



The Role Of The National Industrial Court In The Promotion Of Industrial Harmony In Nigeria

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ABSTRACT

The National Industrial Court (NIC) has now been established as a specialized court with full civil and criminal jurisdiction over labour, employment and industrial related issues. The trade disputes envisaged by the enlarged powers of the NIC include workers welfare, emoluments, job security, safety, pension, just to mention but a few. Available labour legislation in Nigeria have not been able to promote industrial harmony as guaranteed by international conventions, treaties and protocols on labour except that some of these conventions, treaties and protocols have not been domesticated in Nigeria to enable the citizens enforce their provisions. However, the NIC has now been repositioned by the law to enhance industrial harmony as it is now empowered to apply international conventions, treaties and protocols that relate to labour disputes which are ratified by Nigeria. This papers therefore examines how the NIC has been able to take advantage of this new legal regime to promote industrial harmony in Nigeria. Notwithstanding this new legal regime, it was observed that the court still has some challenges. The paper therefore concludes by making some useful recommendations for a way forward towards a dynamic NIC.

Keywords: NIC, Industrial Harmony, Trade Disputes,

INTRODUCTION

The National Industrial Court has now been conferred with exclusive jurisdiction for civil causes and matters relating to labour, employment, trade union, industrial relation, child labour, child abuse, human trafficking and related matters. The issue of whether the High Court of the state has limited or unlimited jurisdiction over all civil matters has now been removed from the realm of controversy. The available labour legislations in Nigeria have failed to promote industrial harmony compared to international conventions, treaties and protocols on labour. The position of the law is that while ratification makes an international convention's provisions to be legally binding on the member states, domestication makes it possible for the citizens to enforce the provisions in court. Section 254 © (2) of the Constitution has now been amended to bring about a change in the constitutional provisions of section 12 of same which makes it mandatory for any international treaty to be enacted by the National Assembly before being applicable in Nigeria. Section 12 of the Constitution no longer binds all labour related international conventions, treaties and protocols ratified by Nigeria. The provisions of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 stated above is quite novel in the annals of legislative enactments in Nigeria. The import of the above section that has done away with the issue of domestication is that Nigerians can now enforce the through the NIC provisions of all labour related international conventions, treaties and protocols without having to wait for the National Assembly to legislate on such issues. This development no doubt will go a long way to promote industrial harmony.

The National Industrial Court

Labour court was for the first time established in Nigeria with the establishment of the National Industrial Court (NIC) under the Trade Disputes Act 1976.¹ The then operative Constitution (the 1963 Constitution) was amended to accommodate the court among the constitutionally recognized courts. With the advent of

the 1979 Constitution, there was a problem regarding the status, powers and jurisdiction of the court as it was neither included among the superior courts nor its power and jurisdiction defined in the constitution. The constitutionality of the status, power and jurisdiction of the court was therefore subjected to challenge.² This anomaly was addressed with the promulgation of the Trade Dispute (Amendment) Decree, 1992. The Decree conferred the NIC with the status of a superior court of record and the exclusive jurisdiction to entertain industrial disputes including inter and intra union disputes. The situation remained without problem until after the restoration of constitutional government in 1999 when the constitutionality of the position became an issue. The enactment of the National Industrial Court Act, 2006 also conferring the status of a superior court of record on the court with exclusive jurisdiction to entertain industrial disputes and powers of a High Court could not help the situation as the Supreme Court in *National Union of Electricity Employees v. Bureau of Public Enterprises*³ held that the National Industrial Court was not a superior court of record. The Court cited sections 6 (3) and 6 (5) of the 1999 Constitution which declared and listed the superior courts of record, and did not include the National Industrial Court. The Supreme Court did not stop there for it went further to pronounce the National Industrial Court as being inferior and subordinate to the High Court notwithstanding the provision of the National Industrial Court Act.

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act⁴ was enacted to amend the relevant sections of the 1999 Constitution and make adequate provision to lay to rest the controversies surrounding the establishment and composition of the NIC, status of the NIC and its judges, powers and jurisdiction of the NIC, etcetera to enable it play its role. The NIC now has jurisdiction over all employment and labour issues including occupational health and safety, employee's compensation. Although the NIC is still a court of co-ordinate jurisdiction with other superior courts of record in its sphere of authority like the Federal High Court, the State High Court and the High Court of the Federal Capital Territory, Abuja. However, its jurisdiction is exclusive to it and cannot be concurrently exercised or shared among the other High Courts in the same pedestal of authority or power. The orthodox view of lawyers that master-servant issues are outside the jurisdictional scope of the National Industrial Court of Nigeria is now no longer tenable.⁵

The importance of a special court for the adjudication of industrial dispute cannot be over emphasized. Conflicts arising from labour and industrial relations impact significantly on socio-economic development, thus the search for an industrial dispute resolution mechanism or approach that would minimize the adverse effect of industrial unrest is important to every country. Labour courts are established in almost all countries across the globe and they vary from one country to another, depending on the needs and circumstances of a country. They however have some common features that can be identified in terms of composition and structure, scope and jurisdiction, court access and court proceedings.⁶

Applicability of International Labour Standards

Before the passage of the National Industrial Court Act,⁷ the position of the law particularly as it relates to the applicability of "International Labour Standards" is that such Conventions, Recommendations, Protocols, etcetera in so far as it has not been domesticated by the National Assembly, it has no force of law in Nigeria.⁸

Again, Section 254 C (1) (2) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act provides that the National Industrial Court shall have power to apply international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, etcetera.

