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A CONCISE ANALYSIS OF THE RULES, PRACTICE AND PROCEDURES OF THE NATIONAL INDUSTRIAL COURT IN LABOUR DISPUTES IN NIGERIA

*Akinlolu S. Fagbemi**

Abstract

Labour disputes in Nigeria have assumed such fervent dimension that there arose the dire need to arrest situations arising therefrom, or, as an alternative, watch the entire governmental and economic system crumble. The need to provide forum for the resolution of labour related disputes call for both legislative and judicial interventions to tame the rising trends in the 1970s. Part of the legislative intervention at the time was the establishment of the National Industrial Court of Nigeria as a special court with jurisdiction to entertain trade and labour related disputes. The court was further given power to make rules for its operation and to guide proceedings before it. To this end, the court recently enacted another set of Rules, which repealed the 2007 Civil Procedures Rules of the court. The thrust of this paper is to analysis the rules, practice and procedure of National Industrial Court in labour disputes in Nigeria.

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The objective is to sensitize and appraise litigants on the rules, practice and procedures of the court and how best to harness them in the resolution of labour disputes. The paper concludes with suggestions that will promote effective administration of justice in labour related disputes in Nigeria.

Keywords: Rules, Practice, Procedure, National Industrial Court and Labour Dispute.

1. Introduction

The purpose of labour law is to regulate industrial and trade relations between the employers and employees.¹ The objective of this is to make for the smooth running of the country's economy granted the fact that labour disputes are inimical to economic growth and sustainability. Prior to the enactment of the Labour Code Act of 1958, Trade Dispute (Arbitration and Inquiry) Act of 1941 was the main statutory machinery for the settlement of trade and labour disputes. This Act gave powers to the Minister of Labour to intervene by means of conciliation, formal inquiry and arbitration where negotiation had broken down.² However, this Act had two major setbacks. First, the parties were given wide and absolute discretion to decide whether or not they would avail themselves of the machinery provided. Hence, the power of the Minister of Labour to appoint a conciliator and or set up arbitration tribunal for the resolution of labour disputes is subject

¹Which may be between the government and individual, between corporate entity and individual and between individuals *inter se*.

²Ekanem, E.E& Daniel, E.'A Critique of the Legal Framework for the National Industrial Court of Nigeria and its Impact on the Nigerian Worker' 58(2017) *Journal of Law, Policy and Globalization*, 1-8: 1

to application of one of the parties with the consent of other party.³ The second problem observed under this Act was that there were no permanent institutions laid down before which the disputing parties could go for the settlement of their labour disputes. Instead, an *ad hoc* body or an arbitration panel had to be set up for a particular dispute and once it gave decisions it became *functus officio*.⁴

The above setbacks in the provisions of Trade Dispute (Arbitration and Inquiry) Act lasted till the enactment of the Labour Code Act 1958, Trade Disputes (Emergency Provisions) Decree No. 21 of 1968 and the Trade Dispute (Emergency Provisions) (Amendment No. 2) Decree No. 53 of 1969. These Decrees were enacted during the Nigerian Civil War due to exigency of the period and the need to settle trade disputes arising within the period. These Decrees also gave the Minister of Labour and Productivity power to intervene in trade and labour disputes while retaining the usual methods of conciliation, constitution of formal inquiry and arbitration. The requirement for consent of the parties before the Minister could act was abrogated so that he could exercise his power unfettered and without the consent of the parties to labour disputes.

³Fagbemi, S. A. 'An Overview of the Institutional Mechanisms for the Settlement of Labour Dispute in Nigeria' 11(10(2014)*US-China Law Review*, 1322-1335: 1326.

⁴Adejumo, B. A. 'The Role of the Judiciary in Industrial Harmony', being text of commentary delivered at the 2007 all Nigerian Judges' Conference organised by the National Judicial Institute and held between 5th - 9th November, 2007 Retrieved from www.nicn.gov.ng/1.php on 19 September, 2017 at 4.10pm; Emiola, A. *Nigeria Labour Law* (Ogbomoso: Publishing Limited, 2000), 358.

In 1971, the Labour Act was enacted to repeal the Labour Code Act of 1958. This Act consolidated the law relating to labour and also provide a comprehensive legislation and conditions of work and employment. Other laws that were enacted to provide for specific areas of labour and trade disputes that were hitherto not cover by the Labour Act include the Trade Union Act⁵ and Trade Dispute Act.⁶

The Trade Dispute Act was enacted in 1976 and gave National Industrial Court exclusive jurisdiction to entertain labour and industrial disputes.

With the present status of the Nigerian National Industrial Court as one of the Superior Courts of record in Nigeria, having its jurisdiction exclusive to it, it is pertinent to examine the rules, practice and procedures governing proceedings in the court. These rules, of course, cover a wide spectrum of matters affecting proceedings of the court such as: forms and modes of commencing actions in the court, filing and services of processes, assignment of cases to judges, hearing of motions and trials proper, adjournments of cases, judgment, execution and appeals to mention but few. The paper is divided into six parts. Part 1 is this introduction. Part 2 is overview of the History of National Industrial Court of Nigeria. Part 3 examines the Role of the National Industrial Court in Labour Dispute Resolution, Part 4 analyses the Rules and Procedures of the National Industrial Court. Part 5 focuses on the Practice of the Court in Labour Dispute. It concludes with Part 6.

⁵Cap T14, Laws of the Federation of Nigeria 2004.

