees, Laws, Edicts and Rules of Court cloak courts with the requisite jurisdiction to adjudicate. Except so granted, parties cannot by consent endow a court with jurisdiction.²

The recurrent industrial conflicts between employers and workers which result often in an industrial action do not only affect the parties involved but also the general public and the smooth running of the Nigerian economy. The need for

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¹ *Dr. Taiwo Oloruntoba- Oju & 4 Ors. v. Prof. Shuabibu O. Abdek – Raheem & 3 Ors* (2009) 39 NSCQR 105; *Madukolu v. Nkemdilim* (1962) 2 SCQLR 341, *Akeem v. Unibadan* [2003] 10 NWLR (Pt. 829) 545; *Afribuak (Nig) Plc v. Bronik Ind. Ltd* [2006] 5 NWLR (Pt. 673) 3000; *NDIC v. CBN* [2002] 7 NWLR (Pt. 766) 272.

² *Ibid.*

industrial harmony underscores the necessity for a specialized court for quick, effective and efficient resolution of trade disputes. The regular courts are often under-staffed, inadequately funded, over-burdened with so many cases, and plagued with the intricacies of lawyers so much so that cases take too long to be resolved. In addition, such a court may not possess the necessary competence to handle labour matters. Thus the need for a specialized court to entertain and expeditiously resolve trade disputes.

2. Jurisdiction of the NIC from 1976 to 2006

Section 20 (1) of the Trade Dispute Act³ conferred on the National Industrial Court (NIC) exclusive jurisdiction to make award for the purpose of settling trade disputes and determining questions as to the interpretation of any collective agreement, any award made by an Arbitration Tribunal or by the Court itself under Part I of the Act or the terms of settlement of any trade dispute as recorded in any memorandum under section 7. Section 20(3) provides that no appeal shall lie to any other court or person from the determination of the NIC.

The import of section 20 (1) and (3) was to make the NIC the only court empowered to adjudicate over trade dispute matters. However, how correct is this assertion viz a viz the unlimited jurisdiction of the State High Court under section 236 (1) of the 1979 Constitution (now section 272 of the 1999 Constitution as amended)? Section 236 (1) provides:

Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a state shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating

³ Cap. 432, LFN, 1990 later Cap. T8, L.FN, 2004 and now Cap. T8 LFN, 2004 previously known as *Trade Dispute Decree* No 7 of 1976 (as amended).

to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

The clear and unequivocal intendment of section 236 (1) is to impose on State High Courts jurisdiction over all civil and criminal matters inclusive of trade dispute. In *Western Steel Works Ltd & Anor. v. Iron & Steel Workers Union of Nigeria & Anor.*⁴ two justices of the Supreme Court rendered conflicting *obiter dicta* on whether the unlimited jurisdiction of State High Courts extended to trade dispute matters. From the point of view of Oputa JSC, it does not. In his words:

There is no doubt that in all matters within its competence and on a proper reference by the Minister as prescribed by section 10 of the Trade Dispute Act No 7 of 1976, the National Industrial Court is the only Court empowered to handle cases of Trade Dispute properly so called and properly referred to it.⁵

On the other hand, in strong opposition to Oputa JSC, Coker JSC⁶ opined:

On the question of jurisdiction of the High Court of Lagos, I will adopt my reasoning in SC. 139/1985, *Savanna Bank of Nigeria Ltd. V. Pan Atlantic Shipping and Transport Agencies Ltd & anor.* ... I decided that State High Courts by virtue of their unlimited jurisdiction under Section 236 (1) of the 1979 Constitution are competent. No Act of the National Assembly including the Trade Dispute Act, 1976 or the Federal High Court Act, 1973 can cut down or oust the jurisdiction conferred on State High Courts by and under Section 236 (1) of the 1979 Constitution⁷.

⁴ [1987] 1 NWLR (Pt. 49) 284.

⁵ *Ibid.*, at p. 303.

⁶ (Of the blessed memory).

