UNIVERSITY OF UYO LAW JOURNAL

VOLUME 10 (2022)

Published by the Faculty of Law
University of Uyo, Nigeria

UNIVERSITY OF UYO LAW JOURNAL

VOLUME 10 (2022)

Print ISSN: 1119-3573

Published by the Faculty of Law
University of Uyo, Nigeria
facultyoflaw@uniuyo.edu.ng

Citation:
(2022) 10 University of Uyo Law Journal

EDITORIAL BOARD

EDITORIAL COMMITTEE

CONTENTS

EDITORIAL COMMENTS

I am pleased to present Volume 10 of the *University of Uyo Law Journal*. The Editorial Team has worked tirelessly to bring you this issue, comprising ten scholarly papers of nine articles and a statute review. This edition of the journal offers a range of topical and insightful ideas on themes in the fields of international investment arbitration, access to information law, trade dispute and industrial jurisprudence, insurance law, testamentary disposition, pension administration law, taxation law, international criminal law, and legal/constitutional theory. This is in accord with the aim of the *University of Uyo Law Journal* to provide a forum for the widest discussion of subjects on the law and contemporary issues of sub-national, national and global concern.

This edition opens with a paper by Osawe Omosede Andre, which examines the nexus between access to information law and corruption. It argues that corruption impact on access to public information as it works to promote secrecy. As such, any advancement towards opening governments to public scrutiny must foster anti-corruption efforts, which must of necessity validate the demand for openness in government actions and inactions as a right. Thus, the paper notes that a virile public information system will engender transparency that is necessary to expose corrupt acts, as access laws promote public right as well as serve as deterrent to corruption.

The joint paper by Francis Ohiwere Oleghe and Olusesan Oliyide examines the relationship between human rights and international investment arbitration using Weiler's concept of lost siblings. It argues that international investment arbitration (IIA) has elicited so much attention in recent times. So much so that the United Nations Commission on International Trade Law and the International Centre for the Settlement of Investment Disputes have engaged in programmes aimed at reforming the investor-state dispute settlement (ISDS) system, of which IIA is a subset. It makes the point that while the ISDS system has evolved with protection for investors, the experience of host states remains that of misgivings about the system's usefulness, which have resulted in agitations for its reform to give adequate consideration to human rights norms in ISDS cases. The aim of which is to strike a balance between investors' bilateral investment treaty (BIT) rights and their human rights obligations.

The papers by Ogancha Ogbole and John Inaku offer exposés on trade dispute jurisprudence. On the one hand, the former paper examines the constructions of 'trade disputes' and 'state trade disputes' under Nigerian labour laws and regulations. It argues that the recognition of the concept of state trade disputes under Nigerian labour law contributes in expanding the frontiers of trade disputes in the workplace, which poses recondite challenges for the current constitutional arrangement for labour jurisprudence in Nigeria. It therefore recommends the unbundling of labour, as an item under the Exclusive Legislative List, to pave the way for the involvement of state legislative assemblies if the notion of state trade dispute as conceived by Nigerian labour law is to be properly harnessed. On the other hand, the latter paper examines the impact of the finality of the decision of the Court of Appeal on labour and industrial disputes and how it impacts on the development of labour and industrial jurisprudence in Nigeria, in view of the level of expertise available to the Court of Appeal. It therefore proposes packing the Court of Appeal with judges from the National Industrial Court or, in the alternative, for the establishment of a National Labour Appeal Court, constituted of labour and industrial law experts, to hear appeals from the National Industrial Court of Nigeria.

Kehinde Anifalaje's paper considers the regulation of compulsory liability insurance in Nigeria as a means of public protection from the risk of death, bodily injury or loss of property. The paper examines the laws regulating compulsory liability insurance in Nigeria and the enforcement of the rights of third parties within the context of the common law rule of privity of contract. It argues that the current tort-based system of compensation coupled with some regulatory challenges patently constitute a hindrance to a timely enforcement of the right of third parties under the contract of insurance, and suggests, among other things, the institutionalisation of a no-fault system of compensation that would guarantee quick and effective compensation of persons, who suffer losses by means of death, bodily injury or loss of property.

Also advancing the need for improved public protection, Lilian Nwabueze's paper examines public protection through a change in approach towards better Wills by means of legislative amendment to Wills law to include the use of technological devices in communicating Wills; while and the paper by the duo of Onikosi Adedeji and Ahmed Muhammed-Mikaaeel examines the legal regime for pension administration in Nigeria, which it argues possess inherent lapses, including lack of direct prosecutorial power on the part of relevant agencies, unjust and insensitive

exclusion of the state and local government workers from coverage under the extant pension scheme and non-compliance of the pension scheme to Shari'ah.

The focus then moves to taxation law, in which Uche Jack-Osimiri, Anthony Ekpoudo, Rowland Ipoule and Amara Ijeomah comprehensively examine jurisdictional issues that emanate in the administration and practice of tax laws, arising from the jurisdiction of the National Assembly and State Houses of Assembly to exercise legislative power to promulgate tax legislation within the limits conferred by the Constitution. It proposes certain measures to bring about reforms for the smooth administration and practice of tax laws in Nigeria. Glory Okebugwu's paper thereafter examines the investigative and prosecutorial approaches in combating transnational crimes under international law. It argues for a neutral body that will ensure balance of conflicting interests in the investigation and prosecution of transnational crimes, as transnational crimes universally present certain challenges to national criminal justice systems. The paper, therefore, recommends the collective involvement of the international community, as well as the adoption of more proactive investigative approaches with long term control guarantees with human rights considerations.