⁶Cap T8, Laws of the Federation of Nigeria 2004

2. Overview of the History of National Industrial Court of Nigeria

The Trade Dispute Act of 1976⁷ was enacted primarily to make provisions for the settlement of trade disputes and matters related thereto. The Act established the National Industrial Court⁸ as a specialised court to provide forum for a smooth and flexible industrial dispute resolution regime which objective could not be met by the regular courts. Although, the National Industrial Court was established in 1976, however, it did not start its operation until 1978. The object of the court was to provide for a stable and sustainable economy through quick, effective and efficient resolution of industrial dispute and protection of workers.⁹ Hence, the court was conferred with exclusive jurisdiction and power with respect to settlement of trade disputes, the interpretation of collective agreements and matter connected therewith.¹⁰ It was the final arbiter in the hierarchy of the institutional mechanisms provided under the Trade Dispute Act for settlement of trade disputes. However, the roles ascribed to the court became fraught with controversies particularly so with its status, powers and

⁷ Now christened Trade Dispute Act Cap T8, Laws of the Federation of Nigeria 2004.

⁸ Now National Industrial Court of Nigeria, see the provision of Trade Dispute Act s 20.

⁹ Aturu, B. 'The National Industrial Court under the 1999 Constitution and the Resolution of Industrial Disputes' 7 (1) (2012) *The Nigerian Business Law and Practice Journal*, 82-91

¹⁰ See generally Nwazuo, A&Igwe, C. A. 'Appraisal of the Jurisdictional Regime of the National Industrial Court of Nigeria' 11(2013) *Nig. J. R.* 39-52; Fagbemi, S. 'Jurisdiction of the National Industrial Court of Nigeria: a Critical Analysis' 28(2014) *Journal of Law, Policy and Globalisation*, 53-59; Ekanem, E. E&Danie, E, *opcit* 1.

jurisdiction on the hierarchy of courts under the Nigerian legal system.¹¹

Due to the nature of the power conferred on the National Industrial Court vide the provision of section 20 (1) of the Trade Disputes Act, the court was not included in the list of superior courts in the Constitution of the Federal Republic of Nigeria and for this reason, the court was treated as an inferior court whose decision could be reviewed by the state High Court until the court was elevated to a status of superior court of record on the same pedestal with the State High Court, the High Court of the Federal Capital Territory, Abuja and the Federal High Court of Nigeria by the National Industrial Court Act of 2006.¹² Also the referral and other discretionary power of the Minister of Labour over matters relating to the court meant that the influence of the Minister of labour was overbearing. Again, the court was the only court of law in the country where litigants could not on their own motion, except when activating the interpretative jurisdiction of the court, approach the court to ventilate their grievances unless referred their dispute to the Minister of labour and productivity who has the power to appoint a conciliator.

¹¹Ejere, O. D. 'Further Reflection on the Constitutionality of the National Industrial Court Act 2006' 1 (2006)*NJLIR*, 59-74.

¹²Fagbemi, S. *op cit* 55. In the case of *Western Steel Works v Iron and Steel Workers Union*, (1987) 1 *NWLR* (Pt. 49) 284, the Nigeria Supreme Court held that the National Industrial Court, being an inferior court, could not grant injunctive and declarative reliefs. It was further held that only a constitutional amendment including the NIC in section 6 of the 1999 Constitution could restore it to a superior status which it enjoyed under Decree 47 of 1992.

These problems was partly cured in 1992 by the promulgation of the Trade Disputes (Amendment) Decree No. 47 of 1992¹³ which conferred on the Court the status of a superior court of record and gave it the exclusive jurisdiction to entertain industrial disputes including inter-intra Union Disputes.¹⁴ However, despite this new status and jurisdiction of the NIC, it shared jurisdiction with the ordinary courts such as the State High Court and Federal High Court in labour matters due to the fact that several cases decided after the promulgation of the Decree No. 47 maintained concurrent jurisdiction of the NIC with these courts.¹⁵ Hence, the multiple

¹³The Decree amended the Trade Dispute Act by inserting a new section 1A immediately after section I of the Act. Section 1A provides thus: (1) Subject to the provision of subsection (8) of section 20 of this Act, no person shall commence an action, the subject matter of a trade dispute or any inter or intra union dispute in a court of law and accordingly any action which prior to the commencement of this section is pending in any court shall abate and be null and void. (2) Notwithstanding the provisions of the Constitution of the Federal Republic Nigeria, 1979, any interim or interlocutory order, judgment or decision made by any court other than the NIC established under this Act in respect of any trade dispute, inter or intra union dispute prior to the commencement of this section shall cease to have effect. Section 5 of the Decree No 47 of 1992 expressly stipulated that the NIC was a superior court of record. See the case of *Udo v. Orthopedic Hospital Management Board* (1993) 7 NWLR (Pt. 304) 134 where the Supreme Court of Nigeria held that the State High Court lacked the jurisdiction to entertain trade disputes, as same has been ousted in favour of the NIC.

¹⁴Hameed, T. National Industrial Court of Nigeria Pre-2010 Constitutional Amendment and the Investment and Securities Tribunal – Common Bed Fellows? 63(2017) Journal of Law, Policy and Globalization, 17-25:20.

