Towards the Effectiveness of a Labour Court: Nigerian Experience

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Abstract: Objectives: The Paper examines the positive effect of the principle of exclusive jurisdiction in the National Industrial Court of Nigeria (NICN). This is important in view of a Bill[2] before the National Assembly (Nigerian legislature) which seeks to remove the exclusive jurisdiction conferred on the NICN on labor matters, instead seeking both the NICN and the ordinary courts to share concurrent jurisdiction[3]. Prior work: It builds on the scholarship which advocates the establishment of specialized labor courts. Approach: And combines analysis of Nigerian legislations and case-law and relevant secondary sources. Implication: The Paper will be of value to the National Assembly, judges and academics.

Keywords: Industrial Court; Exclusive jurisdiction; Labor law

1. Introduction

The National Industrial Court of Nigeria (NICN) was established in 1976 (i.e. 16 years after Nigerian's independence) but became functional in 1978 pursuant to the Trade Disputes Decree (now Trade Disputes Act 1976[4]). Before the principle of exclusive jurisdiction was introduced in the NICN it suffered from a number of problems, one of which was that it shared jurisdiction with the ordinary courts

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[2] Constitution of the Federal Republic of Nigeria 1999 (Fifth Alteration) Bill 2012. Retrieved from <http://www.nials-nigeria.org/journals/APPENDIX%20B.pdf>. See also (Atilola, Adetunji, & Dugeri, 2012, pp 1-25).

[3] See the proposed section 254 C (1A) of the Constitution of the Federal Republic of Nigeria 1999 (Fifth Alteration) Bill 2012, retrieved from http://www.nials-nigeria.org/. The Bill was first read 19th of April 2012.

[4] Trade Dispute Act 1976, Cap 432 Laws of the Federation of Nigeria, 1990.

(High Court and Federal High Court) in labour matters. The effects were: delays[1] in theordinary courts[2], "forum shopping"[3] by litigants, conflicting judgments all of which created hardship and expense for workers then (Kanyip, 2001).

The principle of exclusive jurisdiction was first introduced by the National Industrial Court Act 2006[4] and further extended by the Constitution in 2010.[5] This has led to positive changes in the NICN which forms part of the focus of this paper. In spite of these changes, there is a Bill[6] currently before the National Assembly (legislature) which seeks to remove the exclusive jurisdiction of the NICN in labour matters, instead conferring concurrent jurisdiction upon the NICN and the ordinary courts.[7] It is much better for the NICN to be retained as a specialised labour court with exclusive jurisdiction than exercising concurrent jurisdiction with the ordinary courts. The Bill is therefore retrogressive; it is like taking two steps backward after taking one step forward.

It has been said that "separate labour courts" can add little or nothing to labour law and its implementation unless labour courts operate effectively (Wedderburn, 1987 p. 27). And one way of ensuring the effectiveness of a labour court (as observed in the example of the NICN) is by conferring exclusive jurisdiction on it. With this fact in mind, the paper seeks to focus on the positive effect of the principle of exclusive jurisdiction in the NICN.

The Paper is divided into several parts. Part 1 is introductory. Some relevant terms are defined in Part 2. Part 3 focuses on the literature review of some principles

[1] For instance, in the case of Isaac Obiuweubi v Central Bank of Nigeria [2011] 7NWLR Pt. 1247 465 SC, (which had to do with termination of employment), took the State High Court (ordinary court) twenty-three years to decide which court, as between the State High Court and the Federal High Court, had jurisdiction. Also in Amadi v NNPC (2000) 5 WRN 47 SC, (a case of wrongful dismissal from employment), took thirteen years to resolve the issue of which court had jurisdiction to hear the matter.

[2]The delay was partly due to the fact that the common law and its procedures operated by the ordinary courts were not suitable to labour related matters. See Amadi v NNPC (2000) 5 WRN 47 SC, Isaac Obiuweubi v Central Bank of Nigeria [2011] 7NWLR Pt. 1247 465 SC.

[3] This was so then because litigants could seek redress either from the NICN or the ordinary courts.

[4] Section 7.

[5] Constitution 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 to provide for this.

