

SKYE BANK PLC V. IWU – FINALITY OR OTHERWISE OF DECISIONS OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA IN CIVIL CAUSES AND MATTERS?*

INTRODUCTION

In Nigeria, the general industrial unrest and disharmony that characterized the industrial sector soon after the civil war and fear of possible socio-political as well as the economic effect on the nation precipitated the need for special formal mechanisms for settlement of labour disputes outside the regular court system with their attendant delay in dispute resolution in Nigeria. It was thought that a special system with a court dedicated to handling trade dispute matters would provide an effective and efficient mechanism for handling trade dispute matters.¹ The response to this was the promulgation of the Trade Dispute Decree No. 7 of 1976 which later became the Trade Dispute Act (TDA) 1976 (as amended).² The TDA in its part II provides for the establishment of the National Industrial Court (NIC), the aim among others was to provide and promote settlement of labour disputes. The NIC was conferred with jurisdiction and power with respect to settlement of trade disputes, interpretation of collective agreements and matters connected therewith.³

Since the establishment of the NIC, it has to some extent contributed to the maintenance of industrial peace as well as impacted greatly on industrial relations in Nigeria. However the roles ascribed to the court over the years became fraught with controversies particularly with its status, powers and jurisdiction in the hierarchy of courts under the Nigeria legal system.⁴ These controversies greatly impeded the functionality of the NIC and quick settlement of labour disputes through adjudication in some cases. The NIC was not regarded as a unit of the judiciary, deserving of a separate Act of the Legislature, establishing it and vesting it with powers but was seen and functioned as a court without technical rules of practice and procedure for purpose of resolution of labour and trade disputes.⁵ To solve the inadequacies that hitherto existed and fill the gaps which had previously hindered the smooth working of the NIC and impeded its attaining the primary objective of settlement of labour disputes, the National Industrial Court Act, 2006 (NIC Act) was enacted.

The long title of the NIC Act noted that the Act is enacted to provide for the establishment of the NIC as a superior court of record and confer jurisdiction on the court with respect to labour and industrial relations matters. The NIC Act expanded the original and appellate jurisdictions of the NIC. It should be noted that with the advent of the NIC Act and NIC Rules 2007, the NIC is now a court established specially by statute and its powers and jurisdiction are now

* Patrick Nnamdi Okoh, LL.B (Hons) LL.M (University College London) BL, Legal Practitioner and Counsel
D. D. Dodo & Co. No. 10 Atbara Street, Wuse 2 Abuja, 07068301721, pokoh@dddodo.cc

¹ B. Atilola, Annotated Nigeria Labour Legislation, Hybrid Consult 2008, p. 4.

² Chapter 432 LFN 1990 was amended by the Trade Dispute (Amendment) Decree No. 47 all of which are now contained in the Trade Dispute Act Cap T8 LFN 2004.

³ Section 20(1) Trade Dispute Act, 2004.

⁴ O. D. Ejere, Further Reflections on the Constitutionality of the National Industrial Court Act, 2006, NJLIR p. 59 -74.

⁵ J. Ogunye, National Industrial Court and Judicial Absolutism in Nigeria, Premium Times, 2014.

properly defined. The jurisdiction of the NIC in civil cases and matters is related to labour, trade unions and industrial action, interpretation of collective agreements, award of arbitral tribunal, terms of settlement of labour disputes, etc.⁶

In spite of the above pragmatic steps taken by the government in identifying the jurisdiction of the NIC, litigants continued to institute their cases in the High Courts of the various states, High court of the Federal Capital Territory and the Federal High Court instead of the NIC. The problem with this amongst others was that the jurisdictions of these other courts extended to other civil causes and matters. Due to this, proceedings before this regular courts took years before they are resolved. To completely checkmate this seemingly self imposed problems, on the part of litigants, the Nigeria National Assembly in collaboration with the State Houses of Assembly in Nigeria in 2010 amended the Nigeria Constitution through the Constitution of the Federal Republic of Nigeria (Third Alteration) Amendment Act, 2010 thus incorporating the establishment of the NIC, its composition and power like other superior courts of record into the provisions of the Constitution.⁷

THE NATIONAL INDUSTRIAL COURT UNDER THE 1999 CONSTITUTION (AS ALTERED)

Section 254A of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, came as the long awaited legislative step in listing the NIC as a superior court of record. The section defined its establishment, composition and appointment of its President, Judges, its jurisdiction, powers, constitution, practice and procedure. This development expanded the jurisdiction of the court, vested it with additional adjudicatory powers and made its jurisdiction exclusive and final.

