

JURISDICTION OF NATIONAL INDUSTRIAL COURT OF NIGERIA ON HUMAN RIGHTS ENFORCEMENT: A LEGISLATIVE NECESSITY OR NIMIETY

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Abstract

Human rights violation has become a matter of great concerns within the temple of administration of justice. The imperative need to expedite the process of adjudication of human rights infraction necessitated arrays of legislative reforms aimed at removing the attendant delays and clogs to pave way for quick and unhindered determination by courts. The reforms are particularly significant with respect to the expanded and expansive jurisdiction of National Industrial Court in the area of human rights infringement in work place. Though conceived to be in stark conflict with jurisdiction of Federal High Court and State High Court as vested by the 1999 Constitution (as amended) on questions of human rights enforcement, the reform of NIC's jurisdiction propelled the contention as to whether it is a necessity or an overabundance. This conceptual analysis relied on both primary and secondary sources of data in the interrogation of the issues connected to the discourse. It found that the reform is welcomed as it widened access to justice in the stern realities of widespread human rights violation in work place in particular, which are now better handled by no other courts other than a specialized court like NIC. However, it is equally found that the fact that NIC would have to

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grapple with filtering its newly vested jurisdictional competence on human rights enforcement vis-à-vis the express provisions of the Constitution and the Fundamental Rights (Enforcement Procedure) Rules (2009) which had hitherto vested exclusive jurisdiction on Federal High Court and State High Court on fundamental rights enforcement tone down the gains to mere nimiety. The paper concluded by making series of proposal for reforming the applicable laws in order to strike a balance between these extremes- 'necessity and nimiety' as it relates to the jurisdiction of NIC on questions of labour related human rights cases by virtue of lessons learnt from Uganda and South Africa.

Keywords: Jurisdiction; Exclusive, Industrial Courts; Human Rights; Labour Matters

1. Introduction

The significance of human rights gained huge momentum within global community after the constitution of the Universal Declaration of Human Rights in 1948¹. The Declaration heralded the consciousness of bundles of rights which a person is entitled to by virtue of their being human.² Human rights are inherent and thus their promotion and promotion is considered a deserved fulfilment of every citizen's confidence in the government capability to curtailing flagrant abuse.³

¹ Universal Declaration on Human Rights 1948, See Preamble.

²However in the Nigerian Constitution, the human rights provisions are tagged "Fundamental Rights,". There is a jurisprudential debate to the effect that incorporation would be entitled to the enjoyment of these 'fundamental rights' as an artificial person despite not been a human person. See also *Okechukwu v EFCC*, [2015] All FWLR (Pt 766) 503-24.

³Kayode Eso, *Thoughts on Human Rights and Education* (Ibadan, St. Paul's Publishing, 2008) 16. See also AS Ishola, A Adeleye and D Momodu, 'Rethinking the Jurisdiction of the National Industrial Court in Human Rights Enforcement in Nigeria: Lessons from South Africa' 1 (2016) *Transnational Human Rights Review* 1.

The fundamental Law of the land in Nigeria -Constitution of the Federal Republic of Nigeria 1999 (as amended)⁴ had also in avowed recognition of the importance and relevance of human rights protection made elaborate provisions for its promotion and enforcement by vesting jurisdictional competence on Federal and State High Courts ⁵and lately on the National Industrial Court.⁶Fundamental rights are sacred and stand in eminence above any other rights stipulated by the ordinary laws of the land. They are in fact ‘antecedent to the political society itself’ and ‘it is the primary condition to civilized society’.⁷

It is important to state from the outset that dilemma sought to be interrogated in this discourse was informed by the fact that prior to 2011, National Industrial Court was not known to be a ‘superior court of record’ under the 1999 Constitution. The provision of the establishment law- NICN Act 2010 which had ingloriously adorn it with the status of ‘superior court of record’ stood in stark conflict with the extant provisions of the 1999 Constitution which had prohibited any recognition of any court as such other than those expressly listed therein.⁸ Based on this legal reasoning, there was no such opportunity at the time, of any perceived jurisdictional contest between the Federal and State High Courts with the NIC in the enforcement of human rights as jurisdiction is solely vested in the courts prescribed by the Constitution.⁹

⁴ Constitution of the Federal Republic of Nigeria 1999 (As amended).Hereinafter ‘CFRN.1999’.

⁵ CFRN 1999, s 46(1).

⁶ Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 Ss 6 (5) CC and 254A to 254C .
Hereinafter ‘Third Alteration Act’.

⁷ As held in the *Locus Classicus* case of *Ramsome Kuti v Attorney General of the Federation* (1985) LPELR-2940(SC). See also DT Michael, ‘Revisiting the Controversies on the Jurisdiction of National Industrial Court of Nigeria over Labour –Related Human Rights Matters’ 3(1) (2020) *National Journal of Labour and Industrial Law* 33 available at <https://www.researchgate.net/publication/349923982> accessed on 15th April 2024.

⁸ CFRN 1999 s 6 (2).