⁷ *Western Steel Works Ltd & Anor. v. Iron & Steel Workers Unions of Nigeria & Anor.*, above note 4 at p. 301.

The present authors respectfully concur with the *obiter dictum* of Coker JSC. First, the 1979 Constitution at the time in question was the grundnorm, and any other law inconsistent with it was null and void to the extent of inconsistency.⁸

Second, the NIC was not a superior court of record under Decree No 7 of 1976 or under Cap. 432. Thus, its status was then an inferior court *viz-a-viz* Section 6 (5) (a-f) 1979 Constitution which listed the only superior courts of record. The implication of this is that the NIC, not being a superior court of record, could not exercise jurisdiction over a civil matter such as trade disputes to the exclusion of High Courts. In other words, as Coker JSC pointed out, the NIC and High Courts could only exercise concurrent jurisdiction over trade disputes.

It was in order to put beyond controversy jurisdiction of the NIC that the Trade Disputes (Amendment) Decree⁹ was promulgated. The Decree amended the Trade Dispute Act¹⁰ by inserting a new section 1A immediately after section I of the Act. Section 1A provides thus:

- (1) Subject to the provision of subsection (8) of section 20 of this Act, no person shall commence an action, the subject matter of a trade dispute or any inter or intra union dispute in a court of law and accordingly any action which prior to the commencement of this section is pending in any court shall abate and be null and void.
- (2) Notwithstanding the provisions of the Constitution of the Federal Republic Nigeria, 1979, any interim or interlocutory order, Judgment or decision made by any court other than the NIC established under this Act in respect of any trade dispute, inter or intra union dispute

⁸ Section 1 (1) (3), 1979 Constitution, now section 1 (1) (3), 1999 Constitution (as amended), Cap C 23 LFN, 2004. *Military Governor Ondo State v. Adewunmi* [1988] 3 NWLR (Pt. 82) 1; *A.G. Ondo State v. A.G.F. & Ors.* [2002] 9 NWLR (Pt. 772) 222

⁹ No. 47 of 1992.

¹⁰ Cap. 432, LFN 1990.

prior to the commencement of this section shall cease to have effect.

Moreover, section 5 of the Decree No 47 of 1992 expressly stipulated that the NIC was a superior court of record. The community reading of the provisions of Decree No 47 led the Supreme Court in *Udo v. Orthopedic Hospital Management Board*¹¹ to hold that the State High Court lacked the jurisdiction to entertain trade disputes, as same has been ousted in favour of the NIC.

With the coming into force of the 1999 Constitution, the wide jurisdiction of the State High Court re-emerged and placed once more on the front banner the jurisdictional controversy between the State High Courts and the NIC notwithstanding Decree No 47 of 1992, which was saved under section 315 (1) (a) of the 1999 Constitution. However, in *Ekong v. Oside*¹² the Court of Appeal construed the jurisdiction of the High Court of the Federal Capital Territory under section 257 (1) of the 1999 Constitution, which is on all fours with section 272 (1) viz a viz the provisions of Decree No 47, 1992, and held that the exclusive jurisdiction of NIC under Decree No 47 was not inconsistent with section 257 (1) and therefore constitutional. Nonetheless, in *Attorney General Oyo State v. NLC*¹³ the court interpreted Decree No 47 of 1992 which conferred exclusive jurisdiction on the NIC to determine trade dispute matters and held that – “By the combined effect of sections 1 (1), (3), 6 (6), (b), 251, 272 and 315 of the 1999 Constitution, the High Court of a State shares concurrent jurisdiction in trade dispute matters with National Industrial Court...”¹⁴

¹¹ [1993] 7 NWLR (Pt. 304) 134.

¹² [2004] ALL FWLR 562.

¹³ [2003] 8 NWLR (Pt. 821) 1.

¹⁴ *A.G. Oyo's case* per Adekeye J.C.A at p. 34 ratios E – F; *Kalango v. Dokubo* (2003) 16 WRN 32.