For the avoidance of doubt, the jurisdiction of the NIC has been expanded and enlarged under the Constitution (Third Alteration) Amendment Act, 2010⁸.

By virtue of the above provision, the NIC is conferred with original and appellate jurisdictions as far as labour and industrial disputes and matters related thereto are concerned.

APPELLATE JURSDICATION OF THE NICN

Before the advent of the Third Alteration Act, Section 9 of the NIC Act, 2006 had made provisions regarding right of appeals from the decision of the NIC as follows:

- (1) Subject to the provisions of the constitution of the federal republic of Nigeria, 1999, and subsection (2) of this section, no appeal shall lie from the decisions of the court to the

⁶ Section 7 of the National Industrial Court Act, 2006.

⁷ Section 6(3)(5)(a) to (i) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

⁸ Section 254C (1) Constitution (Third Alteration) Amendment Act, 2010.

court of appeal or any other court except as may be prescribed by this Act or any Act of the National Assembly.

- (2) An appeal from the decision of the court shall lie only as of right to the court of appeal on questions of fundamental rights as contained in chapter IV of the constitution of the federal republic of Nigeria

The Third Alteration has given constitutional impetus to the above section of the NIC Act 2006. Section 243(2) and (3) of the Third Alteration Act provides as follows:

- (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 leave of the court of appeal

- (4) 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.

The above constitutional provisions are not as clear as there appear and this has resulted to a divergence of judicial opinion on the finality or otherwise of the decisions of the NICN in civil causes and matters. On one hand, there are cases where the Court of Appeal have held the decision of the NICN as final and not subject to appeal, there are cases on the other hand where the Court of Appeal has held the decision of the NICN to be subject to appeal.

Judicial endorsement for the finality of the decisions of the NICN can be found in the case of **LAGOS SHERATON HOTEL & TOWERS V. H.P.S.S.S.A.**⁹ where an application was made to the Court of Appeal Lagos Division for leave to appeal against the decision of the NIC delivered on 14th December, 2010. The sole issue formulated for determination by the Court of Appeal was;

“Whether by virtue of the provisions of Section 243(2) and (3) of the constitution of the Federal Republic of Nigeria and section 9 of the NIC Act 2006, this court has jurisdiction to grant the Applicant’s application for leave to appeal against the decision of the NIC”.

The court of appeal held thus;

⁹ (2014) 14 NWLR PT. 1426 p. 45

“Except for the provisions of sections 243(2) and 254(5) and (6) of the 1999 constitution (as amended), wherein an aggrieved party can appeal as of right to the court of appeal on questions of fundamental rights as contained in Chapter IV of the said constitution as well as decisions in criminal cases, and as they relate to matters upon which the National Industrial Court has jurisdiction; an appeal on any other matter shall only be as prescribed by an Act of the National Assembly. And that is not all; such an appeal shall be only with leave of the court of appeal. Incidentally, as at now, no such Act of the National Assembly has been enacted prescribing what other causes and matters in which an appeal shall lie against the decision of the National Industrial Court. And until such law is made, the decisions of the National Industrial Court from which a party can appeal to the court of appeal remain circumscribed”.

Also in **COCA-COLA (NIG.) LTD. V. AKINSANYA**¹⁰ the Court of Appeal held thus;

“ However, the Constitution that made the National Industrial Court a superior court of record broke from its tradition of conferring appellate jurisdiction on the court of appeal over the decisions of the National Industrial Court as it has done in respect of other superior courts created by it, by stating that an appeal shall only be from other decisions (except on questions of fundamental rights) of the National Industrial Court to the court of appeal as may be prescribed by an Act of the National Assembly.