The paper by Olanrewaju Aladeitan and Adeboro Adamson focuses on the loss of proprietary interest by a private entity on the basis of overriding public purpose in the context of a liberalised and privatised regime, which raises critical legal issue regarding the extent to which the legal framework for the acquisition of land for energy infrastructure development impacts on the rights of a landowner and the correlation to the effective performance of the Nigerian Electricity Supply Industry (NESI). The paper proposes a legal regime that is fair and balanced for operators/investors in sector, as well as for other stakeholders. The final paper, a statute review by Ekokoi Solomon, evaluates the Akwa Ibom State Map Establishment Law 2023. It argues that the AKS map law appears to be inconsistent and out of step with the constitutional provisions on boundary adjustment. This, the paper argues, is in view of the nature of the extant constitutional order, which requires the exercise of legislative power to promote the integrity of the legal/constitutional order.

There is evidently a wealth of good reading, thoughtful analyses and helpful materials in this volume of the journal. In effect, the authors have worked diligently to provide innovative perspectives on the issues covered by their papers, which have sub-national, national and international

concerns. We therefore welcome constructive feedback and suggestions on the issues covered in this edition. If there are any questions, comments or concerns, please do well to contact us at facultyoflaw@uniuyo.edu.ng

With gratitude to members of the Editorial Team and our external reviewers, who volunteered their time and intellect to enhance the quality of the papers selected, I welcome readers to turn the pages of this volume of the journal and embrace the wealth of information and knowledge contained in them.

Prof. Mojisola Eseyin
LLB (Ago-Iwoye), LLM (Uyo), PhD (Calabar)
Editor-in-Chief, University of Uyo Law Journal
Email: mojisola.eseyin@uniuyo.edu.ng

Finality of the Court of Appeal on Labour and Industrial Matters and its Impact on the Crystallisation of Labour Jurisprudence in Nigeria

*John Fidelis Inaku**

ABSTRACT

The Constitution of the Federal Republic of Nigeria 1999 makes the Court of Appeal the final court in civil appeals emanating from the National Industrial Court. A critical examination reveals that the jurisdiction of the Court appears to go beyond the mere interpretation of law to crystallisation of labour jurisprudence in Nigeria. It is within this context that this paper examines the suitability or otherwise of the Court of Appeal as the final court to affirm the emerging labour jurisprudence. This paper analyses the relevant law, the decisions of the National Industrial Court and the review of same by the Court of Appeal. It reveals that the expertise at the level of the National Industrial Court is absent at the Court of Appeal, thus, resulting to a regime of conflicting decisions by the Court of Appeal. While agreeing with the need for speedy dispensation of labour matters, the paper argues that judges of the National Industrial Court should be elevated to the Court of Appeal, or in the alternative, a National Labour Appeal Court, which is expertly constituted, should be established to hear appeals from the National Industrial Court.

Keywords: National Industrial Court of Nigeria, Court of Appeal, Nigeria, labour jurisprudence

I. INTRODUCTION

The Court of Appeal has the exclusive jurisdiction to hear and determine appeals from the National Industrial Court of Nigeria (NICN) and other courts as prescribed under the Constitution of the Federal Republic of Nigeria 1999.[1] The NICN is a specialised court with exhaustive jurisdiction and mandate on labour, employment, trade unions and industrial relations. Being a court of competent jurisdiction, her primary role is that

* LLB (Calabar), LLM (ABU, Zaria), PhD candidate (Uyo), is a Lecturer at the Faculty of Law, University of Calabar, Nigeria. E-mail: johnfidelis@unical.edu.ng

[1] Cap C23 Laws of the Federation of Nigeria (LFN) 2004 (CFRN 1999 or Constitution) s 240.

University of Uyo Law Journal Volume 10 (2022): 57-73

of disputes resolution. However, due to the peculiarity of the labour space in Nigeria, where the main labour law is both otiose and inadequate, the court has been saddled with additional responsibility.

The jurisdiction of the court is in excess of the substantive labour legislation available, hence the onerous responsibility of sourcing for international best practice in labour relations to crystallise a globally acceptable labour jurisprudence in Nigeria. This paradigm shift is further challenged by the fact that common law was the fountain of labour jurisprudence in Nigeria and is still struggling to retain its prized possession through the appellate courts whose Justice were trained in common law all their lives.[2]

Besides, being a common law jurisdiction where the hierarchy of courts and precedents are emphasised, no matter the brilliance of the seat of the lower court in constructing an emerging jurisprudence, in this instance the NICN, only the positive nod of the appellate courts can confirm their decision to be a law. Where the appellate courts disagree with their reasoning, the disputation over which court is right remains a mere academic exercise.

The reasoning of the upper court by the principle of hierarchy of courts remains superior and it is the law. It is within this context that this paper examines the suitability or otherwise of the Court of Appeal as the final court over civil appeals from the NICN and its impact on the emerging labour jurisprudence in Nigeria. This paper explores some areas of the emerging labour jurisprudence, the responses so far from the Court of Appeal and a comparative analysis of the peculiarity of the bench of the NICN with the Court of Appeal.