[6] Constitution of the Federal Republic of Nigeria 1999 (Fifth Alteration) Bill 2012. See also Atilola, B. Adetunji, M. & Dugeri, M. (2012) 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) Nigerian Journal of Labour Law and Industrial Relations 1-25.

[7] See the proposed section 254 C (1A) of the Constitution of the Federal Republic of Nigeria 1999 (Fifth Alteration) Bill 2012. The Bill was first read on 19th April 2012.

necessary for the effectiveness of specialised labour courts. Part 4 analyses the principle of exclusive jurisdiction and its effect in the NICN. Part 5 attempts to answer the question whether the decisions of the NICN are appealable in view of its exclusive jurisdiction. It concludes with Part 6,

2. Definition of Some Relevant Terms

(a) Autonomy of Labour Law

Kahn-Freund (1972) once famously observed that "the main object of labour law has always been… to be a countervailing force to counteract the inequality of bargaining power which is inherent… in the employment relationship" (p. 8). And that "the principal purpose of labour law, then, is to regulate, to support, and to restrain the power of management and the power of organised labour" (p. 5) Kahn-Freund (1959) had of course, an "almost passionate belief in the autonomy of industrial forces" (p. 224), which he called "collective laissez-faire." (p. 224). The main characteristics of collective laissez-faire were "aversion to legislative intervention, its disinclination to rely on legal sanctions…" (p. 224).

Though Kahn-Freund did not follow up his observations with any detailed argument or suggestion for specialised labour courts, it will appear that his scholarship formed part of the groundwork for the argument for the autonomy of labour law. Also, although Kahn-Freund did not particularly use the term "the autonomy of labour law" (as such Freedland, 2015, p. 33) He certainly believed that labour law needed its autonomous ideal of redressing the inequality of power between employees and employers, and that the realization of that ideal generally required a distinctive administration of justice for employment issues (Freedland, 2015, p. 43). Kahn-Freund always preferred to suggest positive paths for the doctrinal development of labour law from within the general law than to demand a declaration of independence from it (Freedland, 2015, p. 33). He thus promulgated the distinctive rationale of redressing the inequality of bargaining power inherent in the making and administration of the individual contract of employment, and the equally distinctive institutional methodology of 'collective laissez-faire' (Freedland, 2015, p. 33).

The word "autonomy" was carefully chosen by Wedderburn (1987) as a "more forceful, more revealing word" to express his idea of "freeing" labour law from the rules and methods of civil law which prejudice workers (p. 2). Wedderburn (1987)

identified the rationale for this approach as being that labour law should work to counteract the inequality in the employment relationship (p. 4). He argued that common law approaches to the employment relationship based on the 'contract of law' are conceptually inappropriate, (1987 p. 5) and further that the common law functioned to preserve what he described as the subordination inherent within the employment relationship (1987, p. 9).

Wedderburn (1987) followed up his argument (on the autonomy of labour law) with the suggestion for the establishment or creation of judicial institutions which develop their jurisprudence on some basis other than the common law (1987, pp. 22-23)

And he further emphasised that "…if labour law is to escape from the clutches of common law thinking and procedures, the compass seems to point in a direction… towards labour courts" (1987, p. 26). Wedderburn (1987), also relied heavily on the idea of collective laissez-faire when he developed his arguments in favour of specialist labour courts (p. 5).[1]

(b) Labour Court

Wedderburn (1991) advocated "labour courts" or "specialised industrial courts", in order to give labour law some autonomy from the common law tradition (p. 25). He noted that one purpose of labour court is to give labour law some autonomy from the common law. To Wedderburn (1987):

…the term "labour courts" means different things to different people. In our context, it cannot mean Diplock-courts to which trade union rights are "unpalatable", nor Donaldson-courts which aim to tell the public which side is "right" in an industrial dispute…rather than a system of separate specialised bodies with diverse tasks, from informal arbitration or dispute resolution machinery to more formal tribunals, all speaking an autonomous language of labour law (p. 26)

In the same vein, W.E.J McCarthy (1990) defined it thus: "the term "labour court" has been widely used to describe separate and "independent" forms of jurisdiction which interpret and enforce aspects of labour Law that would otherwise be decided within the existing legal system" (p. 98).