⁹ Fundamental Rights (Enforcement Procedure) Rules 2009 applies only to Federal High Courts and State High

The need to pursue labour justice with respect to human rights infractions in work place has gained historic attention given the unique jurisdiction of NIC in labour matters. This informed the reposition of the court to align its status in line with constitutional stipulations. The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 vests exclusive jurisdiction in the NIC with respect to human rights matters arising from employment relations.¹⁰ However one pertinent question has been whether there are justifications in the reform brought by the Third Alteration Act which purportedly oust the general jurisdiction of both Federal and State High Courts with respect to matters of human rights violation which also include those arising from employment relations? The pertinent need to provide answers to this germane question justifies the rationale behind this academic exercise.

This paper attempts to x-ray the exclusivity of the jurisdiction vested in the NIC in labour related human rights issues with a view to identifying whether the alteration is in any way deserving or duplicity of roles given that matters of enforcement of human rights generally was hitherto vested on the Federal and State High Courts. At the end, the paper proposed series of recommendations including suggested amendment to the provisions of the Constitution on the subject in order to douse litany of controversies surrounding the question of whether the reforms of the NIC legal framework is a crowning glory of legislative necessity or a mere nimiety.

2. Concept of Jurisdiction

Jurisdiction is the super structure upon which judicial power rests. It is the authority upon which determination of legal disputes by judicial or quasi-judicial bodies is validated. It is the life wire of every judicial process. In *Mobil Producing Nigeria Unlimited v Lagos State Environmental Protection Agency & Ors*¹¹ the Supreme Court defines ‘jurisdiction as ‘...as the authority, which a court has to decide matters

Courts.

¹⁰ Third Alteration Act s 254C.

¹¹ (2002) 12 S.C (Pt 1) 26

that are litigated before it or take cognizance of matters presented in a formal way for its decision'. Jurisdiction is a matter of statutory creation.

The importance of jurisdiction is underscored by the fact the issue of lack of it can be raised at any point in judicial proceedings either at the trial, on appeal or even at the Supreme Court.¹² A trial without jurisdiction no matter how well conducted is a nullity. This is because a court that lacks jurisdiction to entertain an action is incompetent to make any pronouncement on any issues submitted to it.¹³ Jurisdiction is usually determined by the enabling statute which creates the particular Court and the Constitution as the supreme law. In *Okereke v Yaradua & Ors*¹⁴ the Supreme Court while reiterating this principle held that:

The jurisdiction of all superior courts of record was constitutional and could not therefore be circumscribed or limited by any other statute, let alone Practice Directions. The issue of jurisdiction could not therefore be subjected to the dictates of any statute including Rules of Court. A party's right to raise issue of jurisdiction was available at all times, giving credence to the immutable principle that the issue of jurisdiction could be raised at any stage of the proceedings at the court of trial or in the Appellate Courts. Emphasis added.

Jurisdiction of courts can either be categorized in terms of monetary, territorial or subject matter. Monetary jurisdiction mainly affects the power of magistrate courts or districts courts to entertain monetary claims. Territorial jurisdiction is the extent a particular court can exercise powers over a well-defined territory. Subject matter jurisdiction refers to the legal authority of a court over the subject of legal proceedings.

¹²*Obeta v Okpe* (1996) 7 SCNJ 249.

¹³*Madukolu v Nkemdilim* (1962) 2 SCNLR 341 AT 404; *Ngere v Okuruke* (2014) AFWLR (Pt 742) 1766 at 1785.

¹⁴ (2008) 12 NWLR Pt. 1100) 95 at 18-129.

Other taxonomy of jurisdiction are original and appellate, concurrent and exclusive. Original jurisdiction refers to the right of a court to operate as court of first instance. Most trial courts exercise original jurisdiction.¹⁵ The Supreme Court also exercise original jurisdiction in selected causes.¹⁶ A court is said to exercise concurrent jurisdiction with other courts of the same hierarchy when their decisions do not bind each other. Exclusive jurisdiction occurs when a particular court by virtue of enabling statute is jealously prevented from sharing its power of adjudication with any courts whatsoever.¹⁷

3. Human Rights Enforcement in Nigerian Courts

The jurisdiction to hear and determine human rights related disputes is vested on the High Court of any State where any of the provisions of Chapter IV of the Constitution ‘has been or likely to be contravened’. The Constitution failed to define what is meant by ‘High Court’ thus lending credence to a literal interpretation that could be exploited to mean that it does not cover Federal High Court. However, the provision of the Fundamental Rights(Enforcement Procedure) Rules 2009¹⁸ as a subsidiary instrument provided legal succour to the quagmire in that it defines ‘Court’ to mean ‘the Federal High Court’ and ‘State High Court’.

It is thus indubitable to argue that prior to 2011, the courts with requisite jurisdictional competence to determine matters of human rights violations are the Federal High Court or the High Court of the States which invariably include the High Court of the Federal Capital Territory exercising same concurrently. This position has received judicial

¹⁵ For example, the NIC exercises original jurisdiction over all labour related matters to the exclusion of all

other courts by virtue of section 254C of the CFRN (Third Alteration Act) 2010.