¹⁵See the case of *Attorney General of Oyo State v Nigerian Labour Congress* (2003) 8 NWLR (Pt. 821) 1 at 35. In this case, it was held that “By the combined effect of sections 1 (1), (3), 6 (6), (b), 251, 272 and 315 of the

effects of this problem according to Emudainohwo¹⁶ were: delays in proceedings, “forum shopping” by litigants, conflicting judgments all of which created hardship and expense for workers then.¹⁷ The principle of exclusive jurisdiction which was first introduced by the Trade Dispute (Amendment) Decree was adopted by the National Industrial Court Act 2006¹⁸ and further reinforced by the Constitution in 2010.¹⁹ For instance, one of the major effects of the National Industrial Court Act (NICA) of 2006 was to take the court out of the Trade Dispute Act by repealing Part II of the Trade Disputes Act of 1976 and gave it a separate enabling law of its own. The NICA expanded the original and appellate jurisdiction of the court. The jurisdiction of the NIC in civil cases and matters is related to labour, trade unions, and industrial relations; environmental and conditions of work, health, safety and welfare of labour, strike, lock-out or industrial action, and interpretation of collective agreements, award of arbitral

1999 Constitution, the High Court of a State shares concurrent jurisdiction in trade dispute matters with National Industrial Court...”. See also the case of *Kalango v. Dokubo*(2003) 16 WRN 32.

¹⁶Emudainohwo, E. ‘Towards the Effectiveness of a Labour Court: Nigerian Experience’ 13 (1) (2017)*ActaUniversitatisDanubius*204-220: 204

¹⁷Kanyip, B. B. ‘National Industrial Court: Yesterday, Today and Tomorrow’ Retrieved from <http://www.nationalindustrialcourtofngigeria.com> on 12 September 2017 at 6,

¹⁸National Industrial Court Act 2006 section 7

¹⁹Constitution 1999 (as amended), section 254C(1),(2) & (5) .The Constitution was amended in 2010 by the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010; Atilola, B,Adetunji, M&Dugeri, M. ‘Powers and Jurisdiction of the NICN under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010: A Case for its Retention, 6(3)(2012)*NigerianJournal of Labour Law and Industrial Relations* 1-25.

tribunal, terms of settlement of labour dispute and matter incidental thereto.²⁰

3. The Role of the National Industrial Court in the Resolution of Labour Disputes

According to Nwazuoke and others,²¹ the recurrent industrial conflicts between employers and workers which often result in an industrial action do not only affect the parties involved but also the general public and the smooth running of the Nigerian economy. The need for industrial harmony underscores the necessity for a specialized court for quick, effective and efficient resolution of trade disputes.²² The regular courts are often understaffed, inadequately funded, over-burdened with so many cases, and plagued with the intricacies of lawyers so much so that cases take too long to be resolved. In addition, such a court may not possess the necessary competence to handle labour matters.²³ Thus the need for a specialized court to entertain and expeditiously resolve labour and trade disputes.

In view of the foregoing fact, the NIC was first established under the Trade Dispute Act of 1976. However, the court was not listed among the superior courts of record in the Constitution of the Federal Republic of Nigeria 1979. Due to this omission, a problem was created, thereby making the status, powers and jurisdiction of

²⁰However the decisions of the Court of Appeal in the cases of *Kalango v Dokubo*(supra)and *Attorney General of Oyo State v Nigerian Labour Congress, Oyo State Chapter* (2003) 8 NWLR I and *Bureau of Public Enterprise v National Union of Electricity Employees* (2003) 13 NWLR Pt. 837 p. 382 declared the provisions of the NIC Act 2006 on the status, powers and jurisdiction of the NIC null and void in view of the provisions of the 1999 Constitution of the Federal Republic of Nigeria.

²¹Nwazuoke, A & Igwe, C. A, *op cit* 39-40

²²*Ibid*

²³*Ibid*

the Court undefined in relation to the hierarchy of Courts in Nigeria.²⁴ This position remained unchanged until the return to democratic rule in 1999 and subsequent amendment of the Constitution in 2010. By virtue of amendment to the Constitution, the exclusive jurisdiction of the NICN was extended to cover not only criminal causes and matters arising from labour and trade disputes,²⁵ but the civil jurisdiction was also enlarged to cover: matters relating to unfair labour practice or international best practices in labour,²⁶ application or interpretation of international labour standards, application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour,²⁷ the interpretation and application of the provisions of Chapter IV of the Constitution (on fundamental human rights) as it relates to employment and labour, national minimum wage, discrimination or sexual harassment at workplace, child labour, child abuse and human trafficking.²⁸ Also the NICN now has exclusive appellate jurisdiction on the decisions on an award or order made by an arbitral tribunal in respect of a trade dispute or any application for the enforcement of an award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to matters which it has jurisdiction, the decisions of the registrar of trade unions relating to labour, and the decisions or recommendations of any administrative body or

²⁴Arowosegbe, O. O. 'National Industrial Court and the Quest for Industrial Harmony and Sustainable Economic Growth and Development in Nigeria' 5 (4, *Labour Law Review*, 8; Ekanem, E. E& Daniel, E *op cit* 4

²⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s254C(5).

²⁶ *Ibid* section 254 C (1)(f).

²⁷ *Ibid* section 254 c (2)

²⁸ *Ibid* section 254 C (1)(d) (e) (g) and (i)

commission of enquiry relating to labour and employment.²⁹ The Constitution also provides that the NICN may establish an Alternative Dispute Resolution (ADR) Centre within its (NICN) premises on matters which jurisdiction is conferred on the court by the Constitution or any Act or Law.³⁰ Pursuant to the foregoing, the NICN has established an ADR Centre within its premises to resolve certain disputes arising from labour, employment, industrial relations, workplace, etc, between parties using the process of mediation and/or conciliation.³¹ The Centre uses mediation and/or conciliation technique(s) to assist parties to resolve their disputes and arrive at mutually acceptable agreement.³²

The establishment of the National Industrial Court of Nigeria has rightly been applauded as a significant development in the Nigerian judicature. It is an indication that the law makers are responding to calls by commercial and private sectors of the economy for reforms in the administration of justice system to meet the challenges of globalization, advancement in technology and movement into specialized courts as it is in democracies all over the world.³³ The provisions of the NICA establishing the court

²⁹*Ibid* section 254 C (1) (j)(ii) (3) (4) (1) (i) (ii)

³⁰Constitution (as amended by the 3rd Alteration Act, 2010) in section 254 C (3).