II. CONCEPTUAL BASIS FOR THE FINALITY OF THE DECISION OF THE COURT OF APPEAL IN LABOUR AND INDUSTRIAL MATTERS

This section examines the emerging labour jurisprudence from the decisions of the NICN and interrogates the propriety of the termination of civil appeals on labour and industrial matters at the Court of Appeal. The key terms, therefore include 'jurisprudence', 'appeals' as well as 'labour and

[2] For instance, the position at common law is that a collective agreement is not enforceable except where parties have adopted it into their terms of employment. However, with the coming into force of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, the NICN, in a number of cases, has refused to follow the said common law principle, notwithstanding existing decisions of the Supreme Court and the Court of Appeal where the common law principle was applied. Unfortunately, as recent as 2020, the Supreme Court in the case of *BPE v Dangote Cement Plc* [2020] 5 NWLR (Pt 1717) 322, reiterated the common law principle that collective agreements are not enforceable except where they have been incorporated by the parties.

industrial matters.' The need for the terms to be clarified is to lay a proper foundation for the ensuing discussion. The term jurisprudence is derived from Latin word *jurisprudentia*, which means 'knowledge of law' or 'skill of law'. The word *juris* means 'law' and *prudentia* means knowledge, science or skill. Thus, jurisprudence signifies knowledge or science of law and its application. The phrase 'labour or industrial jurisprudence' refers to a bass of literature regarding knowledge of law with respect to labour and industry, derived from labour legislation, constitutional framework and judicial law-making in the country.[3]

Appeals refer to laying before a higher court the decision[4] of a lower court for the exercise of the powers of the higher court to review, reverse, modify or confirm such decision.[5] It is therefore a process that affords an opportunity to parties who are dissatisfied with the decision of a lower court, to subject such decision to further scrutiny by a higher judicial body. The appellate court (especially the Court of Appeal), usually sitting as a panel and therefore positioned to aggregate their superior collective knowledge, experience and skills to interrogate the decision, with a view to ascertaining whether, on the facts placed before it, the relevant laws have been rightly applied and a right decision arrived at by the lower court.[6] The enabling law of the Court of Appeal, the Court of Appeal Act[7] confers it with the power to assume all the powers of the trial court in determining an appeal before it. The domain of the appellate jurisdiction of courts turns on the fallibility of all, including judicial officers and the presumed superior knowledge of law of the appellate court over the lower court.

Labour matters refer to all matters arising from the relationship between a worker and an employer or a trade union and employers.[8] An industrial matter maybe regarded as a subset of labour matters as an industrial matter on its part is narrower, as it focuses on matters between a trade union and employer or employers' association. Thus, labour is more

---

[3] M Sharma, 'Industrial Jurisprudence in Labour Law' *Biyani Law College Journal* <https://www.biyanicolleges.org/industrial-jurisprudence-in-labour-law/> accessed 26 June 2023.

[4] CFRN 1999 s 318, defines 'decision' to mean, in relation to a court, any determination of that court and includes judgement, decree, order, conviction, sentence or recommendation.

[5] *Shettima v Goni* [2011] 18 NWLR (Pt 1279) 80, 478.

[6] A Oyewunmi, 'Appeals in Labour and Industrial Disputes: Practice and Procedure' (Refresher Course for Judges and Kadis, Nigerian Judicial Institute, Abuja, March 2022) <nji.gov.ng/wp-content/uploads/2022/04/APPEALS-IN-LABOUR-AND-INDUSTRIAL-DISPUTES-by-Prof.-Adejoke-Oyewunmi.pptx> accessed 17 June 2023.

[7] Court of Appeal Act, 2013 s 16.

[8] CFRN 1999 s 254C (1) (a).

all-encompassing, as it covers both individual employment as well as collective relations in the workplace.[9]

The unambiguously worded provisions of section 243 (4) of the CFRN 1999 evince an intention to strictly circumscribe civil appeals of the NICN to the Court of Appeal. Perhaps, this is an attempt to accord with the the philosophical postulation for the establishment of specialised court. Informality, simplicity, flexibility and speed in the judicial resolution of cases by special courts have always been cited as the major concerns for the establishment of specialised court.[10] It maybe the argument of the philosophy that terminating civil labour and industrial appeals at the Court of Appeal is to avoid prolong litigation and delay in the resolution of labour disputes. In *Federal Government v Academic Staff Union of Universities*, the NIC the court stated that 'time is of the essence in labour adjudication; and so the mantra of labour adjudication is: it is better to have a bad judgement quickly, than a good one too late.'[11] This philosophy was further asserted in the ruling of the Court of Appeal in *The Federal Polytechnic, Mubi v Mr Emmanuel Peter Wahatana*.[12]

There is no doubt that delay in the delivery of justice is a major challenge facing the judiciary in Nigeria. In as much as speed is a desire outcome, speed with a faulty conclusion will defeat the very purpose of a special court and bring the labour jurisprudence in Nigeria to a house of straw. This may be compounded by the gaping gaps in labour legislation in Nigeria.

III. TYPES OF APPEALS FROM THE NATIONAL INDUSTRIAL COURT

There are three major classifications of appeals from the NICN. The first set of appeals are appeals from the criminal jurisdiction of the court.[13] The second are appeals on questions of fundamental rights as contained in Chapter IV of the CFRN 1999 as it relates to matters upon which the NICN has jurisdiction.[14] The last one are appeals in respect of any civil jurisdiction of the NICN. The first two sets of appeals shall be of right without leave of court. The position of the law is that appeals on

---

[9] Oyewunmi (n 6).

[10] MB Zimmer, 'Overview of Specialized Courts' (2009) *International Journal for Court Administration* 46 (2) cited in BOO Odeny, 'Accessing Justice in Kenya through Developing Specialised Courts' (2022) <http://erepository.uonbi.ac.ke/bitstream/handle/11295/163565/BRUCE%20ODENY%20ODIWUOR%20OKOMBO-PROJECT.pdf?sequence=1> accessed 17 June 20233.