¹⁶ By virtue of Supreme Court (Additional Original Jurisdiction) Act No.3 2002 s 1(1) (a), (b) and (c).

¹⁷ NIC is one court vested with such powers.

¹⁸ FREP Rules 2009 Order 2 Rule1.

imprimatur in litany of cases such as *Grace Jack in University of Agriculture Makurdi*¹⁹ where the Supreme Court held that:

Section 42 of the 1979 Constitution which is now section 46 of the 1999 Constitution as amended creates special jurisdiction for the enforcement of fundamental rights irrespective of the general provisions on the jurisdiction of the State and Federal High Courts.

The above decision seems to have put to rest the question of which court has jurisdiction in fundamental right matters against the backdrop of judicial decisions to the effect that ‘where a fundamental rights enforcement action involved the Federal Government or any of its agencies it had been within the exclusive jurisdiction of the Federal High Court’.²⁰

The concurring judgment of the Supreme Court in *Adetona v Igele General Enterprises Ltd*²¹ where Muhammed JSC (as he then was) expounded on the issue of fundamental rights cases with respect to the jurisdiction of State and Federal High Courts have been followed with stringent dexterity by the Court of Appeal in several cases even though no direct reference was made to issues of fundamental rights in the lead judgment due to the fact that the claim was in respect to closure of the respondent’s office apartment by a Receiver/Manager, held that the Lagos High Court had jurisdiction over the subject matter.

The Court of Appeal had in subsequent decisions placed much reliance on the concurring part of the judgment which ordinarily is no more than an obiter to purportedly uphold what was considered ‘settled position’ by holding that jurisdiction in fundamental rights cases is subject to the

¹⁹ (2004) 5 NWLR (Pt 865)208. For chronicles on jurisdiction of High Courts in fundamental rights cases, see *Tukur v Government of Gongola State* (1989) 3NSCC 225; *Garba v University of Maiduguri* (1986) 1NWLR (Pt 18)550.

²⁰*NEPA v. Edegbenro* (2002) LPELR-1957 (SC). Contrast with *FUTMINNA Odutayo*, where Eko JSC (as he then was) emphatically called for the resolution of the issue.

²¹ (2011) 7NWLR (Pt 1247) 535

general jurisdiction of the High Courts.²² In other words, a litigant must choose a court with primary jurisdiction over the subject matter and ‘parties’.²³ By so doing, the Court of Appeal have clearly amplified the obiter dictum in the *Adetona*’s case to the effect that fundamental rights jurisdiction is not ‘*sui generis*’ in the sense that it is dictated by the general jurisdictional provision of the Constitution.

The conclusion derivable from the foregoing is that the jurisdiction vested on the Federal and State High Courts to hear and determine matters of human rights infringement is to be exercised concurrently. Shedding light on this, Adah JCA (as he then was) in *SCC Nigeria Limited & Anor v David George & Anor*²⁴ held brilliantly that:

The reference to “a High Court” in this provision has created opportunity for any of the co-ordinate High Courts in a state where the breach occurs to handle or entertain. The only rider is that there are issues of special jurisdiction as conferred on the Federal High Court and the National Industrial Court. Any breach of the fundamental rights that relates to the special or exclusive jurisdiction of any of the Courts will be handled exclusively by such a Court. It is obvious that barring that fact any other breach of fundamental rights can be entertained by any of the High Courts, as the Courts share concurrent jurisdiction in fundamental rights enforcement.

In spite of the foregoing, the Supreme Court’s decision in *Grace Jack*’s case having not been set aside by the apex Court, it still remains the subsisting law on the issue of jurisdiction of courts in Nigeria in entertaining and determining fundamental right cases. The decision

²² *Osunde v Baba* (2014) LPELR-23217 (CA); *Udo v Robson & Ors* (2018) LPELR - 45183 (CA) to mention but a few.

²³ Elvis Asia, Jurisdiction in Fundamental Right Cases: A Commentary on the Court of Appeal’s Case Reliance on the case of *Adetona v Igele General Enterprises*’ available at <https://lawfuturepartners.com> > Accessed on 14th April 2024.

²⁴ (2019) LPELR-46963(CA).

serves very useful purposes of opening more judicial access to citizens to ventilate their grievances without any let or hindrance.

4. Jurisdiction of NIC in Human Rights Enforcement

The National Industrial Court was first established in Nigeria in 1976²⁵ following proliferation of trade disputes in the regular courts. Regular courts were not so equipped to handle technicalities involved in the resolution of such disputes which are clearly beyond the boundaries of existing common law. The newly established Court suffered series of shortcomings and limitations particularly in terms of restriction on its powers to entertain inter and intra trade disputes as well the issue of its orders and declarations being subject of judicial review by the other courts of co-ordinate jurisdiction.²⁶ Under the enabling decree, NIC was adorned with a status of a superior court of record. However, this was not captured as such in the then Constitution²⁷ which had hitherto made provision with respect to courts with superior status.