It follows therefore that under the present legal regime ie from 2006, the National Industrial Court is enjoined to have regard to international best practice in labour or industrial relations in discharging its mandate under the law establishing it. Section 7 (6) of the National Industrial Court Act provides as follows:

1. Then Decree No. 7 of 1976.

2.. *Udoh v. Orthopaedic Hospitals Management Board & Ors.* (1993) 7 N.W.L.R (pt. 254) p. 488.

3. (2010) 7 N.W.L.R (pt.1194) p. 538.

4. 2010.

5. Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010. Section 254; particularly section 254 c (1).

7. 2006.

8. Constitution of the Federal Republic of Nigeria 1999 (as amended) section 12 (1).

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 practices in labour or industrial relations.

There is absence of statutory protection against unfair dismissal or termination of employment in Nigeria. However, the International Labour Organization in its efforts to set standards of practice in the work place particularly as it relates to security of tenure of employment fashioned out Recommendations concerning termination of employment and Convention on Termination of employment. The organization was influenced in its decision to fashion out the above Recommendation and Convention as a panacea to the ugly situation where an employer could dismiss his employee without any reason or motive. Such situation is described as a violation of all things unfair and just. It is also said that such a situation amounts to violation of the I.L.O Convention which provides that:

*The employment of a worker shall not be terminated unless there is valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service*⁹

The employer is required to give a valid reason for dismissal or termination. A reason is valid if and only if it is connected with the capacity or conduct of the employee. The relevant Convention on unfair dismissal is therefore the I.L.O Termination of Employment Convention which was adopted by the organization as a result of changes and developments in different countries on the subject of termination of employment. Article 2 of the Convention provides that “the convention applies to all branches of economic activities and to all employed persons”¹⁰

By the provisions of Article 2 as stated above, the provisions of the Convention apply to employees in purely master /servant relationship and to employees whose contract of employment is backed by statutes without any discrimination. This is unlike the position in Nigeria Labour and Industrial law jurisprudence where the rule is that an employer can terminate the employment relationship particularly that of the private employee with reason or for no reason at all. The employer need not show any motive or give a reason for the termination which has received judicial blessing in a plethora of authorities from our appellate courts in Nigeria.

Since no distinction exists in I.L.O standards which are embedded in the I.L.O Termination of Employment Convention, the distinction with respect to the available remedies to those distinctive categories of contract of employment in Nigeria becomes *non-sequitor*. Thus the appropriate authority like the National Industrial Court to determine the fairness or otherwise of the termination can make any order that is appropriate in the light of the facts and circumstances of a particular case. This is made manifest in the provisions of Article 8 and 9 of the Convention. The provisions of these articles are set out *seriatim*. Article 8 (1) provides that:

A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body such as a court, labour tribunal, arbitration committee or arbitrator at the place where termination occurred

Article 9 (1):

The bodies referred to in article 8 of the Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

9. I.L.O Convention 158 on Termination of Employment, 1982, Article 4.

10. Umenwek, M.N and Anushiem, M.I. “Curbing the Incidence of Unfair Dismissal in Nigeria: Lessons from other Jurisdictions” (2015) 3 *I.J.B.L.R* p.95.

In doing so, the body will shift the burden to proving the reasons for termination to the employer. The court shall also have regards to evidence produced by parties and procedures provided by national laws. The body shall also have to decide whether the reasons adduced for the termination were valid reasons recognized by Articles 4 of the Convention.¹¹

The implication of the above is that any determination of contract of employment in any manner without reason amount to unfair dismissal. Still on valid reasons for determination of contract of employment, Article 6 of the Convention provides that temporary absence from work because of illness or injury shall not constitute a valid reason for termination. Also Article 7 of the Convention provides that the employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot be reasonably expected to provide this opportunity. Thus the provisions of Article 7 reiterates the fundamental principles of fair hearing in the determination of contract of employment. This is contrary to the common law position of termination at will as applicable before now.

A careful and painstaking review of the International Labour Organisation standards on unfair dismissal deducible from the Convention on Termination of Contract of Employment shows that certain dismissal and/or termination of contract of employment in Nigeria particularly those in the private sector amounts to unfair dismissal when tested against the International Labour Organisation Convention on unfair dismissal. The problem however is that where the international best practice is the product of an I.L.O Convention (including Recommendation or Codes of practice) can the National Industrial Court of Nigeria take account of it even if there is evidence that Nigeria did not ratify the Convention? Or even where the Convention has been ratified, can the National Industrial Court have regard of same when adjudicating?