³¹The NICN ADR Centre was established on the 18th of December 2015.

³²National Industrial Court of Nigeria, "About the NICN ADR Centre" retrieved from <http://nicn.gov.ng/adr/about-us.php> on 21 September 2017 at 6 45pm; Emudainohwo, E. *op cit* 213

³³Abubakar, B. 'An Appraisal of the Jurisdiction and Powers of the National Industrial Court of Nigeria' a Thesis submitted to the School of Postgraduate Studies, Ahmadu Bello University, Zaria, in partial fulfillment of the requirements for the award of a Master Degree in Law

have the goal of endowing organized labour with enough power to enable employers and workers to negotiate a wide range of subject in a balanced frame work.³⁴

4. Analysis of the Rules, Practice and Procedures of the National Industrial Court

The primary objective of the administration of justice is to render justice according to law. The National Industrial Court of Nigeria is enjoined under section 13 of the NICA to concurrently ensure the observance of law and the principles of equity in every civil cause or matter commenced or initiated in the court. The jurisdiction vested in the court shall in so far as practice and procedure are concerned be exercised in the manner provided by the NICA or any other enactment or by such rules or orders as may be made or in the absence of any such provisions, in substantial conformity with the practice and procedure of the court.

The NICN like any other superior courts of record has power to regulate its procedure and proceedings as it thinks fit and shall be bound by the Evidence Act but may depart from it in the interest of justice.³⁵To pursue its onerous tasks, the court enacted the National Industrial Court of Nigeria (Civil Procedure) Rules 2017 (NICN Rules) on 6th December, 2016 but came into force on the 5th January, 2017.³⁶ This Rules repealed the National Industrial Court

LL.M. Department of Public Law Faculty of Law Ahmadu Bello University, Zaria, Nigeria (2015) 26

³⁴Adejumo, B. A. 'The Impact of National Industrial Court in the Administration of Justice in a developing economy like Nigeria Vol. II. Retrieved from www.nationalindustrialcourtofNigeria.com on 14 September 2017 at 7.01pm

³⁵ National Industrial Court of Nigeria (Civil Procedure) Rules 2017 o 9 r 2.

³⁶This is the reason the rule was named National Industrial Court of Nigeria (Civil Procedure) Rules 2017. Due to the date of enactment and

of Nigeria (Civil Procedure) Rules 2007 and Practice Direction, 2012.³⁷

Whilst the 2007 rules contained twenty-nine Orders, the New Rules provides for sixty-seven Orders. The difference in the Orders contained in the two rules is an indication of the improvement in the latter over the former. The preamble to the NICN Rules specifically states that the Rules were enacted by the President of the National Industrial Court, Hon. Justice Babatunde Adeniran Adejumo pursuant to the powers conferred on him under section 254 (F) (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended by the Third Alteration Act 2010 and section 36 of the National Industrial Court Act, 2006.

By Order 1 Rule 3 of the NICN Rules 2017, its provisions were made applicable to all civil matters in respect of which the NICN has been conferred with jurisdiction.³⁸ According to Adetola-

the operative date, Adetola-Kazeem has advised the President of the Court to clarify the correct citation and commencement date of the rules before it is fully circulated. For instance, he observed that Order 1 Rule 2 provides that "these Rules may be cited as the National Industrial Court of Nigeria (Civil Procedure) Rules, 2016 and shall come into effect on the 5th day of January, 2017. However, the short title of the Rules as boldly written on the copy obtained from the court is National Industrial Court of Nigeria (Civil Procedure) Rules 2017. See Adetola-Kazeem, A. 'Overview Of The National Industrial Court Of Nigeria (Civil Procedure) Rules, 2017' (2017) *The Nation*, 3.

³⁷ See the NICN (Civil Procedure) Rules 2017 Order 1 rule 1.

³⁸ Order 1 rule 3 of NICN Rules 2017 provides as follows: "These Rules shall, save to the extent and as may otherwise be ordered by the President, National Industrial Court of Nigeria, pursuant to Section 254(C) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) apply to all civil matters in respect of which jurisdiction has been conferred on the Court by Section 254C of the Constitution of the

Kazeem,³⁹ the New Rules is a reflection of the expanded jurisdiction of the court as provided for by the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010. The New Rules is very detailed on a number of issues. For instance, under the 2007 NICN Rules, there were a lot of gaps which left the court with no option than to rely on the provisions of Order 15 to be effective in its operation. For instance, Order 15 provides *inter alia* that 'where no provision is made in these Rules as to practice and procedure or where the provisions are inadequate, the Court may adopt such procedures as will in its view do substantial justice to the parties.' These rules gave wide room to judges of the court to adopt different procedures in many circumstances where the rules do not make provisions, thereby making the procedures of the court unpredictable and confusing in many circumstances. Although Order 1 Rule 9 (1) and (2) of the NICN 2017 Rules is similar to Order 15 of the 2007 rules, resort to it will be very minimal in view of the robustness of the new rules.⁴⁰ For avoidance of doubt, Order 1 Rule 9 (1) and (2) provides:

(1). Where a matter arises for which provisions or inadequate provisions are made in these Rules, the Court may adopt and apply any procedure as will in its view do substantial justice to any of the parties concerned in the matter.