In the year 2006, concerted efforts were made to correct the shortcomings of the erstwhile NIC and this gave birth to the enactment of the NICN Act.²⁸ The Act became operational on the 14th of June 2006. Part of the laudable provisions in the new Act was the repeal of the application of Trade Disputes Act 1990 with respect to the newly established Court as well expansion of its powers to grant both injunctive and declarative reliefs which were hitherto non-existent under the abolished court.

In spite of the laudable provisions of the Act, the legal conundrum regarding the exact status and powers of the NIC still persisted as the Court like its predecessor²⁹ was not also listed in the 1999 Constitution as one of the courts of superior record despite copious allusion to this

²⁵Trade Disputes (Enquiry and Arbitration) Decree No. 7 of 1976.

²⁶BK Benedict, *The National Industrial Court: The journey so far* <<http://NationalIndustrialCourt.gov.ng/K12.Php>> accessed 11th April 2024.

²⁷ Constitution of the Federal Republic of Nigeria 1963.

²⁸ National Industrial Court of Nigeria (Establishment) Act No. 10 (2006).

Hereinafter NICN Act.

²⁹ The National Industrial Court established in 1976.

fact in the enabling Act.³⁰ Therefore, the perplexities and controversies that surrounded its status and jurisdiction still lingered on.

Worried by the challenges associated with these limitations on the status and jurisdiction of NIC, the Nigerian Government in a proactive legislative endeavour altered the 1999 Constitution to essentially reflect as well to adorn the newly established court with the status of superior court of record³¹ and also to confer jurisdictional exclusivity on it with respect to all labour matters.³²

It was by virtue of this alteration that a new vista became well entrenched as far as the jurisdiction of NIC with respect to novel areas like child labour, human trafficking as well as application and interpretation of Chapter IV of the Constitution as it relates labour matters, application and enforcement of international treaties is concerned.³³ The Third Alteration Act in essence vests on NIC an exclusive and expansive jurisdiction to hear and determine trade related disputes in Nigeria.³⁴ Like the Federal and State High Courts, NIC is by virtue of the Third Alteration Act vested with jurisdiction to hear and entertain matters pertaining to human rights in work place. It is now at par in status as superior court of record and a court of equal or concurrent jurisdiction with the Federal and State High Courts in human rights promotion and enforcement. However, the condition precedent to NIC assuming jurisdiction is still tied to the fact that the dispute must originate from labour, employment, trade unions and industrial relations in the workplace.³⁵ The rationale behind this position is inextricably

³⁰NICN Act (n28) s 1(2)(b)(a).

³¹ Third Alteration Act 2010 s 6 which added new sections 254A to 254F. See *Skye Bank Plc v Victor Anaemem Iwu* (2017) LPELR-42595(SC); *FCET Gusau v Abubakar* (2022) 12 NWLR (Pt.1843) 125

where the courts have pronounced on the effect of the alteration on the status of NICN as 'superior court of record with exclusive jurisdiction on labour matters.

³²*ibid*, Third Alteration Act s 254C.

³³*ibid*, s 254C(1)(g) – (i).

³⁴Obaje Enemaku, 'Exclusive and Expansive Jurisdiction of the National Industrial Court: The Constitution (Third Alteration) Act 2010 in Focus' *Commonwealth Law Review Journal* 6 (2021)73-84.

³⁵Ishola, Adeleye and Momodu (n 3) 105.

tied to the obvious fact that the original jurisdiction of NIC is firmly rooted in the understanding that this is a specialized court established to deal with industrial or employment matters and others incidental thereto which human rights disputes in work place is an integral part.

That the NIC is seised of jurisdictional competence to handle human rights enforcement cases is now firmly established. However, there is palpable controversy as to nature of human rights jurisdiction to be exercised by the NIC given that the Federal and State High Courts have been vested with this power by the Constitution as well. There is therefore the need to further interrogate in the next part of this article on whether the legislative benevolence vested by the Third Alteration Act on the NIC divests or ousts the general jurisdiction from the Federal and State High Courts in the enforcement of human rights violated within the work place.

5. Critique of NIC and Human Rights Protection and Enforcement

The momentous ovation which heralds the philosophy behind the enactment of the Third Alteration Act would remain a mirage in the light of the obvious lapses in the current position of the jurisdiction of NIC with respect to labour related matters of human rights vis-à-vis the general jurisdiction of Federal and State High Courts. The jurisdictional collision is indeed inevitable in the light of other provisions of the Constitution.³⁶

The exclusive competence of the NIC to hear and determine all cases of human right violations emanating from work place limits directly the powers of Federal and State High Courts. This is becomes more practical in the light of the transitional provisions to the effect all pending labour related cases in both the Federal and State High Courts