[1]See also Wedderburn K.W, (1991).The Social Charter in Britain-Labour Law and Labour Courts? Modern Law Review, 54(1), pp.1-47; Moore, M. (2000-2001). The Role of Specialist Courts- an Australian perspective, LAWASIA Journal, pp. 139-154.

The Labour Court in Nigeria (particularly known as the National Industrial Court of Nigeria) has all the powers of a High Court enabling it to be more effective in exercising its jurisdiction.[1] It not only hears labour matters but criminal causes flowing out of labour matters.[2] It will appear that the purpose of this is to prevent a litigant from filing a single case that has two aspects (labour law and criminal law) in two courts-the NICN (for the labour aspect) and the ordinary courts (High Court and Federal High Court for the criminal aspect).

(c) Exclusive Jurisdiction

Jurisdiction is said to be exclusive when a court is vested with the powers to hear matters related to specific areas of the law, to the exclusion of all other courts. And this can be further strengthened by not allowing appeals from the judgments of the particular court which has exclusive jurisdiction (in this instance a labour court) to lie to the appeal courts of the ordinary courts. Wedderburn (1991) has suggested that "…decisions of the specialist labour courts should not end up in the hands of the common law Court of Appeal or Judicial Committee of the House of Lords" (p. 33). And this should be so even on questions of law since this "would hardly change the status quo and put little or no brake on their power" (Wedderburn, 1991, p. 33) to wield the common law.

3. Specialised Labour Courts: Some Principles Necessary for their Effectiveness

Wedderburn (1987) emphasized the need for specialized labour courts and in this regard noted that "…if labour law is to escape from the clutches of common law thinking and procedures, the compass seems to point in a direction… towards labour courts". (p. 26). The argument for specialist labour courts is hinged on the idea of the autonomy of labour law. The need for the autonomy of labour law, in turn, can be explained as follows. Firstly, the concepts, rules and methods of the common law relied on by the ordinary courts (States High Court, Federal High Court) restrict labour law and thus prejudice workers. For example, under the common law, entering into a contract of employment is the parties' free choice, so that any threat to strike can be regarded as a breach of the contract, the only way to terminate the contract is to give notice to quit and resign from the employment.

[1] Constitution, section 254D (1).
[2] Constitution, section 254C (2)(5).

The employer does not normally sue his striking employees for damages but he may dismiss the worker for the breach (Wedderburn, 1989, p. 5), thus "shrouding a relationship of subordination" (Wedderburn 1987, p. 5).

The common law is also unable to deal with the so-called 'a-typical' or 'marginal' relationships between workers and those for whom they produce value: the part-time worker, casual, temporary, home worker, the trainee, or the police cadet who unless special laws are passed are left unprotected because they are in the eyes of the judges as reflected in the common law glass sui generis, "in a class by themselves" (Wedderburn,1987 p. 6), unable to satisfy the test of a contract either for service or for services. (Wedderburn, 1987, p. 6).

Added to the concepts and rules of the common law is the 'refusal or inability (or both) of the judges of the ordinary courts (which follow the common law) to bow the knee of the common law to a balance of power that offends its philosophy' Wedderburn, 1987, p. 16). In other words the common law tradition also governs the judges' interpretation of parliament's employment protection laws (Wedderburn, 1991, p. 16)

In Nigeria, before exclusive jurisdiction (on labour matters) was conferred on the NICN, it was evident that the common law also created hardship for employees. For example at common law an employee's misconduct may justify summary dismissal. But the problem is that there is no fixed definition of the term "misconduct". In Oyedele v Ife University Teaching Hospital Management Board,[1] the Court of Appeal observed that "under our law there is no definition of what is misconduct anywhere, misconduct is what the employer considers to be a misconduct…".[2]

The implication of this foregoing statement is that it gave the ordinary courts (which are the final arbiters) the latitude to decide whether a particular misconduct is sufficient to justify a dismissal. In British-American Insurance Company (Nig) Ltd v Omolaya[3] while the Court of Appeal held that absence from work was gross misconduct which entitled the employer to dismiss summarily, the Supreme Court in Nwobosi v ACB Ltd[4] held that an employee who had granted loans and overdrafts in disregard of express instructions committed misconduct which