Further, the court opined that section 1 (1) of the 1999 Constitution guarantees the supremacy of the Constitution while section 1 (3) of the same Constitution renders any law inconsistent with it null and void. Accordingly, by section 1 (3) of the 1999 Constitution, section 1 (A) (1) of Decree No 47 of 1992, which amended section 20 of the Trade Disputes Act that purport to divest the State High Court of jurisdiction in trade dispute cases is null and void to the extent of its inconsistency with section 272 of the Constitution.

It was the uncertainty surrounding the constitutional status of NIC that precipitated the National Assembly to enact the National Industrial Court Act, 2006.¹⁵ The Act in sections 1 (3) and 7 respectively conferred on the NIC the status of a superior court of record and exclusive jurisdiction over trade disputes. It is argued that the Act can neither confer jurisdiction over trade dispute on the NIC to the exclusion of the High Courts of the State and Federal Capital Territory contrary to sections 272 (1) and 257 (1) of the Constitution nor make it a superior court of record in violation of section 6(3) (5) (a) (i) of the 1999 Constitution.

In *National Union of Electricity Employees & Anor. v. Bureau of Public Enterprises*¹⁶ the Supreme Court had held that Decree No 47 mainly attempted to make the NIC a superior court of record. The apex court opined that the Decree:

[D]oes not by that token make the said NIC a superior court of record without due regard to the amendment of the provisions of Section 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.¹⁷

¹⁵ National Industrial Court Act, Cap N115, LFN, 2004.

¹⁶ (2001) 41 NSCQR (Pt. 1) 611.

¹⁷ *Ibid*, at p. 649, Ratios F-G, per Chukwuma-Eneh JSC.

The Court also held that Decree No 47 which vested exclusive jurisdiction on the NIC was inconsistent with section 272 (1) of the 1999 Constitution and therefore null and void to the extent of the inconsistency.¹⁸

The unconstitutionality of sections 1(3) and 7 of the National Industrial Court Act, 2006 which purport to make the NIC a superior court of record and confer it with exclusive jurisdiction in respect of trade disputes to the exclusion of the High Court has been answered by the Supreme Court decision in *NUEE v. BPE*.¹⁹ Although, the statute in question in the case was Decree No 47, however the provisions of that Decree which were struck down were replicated in sections 1(3) and 7 of the 2006 Act.

3. Jurisdiction of the NIC is Predicated on Trade Dispute

The jurisdiction of the NIC can be viewed through three genres, to wit: interpretative,²⁰ exclusive²¹ and referral²² jurisdictions. Whatever model of jurisdiction is adopted, the jurisdiction of the NIC under Decree No 7 of 1976 as amended by Decree No 47 of 1992, and 2006 Act is predicated on trade dispute. What then is trade dispute?

Sections 48 and 57 of Trade Disputes Act²³ define a trade dispute as any dispute between employers and workers or between workers and workers which is connected with employment or non employment or terms and conditions of employment. The Supreme Court in *National Union of Road*

¹⁸ *National Union of Electricity Employees (NUEE) & Anor. v. Bureau of Public Enterprises* at p. 650.

¹⁹ *Ibid.*

²⁰ Sections 15 and 16, Cap. T8, L.F.N., 2004, Section 7 (1) (C) (1-v) National Industrial Court Act, Cap N115, LFN, 2004 (hereinafter simply referred to as "NIC Act").

²¹ Sections 7 (1), NIC Act

²² Section 14 (1), Cap. T8, L.F.N., 2004.

²³ Cap. T8, L.F.N. 2004 (as amended) adopts the definition of Trade Dispute under section 54 of Trade Unions Act, Cap. T14, L.F.N., 2004.