(2). These Rules are to be applied by the Court as it considers fit and the Court may depart from the rules of evidence in the interest of justice as provided in section 12 (2) of the National Industrial Court Act, 2006.

Federal Republic of Nigeria 1999 or any other enactment in force in Nigeria."

³⁹Adetola-Kazeem, *A op cit*

⁴⁰*Ibid*

A similar provision is also contained in Order 23 of the NICN 2017 Rules, which give leeway to litigants or their counsel to apply to the Court to apply Rules of Procedure of any High Court in Nigeria or to apply any International Best Practice (s) or International Labour Standards in order to meeting the justice of the case before the court, where the NICN 2017 Rules are silent or insufficient thereto.⁴¹ Rule 3 of Order 23 further empowers the court to *suo motu* apply the Rules of Procedure of any High Court in Nigeria to a matter before it, provided it gives the parties opportunity to address it on the propriety or otherwise of the application of such High Court Rules. The President of the Court may also issue a Practice Direction from time to time to regulate any aspect of the procedure and or proceedings of the Court as the situation may require.

The implication of the above provisions is that the New Rules allows for forum shopping provided such is considered to be in the overall interest of justice, equity, convenience or the peculiarity of the matter and it is satisfied that it is not intended to overreach any party or lead to miscarriage of justice or create undue advantage and provided that parties are given opportunity to address the court on the propriety or otherwise of the application of the Rules of any other courts. Flowing from the above provisions, one can conclude that, apart from using the provisions of the NICN 2017, other rules of procedures which may be invoked before the court in the interest of justice include Practice direction issued by the President of the court from time to time;⁴² Rules of Procedure of any High Court in Nigeria;⁴³ Rules of Evidence as

⁴¹NICN Rules 2017 Order 23 rules 1 and 4

⁴²NICN 2017 Rules Order 23 rule 5

⁴³*Ibid* Order 23 rules 1-3

provided by the Evidence Act⁴⁴ and Rules of International Best Practices(s) or International Labour Standards.⁴⁵

Some of the significant innovations in the New Rules are electronic filing of processes and documents;⁴⁶ entitlement of deceased employee;⁴⁷ Pre-Trial Conference;⁴⁸ Claims of Sexual Harassment and Discrimination in the workplace;⁴⁹ Procedure in action for breach of International Protocol, Convention and Treaties and proof of existence of International best practice;⁵⁰ Enforcement of Arbitral Award;⁵¹ reference of disputes to ADR Center;⁵² fast track matters;⁵³ prohibition of legal practitioners from granting press interview on a matter pending before the Court either within the precincts of the Courts or environs;⁵⁴ appointment of Public Trustee in deserving cases where there is intra-union or intra-organizational dispute before the court⁵⁵ etc.

Premised on the foregoing, the NICN Rules is the primary rules of procedure regulating proceedings of the NICN. However, resort may be made to the rules of procedure of any other High Court in Nigeria or rules of International Best Practice where the NICN Rules 2017 is silent or has no provision to deal with the situation

⁴⁴*Ibid*Order9 rule 2

⁴⁵*Ibid*Order23 rule 4

⁴⁶*Ibid*Order6 (a)

⁴⁷*Ibid*Orders 10 & 11

⁴⁸*Ibid*Order12

⁴⁹*Ibid*Order14

⁵⁰*Ibid*Order14 (a)

⁵¹*Ibid*Order17 (3)

⁵²*Ibid*Order24

⁵³*Ibid*Order25

⁵⁴*Ibid*Order58 rule 27

⁵⁵*Ibid*Order59

having regards to the circumstance or peculiarity of the case in hand. In practice, the following, amongst others, are list of processes and procedures introduced by the NICN Rules 2017 to improve on the provisions of the NICN Rules 2007.

4.1. Institution and Trial of Suits

This aspect of the procedure is covered by Order 2 of the NICN Rules, 2017. This Order is an improvement on the old Order 2 of the NICN Rules 2007. Unlike the Old Order⁵⁶ which merely states that filing of originating processes are to be at the Registry of the Court nearest to where the defendant or respondent resides or has presence or in which the defendant or respondent carried on business.⁵⁷ The new Order 2 of the NICN Rules 2017 went further to state that in situations of exigencies, such originating process can be filed in any other Registry of the Court, this is because by virtue of Order 1 Rule 10 (2) of the Rules, the NICN is considered to have 'one judicial division' throughout Nigeria.⁵⁸ Although this provision is an improvement on Order 2 of the NICN Rules 2007. However, it is observed that the New Rules did not offer any definition for what could qualify as an economic, security, environmental and other exigencies. Hence, it is suggested that financial constraints, difficulty or any other prevailing circumstances in accessing the Registry of the court in which either the Claimant or the Defendant resides or carries on business may qualify for the purpose of Order 2 Rule 1.

⁵⁶ Order 2 Rule 1, of the NICN (Civil Procedures) Rules 2007

⁵⁷ Abubakar, *Bopcit*⁵⁸

⁵⁸ According to NICN Rules 2017 Order 1 rule 10 (2) 'judicial division' means 'a location at which the Court carries out its business in any part of the Federation. All Judicial Divisions of the Court shall be one for the purpose of instituting or commencing any matter within the jurisdiction of the Court.