³⁶See *1999 Constitution (as amended)*. The opening paragraph of section 254C(1) provides that: ‘Notwithstanding the provisions of section 251, 257 and 272 and anything contained in this Constitution...’;

section 251 deals with the exclusive jurisdiction of the Federal High Court; section 257 deals with the jurisdiction of the High Court of the Federal Capital Territory, Abuja to hear and determine any civil or criminal proceedings; and section 272 deals with the general jurisdiction of the High Court of a State.

as at the time of commencement of the Act are to be transferred to the NIC.³⁷

In spite of the real dangers inherent in the propriety of NIC's exclusive jurisdiction in labour related enforcement cases, it is yet to receive judicial disapproval, but rather it has attracted more judicial restatement and support.³⁸ The judicial solidarity in support of exclusive jurisdiction of NIC on labour related human rights cases stem from the understanding that in giving meaning to section 46 of the Constitution which is the foundational basis of interpretation and enforcement of fundamental human rights Nigeria, a community reading of other provisions of the Constitution including but not limited to provisions conferring exclusive jurisdiction on NIC should be employed. In other words, the Constitution should be read as a whole. This position clearly accords with the cardinal principles of interpretation of statutes.³⁹

Concerns have been raised as to whether NIC would be able to grapple with enormity of human rights enforcement claims in work place given its newly knitted regalia of exclusivity. The consciousness of citizens to approach this court in an event of infraction of human rights in work place has become unprecedented due to unfair employment practices.⁴⁰ The failure of NIC in this regard would negate the very fulcrum and basis upon the Court was established which is meant to enthrone access and expeditious determination of disputes.⁴¹ With limited facility and manpower compared to Federal and State High Courts which are well staffed and evenly spread throughout the Federation, NIC's exercise of exclusive jurisdiction on labour related human rights enforcement cases is bound to suffocate it by virtue of the new judicial work load.⁴² There is no gain dissipating energy on this legislative imbroglio but to engage

³⁷ NICN Act s 24(3).

³⁸ *FCET, Gusau v Abubakar* (2022) 12 NWLR (Pt.1843) 125.

³⁹ *PDP v INEC*, (1999) 11 NWLR (Pt 626) 200 at 142.

⁴⁰ Ishola, Adeleye and Momodu (n 3)12.

⁴¹ As restated in the *African Charter on Human and Peoples Rights* (*Banjul Charter*) 27 June 1981, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 art 1 (entered into force 21 October 1986 and Universal Declaration of Human Rights 1948.

⁴² This sentiment was expressed by Ishola, Adeleye and Momodu (n 3) 12.

in a holistic revisit of the legal framework on NIC in order to pave way for harmonious jurisdictional relationship with the other courts exercising concurrent powers.⁴³

Fundamental rights enforcement proceedings are *sui generis* due to huge demands for expeditious hearing and determination. They are time bound.⁴⁴ The current arrangement by which NIC is vested with exclusive jurisdiction to hear and determine labour related human rights infringement claims constitute a major setback to achieving the objectives set out in the Fundamental Rights (Enforcement Procedure) Rules 2009.⁴⁵ What is more, the FREP Rules 2009 which regulates generally the enforcement of Chapter IV of the Constitution which the NIC is equally vested with the requisite jurisdictional competence particularly in labour related human rights infringement by dint of the Third Alteration Act does not apply to NIC as it is not ‘a Court’ *simpliciter* within the spirit and letters of the Rules.⁴⁶ One begins to wonder how the NIC would deal with resolving disputes over the ‘interpretation’ and ‘application’ of the provisions of Chapter IV of the Constitution when it is not readily armed with the appropriate procedural tool-FREP Rules 2009. As it stands, the Constitution have not made any alternative rules to the FREP Rules 2009 when it pertains

⁴³Ifeoluwa Olubiyi, ‘Jurisdiction and Appellate Powers of the Nigerian National Industrial Court: Need for Further Reform’ 7 (3) (2016) *The Gravitas Rev of Business & Property Law* 44.

⁴⁴ FREP Rules 2009, Preamble at paragraphs 3(f).

⁴⁵ This is the procedural rules made by the Chief Justice of Nigeria pursuant to the provision of section 46 of the 1999 Constitution. The Rule is meant to guide the conduct of fundamental rights proceedings. Scholars have acknowledged the fact that the rules is both riddled with tales of strengths and weaknesses. See See Abiola Sanni, ‘Fundamental Rights Enforcement Procedure Rules, 2009 as a Tool for the Enforcement of the African Charter on Human and Peoples’ Rights in Nigeria: The need for Far-reaching Reform’ (2011) 11 *African Human Rights Law Journal* 511; Oludude Rufus Adeoluwa, ‘The New Fundamental Rights (Enforcement Procedure) Rules 2009: A Huge Relief to Human Rights Enforcement’ (2011) 16 *The Jurist* 206; Ishola, Adeleye and Momodu (n 3) 5 to mention but a few.

⁴⁶ The FREP Rules 2009, Order 1 Rule 2 defines a ‘Court’ to mean Federal High Court or the High Court of a State or High Court of the Federal Capital Territory.

to issues of human rights proceedings in Nigeria.⁴⁷ Certainly resort to normal rules and procedure of the NIC would not serve as a legitimate alternative or equivalent to the FREP Rules.