*Transport Workers v. Ogodu & Ors.*²⁴ identified the ingredients of trade dispute thus:

- a. There must be a dispute. Dispute means: "to make a subject of argument, to contend for, to oppose by argument, to call in question, to argue, to debate."²⁵
- b. The dispute must involve a trade.
- c. The dispute must be between:
 - (i) employers and workers; or
 - (ii) workers and workers.²⁶ This means that the dispute could be inter or intra union dispute. Intra union dispute is a dispute within a union while inter union dispute envisages the fact that the parties to the dispute belong to different trade unions.²⁷
- d. The dispute must be connected with the employment or non employment; or the terms of employment and physical condition of work of any person.

The above has shown the subject matter and parties over whom the NIC could exercise jurisdiction. In *Dr. Taiwo Oloruntoba -Oju & 5 Ors. v. Prof. P.A. Dapamu & 6 Ors.*,²⁸ the main issues relate to the appointment and removal of the substantive/elected Dean, Faculty of Arts and Heads of Departments of the Linguistics and Performing Arts of the Faculty of Arts, University of Ilorin and the 4th defendants/respondents unilateral appointment of acting Dean and Heads of Departments in the appellants' stead contrary to the University of Ilorin Act. The plaintiffs/appellants caused to be issued originating summons at the Federal High Court, Ilorin Division. The defendants/respondents filed an application for striking out of the suit on the ground that the Federal High

²⁴ (1998) 41 NSCQR (Pt. 1) 611; [1998] 2 NWLR (Pt. 537) 189.

²⁵ *Ibid.* *Muyiwa Daniel & 4 Ors. v. Mrs. Olufunke Fadiugba & Anor.* [1998] 3 NWLR (Pt. 582) 482.

²⁶ *Ibid.* See also *Conway v Wade* (1939) A.C. 506; *Stratford v. Lindeley* [1965] A.C. 269.

²⁷ *Ibid.*

²⁸ (2008) 34 NSCQR (Pt. 1) 176.

Court lacked jurisdiction to entertain the matter because the issues involved trade dispute over which the NIC has jurisdiction.

The trial court and the Court of Appeal held that the main issues raised related to trade dispute as defined in section 47 of the Trade Dispute Act.²⁹ Consequently, the Federal High Court lacked jurisdiction. On further appeal to the Supreme Court, the apex court reversed the decision of the lower court and held that the issue in dispute was the arbitrary, rude and unconstitutional manner the employers were running the University of Ilorin which has nothing to do with trade dispute.

The decision of the Supreme Court in *Dr. Taiwo Oloruntoba-Ojo's* case is a correct statement of the law *viz-a-viz* section 47³⁰ of the Trade Dispute Act since the issue in contention had nothing to do with the employment or non-employment, terms or conditions of the employment of the plaintiffs/appellants. Rather, it was an issue concerning the improper or arbitrary removal of the plaintiffs/appellants from the administrative positions (Dean and Heads of Departments) which they held contrary to the University of Ilorin Act.

Again, in *Dr. Taiwo Oloruntoba- Oju & 4 Ors v Prof. Shuaibu O. Abdul-Raheem*³¹ the apex court opined that -

Their suit under the umbrella of ASUU v the F G is quite separate and distinct from their grievances with their employer who brought to an abrupt end their employment without given due consideration to all the terms and conditions of their employment as expressed in documents. The issue of cessation of their employment has no connotation of trade dispute or collective agreement.³²

²⁹ Cap. T8, L.F.N., 2004.

³⁰ Now Section 48.

³¹ *Ibid*, above note 1 at p. 143.

³² Emphasis added.

One of the ingredients of trade dispute is non employment. The issue of cessation of employment involves “non employment”, on the part of the employer and a demand for continuous employment on the part of the employee (ie employment). Thus, two cardinal elements of the subject matter of the jurisdiction of the NIC – employment and non-employment were present in the above case in addition to proper parties – employers and employees. To the extent that the Supreme Court held that cessation of employment has no connotation of trade dispute, we respectfully submit that it erred.