4.2. Forms and Commencement of Action

Unlike the old Order 3 Rule 1 of the 2007 Rules,⁵⁹ Order 3 Rule 1 of the 2017 Rules has made robust provisions for a list of the various originating processes to be used in commencing actions before the Court. Hence, unlike the 2007 Rules which provided for Complaint (Form 1) as the only form of instituting action in the court, other forms introduced by the 2017 Rules in addition to Complaint (Form 1) are: Originating Summons (Forms 45, 46); Originating Motion; Application for Judicial Review; Notice of Appeal or Petition; Referral from the Minister of Labour and Productivity and By any other means that may be prescribed by the Rules, Act or Law in force in Nigeria.

The implication of Order 3 Rule 1 is that litigant now has ample opportunity to use any of the aforementioned originating process depending on the nature of the relief sought and cause of action.⁶⁰ For instance, a matter which borders on interpretation of statutes or instruments shall be commenced by Originating Summons.⁶¹ While matters which are controversial in nature and require calling of oral evidences shall be commenced by 'Complaint' accompany by other ancillary processes.⁶²

⁵⁹ Which provided for the use of only 'Complaint' accompanying by a statement of facts establishing the cause of action; Copies of every document to be relied on at the trial and List of witnesses to be called as originating process.

⁶⁰ NICN Rules 2017 Order 3 rules 2, 4, 5(1) and 6. The provisions of the Order 3 Rule 1 has placed the NIC on the same pedestal with the State High Court and Federal High Court of justice in terms of number of originating processes usually available in superior courts of record.

⁶¹ NICN Rules 2017 Order 3 rule 2(2)(a).

⁶² *Ibid* Order 3 rule 2(1) & (2)(b).

4.3. Filing and Service of Court Process

The filing and issuance of Originating Process is captured by Order 6 of both the old and the new Rules. However, unlike the 2007 Rules, the 2017 Rules has introduced a new sub-rule under Order 6 Rule 1, which is to the effect that the Registrar of the Court is to seal every originating process with the seal of the Court before it can be deemed properly issued. Also introduced in the said Order by the 2017 Rules is the right of a Claimant to withdraw an originating process already filed by filing a notice of discontinuance.⁶³ This, however, has to be done, either before the services of the originating process on the defendant(s) or after service on them but before filing of defence. The implication of this is that, where one takes advantage of it, as prescribed, the need to pay cost to the defendant for having allowed them to waste resources in coming to Court only for the case to be withdrawn would not arise.⁶⁴

Another major addition and in deed laudable to be precise, to the 2017 Rules is Order 6A which allows for electronic filing of Originating Process and documents. For this purpose, Order 6A Rule 1(2) establishes an E-filing Centre at the Court Registry where such E-filing can be done. Rule 2 of the said Order 6A lists the processes that may be filed using the E-filing system. Below is a reproduction of the Rule.

A party or counsel to a party may e-file any process or document that may be filed with the Court in paper form except: (1) Documents to be presented to the Court in Chambers or in camera, solely for

⁶³ Order 6 Rule 9 of the NICN (Civil Procedures) Rule 3017

⁶⁴ This argument may be supported by Order 55 Rule 5 which reads: "In fixing the amount of costs, the principle to be observed is that the successful party is to be indemnified for the expenses to which the party has been unnecessarily put in the proceedings."

the purpose of obtaining a ruling, and (2) Documents to which access is otherwise restricted by law or Court order, etc.

Flowing from the above Rule, any document can be E-filed before the Court provided the elaborate and cumbersome procedures spelt out in Order 6A are complied with.

The proceeding at trial is governed by Order 38 of the NICN Rules 2017. This order is a replica of Order 19 Rule 2 of the 2007 Rules.⁶⁵ The import of the two rules is to enable a Claimant to obtain judgment, if the defendant were absent in Court on the day the case is fixed for hearing, provided the claimant can prove his case. The slight different in the two rules is that while Order 19 Rule 2 of the 2007 was silent on the filing of defence by the Defendant, Order 38 Rule 2 (1) of the NICN 2017 Rules has improved on the provision of Order 19 rule 2 of 2007 rules by providing thus:

Where a cause fixed for hearing is called and the Claimant appears in Court but the Defendant is absent in Court and has not filed any defence to the claim in accordance with these Rules, the Claimant shall be entitled to judgment as far as he can prove his case.

Premised on this rule, the Court only needs to satisfy itself that the absent party had been duly served with the hearing notice in respect of the matter and that there is no just cause for his absence in Court.⁶⁶ Conversely, where the claimant failed to appear in court on the day fixed for hearing, the court may strike out the case

⁶⁵ Which provides thus: 'where a cause is called for hearing and the claimant appears but the defendant or respondent and/or counsel do not and no good cause is shown for the absence, the claimant may prove the claim in so far as the burden of proof lies upon him or her'.

⁶⁶ Order 38 Rule 3 (2) of the NICN (Civil Procedures) Rules, 2017.

for lack of diligent prosecution unless the court sees good reason to the contrary.