In other words, does section 7 (6) of the National Industrial Court Act or Section 254 (c) (1) (2) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, meet the said domestication requirement of section 12 of the 1999 Constitution?

Kanyip, is of the opinion that section 7 (6) of the National Industrial Court Act and Section 254 (c) (1) (2) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act meets the said domestication requirement and to hold otherwise means that the very basis of the National Industrial Court of Nigeria and all that the dispute resolution structure under part 1 of the Trade Dispute Act represents will collapse.¹²

Enforceability of Collective Agreements

Another critical point is on the issue of non-enforceability of collective agreements which has been held by several judicial pronouncements to be gentleman's agreement and so are binding in honour only. The problem is whether this position of the law will still be maintained in the same way having regard to the clear provisions of the National Industrial Court Act.

Kanyip, observed critically that section 7 (1) (c) (i) of the National Industrial Court Act grants the court the jurisdiction to interpret collective agreements amongst other documents. Section 54 (1) of the same Act then goes on to define a trade dispute to include any dispute between employers and employees, including disputes between their respective organizations and federations which is connected with the conclusion or variation of a collective agreement. The question to be asked is why the law would go to this length if the desire is not that collective agreement should be binding and enforceable. Of what use is the power of the court to interpret or enquire into matters relating to the conclusion and variation of collective agreements, if the desire is not that they should be binding. This common law principle that collective agreements are binding in honour only cannot stand in the face of the provision of sections 7 (1) (c) (i) b, 15 and 54 of the National Industrial Court Act.¹³

From the foregoing, no doubt, the National Industrial Court Act and now the Constitution of the Federal Republic of Nigeria (Third Alteration) Act have made giant strides in shaping the way in which labour disputes would be resolved in the country. The limits of the law are yet to be known but a good deal will be expected in terms of judicial interpretation of the respective provisions of the Act and the constitution particularly from our appellate courts. The way for the resolution of labour disputes in the country has now

11. Ibid.

12. Kanyip B.B, "Current Issues in Labour Dispute Resolution". (Retrieved from <http://www.nicn.gov.ng/k2/phd>. on the 28/7/2017 at 11:34 a.m p. 67).

13. Ibid p. 69.

been fully charted. What all the practitioners make of it remains a critical issue. A good deal of learning on the new dispensation is absolutely necessary if the desired results are to be achieved.

The test for all practitioners is how to utilize the new current legal regime in advancing the cause of justice for industrial harmony.

OBSERVATIONS / CONCLUSION

In course of this work it has been observed that there is risk involved in transplanting legal regimes, institutions or policies. Without any doubt, legal transplant is a veritable means to develop and or re-engineer the society. But such a venture must be done mindful of the possibility of discrepancies in social, political, economic and cultural underpinnings in both the transferring and recipient countries. Thus legal, transplant must be done "in context." In essence, the new trend in labour relations currently experienced under the current legal regime though commendable might have some challenges in gaining acceptability and applicability within Nigeria setting.

It is worth noting that the generality of our people are not accustomed to resolving disputes through the medium of litigation. The cost of litigation may be too expensive for the ordinary employee to bear. There is also the possibility of a backlash on an employee who challenges the conduct of the employer. In the circumstances, glaring acts of discrimination, abuse or unfairness may go unchallenged.

Again, many states of the federation like Delta State have no judicial division of the court for easy accessibility and affordability to litigants who are desirous of seeking redress in the court having divested the Federal and State High Courts that are closer to the people with jurisdiction over labour and employment related disputes.

RECOMMENDATION

There should be periodic sensitization programmes through out the federation to create awareness to the general public of the powers and jurisdiction of the repositioned National Industrial Court of Nigeria through seminars, workshops, conferences, and so on, in view of the level of illiteracy in Nigeria and lack of knowledge and awareness regarding labour and industrial related matters and disputes.

There should be judicial division of the National Industrial Court in all the 36 states of the federation for easy accessibility to litigants who are desirous of seeking redress in the court having divested the Federal and State High Courts that are closer to the people with jurisdiction over labour and employment related disputes. This will enhance a better justice delivery system that is cost free and reduce the hardship experienced by people in states like Delta State that do not have a division of the court..

A Multi Door Court house should be established at the National Industrial Court with Alternative Dispute Resolution facilities and materials as a means of settling labour disputes over which the court is vested with jurisdiction to handle as such step will save cost and time that would have been expended on full litigation, and also decongest the court of cases of labour diputes.

As a matter of fact, proactive judges should also be appointed into the National Industrial Court. The judges should go beyond the mere letters of the Constitution of the Federal Republic of Nigeria (third alteration) Act to achieve the utmost aim of the provisions of the Constitution on the jurisdiction of the National Industrial Court. With this, the seeming legislative lapse in the provision of the Constitution will be obviated and the implementation of the International Labour Organisation standards on unfair dismissal as well as any other labour treaties and conventions ratified by Nigeria will be achieved without the requirement of domestication.

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