In contrast, the power of the High Court to hear and determine all applications brought before it and to make appropriate orders in deserving cases⁴⁸ attests to the fact that it is a ‘Court’ that is properly equipped to grapple with the challenges of ‘unlimited jurisdiction’ vested on it by the Constitution.

There is also a jurisprudential debate over the powers of NIC to enforce the provisions of Chapter IV of the Constitution. It has been contended that the jurisdictional powers of the NICN only relates to ascertainment of instances of violation of human rights in work place without more and that the enforcement powers only resides with the High Courts.⁴⁹ There is also implications on right of appeal from the decision of court of first instance like the Federal High Court, High Court, and NIC. Where Federal and State High Courts are saddled with interpretation of the Chapter IV of the Constitution, rather than in the enforcement of rights contained therein whether as Courts of first instance or sitting on appeal, how the right of appeal is exercised depends largely on the nature of the decision appealed against. In considering whether an appeal is of right to the Court of Appeal or the Supreme Court, a very careful distinction is usually made between appeals on decisions emanating from questions of ‘interpretation of any provisions of the Constitution and decisions bordering on infringement of the fundamental rights captioned under Chapter IV of the Constitution.

In essence, an unsuccessful party who seeks to appeal against the decision of the NIC is required to exercise his right of appeal to the

⁴⁷ For detailed comments on this issue, see Dakas CJ Dakas, “Judicial Reform of the Legal Framework of Human Rights Litigation in Nigeria: Novelities and Perplexities’ in Epiphany Azinge & Dakas CJ Dakas, eds, *Judicial Reform and Transformation in Nigeria: a Tribute to Hon Justice Dahiru Musdapher*, GCON, FNIALS, Chief Justice of Nigeria (Lags: Nigerian Institute of Advanced Legal Studies, 2012) 334.

⁴⁸ CFRN 1999 s 46(2).

⁴⁹ Ishola, Adeleye and Momodu (n 3) 14.

Court of Appeal or to the Supreme Court by way of leave of and not as of right⁵⁰ for reasons that the nature of fundamental rights over which exclusive jurisdictional competence bestowed on NIC relates, is more or less a civil cause arising from ‘employment’, ‘labour’, ‘industrial relations’, ‘trade unionism’, ‘employer association’ or any other matter and strictly speaking not necessarily tied to the provisions on fundamental rights elaborately entrenched in Chapter IV of the Constitution.

The above legal position was well articulated by the Court of Appeal in *Smart Mark Limited v Ajuziogu*.⁵¹ In this case the Respondent filed an action at the National Industrial Court claiming among others a declaration that his suspension was unlawful and that the appointment is still subsisting. The Respondent as claimant at the trial court sought for monetary damages of the sum of ₦83,286.93k as special damage and sum of ₦1,000,000 as general damages in addition to the cost of the suit. The trial Court entered judgment in favour of claimant. The Appellant appealed to the Court of Appeal. On the main issue for consideration as to whether the Appellant’s appeal is competent, the Court of Appeal in declaring the appeal incompetent held that ‘the claim set out above cannot be referred to as a fundamental right action under Chapter IV of the Constitution. It is a civil matter’. The Court of Appeal relied on *Sky Bank PLC v Iwu*⁵² where the Supreme Court held that:

...the decisions of the National Industrial Court are appealable to the Court of Appeal as of right in fundamental right cases and criminal cases and with leave of the Court of Appeal in all other civil matters which the National Industrial Court has exercised its jurisdiction. Emphasis added.

The implication of the above judicial decisions is that the progressive legislative intent that prompted vesting of exclusive jurisdiction on the

⁵⁰ CFRN 1999, Ss 233(2)(b) and 241(1)(c) as applicable to Supreme Court and Court of Appeal respectively.

⁵¹ (2022) LPELR-58904(CA).

⁵² (2017) 16 NWLR (Pt 1390) 24.

NICN with respect to labour related human rights cases are illusory and unachievable under the present arrangement as it hamstrung constitutional right of appeal of any party who may choose that pathway to justice through NIC as a court of first instance in cases of labour related fundamental rights infringements.

6. Jurisdiction of National Industrial Court: Lessons from Uganda and South Africa

It is beyond argument to note that the exercise of exclusive jurisdiction by NIC based on the provisions of the Third Alteration Act has provoked series of backlash against the “golden Court”. It is obvious that NIC has become an albatross that impedes rather realize the goal of realization and enjoyment of fundamental rights.

For purposes of comparison, two foreign jurisdictions -Uganda and South Africa as Commonwealth countries are purposively selected for analysis. This scholarly adventure is conceived to afford Nigerians an opportunity of drawing from their lessons on the practice and procedure of industrial or labour courts in other jurisdictions.