One of the features of the New Rules is its human face. Order 10 Rule 1 of the New Rules provides that 'filing of any process related to or connected with outstanding salary, gratuity, pension, benefits, or any other entitlement of deceased employee in any of the Registries of the Court shall attract twenty-five per cent (25%) only of the stipulated filing fees'. Order 11 rule 10 further provides that 'Any process related to or connected with outstanding salary, benefits, allowances, gratuity, pension or any other entitlement of a deceased person filed in any of the Registries of the Court, shall be placed on fast-track'. These rules are quite laudable in the sense that they will encourage quick hearing of cases involving outstanding salary and benefits of deceased person. Also by virtue of Order 25 Rule 1, other matters that qualify to be placed on fast track include, cases concerning or relating to a strike, lock-outs or any other form of industrial action that threatens the peace, stability and economy of the country or any part thereof; a declaration of trade dispute by essential services providers; a trade dispute directly referred to the court by the Minister of Labour and Productivity; and any other matters the President of the Court may direct to be placed on fast-track.

One other interesting provisions of the New Rules is the provision of Order 58 rule 27 which provides that: 'No legal practitioner shall be allowed to grant any press interview, make comments or give any opinion or argument that may touch on a matter which is *sub-judice* before the Court either within the precincts of the Court, its appurtenances or environs'. This provision was made to stem the tide of unethical practices of lawyers making statement to the press about matters which are pending before the court to attract undue publicity of the cases in the media. This provision is a

reinforcement of the provision of Rule 33 of the Rules of Professional Conduct 2007 which provides that 'a lawyer or law firm engaged in or associated with the prosecution or defence of a criminal matter or associated with a civil action shall not, while litigation is anticipated or pending in the matter, make or participate in making any extra-judicial statement that is calculated to prejudice or interfere with, or is reasonably capable of prejudicing or interfering with, the fair trial of the matter or the judgment or sentence thereon.' Any legal practitioner who breaches Order 58 Rule 27 of the New Rules is liable to be committed for contempt of court as provided under Order 63 of the rules.⁶⁷

5. The Practice of the Court in Labour Dispute.

Like other conventional courts, the court applies the rule of law, as applicable, combined with flexibility, expediency, reliability and affordability. For this reason, the Judges of the court are expected to have considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.⁶⁸ Procedurally, the Evidence Act applies to its civil matters. However, the court may depart from applying the provision of Evidence Act in the interest of justice. For its criminal matters, the Criminal Code, the Penal Code, the Administration of the Criminal Justice Act, 2015 (which repealed the Criminal Procedure Act, Criminal Procedure Code) and the Evidence Act bind its proceedings. Essentially, the proceedings of the court are generally regulated by the Constitution of the Federal Republic of Nigeria 1999 (as altered); the National Industrial Court Act, 2006;

⁶⁷Adetola-Kazeem, *Kop cit*.

⁶⁸Aperua-Yusuf, A, Momodu, D and Ishola, A. S. 'Non-Appealable Decisions of the National Industrial Court of Nigeria: A Critical Analysis' 5 (6)(2015) *American International Journal of Contemporary Research*, 160

the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; and, the Trades Disputes Act, 1990 (as amended).

As can be seen from the listed items under Section 254C of the Constitution, the National Industrial Court has now been developed from being a Court of resolution of trade, labour or industrial dispute to a Court that has jurisdiction to entertain anything labour, child labour, child abuse, human trafficking and sexual harassment at the workplace. Despite this laudable development, the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) has some shortcomings. One of which is an attempt to vest the National Industrial Court with the jurisdiction of a Court of first and last resort. Under the Constitution, the right of Appeal from the National Industrial Court of Nigeria depends on the nature of the suit. In other words, the right of Appeal depends on whether the cause is civil or criminal. In criminal causes and matters, the Appeal lies from the decision of the National Industrial Court to the Court of Appeal as of right.⁶⁹ An Appeal shall lie even up to Supreme Court in respect of causes and matters within the criminal jurisdiction of the NIC.⁷⁰ The situation is not that simple in civil causes and matters. An aggrieved party's right of appeal from NIC to Court of Appeal are limited to issues bothering on fundamental rights.⁷¹

⁶⁹Section 254C(5) and (6) of the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration)

⁷⁰Sections 254C(5) ,(6) and 243(4) of the Constitution of Nigeria. See Gummi, L. H. *National Industrial Court: Powers and Jurisdiction'*, Text of paper delivered at the National Judicial Institute on June 29 2011; Aturu, B. *Law and Practice of the National Industrial Court* (Lagos: Hebron Publishing Co. Ltd., 2013) 50 and Arowosegbe, O.Oop *cit* 188.

⁷¹Fagbemi, *Sop cit*.

In all other decisions, an aggrieved litigant can only appeal against the decision of National Industrial Court only at the mercy of the National Assembly or at best appeal with the leave of the Court of Appeal where the enabling Act or Law prescribes an appeal.⁷²In practice, the Court of Appeal is actually divided in opinion as to whether any decision of the NIC is subject to Appeal in civil causes and matters. In five Appeal cases before the Ekiti Judicial Division of the Court of Appeal, the Court was faced with such a question relating to the right of appeal from the decisions of NICN between 2012 and 2013. The Court in the said Appeals namely: *Local Government Service Commission Ekiti v. Olamiju*;⁷³*Local Government Service Commission Ekiti v. Asubiojo*;⁷⁴ *Local Government Service Commission Ekiti v Jegede*;⁷⁵ *Local Government Service Commission Ekiti v. Ajayi*⁷⁶ and *Local Government Service Commission. Ekiti v Bamisaye*⁷⁷ was consistent in granting leave to the Appellants/Applicants to appeal against the decision of the National Industrial Court of Nigeria notwithstanding the fact that the questions that arose did not relate to issue of fundamental right. The reasoning by the Court of Appeal, Ekiti Judicial Division in the above cases is really very compelling and more reasonable. However, in *Coca-Cola (Nig.) Ltd. v Akinsanya*,⁷⁸ an opportunity was further presented to the Court of Appeal to make a pronouncement on the right of appeal from National Industrial Court. In that case, the Appellant filed a Motion on Notice praying for an order of the lower court for a case stated to the Court of Appeal for the determination of the constitutional question as to

⁷²*Ibid*

⁷³CA/EK/69/M/2012 reported in (2013)LPELR -20409 (CA).