As the position stands now, there is no enactment of the National Assembly conferring a right from any decision of the National Industrial court outside the fundamental rights relating to matters within its civil jurisdiction to the court of appeal. While the lacuna may help to reduce the workload of the court of appeal, it is doubtful whether leaving the National Industrial Court as the final court in such civil matters of mega jurisdiction will augur well for aggrieved litigants especially as anything to do with employment affects the livelihood of members of the workforce and invariably their dependents.

While I agree with the sentiments expressed by my learned brother in relation to the ultimate jurisdiction of the National Industrial Court in labour and employment matters, the position of the law as interpreted cannot be faulted. Until there is an enactment prescribing the instances of appeal to this court from the National Industrial Court or an amendment of Section 243 of the Constitution, the National Industrial court remains the final court in such matters upon which the court has jurisdiction except in decisions relating to questions of fundamental rights expressed under Chapter IV of the 1999 Constitution.”

This decision was applied and followed in **ZENITH BANK PLC V. DURUGBOR**.¹¹

¹⁰ (2013) 18 NWLR PT. 1386 p. 255.

¹¹ (2015) LPELR – 24898 CA.

More recently, in **ADEBAYO V. GOV. BOARD, RUGIPOLY ONDO**¹², the Appellant challenged the legality of his removal from the employment of the Respondent. The NIC dismissed the suit and upheld the respondent's action. Aggrieved, the appellant appealed to the court of appeal and filed an application for enlargement of time to seek leave to appeal, leave to appeal and enlargement of time to appeal the judgment of the NIC. Attached to the application was a notice of appeal marked as Exhibit B. In opposing the application, the respondents contended that no right of appeal was available to the Applicants against the judgment of the NIC unless it is constituted purely on grounds of violation of Fundamental Rights within the ambit of Chap IV of the 1999 Constitution. The court of appeal held as follows;

“I am agreeable that there was no disclosure of any breach of fundamental right provision of chap IV of the 1999 Constitution to confer a right of appeal let alone, as of rights to this court in the civil matter to warrant the exercise of any power by this court in relation to this instant motion. I have also not been referred to any Act of the National Assembly where a right of appeal in any other circumstance has been bestowed on the National Industrial Court pursuant to which this instant/intended appeal could purport to emanate, even with leave of this court as enjoined by the Constitution ie section 243(3) of the 3rd alteration to the constitution. This court, per its decision in Lagos Sheraton and Towers v. Personal Services Senior Association per Oseji JCA has lucidly espoused and restated clearly what the law is in this regard.

On the other hand are cases where the Court of Appeal has held the decisions of the NIC to be subject to appeal and granted leave to appeal. In the case of **FEDERAL MINISTRY OF HEALTH V. THE TRADE UNION MEMBERS OF THE JOINT HEALTH SECTORS UNION & ORS.**¹³ an application was brought seeking leave of the Court of Appeal to appeal the decision of the NIC on grounds of jurisdiction and wrongful evaluation of evidence. The Respondent reacted to the application by filing a Counter affidavit and a Notice of Preliminary objection contending that the Applicant's motion for leave was incompetent and liable to be dismissed having regards to the provisions of Section 243(2) of the 1999 Constitution and the decision in **COCA-COLA (NIG.) LTD. V. AKINSANYA** (supra). In resolving the matter, the court of appeal held thus;

“I have set out the expansive jurisdiction of the National Industrial Court, particularly the subject matters upon which the court may adjudicate not only in civil but criminal proceedings. Can it be sensibly argued that the National Assembly intended that no appeal shall lie from the decision of the NIC to the court of appeal except cases involving Fundamental Human Rights under Chap. IV of the Constitution? I do not think so. If the argument of the learned counsel to the Respondent is upheld, it will follow that no party aggrieved by the decision of the NIC involving any civil or criminal matter can be subject of appeal to the Court of Appeal. In that case, the decisions of the NIC shall be final. That will be absurd.”