[11] (Suit No. NICN/ABJ/270/2022) (Kanyip J).

[12] (Appeal No. CA/YL/175M/2021) (Affen JCA).

[13] CFRN 1999 s 254C (5).

[14] ibid, s 243 (2).

either criminal or questions on fundamental rights contained in Chapter IV of the CFRN 1999 lie to the Court of Appeal without leave of court.[15] However, the third category of appeals, which bothers on the civil jurisdiction of the court, are yoked with the restrictions of leave from the Court of Appeal and terminable at the Court of Appeal.[16]

The character of the questions of fundamental rights contained in Chapter IV of the CFRN 1999 of which the NICN has jurisdiction is amorphous. This is because of the seemingly status of *sui generis* of appeal without leave, but coalesce into the general civil appeal of the NICN which is terminable at the Court of Appeal. This is due to the language of section 243(4) of the Constitution, which unequivocally exempts only criminal appeal from the set of appeals that are terminable at the Court of Appeal. The section provides thus: 'Without prejudice to the provisions of section 254C (5) of this Act, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.'

IV. ROLE OF THE NATIONAL INDUSTRIAL COURT IN CRYSTALLISATION OF LABOUR JURISPRUDENCE IN NIGERIA

The CFRN (Third Alteration) Act 2010 has put the status of the NICN as a superior court of record beyond conjecture. Its constitutional weight and flavour coupled with the provisions of the National Industrial Court Act (No 38) of 2006 (NIC Act) has broadened the jurisdiction of the NICN beyond mere adjudication of industrial disputes to a more encompassing role which straddles the entire gamut of labour jurisprudence in Nigeria. In addition to its traditional roles, the NICN has been saddled with special role by virtue of its jurisdiction and the state of Labour law in Nigeria. This special role is precipitated by the fact that its constitutional jurisdiction is in excess of the substantive law available in Nigeria. This apparently negates the constitutional authority of the courts to exercise jurisdiction on matters with respect to which the National Assembly may make laws; or on matters with respect to which a House of Assembly may make laws.[17] It is therefore a special jurisprudence to exercise jurisdiction over laws that have not been made.

Armed with a constitutionally conferred jurisdiction, though in the absence of municipally known legislation or principle of law, it behoves on the court to craft a robust and globally accepted labour law jurisprudence,

---

[15] ibid, ss 243 (2) and 254C (6).
[16] ibid, s 243 (4).
[17] ibid (5)(j) and (k).

using the instrumentality of its jurisdiction. Where a constitution confers jurisdiction on a court beyond the substantive law available on the area of its subject matter, as in the jurisdiction of the NICN, the court will expand its role beyond mere interpretation of law to formulation of law. The excess jurisdiction of the court in this instance is the jurisdiction of the court on principles of labour law not covered by municipal laws.

The court, therefore must crystallised such floating jurisdiction into applicable labour jurisprudence in Nigeria. Conscious of this enormous responsibility and being a specialised court handling matters under item 34 of the Exclusive Legislative List of the CFRN 1999, the court has risen to the occasion and shaped to a great extent labour jurisprudence in Nigeria. Some areas in which the NICN has left indelible jurisprudential marks in the labour space include:

A. Applicability of International Labour Standards

The position of law in Nigeria before the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 was that no international law or treaty shall have the force of law in Nigeria, except such law or treaty have been domesticated by the National Assembly.[18] The implications were that even ratified International Labour Standards such as Conventions, Recommendations, Protocols, etc, had no force of law in Nigeria until domesticated by the National Assembly. However, by the combined provisions of section 254 C (1) (2) of the CFRN 1999 and section 7 (6) of the National Industrial Court Act,[19] the NICN has been able to reshape Nigerian labour jurisprudence by applying international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith, even though they are yet to be domesticated by the National Assembly. Flowing there-from, the court has made jurisprudential pronouncements that that have affected the tenure and security of employment different from the position of the common law.[20]

In *Bello v Eco Bank Plc*[21] the court relying on Article of 4 of Termination of Employment Convention of 1982 No. 158 and Recommendation 166 of International Labour Organisation (ILO), deprecated the common law entrenched practice of determination of

---

[18] CFRN 1999 s 12 (1); *Abacha v Fawhinmi* [2000] No. SC45/1997.

[19] NIC Act 2006.

[20] E Essien and E Solomon, 'The Application of International Labour Organisation Standards on Unfair Termination of Employment in Nigeria' (2020) 5(3) *Miyetti Quarterly Law Review* 39.

[21] (Suit No. NICN/ABJ/144/2018).

contract of employment without giving any valid justifiable reason. The position of the law now as pronounced by the court is that the employment of a worker shall not be terminated unless there is a 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. The court went on further to order specific performance by way of reinstatement of the claimant in a master/servant employment relationship. These positions were clearly unattainable under the common law labour jurisprudence in Nigeria.

Furthermore, on the vexed issue of the gross absence of any municipal legislation on discrimination or sexual harassment at workplace, the court has made efforts to fill the lacuna. Relying on its jurisdiction as provided in section 254C (1) (g) of the CFRN 1999, the court rose to the occasion in the case of *Ejike Maduka v Microsoft & Ors.*[22] In pursuant of the powers conferred on the NICN, the Court applied United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and International Labour Organisation's Discrimination (Employment and Occupation) Convention 1958 No. 111 to determine the justice of the case of the applicant. Recommendation No. 19 of the CEDAW was the tipping point of the case. It provides, 'it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment.'