The industrial Court of Uganda is an established Court pursuant to the Labour Disputes (Arbitration and Settlement) Act.⁵³ The Court provides an avenue that encourages peaceful resolution of employment related grievances through arbitration and other forms of alternative dispute mechanisms.⁵⁴ In contrast to NIC, the Industrial Court of Uganda has concurrent jurisdiction with the High Court to determine any labour dispute referred to it under the Act.⁵⁵ Under the Judicature Act of Uganda, this Court also has jurisdiction to handle labour disputes referred to it by the High Court.⁵⁶

⁵³ Cap 224, Laws of Uganda 2006 . Hereinafter LADASA. The Act was assented to on the 24th May 2006 and commenced on the 7th August 2006 by virtue of a Ministerial statutory instrument.

⁵⁴*Ibid*,s 7.

⁵⁵*Ibid*, s.8.

⁵⁶Constitution of Republic of Uganda 1995, arts. 138 (1) hereinafter ‘Uganda Constitution’; Judicature Act s 27 (as amended) by Administration of the Judiciary Act , 2020 (Act 8 of 2020).

Like its Nigerian counterpart, the High Court of Uganda is also a Court of unlimited original jurisdiction in all matters.⁵⁷ It also exercises appellate powers and other jurisdiction as may be conferred on it by Act of Parliament.⁵⁸ However, in contrast to the NIC, the High Court of Uganda does not have jurisdiction over any question relating to interpretation of the Constitution as same is vested in the Court of Appeal sitting as Constitutional Court.⁵⁹ However, in the enforcement of Chapter IV of the Uganda Constitution which essentially dealt with fundamental rights, any person aggrieved may apply to the any 'competent court' for redress which may include compensation.⁶⁰ Competent court for this purpose means superior courts recognized and listed by the Uganda Constitution as such.⁶¹

Unlike NIC, Industrial Court of Uganda is not 'a superior court of record' and thus does not enjoy the status of a competent court with respect to exercise of jurisdiction on question of enforcement of Chapter IV of Uganda Constitution which is *impari materia* with Chapter IV of the Nigerian Constitution.⁶²

Drawing from the above, the dilemma arising from exclusive jurisdiction of NIC and the likelihood of palpable jurisdictional conflicts with Federal and State High Courts with respect to determination of labour related human rights infringement in a given case would never arise under the Uganda legal arrangement. This a lesson for Nigeria on the need to draft legislations with precision and in iron cast so as to prevent cases of overlapping or duplication of responsibilities.

⁵⁷*ibid*, Uganda Constitution art 139(1), *ibid*. Judicature Act (as amended) s14

⁵⁸*ibid*, Uganda Constitution art. 140. Under this provision, the High Court handles election cases as well.

⁵⁹*ibid*, Uganda Constitution art 137.

⁶⁰*ibid*, Uganda Constitution art 50.

⁶¹ Judicature Act (as amended) section 1 dealing with interpretation clause provides that 'superior courts' means the Supreme Court, the Court of Appeal and the High Court.

⁶²*ibid*, Uganda Constitution art 129 (1) and (2).

South Africa is another jurisdiction where the practice and procedure of the institutional mechanism for resolving labour disputes deserve comparative scrutiny for the purpose of unveiling positive lessons for Nigeria. Labour Court and Labour Appeal Court as court of first instance and appellate court on labour matters were established pursuant to Labour Relation Act.⁶³

The Labour Court has concurrent jurisdiction with the High Court of South with respect to question of violations of fundamental rights as enshrined in the Constitution.⁶⁴ The Court also exercises competence over labour related disputes involving employers and employees, trade unions and employers' association. However, unlike NIC with vested exclusive jurisdiction that is too wide in form and context, the Labour Court of South Africa is exclusively saddled with judicial competence in very limited areas of employment relations such as collective bargaining, locks, strike, trade unions among others.

Like the Third Alteration Act which vests exclusive jurisdiction on the NIC on labour related disputes, the LRA purportedly provides for ouster of High Court's jurisdiction on labour matters but with a proviso that negate the general intendment of the Act by subjecting the entirety of the provision of LRA to the Constitution of South Africa.⁶⁵ Unlike the NIC whose exclusive jurisdiction is expressly stated in the Nigerian Constitution,, the exclusive jurisdiction of Labour Court is restricted to matters elsewhere in terms of the Act or in terms of any other law to be determined by the Labour Court.⁶⁶ This unfortunate snag has raised series of concerns within judicial circle as to the true legal construction to be accorded to section 157 of the LRA. ⁶⁷

⁶³Labour Relation Act 1996 as amended in 1998 and 2002 respectively Hereinafter 'LRA'.

⁶⁴ *ibid.* LRA s 15(2).

⁶⁵ *ibid* LRA s 157(1).

⁶⁶As such, matters mentioned in sections 9, 24(7), 26, 59, 63(4), 66(3), 68(1) and 69 of the LRA would be the proper matters contemplated by section 157(1), upon which only the Labour Court would have jurisdiction to the exclusion of the High Court.