[1] Oyedele v Ife University Teaching Hospital Management Board [1990] 6 NWLR 194 see also Uvieghara E.E.(2001). Labour Law in Nigeria, Lagos, Malthouse Press Limited, pp. 65-67.
[2] Oyedele v Ife University Teaching Hospital Management Board [(n10) pp. 194,199.
[3] British-American Insurance Company(Nig) Ltd v Omolaya [1991]2NWLR 721.
[4] Nwobosi v ACB Ltd [1995] 6NWLR 658.

justified summary dismissal. The Supreme Court further held that a clause of the contract of employment which provided that that staff may be dismissed for certain offences, including certain listed ones, was not exhaustive and did not preclude the application of the general common law. By this, the categories of offences for which an employee is dismissed are not fully known leading to job insecurity.

While the establishment of a labour court to enforce labour law and "escape" the common law is important, some other principles are also necessary for their proper functioning. And in this direction, De Givry (1968) for his part identified a number of principles "which appear to be of particular significance for the proper functioning of labour courts" (De Givry, pp. 364-375).[1]

De Givry's principles were based on the conclusions contained in the Resolutions which the Fourth Conference of America States Members of the ILO adopted on the subject in 1949[2] and were expressed to be his views not committing the International Labour Office in any way. And they include:

(i) Labour courts should be established on a permanent basis and should be completely independent of executive authorities. (p. 371).

He suggested that labour judges should be completely independent of the executive authorities and that the independence of the labour court should be fully guaranteed in its statutes. (p. 371)

(ii) Labour judges should be selected from persons who have special experience and knowledge of labour questions (p. 372).

(iii) Labour courts should seek the settlement of labour disputes of a legal character by agreement or conciliation of the parties before judicial awards or decisions are rendered; (p. 373)

He suggested that legislation provide for a conciliation stage before the judicial process. (p. 373)

[1] De Divry, J. was a former officer in the Social Institutions Development Department of the International Labour Office.

[2]See also Jordaan, B & Davis, D. "The Status and Organisation of Industrial Courts: A Comparative Study '(1987) Industrial Law Journal Juta,8, 199, Omar D & Others (speeches) (1998) 'Labour Court Inauguration' Industrial Law Journal Juta 19, 975-985.

See also Internaional Labour Office, Report on Labour Courts in Latin America (Fourth Conference of American States Members of the International Labour Organisation 1949), pp. 76-89, Retrieved from <www.ilo.org/public/libdoc/ilo/ILO-SR/ILO-SR_NS13_engli>.

(iv) The formalities and procedures of labour court should be simplified and all possible measures should be taken to expedite the procedure as far as possible; (p. 373)

He recommended that the rules of common procedure should not apply to labour courts except where such rules are compatible with the character of labour courts and should be simple, brief and expeditious in nature. And also "Labour judges should possess powers sufficient to permit them to intervene actively in the court procedure." (p. 373)

(v) The services of the labour court should be available to the parties free of charge; (p. 373)

(vi) Workers should enjoy adequate legal protection against any act of discrimination in respect of their employment likely to prevent them from having recourse to the labour courts, from giving evidence as witnesses or experts or, in relevant cases, from acting as members of labour courts (p. 373).

(vii) Labour courts should have exclusive jurisdiction over the interpretation and application of individual contracts of employment, collective agreements and social legislation, but must not be siesed with collective disputes before agreed procedures have been exhausted; (p. 373)

As earlier said, this paper will however focus on the principle of exclusive jurisdiction examining the positive effect of it in the NICN.

4. Exclusive Jurisdiction in the NICN

This principle of exclusive jurisdiction was first introduced in 2006 by the National Industrial Court Act, 2006[1] and extended in 2010 by the Constitution.[2]

4.1. Under the National Industrial Court Act 2006

Section 7 (1) of the National Industrial Court Act provides that:

The Court shall have and exercise exclusive jurisdiction in civil causes and matters.

(a) relating to-

[1] Section 7.
[2] Constitution 1999 as amended section 254 C (1), (2) and (5).

(i) labour, including trade unions and industrial relations; and (ii) environment and conditions of work, health, safety and welfare of labour, and matters incidental thereof; and

(b) relating to the grant of any order to restrain any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of strike, lock-out or any industrial action;

(c) relating to the determination of any question as to the interpretation of-

(i) any collective agreement

(ii) any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute;

(iii) the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement,

(iv) any trade union constitution, and

(v) any award or judgment of the Court.