The court further relied on a Canadian case where it was determined that sexual harassment is a form of sexual discrimination banned by the human rights statutes in all jurisdictions in Canada.[23] Besides, the court also took a clue from a Supreme Court of India's judgement where it was held that a right against gender discrimination is a universally recognised basic human right.[24] The court therefore held that the termination of the applicant's employment for her refusal to succumb to the sexual advances and overtures of the 3rd respondent is a discrimination against the applicant on the basis of her gender, and a rape on her right to dignity of her human person.

Regardless of the laudable positions of the law adopted and jurisprudential pronouncement by the court in the foregoing, the need for a higher court, equally manned by experts in labour and industrial matters, to review the decisions of the NICN cannot be overemphasised.

---

[22] (Suit No. NICN/LA/492/2012, judgement delivered on 19 December 2013).
[23] *Janzen v Platy Enterprises Ltd* [1989] 1 SCR 1252.
[24] *Vishaka & Ors v State of Rajasthan & Ors* [1997] 6 SCC.

This is to ensure that the international law being applied is in conformity with the provisions of the Constitution. For instance, the legal status of the Termination of Employment Convention of 1982 No. 158 as applied in the case of *Bello v Eco Bank Plc*,[25] is still undefinable in the light of constitutional provisions.[26] The international instrument that was applied in that case is a Convention of the ILO, so cannot be safely classified as either international best practice[27] or international labour standards.[28]

Unfortunately, the Convention has not been ratified by Nigeria as to come within the purview of section 254C (2) of the CFRN 1999. Convention 158 has introduced radical changes to Nigerian labour law, yet it appears to be alien to the Nigerian Constitution. This clearly accentuate the need for a labour appeal court other than the Court of Appeal as presently constituted. This is so because while the NICN is formulating an emerging labour jurisprudence from the ashes of the common law, the court is bound to make some mistakes which can only be corrected and fine-tuned by an equally enthusiast of the emerging-labour-jurisprudence and superior in knowledge Appeal Court.

B. Enforceability of Collective Agreements

Another emerging area of crystallisation of labour jurisprudence being embarked upon by the NICN, though not as concrete as the applicability of international standards, is the enforceability of collective agreement. The gleefully pronounced position of the common law is that collective agreement is a mere gentlemen's agreement which is unenforceable unless reduced into individual employment contract of employees who wish to benefit from it and that non-signatories to a collective agreement cannot enforce it because they are non-privy to it.[29]

Even before the coming into force of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, Justice KanyiP had noted the inter-relativity of sections 7 (1) (c) (i) and 54 (1) of the National Industrial Court Act in respect of the intention of the legislators to make collective agreements enforceable. The Act grants the court the jurisdiction to interpret collective agreements amongst other document[30] and also goes on to define a trade dispute to include any dispute between employers and employees, including disputes between their respective organisations and

---

[25] (Suit No. NICN/ABJ/144/2018).
[26] CFRN 1999 s 254C (1), (f), (h) and (2).
[27] ibid, s 254C (1) (f).
[28] ibid, s 254C (h).
[29] *Union Bank v Edet* [1993] 4 NWLR (Pt 287), 288; *Afribank (Nig) Plc v Osisanya* (2000) 1 NWLR (Pt 642) 598.
[30] National Industrial Court Act 2006 s 7 (1) (c) (i).

federations which is connected with the conclusion or variation of a collective agreement.[31]

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. He argued that the common law principle that collective agreements are binding in honour only cannot stand in the face of the provision of the law.

It is worthy of note that the omission in the Act[32] to grant the power to apply collective agreements to the court has been generously cured by the Constitution, as section 254C (1) (j) (i) of the CFRN 1999 empowers the court with exclusive jurisdiction to determine any question relating to the interpretation and application of any collective agreement. The NICN is constitutionally empowered to interpret and apply collective agreements in Nigeria. Though the court faltered and echoed the rigid common law position on collective agreement in the case of *Sampson Nnosiri & Ors v Eastern Bulkcem Co. Ltd*,[33] it appears to have struck a balance in subsequent cases. The totter toward the ideal began with the case of *Aghata Onuorah v Access Bank Plc*,[34] and evolved in *Valentine Ikechukwu Chiazor v Union Bank of Nigeria Plc*,[35] where the court held that actual proof of membership is the key to recovery under a collective agreement. Proof of that membership of a trade union has to be by direct documentary evidence. Enhancing its position, the court succinctly stated in *Stephen Ayaogu and Ors v Mobil Producing Nigeria Unlimited and Anor*[36] that:

> The 2nd defendant had argued that the claimants cannot rely on Exhibits C1 and C2, the Collective Bargaining Agreements (CBA) because they are not signatories to the collective agreements, the collective agreements were not incorporated into the employment contracts of the claimants, and collective agreements are gentleman's agreements binding in honour only. This Court has held severally that given its power and jurisdiction to interpret and apply collective agreements under section 254C of the 1999 Constitution presuppose that collective agreements are now binding as against those they relate to… This being the case, the claimants are entitled to rely on Exhibits C1 and C2 in proving

---

[31] ibid, s 54 (1).
[32] National Industrial Court Act 2006 s 7 (1) (c) (i).
[33] (Suit No: NICN/PHC/69/2013, judgment delivered on 13 January 2016).
[34] [2015] 55 NLLR (Pt 186) 17.
[35] (Suit No. NICN/LA/122/2014, judgement delivered on 12 July 2016).
[36] (NIC/LA/38/2010) [2017] NGNIC 10.

> their entitlements to the claims for redundancy in this case. I so find and hold.