¹² (2017) 4 NWLR PT. 1555 p. 264

¹³ (2014) LPELR – 23546 CA

Similarly, in **LOCAL GOVT. SERVICE COMMISSION EKITI STATE & ANOR. V. BAMISAYE**¹⁴, the Respondent filed a suit against the Appellant at the Ibadan, Oyo State division of the NIC. The NIC ruled in his favour. The Respondent filed an application at the Ekiti Division of the Court of Appeal for an order granting leave to appeal the judgment. The court of appeal held thus;

“The combined reading of section 9 of the NIC Act 2006 and Section 243(2) and (3) of the 1999 Constitution (as amended) is to the effect that an appeal shall lie as of right in matters relating to questions of fundamental rights from the decision of the NICN to the Court of Appeal, while in other cases, appeal from the decision of the NIC to the court of appeal can only lie if such is prescribed by an act of the national assembly, in which case the appeal shall be with leave of the court of appeal.

I will be emphatic on the apparent, which is that there is no Act of the national assembly that has prescribed the right of appeal that shall lie from the decision of the National Industrial Court to the court of appeal as particularly provided for by Section 243(3) of the Constitution (as amended). The court of appeal being a superior court is deemed to have jurisdiction in respect of all matters except otherwise provided. As far as a superior court is concerned, the reverse is the case. Nothing shall be intended to be out of the jurisdiction of a superior court but that which specifically appears to be so. For an appellate court to be stripped of its jurisdiction therefore, it must be by express provision of the law and not by necessary implication.

Section 9 of the NIC Act, 2006, is not in conflict with the provisions of the constitution on the issue at hand. There is nothing both in the Act or constitution that provides that the NIC shall be a final court in respect of any matter before it. While the law provides that appeal on questions of fundamental rights shall lie as of right to the court of appeal, no provision forecloses a right of appeal with leave on other decisions of the NIC. Since there is no express provision both in the constitution and the Act that the NIC shall be a final court in any matter before it, it follows that under no circumstance

shall the NIC exercise the act of finality in a matter before it. A court of law can only be expressly made a final court by the statute that created it or by any other law where necessary.”

The Court of Appeal also gave similar decisions in **Local Govt. Service Comm. Ekiti State v. Olamiju**¹⁵ and **Local Govt. Service Commission Ekiti State v. Owolabi**¹⁶

¹⁴ (2015) LPELR – 20407 (CA)

¹⁵ (2014) LPELR 22469 CA

¹⁶ (2014) LPELR 22457 CA

SUPREME COURT'S DECISION IN SKYE BANK PLC V. IWU

Notably and of great significance is the fact that the Supreme Court of Nigeria sitting as a full court has just recently resolved this controversy. This is courtesy of the high water mark case of **SKYE BANK PLC V. IWU**¹⁷. In that case the Respondent was an employee of the defunct Afribank Nig. Plc. He commenced a suit against Mainstreet Bank Ltd (as successor- in-title to Afribank Plc) at the National Industrial Court, Lagos. The Respondent's claims were for wrongful termination of employment, unpaid accrued salaries and other benefits. Mainstreet Bank Ltd raised a preliminary objection to the trial court's jurisdiction. The trial court dismissed the preliminary objection and held that it had jurisdiction to hear and determine the matter. Aggrieved by that ruling, Mainstreet Bank Ltd appealed to the Court of Appeal. The Respondent in turn raised a preliminary objection to the jurisdiction of the Court of Appeal to entertain the appeal on the ground that decisions of the National Industrial Court were appealable only on issues of fundamental Rights and that this present appeal was not based on an issue of fundamental right. The Court of Appeal heard parties on the objection and adjourned for ruling. The court of appeal later had to put its ruling in abeyance because Mainstreet Bank Ltd applied it should state a case for the Supreme Court's opinion on the constitutional issues raised in the Respondent's preliminary objection. The principal ground for the application was that there were on record, two sets of conflicting decisions of the Court of Appeal on whether the Court of Appeal had jurisdiction over appeals against all decisions of the National Industrial Court. The Court of Appeal granted the application and formulated three issues for determination by the supreme court. In the course of proceedings at the Supreme Court, the Appellant (Skpe Bank Plc) became the successor-in-title to Mainstreet Bank Ltd and was granted leave of court to continue with the case as the Appellant. The Supreme Court noted that the three (3) issues formulated by the Court of Appeal can be conveniently condensed into a single issue i.e *'Whether the court of appeal as an appellate court created by the constitution of the Federal Republic of Nigeria has the jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court?'*