While this provision is important it had several limitations which perhaps led to further enlargement of exclusive jurisdiction in the Constitution (as amended).

It was restricted to "civil causes and matters" so that criminal causes arising out of civil causes fell outside the jurisdiction of the court to be heard by the ordinary courts whose jurisdiction covered criminal matters. Also the civil causes were fewer than that listed in the Constitution.[1]

4.2. Under the Constitution

When the Constitution was amended in 2010, the exclusive jurisdiction of the NICN was extended to cover not only criminal causes and matters arising from labour[2] but the civil jurisdiction was also enlarged to cover the following: matters relating to unfair labour practice or international best practices in labour,[3] application or interpretation of international labour standards, application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour,[4] the interpretation and application of the provisions of Chapter IV of the Constitution (on fundamental human rights) as it relates to employment, and

[1]Constitution , section 254 C (1-5).
[2] Section 254C(5).
[3] Section 254 C (1)(f).
[4] Section 254C (2).

labour,[1] national minimum wage,[2],discrimination or sexual harassment at workplace,[3] child labour, child abuse and human trafficking.[4]

Also the NICN now has exclusive appellate jurisdiction on the following: decisions on an award or order made by an arbitral tribunal in respect of a trade dispute[5] 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,[6] the decisions of the registrar of trade unions relating to labour,[7] and the decisions or recommendations of any administrative body or commission of enquiry relating to labour and employment.[8]

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 (NICN) by the Constitution or any Act or Law.[9] Pursuant to the foregoing, the NICN has now established[10] 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. The Centre uses mediation and/or conciliation technique(s) to assist parties resolve their disputes and arrive at mutually acceptable agreement.[11]

4.3. The Positive Effect of the Introduction of the Principle of Exclusive Jurisdiction in the NICN

The effect is that it eliminated forum shopping (as all labour matters could only be filed at the NICN). And this led to increase in the number of cases decided.[12] This effect was observed by comparing the number of cases decided before and after the principle was introduced.

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[1] Section 254 C (1)(d).
[2] Section 254 C (1)(e).
[3] Section 254 C (1)(g).
[4] Section 254 C (1)(i).
[5] Constitution, section 254 C (1)(j)(ii).
[6] Constitution, section 254 C (4).
[7] Constitution,section 254 C (1)(l)(i).
[8] Constitution of the Federal Republic of Nigeria 1999 (as amended), section 254 C (1)(l)(ii).
[9] Constitution (as amended by the 3rd Alteration Act, 2010) in section 254 C (3).
[10] The NICN ADR Centre was established on the 18th of December 2015.
[11] National Industrial Court of Nigeria, "About the NICN ADR Centre" retrieved from http://nicn.gov.ng/adr/about-us.php.

[12] see Table 1.

As is shown in Table 1 below, while only 123 cases were decided before the principle was introduced [that is between 1978 and 2005 (in 25 years:[1] an average of 4.92 cases per year[2]), 442 cases were decided between 2006 (when the principle was introduced) and 2015 (in 10 years[3]: an average of 44.20 cases per year.[4])] The total number of cases decided from 1978 to 2015 (excluding the years whose data were not available) is 565. Of this total, 21.77 per cent[5] (approximately 22 per cent) of these cases were considered from 1978 to 2005 (in 25 years) while 78.23 per cent[6] (approximately 78 per cent) of the total cases were considered from 2006 to 2015 (in 10 years)[7]

The number of decided cases have increased between these two periods by about 9 times per year from 2006 to 2015 over 1978 to 2005.[8] It can be argued that the reason for the large number as from 2006, is the introduction of exclusive jurisdiction, as litigants were then bound by law to resolve labour disputes only at the NICN.

Table 1. Number of Cases Decided in the National Industrial Court of Nigeria between 1978 and 2015

Year	No of decided cases
1978	5
1979	7
1980	1
1981	5
1982	7
1983	6
1984	6
1985	2
1986	6
1987	6
1988	10
1989	4

[1] This excludes the three years: 1998, 1999 and 2000 which data were not available.

[2] 4.92 cases per year = $\frac{123}{25}$.