V. SUITABILITY OF THE COURT OF APPEAL AS THE FINAL COURT IN LABOUR AND INDUSTRIAL MATTERS

Section 240 of the CFRN 1999 confers the exclusive jurisdiction on the Court of Appeal to hear and determine appeals from the NICN and all the other courts of coordinate jurisdiction named therein. Section 243 (4) of the Constitution[37] isolates the NICN and makes the decision of the Court of Appeal in respect of any appeal arising from its civil jurisdiction to be final. Appellate Courts review the findings and evidence from the lower court and determine if there is sufficient evidence to support and justify its decision. It is the responsibility of the appellate court to determine if the trial or lower court correctly applied the law. This responsibility is an onerous task as it presupposes the superiority of knowledge and expertise of the appellate court over the trial court.

Regardless of the dexterity and pragmatic demonstration of knowledge by the trial court, on the ladder of precedent, the pronouncement of the appellate court cannot be discountenance by the lower court. Settling in on the labour space in Nigeria, particularly, a jurisprudence locked-in in the prism of common law, which has been shown to be antithetical to the welfare of employees and exacerbated by gaping gaps in labour legislation, the final mould of our emerging labour jurisprudence must be of concern to labour watchers and stakeholders.

The crystallisation, as being done by NICN and solidification as should be done by an appellate court, of the emerging labour jurisprudence is the singular most important factor in ensuring a globally competitive labour space in Nigeria. When a labour principle is crafted by the specialised court and affirmed by a superior court, it become a judicial precedent and rule by which labour and industrial relations are to be governed.[38] Precedents are judicial tools that fortify the courts against uncertainties and reduce to the barest minimum the invasion of the idiosyncrasies of the judges in matters before them.[39] But as the holy book says, 'For if the trumpet give an uncertain sound, who shall prepare himself for battle?'[40]

---

[37] ibid.

[38] GN Okeke, 'Judicial Precedent in the Nigerian Legal System and a Case for its Application under International Law' (2010) *NAUJILJ.*

[39] S Ulmer, *Supreme Court, Policymaking and Constitutional Law* (McGraw-Hill Book Company 1986) 26.

[40] The Holy Bible (KJV) 1 Corinthians 14:8.

The need for such certainty cannot be overemphasised in a field like labour law that impact directly on the economic well-being of the nation. A crystallised labour jurisprudence that accords with global best practice, therefore, promotes sound labour relations, guarantees national economic well-being and assures foreign investors of the safety of their investment and just resolution, in case of dispute. Therefore, the pride of place of the final court in the moulding of jurisprudence cannot be overemphasised. It is in the light of the above and gleanings from other jurisdictions that this paper test the appositeness or otherwise of the Court of Appeal as the final court in the moulding of labour jurisprudence in Nigeria.[41] This paper makes the argument why the Court of Appeal, as presently constituted, cannot effective in promoting globally competitive labour jurisprudence in Nigeria.

A. Propensity for Conflicting Decisions from Various Divisions of the Court of Appeal

Besides the bedlam of decisions[42] that occurred at the Court of Appeal regarding the interpretation of sections 240 and 243 of the CFRN 1999 over the applicability or otherwise of decisions from the NICN which led to case stated to the Supreme Court in *Skye Bank Plc v Iwu*,[43] later decisions emanating from the Court of Appeal on labour matters are still steeped in discordant tunes. Among a plethora of such conflict in decisions emanating from the Court of Appeal, a few are cited hereunder.

In *Dr. Emmanuel Akpan v University of Calabar*, the Court of Appeal, despite the provisions of section 7 of the NIC Act[44] and section 245C (1) (a) of the CFRN 19999, held that defamation arising from an employer-employee relationship is not a matter within the competence of the NICN.[45] However, in *Medical & Health Workers Union of Nigeria v Dr. Alfred Ehigiegba*,[46] the same Court held that the tort of defamation that arose

---

41 CFRN 1999 s 243 (4).

42 *Local Government Service Commission, Ekiti State & Anor v M. A. Jegede* [2013] LPELR-2113; *Local Government Service Commission, Ekiti State & Anor v MK Bamisaye* [2013] LPELR-20407; *Local Government Service Commission, Ekiti State & Anor v Francis Oluyemi Olamiju* [2013] LPELR-20409 and *Local Government Service Commission, Ekiti State & Anor v GO Asubiojo* [2013] LPELR-20403. In all four cases, the Court held that applicants may appeal with leave of the Court of Appeal on all other matters besides matters of fundamental right which is as of right. While Lagos Division of the Court of Appeal in *Coco-Cola (Nig) Limited v Akinsanya* [2013] 18 NWLR (Pt 1386) 225 held that until the National Assembly passes a law granting applicants right of appeal with leave, that right does not exist.

43 [2017] LPELR-42595 (SC).

44 NIC Act, 2006.

45 [2016] LPELR-41242 (CA).