In resolving this issue, the Supreme Court held that the construction of any document including the constitution is a holistic endeavour and the genesis of the conflicting decisions of the Court of Appeal on this issue is due to the isolated construction of S. 243(2) & (3) of the 1999 constitution as amended. The Supreme Court held that prior to the 3rd alteration Act, the National Industrial Court was an inferior court of record and that the mischief which the 3rd alteration came to cure was to remove the National Industrial court from the category of an inferior court and to elevate it to a superior court of record. Thus vesting the NIC with a superior status like the High Court which is under the appellate jurisdiction of the Court of Appeal, the only difference being that the decisions of the NIC are deliberately made appealable only to the court of appeal, there being no further appeal beyond that court.¹⁸

¹⁷ (2017) 16 NWLR PT. 1590 p. 24

¹⁸ Section 243(4) 1999 Constitution

The Supreme Court also held in that case that the NIC having been elevated to the status of a superior court with the High Court, the NIC cannot navigate out of the Court of Appeal's appellate constitutional jurisdiction over all the courts under it. Since the court of appeal has been given jurisdiction to sit on appeal over decisions of all lower courts that fall under it in terms of judicial hierarchy, the NIC cannot be an exception, except where the constitution expressly states so and which it has not done.

The Supreme Court further held that a contrary interpretation would wreak havoc on the settled notion of hierarchy of courts under the 1999 constitution. By a harmonious construction of S. 240, 242(1), 243(1)(a) and 243(4) of the 1999 Constitution, a litigant who is aggrieved by a decision of the NIC can exercise a right of appeal with the leave of the Court of Appeal. The only innovation in this regard is that the decision of the Court of Appeal in respect of such appeals is final.

The Supreme Court concluded as follows;

- a. Appeals lie from the NIC to the Court of Appeal as of right in criminal cases¹⁹ and Fundamental Human Rights matters²⁰.
- b. Appeals lie from the NIC to the court of appeal with the leave of the latter in all other civil matters²¹.
- c. Decisions of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the NIC shall be final²²

It can be gleaned from the decision of the Supreme court in *Skye Bank v. Iwu*²³ that decisions of the NIC in respect of fundamental rights and criminal cases are appealable as of right to the court of appeal, while other decisions not falling under the above two are appealable subject to the leave of the court of appeal being sought and obtained. Furthermore, from the judgment of the supreme court, it is clear that the National Industrial Court is not a final court on labour and industrial matters and like every other court subordinate to the court of appeal in the architecture of judicial hierarchy in Nigeria, the decisions of the NIC are subject to review by the court of appeal.

CONCLUSION

The Supreme Court's decision in *SKYE BANK V. IWU* is most welcomed and appreciated. Mechanisms for correction of error are an important feature of developed legal systems and appeals constitute a veritable instrument of such a mechanism. Furthermore, appeals ensure a better decision making system as judges know that their decisions can be reversed. Agreeably, a rationale behind the reasoning of those in favour of the removal of the right of appeal from the judgments of the NIC is to discourage unnecessary elongation of cases in which the NIC is seised with jurisdiction. However, the need for expeditious dispensation of cases should not

¹⁹ Section 254c(5) & (6)

²⁰ Section 243(2)

²¹ Section 240, 243(1) & (4)

²² Section 243(4)

²³ Supra.

defeat the need for a legal system that effectively guarantees the right of an aggrieved party to proper judicial audience by way of appeal. SKYE BANK V. IWU is a water mark decision and the Supreme Court is to be commended for its pragmatic and purposive interpretation in reaching this momentous decision. It is clear that by that decision the Supreme Court has resolved the uncertainty and controversy regarding the extent of the powers of the Court of Appeal to review decisions of the National Industrial court.