4. Status of the NIC and Third Alteration to the 1999 Constitution

Attempts of Decree No 47 of 1992 and the NIC Act 2006 to confer the status of a superior court of record on the NIC were done to obviate the status of inferiority *viz a viz* the High Courts. At common law, the implications of a court being inferior affect its jurisdiction -

First, an inferior court is subject to the supervisory jurisdiction of the superior courts. In other words, its processes can be controlled by judicial review. Thus, a High Court, which is a court of superior record may prohibit the NIC from sitting on a matter if it is of the opinion that the NIC is likely to exceed its jurisdiction. Its proceedings may also be quashed by an order of certiorari. Second, inferior courts at common law do not have the power to punish for contempt as such.³³

Before the repeal of sections 22 and 23 of Trade Disputes Act³⁴ by the 2006 Act, the NIC was empowered to commit for contempt under section 22. However, because it then lacked criminal jurisdiction,³⁵ section 23 required the president,

³³ B. Aturu, *Nigerian Labour Laws, Principles, Cases, Commentaries and Materials* (Lagos: Friedrich Ebert Stiftung, 2005) p. 237.

³⁴ Cap. T8, L.F.N., 2004.

³⁵ *Ekene Dili Chukwu Ltd v. Mrs. G.I. Akinbaboye*, Chief Magistrate Court No 1 Lagos & Ors. [1987] 1 NWLR (Pt. 49) 306.

where there was sufficient evidence to commit a person for contempt, to commit such a person for trial at the High Court. This underscores the fact that the NIC was created as a subordinate court to the High Courts.

However, there is no *vires* from the provisions of the Trade Dispute Act to support the decision of the Supreme Court in *Western Steel Works Ltd, & Anor. v. Iron & Steel Workers Union of Nigeria & Anor.*³⁶ that - "Section 15 of the Trade Dispute Act, 1976 conferring jurisdiction on the NIC did not include jurisdiction to make declarations and to order Injunctions."³⁷ Section 15 deals with the powers of the NIC to interpret an award made either by an Arbitration Tribunal or itself. It is inconceivable that a court empowered to interpret awards cannot make a declaratory order and by the same token grant an injunction. Indeed if a court cannot make this specie of orders, it can hardly qualify to be called a court.³⁸

The Third Alteration to the 1999 Constitution has not only cured the lapses in the jurisdiction of the NIC which Decree No 47 of 1992 and the 2006 Act in futility attempted to effect, but has also conferred on it a very expansive jurisdiction. This jurisdiction covers industrial, employment, trade, labour relations and matters related thereto including matters connected with international best practices and /or interpretation of international labour standard.³⁹ Section 251 (1)⁴⁰ which hitherto conferred wide jurisdiction on the Federal High Court particularly its sub-sections (p) (q) and (r) are now

³⁶ Above note 4.

³⁷ *Ibid* at p. 304 Ratio B per Oputa JSC; see also *Dr. Taiwo Olorunjobi-Oju & 4 Ors. v. Prof. Shuabibu O. Abdul- Radeeme 3 Ors.* (above) note 1 at p. 145 per O. O. Adekeye JSC. However sections 16 (1) and 19 (a) NIC Act , for the avoidance of doubt, expressly empowered the NIC to grant declaratory and injunctive Orders.

³⁸ Aturu., above note 31, p. 238.

³⁹ Section 254 C (1) (a) (f) (h), 1999 Constitution (as amended).

⁴⁰ 1999 Constitution (as amended)

limited by section 254 C (1)⁴¹ in respect of civil causes and matters bordering on trade disputes.