⁶⁷*Mondi Paper (A Division of Mondi Ltd) v Printing Wood and Allied workers Union & Others* (1997) 18 ILJ 84 (D). The Supreme Court of South in *Fedlife Assurance Ltd*

Unlike its counterpart in Nigeria, Labour Court in South Africa is not exclusively vested with general jurisdiction on labour matters save and except the limited spheres of employment. Beyond this limit, the High Court of South Africa has concurrent jurisdiction with Labour Court on wide range of disputes emanating from employment relations which are clearly outside the province of exclusive competence of Labour Court.

Under the LRA, no special provision vesting exclusive jurisdiction in any courts is made in respect of labour related human rights enforcement. This is in contrast with NIC which exercises exclusive competence on human rights issues arising from work place and which is the centre point of the legal conundrum interrogated in this paper.

The cumulative understanding of the foregoing practice and procedure of similar courts in Ugandan and South Africa constitute big lessons to Nigeria as to which court should exercise jurisdictional competence on enforcement of fundamental rights be it on labour related issues or otherwise is critical and needs to be streamlined jealously to avoid the unfortunate jurisdictional quagmire facing NIC.

7. Observations and Concluding Remarks

In this discourse, the paper critically ventured into interrogation of the knotty issues surrounding the jurisdiction of NIC particularly in labour related human rights enforcement in work place which has attracted more judicial and scholarly debates owing to issue of the exclusive powers vested on the NIC. In the prognosis, the paper brought to light cardinal issues that constitute pitfalls necessitating a rethink on the jurisdiction of NIC as presently constituted in the Third Alteration Act.

While not desecrating the philosophy behind the pragmatic advances made by the legislature in this regard, it is indubitable that the exercise was done without due regards to other provisions of the Constitution dealing with the questions of interpretation and enforcement of

v *Wolfardt* 2001) 22 ILJ 2407 departed from the ratio of *Mondi* Case that held that LRA ousted the jurisdiction of High Court of South Africa on labour related matters.

fundamental rights generally given that the Constitution had conferred general jurisdiction on the High Court without any qualification whatsoever.⁶⁸ It therefore follows that the taking away of such powers and vesting it on the NIC was a legislative blunder. At best both the High Courts and the NIC would have been granted concurrent jurisdiction on labour related human rights cases as a means of dousing the raging controversies.

In the light of the foregoing, an amendment of section 254C of the Third Alteration Act is required. The proposed amendment should deal directly with paragraphs (d) by inserting the phrase- '*subject to and without prejudice to the jurisdiction conferred on the High Court in section 46 (1) of this Constitution, which shall also include labour and employment related human rights issues*'.⁶⁹ By dint of this amendment, the issue of lack of clarity in the jurisdiction of both High Courts and the NIC on issues of labour related human right cases would have been laid to rest as both the High Court and NIC would be exercising concurrent jurisdiction forthwith.

As a matter of procedure, a consequential amendment of the FREP Rules is roundly indispensable. This would allow for insertion into *Order 2 Rule 1* the term '*and National Industrial Court*' to justify resorting to the FREP Rules whenever any dispute with respect to section 254C (1) (d) of the Third Alteration Act is brought before the NIC. This would once and for all bring to an end the argument regarding propriety of NIC in applying the FREP Rules, notwithstanding the sweeping effects of section 254D (1) of the Third Alteration Act which purports to equate NIC with High Court in the exercise of the jurisdiction conferred on it by the Constitution or any Act of the National Assembly.

Similarly, consequential amendment of other implicated provisions of section 7(1) (a) of NICN Act (Parent Act) is inevitable so as to align it with the suggested review of section 254(C) above which aims to support the call for concurrent exercise of jurisdiction by NIC and High Court in respect of labour related human rights enforcement cases.

⁶⁸ See CFRN 1999 s 46(1).

⁶⁹ Emphasis is mine. Similar sentiment is shared by Ishola, Adeleye and Momodu (n 3) 21.

Based on the comparative analysis, it is clear that both jurisdictions – Uganda and South Africa deliberately avoided sinking into the same web of jurisdictional conflict facing NIC in their legislative frameworks by allowing each of their respective Labour Courts to maintain their paths separately and where necessary as it were in South Africa, vesting concurrent powers on the High Court and the Labour Court with respect to questions of fundamental rights enforcement in employment relations. From all angles, this obviously remains the best choice.

As a means of dealing with the enormity of extra work load brought about with the exclusive and expansive jurisdiction on labour related disputes vested on the NIC, it is recommended as a practical institutional measure to create additional divisions which are to be further enhanced with deployment of Judges and personnel who are versed with the use and handling of modern technologies that align with expeditious case management strategies so as to curtail the challenges of delay usually encountered in the administration of justice system.⁷⁰

⁷⁰ Brown E Umukuro and Peter A Obereh, 'Is the National Industrial Court (NIC) Still a Special Court? A Review of the Extra Luggage of Ancillary Jurisdiction of the NIC as a Disservice to Labour Justice' *Beijin Law Review* 13 (2022) 948-966. DOI: 10.4236/blr.2022.134061.