⁷⁴CA/EK/72/M/2012 reported in (2013)LPELR -20403 (CA).

⁷⁵CA/EK/07/M/2012 reported in (2013)LPELR -21131 (CA).

⁷⁶CA/EK/70/M/2012 reported in (2013)LPELR -21133 (CA).

⁷⁷CA/EK/69/M/2012 reported in (2013)LPELR -20407 (CA).

⁷⁸(2013) 18 NWLR (Pt.1386)255

whether the jurisdiction of the National Industrial Court as contained in Section 254C(1) of the Constitution extends to all cases of private individual contractual employment or is limited to industrial relations and only to employment matters arising from or connected with trade disputes, collective agreements, labour and industrial relations. Instead of referring the question to the Court of Appeal, the trial court delivered a Ruling and held that it had jurisdiction over the claims of the (Respondent) on the authority of Section 7 of National Industrial Court Act, 2006 and Section 254C (1) of the Constitution, as amended' and that 'the question posed by the Appellants does not raise any substantial issue of law to warrant referring the case. Upon appeal by the Appellant, the Respondent filed a notice of preliminary objection challenging the competence of the appeal, on the ground, *inter alia*, that the Court of Appeal lacks jurisdiction to entertain the appeal having regard to the fact that the appellate jurisdiction of the Court of Appeal as provided under the 1999 Constitution (as amended) over decisions of the NICN only applies to Fundamental Human Rights Enforcement actions, criminal matters as well as in cases where the National Assembly has conferred additional appellate jurisdiction on the Court of Appeal.

The Court unanimously overruled the Respondents' objection under different reasons. They however agreed that the question submitted by the Appellant to the lower Court for reference to the Court of Appeal for determination patently raised a substantial question of law as it bothers on jurisdiction of the Court. Saulawa JCA however made a very interesting observation to the effect that the Court of Appeal has a duty to resolve the inconsistency inherent in the provisions of the Constitution with regard to the right of appeal from the National Industrial Court to the Court of Appeal and that it would amount to absurdity and a negation to the fundamental doctrines of interpretation if the provision of

Section 243(2) and (3) of the Constitution are not construed in conjunction with the well set out provisions of sections 240, 241 and 242 of the said Constitution.⁷⁹

Due to the different approaches by the Court of Appeal in the interpretation of Section 243(2) and (3), one cannot, but commend the Supreme Court of Nigeria for stepping in to clear this legal conundrum and laid to rest the issue of whether the decision of the National Industrial Court of Nigeria is amenable to appeal in the consolidated appeals of *Re-Coca Cola v Mrs. Akinsanya* (SC 542/2013) and *Skye Bank PLC v Victor Anaemenelwu* delivered on 30/6/2017 where it held that the decisions of the NICN in all matters to which the court has jurisdiction are amenable to appeal. It is hope that the Court of Appeal will follow the precedent set by the Supreme Court in all future appeals from the decision of the NICN.

6. Conclusion

Although, the National Industrial Court has come to stay as a court of record in Nigeria with jurisdiction as clearly stated in Section 254C of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the NICA 2006 and the recent enacted NICN Rules 2017, which is a substantial improvement on the provisions of NICN Rules 2007 of the Court and commendable. However, it is imperative to clear seemingly conflicting provisions of the Rules.

⁷⁹A contrary view was expressed in the case of *Lagos Sheraton Hotel and Towers v Hotel and Personal Services Senior Staff Association* (2014) LPELR 23340 (CA). conversely, in the case of *Federal Ministry of Health v Trade Union Members of the joint Health Sectors Union (JOHESU) & Ors* (2014) LPELR 3546. The Abuja Division of the Court of Appeal held that the Court of Appeal can exercise appellate jurisdiction over the decision of the National Industrial Court in all civil matters.

For instance, the actual commencement date of the Rules require further clarification to avoid ambiguity

In view of the importance of labour disputes to a nation economy and its development, the court is enjoined to establish judicial division in all the 36 states within the federation for easy accessibility and affordability to litigants who are desirous of seeking redress in the court having divested the Federal and State High courts' jurisdiction in labour and employment related matters. Doing this will reduce the hardship experienced by litigants in the states that do not have a division of the National Industrial Court. This will further enhance a better justice delivery system that is cost effective. In addition to the foregoing, the recent Supreme Court of Nigeria decision making judgment of National Industrial Court amenable to appeal in all matters in which the court has jurisdiction is commendable and should be followed to letter by Court of Appeal. It is further suggested that the provisions of section 12 (2) of the NICA 2006, which allows the NICN to depart from the rule of evidence during proceeding before in the interest is even against the dictate of substantial justice and international best practice. It is submitted that the court being a superior court of record, the rule of evidence should play prominent roles in proceeding before the court in the interest of justice and not otherwise. To resolve the issues raised in this paper, the National Assembly is called upon to further amend the Constitution of the Federal Republic of Nigeria 1999 and other relevant provisions of NICA 2006 in the interest of justice and international best practice in legal proceedings.