Indeed under section 254 C (1), the NIC has jurisdiction to the exclusion of all other courts in civil matters and cases connected with or arising from Factories Act,⁴² Trade Dispute Act,⁴³ Trade Unions Act,⁴⁴ Labour Act,⁴⁵ Employees Compensation Act,⁴⁶ Trafficking in Persons (Prohibition) Law Enforcement and Administration Act,⁴⁷ sexual harassment at workplace,⁴⁸ dispute over the interpretation and application of the provisions of Chapter IV of the 1999 Constitution (as amended) as it relates to any employment, labour, industrial relations, trade unions, employer's associations.⁴⁹ Specifically, the NIC has been upgraded to a superior court of record.⁵⁰

It is significant to note that under section 254 C (5), the NIC now has criminal jurisdiction arising out of matters over which it has exclusive civil jurisdiction. It is also noteworthy that under section 254 C (6), appeals lie to the Court of Appeal as of right in respect of criminal jurisdiction of the NIC. Furthermore, under section 243 (2) of the 1999 Constitution (as amended), an appeal lies to the Court of Appeal as of right from the decision of the NIC on questions of fundamental rights. In addition, subsection 3 of section 243 provides – “An Appeal shall only lie from the decision of the National

⁴¹ *Ibid.* In view of the above, most cases decided at the High Courts in the past are now undoubtedly within the constitutional jurisdiction of NIC. Examples *Institute of Health, Ahmadu Bello University Management Board v. Mrs. Jummai R.I. Anyip* (2011) 45 NSCQR (Pt. 11) 408; *Mobil Producing Nig. Unlimited v. Udo* (2009) ALL F WLR (Pt. 482) 1177; *Akinyanju v. Unilorin* [2005] 7 NWLR (Pt. 323)87.

⁴² Factories Act, Cap FI, L.FN, 2004.

⁴³ Cap. T8, L.FN, 2004.

⁴⁴ Trade Unions Act, Cap. T14, LFN, 2004.

⁴⁵ Labour Act, Cap. L1, LFN, 2004.

⁴⁶ Employees Compensation Act, Cap.E7A, LFN, 2004.

⁴⁷ Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, Cap. T23, LFN, 2004.

⁴⁸ Section 254 (1) (g), 1999 Constitution (as amended).

⁴⁹ Section 254 (I) (L) (i) *ibid.*

⁵⁰ Section 6 (5) (C C) *ibid.*

Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly..." However, such appeals shall be with the leave of the Court of Appeal and the decision of the Court of Appeal arising from any civil jurisdiction of the NIC shall be final.

The NIC exercises appellate jurisdiction in respect of:

- a. Decisions of the Registrar of Trade Unions or matters relating thereto.⁵¹ This may arise from the Registrar's refusal to register association as a trade union on any ground.⁵²
- b. Decisions or recommendations of any Administrative Body or Commission of Inquiry arising from or connected with employment, labour, trade unions or industrial relations.⁵³ Appellate and supervisory jurisdictions are also conferred on the NIC over decisions of an Arbitral Tribunal or Commission, Administrative Body or Board of Inquiry in respect of any matter which it has jurisdiction to entertain or other matters as may be prescribed by an Act of the National Assembly or any law in force in any part of Nigeria.⁵⁴

5. Conclusion

This paper has x-rayed the jurisdictional controversy in which the NIC was embroiled. It has shown that the Third Alteration to the 1999 Constitution has not only made the NIC a superior

⁵¹ *Ibid.*

⁵² Some of the grounds upon which a proposed trade union may not be registered include: if the name of the proposed trade union is identical with the name of an existing trade or so nearly resembling such name as to be likely to deceive the members of the public. Section 6 (3); Trade Union Act, Cap. T14, LFN, 2010, or where there is already in place a trade union which represents the interest of the members of the union sought to be registered. Sections 3 (2) 5 (4), Trade Unions Act, Cap. T14, LFN, 2004, and *Registered Trustees of National Association of Community Health Practitioners of Nigeria & 2 Ors. v. Medical and Health Workers Union of Nigeria* (2008) 2 NWLR (Pt. 1072) 575.

⁵³ Section 254 (I) (i) (ii), 1999 Constitution (as amended).

⁵⁴ Section 254 (3), *ibid.*

court of record but has conferred criminal as well as expansive civil constitutional jurisdiction on it in respect of every conceivable labour and industrial related matters. The third amendment to the 1999 Constitution has ensured that the public policy behind the setting up of the NIC will be realized.