[3] 2006-2015 is 10years because each of the years beginning from 2006 was counted as a full year of twelve months Hence 2006-2015 is 10 years.

[4] 44.2 cases per year = $\frac{442}{10}$.

[5] 21.7699 per cent (approximately 22 per cent) = $\frac{123}{565}$ x 100.

[6] 78.23 per cent (approximately 78 per cent) = $\frac{442}{565}$ x 100.

[7] 2006-2015 is 10years because each of the years beginning from 2006 was counted as a full year of twelve months Hence 2006-2015 is 10 years.

[8] $\frac{44.20}{4.92}$ = 8.98 times (approximately 9 times).

1990	14
1991	10
1992	5
1993	2
1994	1
1995	2
1996	3
1997	1
1998	-
1999	-
2000	-
2001	6
2002	3
2003	1
2004	6
2005	4
2006	6
2007	6
2008	9
2009	13
2010	14
2011	18
2012	36
2013	53
2014	125
2015	162

Source: Compiled by researcher using data from National Industrial Court of Nigeria (NICN) http://judgment.nicn.gov.ng/ (accessed 2nd of November 2016) NB: Data for 1998, 1999 and 2000 were not available

One relevant question is whether an appeal can lie from the decisions of the NICN in view of its exclusive jurisdiction.

5. Exclusive Jurisdiction of the NICN and Appeals

Whether an appeal can lie from decisions of the NICN depends on the interpretation of the following provisions of the Constitution (as amended).

Section 243 (2) – (3) provides that:

(2) An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

(3) An Appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly: Provided that where an Act or Law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such appeal shall be with the leave of the Court of Appeal.

Also section 254 C (5) – (6) provides that:

(5) The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any other Act of the National Assembly or by any other law.

(6) Notwithstanding anything to the contrary in this Constitution, appeal shall lie from the decision of the National Industrial Court from matters in sub-section 5 of this section to the Court of Appeal as of right.

The NICN is yet to have an opportunity to interpret these provisions or make any pronouncement on whether the decisions of the NICN are final. But some statements made by two learned Justices of the NICN (outside the court) regarding this seem to conflict. In a seminar, the President of the NICN, Adejumo B. (2011) said:

The controversy on the finality of the decision of the National Industrial Court has been clarified as section 243(3) of the Constitution provides that an appeal shall lie from the decision of the NICN to the Court of Appeal as may be prescribed by an Act of the National Assembly. (Adejumo, 2011)[1]

Kanyip B. on the other hand (also in a seminar) said:

The right of appeal from the decisions of the NICN to the Court of Appeal remains circumscribed. Only in respect of issues of fundamental rights or criminal causes and matters is the appeal as of right. In all other cases, an Act of the National Assembly must first provide for an appeal even here the appeal is possible only upon the leave of the Court of Appeal. (Kanyip, 2011)[2]

[1]Adejumo, B. (2011). The National Industrial Court of Nigeria: Past, Present and Future', Being a Paper delivered at the Refresher Course organised for judicial Officers of between 3-5 years, post appointment by the National Judicial Institute, Abuja on the 24th of March, 2011. Retrieved from http://nicn. gov.ng/.

[2]Kanyip, B., The National Industrial Court: Yesterday, Today and Tomorrow. Retrieved from <www.nicn.gov.ng/>.

The statements of the two learned justices seem to conflict. While Hon. Justice Babatunde Adejumo relying on section 243(3) is of the view that an appeal cannot lie from the decision of the NICN unless an Act of the National Assembly prescribes it, Hon. Justice Benedict Kanyip's statement seems to downplay the force of section 243(3) to the effect that the subsection applies to all 'other cases' apart from fundamental rights and criminal causes.

The effect is that while Hon. Justice Babatunde Adejumo's statement projects the NICN as a final court (that is no appeals from NICN decisions pending an Act of the National Assembly), Hon. Justice Benedict Kanyip's statement tends to suggest that the NICN is not a final court as appeals on fundamental rights and criminal causes as of right go to the Court of Appeal.

A possible way out of this confusion is to interpret sections 243 (2)–(3) and 254 (5)–(6) together as follows:

Section 243(3) appears to be the leading provision because a condition precedent has been prescribed for appeals and reinforced by the words "shall only". Therefore since there is yet to be an Act of the National Assembly in this regard, the decisions of the NICN can be regarded as final.