46 [2017] LPELR-44972 (CA) (Mustapha JCA).

from workplace relationship is within the exclusive jurisdiction of the NICN. While in *Nwagbo & Ors v National Intelligence Agency*,[47] the Court held that the NICN has jurisdiction over the complaints of non-payment of death benefits of a deceased employee under section 254C (1) (k) of the Constitution, an opposite decision was reached in a similar matter before the Court of Appeal in *Ministry of Local Government & Chieftaincy Affairs, Akwa Ibom State & Anor v Udoh & Ors,*[48] wherein the Court held that claims of payment of acknowledged arrears of allowances under section 254C (1) (k) of the Constitution are claims for debts over which the State High Court, and not the NICN, has jurisdiction. The Court opined that since there was no dispute as to the quantum of the claims, there was no dispute and therefore section 254C (1) (k) of the Constitution cannot be brought to bear.[49]

Also, in *Oak Pensions Ltd v Olayinka*,[50] the Court of Appeal turned down the propriety of an award of two years' salary as compensation on a finding of wrongful termination of employment. The reason advanced by the Court of Appeal for striking down the compensation awarded by NICN is that unfair labour practice or international best practices would not arise in the exercise of a right vested in the parties by their own voluntary agreement on how to end or determine the relationship between them. However, in *Sahara Energy Resources Ltd v Oyebola*,[51] the same Court of Appeal made a somersault and held that the NICN, in considering the measure or quantum of damages is to do so in accordance with 'good or international best practices in labour or industrial relations', which shall be a question of fact.

Subjecting an emerging jurisprudence to such confusion is a great disservice to the country. This is so because, as earlier noted, the economic well-being of a nation is a corollary of the robustness of its labour and industrial jurisprudence. It must be noted that the apparent conflicting decisions are not, by any means, testimonial of deficiency of the knowledge of law by their Justices of the Court of Appeal, but the natural consequences of the structure of the Court of Appeal. The various divisions of the court are independent in their evaluation of facts and application of the law to the facts before them, hence the conflicts of decisions even on similar facts.

---

47 [2018] LPELR-46201 (CA).
48 [2019] LEPLR-47004 (CA).
49 ibid (Owoade JCA).
50 [2017] LEPLR-43207(CA).
51 [2020] LPELR-51806 (CA).

B. Requirements for Appointment to the NICN and Court of Appeal

The NICN is a special court, which requires specialist knowledge. In *The Federal Polytechnic, Mubi v Mr Emmanuel Peter Wahatana*,[52] relying on *Sahara Energy Resources Ltd v Mrs Olawunmi Oyebola*,[53] Court of Appeal reiterated the specialist nature of the NICN. According to the Court:

> appellate courts often defer to the specialist knowledge of employment judges who bring industrially informed perspectives to bear in their decisions; they have a good knowledge of the world of work and a sense, derived from experience, of what is real and what is mere window-dressing; they are to be 'realistic and worldly wise' and 'sensible and robust' ... in order to prevent form from undermining substance.[54]

To qualify as a Judge of the NICN, section 254B (3) and (4) of the CFRN 1999 as well as section 2(4)(a) of the NIC Act add a compulsory qualification of 'considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria' to the general qualification of specific years of practice as a legal practitioner in Nigeria. Section 238 (3) of the CFRN 1999 provides the requirement for appointment to the seat of a Justice of the Court of Appeal. A legal practitioner in Nigeria of not less than 12 years standing is eligible for that exalted office of a Justice of the Court of Appeal.

The legal requirement of an extra qualification to sit as a Judge of the NICN drips with the fact that it is a *sui generis* court. However, the appointment or elevation of judges of the NICN to the Court of Appeal, is no doubt, an advancement on the judiciary ladder, but with due respect, it does not derogate from the fact that the advancement is on the platform of the general knowledge of law and not in a specific area of law like labour jurisprudence. Where a specific area of law is needed in the occupation of the seat of the Justice of the Court of Appeal, the Constitution clearly spelt it out.[55] Therefore, the idea of subjecting the decisions of experts at the NICN to be reviewed by the opinions of Justices of general knowledge of law manning the fort of the Court of Appeal, is in itself a miscarriage of objectivity.

Such constitutional miscarriage may lead to inelegant decisions at the appellate court. One of such is the decision of the Court of Appeal in *Dance*

---

[52] Appeal No. CA/YL/175M/2021, ruling delivered 27 April 2023.

[53] [2020] LPELR-51806 (CA).

[54] *Federal Polytechnic, Mubi* (n 51) (Affen JCA).

[55] Section 237 (2) (b) of the CFRN 1999 provides that: 'such number of Justices of the Court of Appeal, not less than forty-nine of which not less than three shall be learned in Islamic personal law, and not less than three shall be learned in Customary law, as may be prescribed by an Act of the National Assembly.'

Services Ltd v Nnamdi Azunna,[56] where the Court is of the opinion that the linchpin for cognisable cause of action under section 254C of the Constitution is employment relationship between the parties. This decision, in the light of *Diamond Bank Plc v NUBIFIE & 3 Ors*,[57] with due respect, is an attempt to re-write the civil jurisdiction of the NICN under section 7 of the NIC Act and section 254C (1) of the CFRN 1999. The NICN in *Diamond Bank Plc* case held that that even if the defendants were not employees of the claimant, the right to picket could still exist since the place of work of the defendants is the claimant's premises. The jurisdiction conferred on the NICN under section 254C of the Constitution can be activated without necessarily having an employment relationship between the parties.

C. Constitutional Misplacement of Priority

Section 237 (2) (b) of the Constitution provides that:

> such number of Justices of the Court of Appeal, not less than forty-nine of which not less than three shall be learned in Islamic personal law, and not less than three shall be learned in customary law, as may be prescribed by an Act of the National Assembly.

The demand of expertise and specialty in areas of law such as Islamic personal law and customary law without a corresponding requirement for labour law is a clear demonstration of misplacement of priority on the part of the framers of the above constitutional provisions. On the scale of relevance, what justifies the placement of Islamic personal law and customary law over and above labour and industrial relations? Therefore, the wisdom that resulted in the requirement of expertise in Islamic and customary law as qualifications to be appointed as a Justice of the Court of Appeal without the same consideration for labour and industrial relations, reflects negatively on the priorities of the country. This amounts to standing wisdom on its head, which constitutes a constitutional clog in the wheel of the effectiveness of the NICN in the settlement of labour and industrial relations disputes in Nigeria.

D. Dearth of Experts on Labour Law at the Court of Appeal

At present, Justice Kenneth Amadi is the first and only Judge of the NICN to be elevated to the appellate court since the inception of the Court. Justice Amadi and 17 other judges were sworn in as the Justices of the Court of Appeal on Monday, 28 June 2021 by the Chief Justice of Nigeria at the

[56] [2019] 16 ACELR 137, 149-150.

[57] (Suit No. NICN/ABJ/130/2013, judgement delivered on 6 February 2019).

Supreme Court of Nigeria Complex, Abuja. In other words, the Court of Appeal is constituted of only one justice, who has considerable knowledgeable and experienced in the law and practice of industrial relations and employment conditions in Nigeria. Assuming that a unit of the Court of Appeal, as presently constituted, is dedicated to labour and industrial appeals, it therefore means the Court will not have an expertly constituted panel.

Also, one expert among two other non-experts cannot constitute a majority. The scope of labour and employment law and the direct impact of disputes emanating therefrom on the economy vis-à-vis those of Islamic and customary disputes is as different as the day is from the night. This is because, no matter the wisdom and brilliance of the lower court, the appellate court is without doubt, the stabiliser of such wisdom and brilliance. Therefore, this paper opposes the provisions of section 243 (4) of the CFRN 1999, which set the decision of the Court of Appeal as the final bar in respect of any appeal arising from any civil jurisdiction of the NICN, and the inability of the Court of Appeal to midwife a sustainable and globally acceptable labour jurisprudence in Nigeria is underpinned by the reasons above expounded.

VI. A GLANCE AT THE PRACTICE IN COMPARABLE JURISDICTIONS

In the United Kingdom, appeal lies from the judgement of an Employment Tribunal (ET), which is a special labour tribunal to the Employment Appeal Tribunal (EAT). EAT is a statutory body established to hear appeals from Employment Tribunal.[58] Appeal from the EAT for proceedings in England and Wales is to the Court of Appeal, and may only be made on a point of law, and with permission either from the EAT or the Court of Appeal.

In South Africa, the Labour Court, which is the equivalent of our NICN, has the same status as a high court.[59] The Labour Court adjudicate matters relating to labour disputes.[60] Appeals from the Labour Court are made to the Labour Appeal Court.[61] The court was established by the Labour Relations Act 1995, and has a status similar to that of the Supreme Court of Appeal,[62] which is the equivalent of the Nigeria Court of Appeal. The Labour Appeal Court has jurisdiction in all the

[58] Employment Tribunals Act 1996 s 20.
[59] South Africa Labour Relations Act 1995 s 153(6) (a) (i).
[60] ibid, s 157.
[61] ibid, s 166(4).
[62] ibid, s 167(3).

provinces of the Republic.[63] The Labour Appeal Court is the final court of appeal in respect of all judgements and orders made by the Labour Court in respect of the matters within its exclusive jurisdiction.[64]

In Ghana, the labour dispute settlement institution is located in the National Labour Commission (NLC) established by the Labour Act, 2003 (Act 651). The Act[65] is the coalesce of the hitherto disjointed Labour laws of Ghana. The institution of labour disputes settlement in Ghana is quite different from what obtained in Nigeria and South Africa. The NLC exercises its powers of settling industrial disputes by any of the modes of settlement recognised by the Act, be it negotiation, mediation or compulsory arbitration. In the exercise of its duty of settlement of disputes, the Commission is clothed with the powers of a High Court in certain matters.[66] However, in terms of the enforcement of the orders of the Commission, the Act subjugate the Commission under the High Court of Ghana. The High Court has divisions.[67] It has Labour Division and other divisions such as Criminal, Land, Divorce and Matrimonial, etc. There from, the appeal can get up to the Supreme Court of Ghana.[68]

VII. CONCLUSION AND RECOMMENDATIONS

It has been shown that civil appeals from the NICN terminate at the Court of Appeal. This paper made efforts to interrogate the philosophical basis for the legislature's prescription, which made the Court of Appeal the final court in labour and industrial matters in Nigeria. The paper posited that the role of the NICN goes further than mere resolution of labour disputes to crafting a globally acceptable labour jurisprudence for Nigeria. The role was examined in the light of its jurisdiction to apply ratified international labour instruments and international best practice, which has birthed landmark decisions that introduced a paradigm shift in employment termination and curbing of sexual harassment in the workplace.

Furthermore, the jurisdiction to interpret and apply collective agreements was analysed. The paper also examined the suitability or otherwise of the Court of Appeal as the final court in labour and industrial matters in Nigeria vis-a-vis what is obtainable in other jurisdictions. Based on its findings, the paper recommends that in order to checkmate the issue

---

[63] ibid, s 172(1).
[64] ibid, s 167(2).
[65] Ghana Labour Act 2003 (Act 651).
[66] Labour Act 2003 (Act 651) s 139(1), (2) and (3).
[67] The Republic of Ghana Judiciary, 'The High Court' <https://judicial.gov.gh/index.php/the-high-court> accessed 20 June 2023.
[68] *Labour Commission v Crocodile Matchet* [2011] GHASC 39.

of contradictory judgements by the Court of Appeal, a Labour Court of Appeal constituted of experts in labour and industrial matters should be established or in the alternative, more Judges of the NICN should be elevated to the Court of Appeal and special panels constituted to hear labour appeals.

ISBN 1119-3573