It is important to note that the Supreme Court had held in Chief Dominic Onuorah Ifezue v Livinus Mbadugha[1] that the word "shall" in a statute is commanding enough to be regarded as mandatory rather than directory. And this became obvious when "shall" was further reinforced by "only" in section 243(3).

If section 243(3) is not appreciated as in (a) above it will lead to further confusion as to the nature of matters for which appeal can lie to the Court of Appeal apart from fundamental rights and criminal matters.

To avoid leaving the answer to the question whether the decisions of the NICN are final to judges' interpretation, it is suggested that the National Assembly should further make a law clarifying its intention in this regard.

[1] Chief Dominic Onuorah Ifezue v Livinus Mbadugha (1984) 1SCNLR 427, also in Suit No. SC.68/1982, judgment of Supreme Court delivered by Anthony Nnaemezie Aniagolu JSC on 18th May, 1984. Retrieved from www.nigeria-law.org/Dominic. This decision can be compared to a Supreme Court Ruling delivered by Francis Fedode Tabai JSC in Associated Discount House Limited v Amalgamated Trustees Limited, Suit No. SC.289/2002, delivered on 13th July 2007. Retrieved from www.nigeria-law.org/Associated, where he said that there is no laid down rule as to whether the word shall used in a statute carries mandatory or merely connotation and that its real purport depends by and large on the particular context in which it is used. It is important to note that Chief Dominic Onuorah Ifezue v Livinus Mbadugha has not been overruled and such is still good law.

6. Conclusion

This paper gave consideration to the importance of the principle of exclusive jurisdiction in a specialised labour court (NICN) to the effective resolution of labour disputes. It noted the argument of Wedderburn (1987) who advocated the creation of judicial institutions to enforce labour law so that labour law might escape from the clutches of the common law thinking and procedures (p. 26).

Building on such arguments, the paper then considered the matter of the effectiveness of labour courts. Using De Givry's (1968) explanation of the principles necessary for the proper functioning of a labour court as a framework for the discussion(pp. 371-375), the principle of exclusive jurisdiction was identified and discussed as essential to the effectiveness of labour courts in general, and the experience of the NICN in particular.

The principle of exclusive jurisdiction was first introduced in the NICN by the National Industrial Court Act in 2006 and further enlarged in 2010 by the Constitution (as amended. This resulted in a large number of cases decided. In order to show that the introduction of the principle increased the number of cases decided, a comparison was made between the number of cases decided before 2006 and from 2006 (when the principle was first introduced). It was observed (as shown in Table 1) that while only 123 cases were decided between 1978 and 2005 (in 25 years, an average of 4.92 cases per year), 442 cases were decided between 2006 (when the principle was first introduced) and 2015 (in 10 years[1], an average of 44.20 cases per year). Thus the total number of cases decided after the principle was introduced did not only increase by 319[2] in 10 years but also the rate per year (an average of 44.20 cases per year). An ancillary question also examined in this paper was whether the decisions of the NICN are appealable in view of the exclusive jurisdiction conferred on it by the Constitution.[3]. It was argued that whether the NICN is a final court depends on the interpretation of the following constitutional provisions: sections 243 (2)-(3) and 254C (5)-(6) (which prescribed situations where Appeal can only lie from the decisions of the NICN). It was argued further that if the foregoing constitutional provisions are examined holistically, it will appear that the NICN can be regarded as a final court, however,

[1] 2006-2015 is 10 years because each of the years beginning from 2006 was counted as a full year of twelve months Hence 2006-2015 is 10 years.
[2]442-123=319 derived by subtracting the total number of cases decided before 2006 from total number of cases decided from 2006-2015.
[3] section 254C(1)-(3).

only on labour matters since there is yet to be an Act of the National Assembly in this regard. It was suggested that to avoid leaving the final answer to the question whether the NICN is a final court to judges' interpretation, the National Assembly should make a law which clearly makes the decisions of the NICN non appealable. It is hoped, meanwhile, that the Bill currently before the National Assembly, which would remove the exclusive jurisdiction of the NICN to hear labour matters, will not be passed.

7. References

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